

HB 2719 - S AMD 327

By Senators Hargrove, Kline, and McCaslin

ADOPTED 03/12/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** It is the legislature's intent to ensure
4 that offenders receive accurate sentences that are based on their
5 actual, complete criminal history. Accurate sentences further the
6 sentencing reform act's goals of:

7 (1) Ensuring that the punishment for a criminal offense is
8 proportionate to the seriousness of the offense and the offender's
9 criminal history;

10 (2) Ensuring punishment that is just; and

11 (3) Ensuring that sentences are commensurate with the punishment
12 imposed on others for committing similar offenses.

13 Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005);
14 *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472
15 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature
16 finds it is necessary to amend the provisions in RCW 9.94A.500,
17 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed
18 accurately reflect the offender's actual, complete criminal history,
19 whether imposed at sentencing or upon resentencing. These amendments
20 are consistent with the United States supreme court holding in *Monge v.*
21 *California*, 524 U.S. 721 (1998), that double jeopardy is not implicated
22 at resentencing following an appeal or collateral attack.

23 **Sec. 2.** RCW 9.94A.500 and 2006 c 339 s 303 are each amended to
24 read as follows:

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

1 Except in cases where the defendant shall be sentenced to a term of
2 total confinement for life without the possibility of release or, when
3 authorized by RCW 10.95.030 for the crime of aggravated murder in the
4 first degree, sentenced to death, the court may order the department to
5 complete a risk assessment report. If available before sentencing, the
6 report shall be provided to the court.

7 Unless specifically waived by the court, the court shall order the
8 department to complete a chemical dependency screening report before
9 imposing a sentence upon a defendant who has been convicted of a
10 violation of the uniform controlled substances act under chapter 69.50
11 RCW, a criminal solicitation to commit such a violation under chapter
12 9A.28 RCW, or any felony where the court finds that the offender has a
13 chemical dependency that has contributed to his or her offense. In
14 addition, the court shall, at the time of plea or conviction, order the
15 department to complete a presentence report before imposing a sentence
16 upon a defendant who has been convicted of a felony sexual offense.
17 The department of corrections shall give priority to presentence
18 investigations for sexual offenders. If the court determines that the
19 defendant may be a mentally ill person as defined in RCW 71.24.025,
20 although the defendant has not established that at the time of the
21 crime he or she lacked the capacity to commit the crime, was
22 incompetent to commit the crime, or was insane at the time of the
23 crime, the court shall order the department to complete a presentence
24 report before imposing a sentence.

25 The court shall consider the risk assessment report and presentence
26 reports, if any, including any victim impact statement and criminal
27 history, and allow arguments from the prosecutor, the defense counsel,
28 the offender, the victim, the survivor of the victim, or a
29 representative of the victim or survivor, and an investigative law
30 enforcement officer as to the sentence to be imposed.

31 A criminal history summary relating to the defendant from the
32 prosecuting authority or from a state, federal, or foreign governmental
33 agency shall be prima facie evidence of the existence and validity of
34 the convictions listed therein. If the court is satisfied by a
35 preponderance of the evidence that the defendant has a criminal
36 history, the court shall specify the convictions it has found to exist.
37 All of this information shall be part of the record. Copies of all
38 risk assessment reports and presentence reports presented to the

1 sentencing court and all written findings of facts and conclusions of
2 law as to sentencing entered by the court shall be sent to the
3 department by the clerk of the court at the conclusion of the
4 sentencing and shall accompany the offender if the offender is
5 committed to the custody of the department. Court clerks shall
6 provide, without charge, certified copies of documents relating to
7 criminal convictions requested by prosecuting attorneys.

8 (2) To prevent wrongful disclosure of information related to mental
9 health services, as defined in RCW 71.05.445 and 71.34.345, a court may
10 take only those steps necessary during a sentencing hearing or any
11 hearing in which the department presents information related to mental
12 health services to the court. The steps may be taken on motion of the
13 defendant, the prosecuting attorney, or on the court's own motion. The
14 court may seal the portion of the record relating to information
15 relating to mental health services, exclude the public from the hearing
16 during presentation or discussion of information relating to mental
17 health services, or grant other relief to achieve the result intended
18 by this subsection, but nothing in this subsection shall be construed
19 to prevent the subsequent release of information related to mental
20 health services as authorized by RCW 71.05.445, 71.34.345, or
21 72.09.585. Any person who otherwise is permitted to attend any hearing
22 pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the
23 hearing solely because the department intends to disclose or discloses
24 information related to mental health services.

25 **Sec. 3.** RCW 9.94A.525 and 2007 c 199 s 8 and 2007 c 116 s 1 are
26 each reenacted and amended to read as follows:

27 The offender score is measured on the horizontal axis of the
28 sentencing grid. The offender score rules are as follows:

29 The offender score is the sum of points accrued under this section
30 rounded down to the nearest whole number.

31 (1) A prior conviction is a conviction which exists before the date
32 of sentencing for the offense for which the offender score is being
33 computed. Convictions entered or sentenced on the same date as the
34 conviction for which the offender score is being computed shall be
35 deemed "other current offenses" within the meaning of RCW 9.94A.589.

36 (2)(a) Class A and sex prior felony convictions shall always be
37 included in the offender score.

1 (b) Class B prior felony convictions other than sex offenses shall
2 not be included in the offender score, if since the last date of
3 release from confinement (including full-time residential treatment)
4 pursuant to a felony conviction, if any, or entry of judgment and
5 sentence, the offender had spent ten consecutive years in the community
6 without committing any crime that subsequently results in a conviction.

7 (c) Except as provided in (e) of this subsection, class C prior
8 felony convictions other than sex offenses shall not be included in the
9 offender score if, since the last date of release from confinement
10 (including full-time residential treatment) pursuant to a felony
11 conviction, if any, or entry of judgment and sentence, the offender had
12 spent five consecutive years in the community without committing any
13 crime that subsequently results in a conviction.

14 (d) Except as provided in (e) of this subsection, serious traffic
15 convictions shall not be included in the offender score if, since the
16 last date of release from confinement (including full-time residential
17 treatment) pursuant to a felony conviction, if any, or entry of
18 judgment and sentence, the offender spent five years in the community
19 without committing any crime that subsequently results in a conviction.

20 (e) If the present conviction is felony driving while under the
21 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
22 felony physical control of a vehicle while under the influence of
23 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
24 of felony driving while under the influence of intoxicating liquor or
25 any drug, felony physical control of a vehicle while under the
26 influence of intoxicating liquor or any drug, and serious traffic
27 offenses shall be included in the offender score if: (i) The prior
28 convictions were committed within five years since the last date of
29 release from confinement (including full-time residential treatment) or
30 entry of judgment and sentence; or (ii) the prior convictions would be
31 considered "prior offenses within ten years" as defined in RCW
32 46.61.5055.

33 (f) This subsection applies to both adult and juvenile prior
34 convictions.

35 (3) Out-of-state convictions for offenses shall be classified
36 according to the comparable offense definitions and sentences provided
37 by Washington law. Federal convictions for offenses shall be
38 classified according to the comparable offense definitions and

1 sentences provided by Washington law. If there is no clearly
2 comparable offense under Washington law or the offense is one that is
3 usually considered subject to exclusive federal jurisdiction, the
4 offense shall be scored as a class C felony equivalent if it was a
5 felony under the relevant federal statute.

6 (4) Score prior convictions for felony anticipatory offenses
7 (attempts, criminal solicitations, and criminal conspiracies) the same
8 as if they were convictions for completed offenses.

9 (5)(a) In the case of multiple prior convictions, for the purpose
10 of computing the offender score, count all convictions separately,
11 except:

12 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
13 encompass the same criminal conduct, shall be counted as one offense,
14 the offense that yields the highest offender score. The current
15 sentencing court shall determine with respect to other prior adult
16 offenses for which sentences were served concurrently or prior juvenile
17 offenses for which sentences were served consecutively, whether those
18 offenses shall be counted as one offense or as separate offenses using
19 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
20 if the court finds that they shall be counted as one offense, then the
21 offense that yields the highest offender score shall be used. The
22 current sentencing court may presume that such other prior offenses
23 were not the same criminal conduct from sentences imposed on separate
24 dates, or in separate counties or jurisdictions, or in separate
25 complaints, indictments, or informations;

26 (ii) In the case of multiple prior convictions for offenses
27 committed before July 1, 1986, for the purpose of computing the
28 offender score, count all adult convictions served concurrently as one
29 offense, and count all juvenile convictions entered on the same date as
30 one offense. Use the conviction for the offense that yields the
31 highest offender score.

32 (b) As used in this subsection (5), "served concurrently" means
33 that: (i) The latter sentence was imposed with specific reference to
34 the former; (ii) the concurrent relationship of the sentences was
35 judicially imposed; and (iii) the concurrent timing of the sentences
36 was not the result of a probation or parole revocation on the former
37 offense.

1 (6) If the present conviction is one of the anticipatory offenses
2 of criminal attempt, solicitation, or conspiracy, count each prior
3 conviction as if the present conviction were for a completed offense.
4 When these convictions are used as criminal history, score them the
5 same as a completed crime.

6 (7) If the present conviction is for a nonviolent offense and not
7 covered by subsection (11), (12), or (13) of this section, count one
8 point for each adult prior felony conviction and one point for each
9 juvenile prior violent felony conviction and 1/2 point for each
10 juvenile prior nonviolent felony conviction.

11 (8) If the present conviction is for a violent offense and not
12 covered in subsection (9), (10), (11), (12), or (13) of this section,
13 count two points for each prior adult and juvenile violent felony
14 conviction, one point for each prior adult nonviolent felony
15 conviction, and 1/2 point for each prior juvenile nonviolent felony
16 conviction.

17 (9) If the present conviction is for a serious violent offense,
18 count three points for prior adult and juvenile convictions for crimes
19 in this category, two points for each prior adult and juvenile violent
20 conviction (not already counted), one point for each prior adult
21 nonviolent felony conviction, and 1/2 point for each prior juvenile
22 nonviolent felony conviction.

23 (10) If the present conviction is for Burglary 1, count prior
24 convictions as in subsection (8) of this section; however count two
25 points for each prior adult Burglary 2 or residential burglary
26 conviction, and one point for each prior juvenile Burglary 2 or
27 residential burglary conviction.

28 (11) If the present conviction is for a felony traffic offense
29 count two points for each adult or juvenile prior conviction for
30 Vehicular Homicide or Vehicular Assault; for each felony offense count
31 one point for each adult and 1/2 point for each juvenile prior
32 conviction; for each serious traffic offense, other than those used for
33 an enhancement pursuant to RCW 46.61.520(2), count one point for each
34 adult and 1/2 point for each juvenile prior conviction; count one point
35 for each adult and 1/2 point for each juvenile prior conviction for
36 operation of a vessel while under the influence of intoxicating liquor
37 or any drug.

1 (12) If the present conviction is for homicide by watercraft or
2 assault by watercraft count two points for each adult or juvenile prior
3 conviction for homicide by watercraft or assault by watercraft; for
4 each felony offense count one point for each adult and 1/2 point for
5 each juvenile prior conviction; count one point for each adult and 1/2
6 point for each juvenile prior conviction for driving under the
7 influence of intoxicating liquor or any drug, actual physical control
8 of a motor vehicle while under the influence of intoxicating liquor or
9 any drug, or operation of a vessel while under the influence of
10 intoxicating liquor or any drug.

11 (13) If the present conviction is for manufacture of
12 methamphetamine count three points for each adult prior manufacture of
13 methamphetamine conviction and two points for each juvenile manufacture
14 of methamphetamine offense. If the present conviction is for a drug
15 offense and the offender has a criminal history that includes a sex
16 offense or serious violent offense, count three points for each adult
17 prior felony drug offense conviction and two points for each juvenile
18 drug offense. All other adult and juvenile felonies are scored as in
19 subsection (8) of this section if the current drug offense is violent,
20 or as in subsection (7) of this section if the current drug offense is
21 nonviolent.

22 (14) If the present conviction is for Escape from Community
23 Custody, RCW 72.09.310, count only prior escape convictions in the
24 offender score. Count adult prior escape convictions as one point and
25 juvenile prior escape convictions as 1/2 point.

26 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
27 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
28 juvenile prior convictions as 1/2 point.

29 (16) If the present conviction is for Burglary 2 or residential
30 burglary, count priors as in subsection (7) of this section; however,
31 count two points for each adult and juvenile prior Burglary 1
32 conviction, two points for each adult prior Burglary 2 or residential
33 burglary conviction, and one point for each juvenile prior Burglary 2
34 or residential burglary conviction.

35 (17) If the present conviction is for a sex offense, count priors
36 as in subsections (7) through (11) and (13) through (16) of this
37 section; however count three points for each adult and juvenile prior
38 sex offense conviction.

1 (18) If the present conviction is for failure to register as a sex
2 offender under RCW 9A.44.130(~~((+10+))~~) (11), count priors as in
3 subsections (7) through (11) and (13) through (16) of this section;
4 however count three points for each adult and juvenile prior sex
5 offense conviction, excluding prior convictions for failure to register
6 as a sex offender under RCW 9A.44.130(~~((+10+))~~) (11), which shall count
7 as one point.

8 (19) If the present conviction is for an offense committed while
9 the offender was under community (~~(placement)~~) custody, add one point.
10 For purposes of this subsection, community custody includes community
11 placement or postrelease supervision, as defined in chapter 9.-- RCW
12 (the new chapter created in section 56 of this act).

13 (20) If the present conviction is for Theft of a Motor Vehicle,
14 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
15 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
16 priors as in subsections (7) through (18) of this section; however
17 count one point for prior convictions of Vehicle Prowling 2, and three
18 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
19 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
20 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
21 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
22 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
23 Permission 2 conviction.

24 (21) The fact that a prior conviction was not included in an
25 offender's offender score or criminal history at a previous sentencing
26 shall have no bearing on whether it is included in the criminal history
27 or offender score for the current offense. (~~((Accordingly,))~~) Prior
28 convictions that were not counted in the offender score or included in
29 criminal history under repealed or previous versions of the sentencing
30 reform act shall be included in criminal history and shall count in the
31 offender score if the current version of the sentencing reform act
32 requires including or counting those convictions. Prior convictions
33 that were not included in criminal history or in the offender score
34 shall be included upon any resentencing to ensure imposition of an
35 accurate sentence.

36 **Sec. 4.** RCW 9.94A.530 and 2005 c 68 s 2 are each amended to read
37 as follows:

1 (1) The intersection of the column defined by the offender score
2 and the row defined by the offense seriousness score determines the
3 standard sentence range (see RCW 9.94A.510, (Table 1) and RCW
4 9.94A.517, (Table 3)). The additional time for deadly weapon findings
5 or for other adjustments as specified in RCW 9.94A.533 shall be added
6 to the entire standard sentence range. The court may impose any
7 sentence within the range that it deems appropriate. All standard
8 sentence ranges are expressed in terms of total confinement.

9 (2) In determining any sentence other than a sentence above the
10 standard range, the trial court may rely on no more information than is
11 admitted by the plea agreement, or admitted, acknowledged, or proved in
12 a trial or at the time of sentencing, or proven pursuant to RCW
13 9.94A.537. Acknowledgment includes not objecting to information stated
14 in the presentence reports and not objecting to criminal history
15 presented at the time of sentencing. Where the defendant disputes
16 material facts, the court must either not consider the fact or grant an
17 evidentiary hearing on the point. The facts shall be deemed proved at
18 the hearing by a preponderance of the evidence, except as otherwise
19 specified in RCW 9.94A.537. On remand for resentencing following
20 appeal or collateral attack, the parties shall have the opportunity to
21 present and the court to consider all relevant evidence regarding
22 criminal history, including criminal history not previously presented.

23 (3) In determining any sentence above the standard sentence range,
24 the court shall follow the procedures set forth in RCW 9.94A.537.
25 Facts that establish the elements of a more serious crime or additional
26 crimes may not be used to go outside the standard sentence range except
27 upon stipulation or when specifically provided for in RCW
28 9.94A.535(~~(+2)~~) (3) (d), (e), (g), and (h).

29 NEW SECTION. Sec. 5. Sections 2 and 3 of this act apply to all
30 sentencings and resentencings commenced before, on, or after the
31 effective date of sections 1 through 4 of this act.

32 NEW SECTION. Sec. 6. The existing sentencing reform act contains
33 numerous provisions for supervision of different types of offenders.
34 This duplication has caused great confusion for judges, lawyers,
35 offenders, and the department of corrections, and often results in
36 inaccurate sentences. The clarifications in this act are intended to

1 support continued discussions by the sentencing guidelines commission
2 with the courts and the criminal justice community to identify and
3 propose policy changes that will further simplify and improve the
4 sentencing reform act relating to the supervision of offenders. The
5 sentencing guidelines commission shall submit policy change proposals
6 to the legislature on or before December 1, 2008.

7 Sections 7 through 58 of this act are intended to simplify the
8 supervision provisions of the sentencing reform act and increase the
9 uniformity of its application. These sections are not intended to
10 either increase or decrease the authority of sentencing courts or the
11 department relating to supervision, except for those provisions
12 instructing the court to apply the provisions of the current community
13 custody law to offenders sentenced after July 1, 2009, but who
14 committed their crime prior to the effective date of this section to
15 the extent that such application is constitutionally permissible.

16 This will effect a change for offenders who committed their crimes
17 prior to the offender accountability act, chapter 196, Laws of 1999.
18 These offenders will be ordered to a term of community custody rather
19 than community placement or community supervision. To the extent
20 constitutionally permissible, the terms of the offender's supervision
21 will be as provided in current law. With the exception of this change,
22 the legislature does not intend to make, and no provision of sections
23 7 through 58 of this act may be construed as making, a substantive
24 change to the supervision provisions of the sentencing reform act.

25 It is the intent of the legislature to reaffirm that section 3,
26 chapter 379, Laws of 2003, expires July 1, 2010.

27 NEW SECTION. **Sec. 7.** A new section is added to chapter 9.94A RCW
28 to read as follows:

29 (1) If an offender is sentenced to the custody of the department
30 for one of the following crimes, the court shall impose a term of
31 community custody for the community custody range established under RCW
32 9.94A.850 or up to the period of earned release awarded pursuant to RCW
33 9.94A.728 (1) and (2), whichever is longer:

34 (a) A sex offense not sentenced under RCW 9.94A.712;

35 (b) A violent offense;

36 (c) A crime against persons under RCW 9.94A.411(2);

37 (d) A felony offender under chapter 69.50 or 69.52 RCW.

1 (2) If an offender is sentenced to a term of confinement of one
2 year or less for a violation of RCW 9A.44.130(11)(a), the court shall
3 impose a term of community custody for the community custody range
4 established under RCW 9.94A.850 or up to the period of earned release
5 awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.

6 (3) If an offender is sentenced under the drug offender sentencing
7 alternative, the court shall impose community custody as provided in
8 RCW 9.94A.660.

9 (4) If an offender is sentenced under the special sexual offender
10 sentencing alternative, the court shall impose community custody as
11 provided in RCW 9.94A.670.

12 (5) If an offender is sentenced to a work ethic camp, the court
13 shall impose community custody as provided in RCW 9.94A.690.

14 (6) If a sex offender is sentenced as a nonpersistent offender
15 pursuant to RCW 9.94A.712, the court shall impose community custody as
16 provided in that section.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 9.94A RCW
18 to read as follows:

19 (1) If an offender is sentenced to a term of confinement for one
20 year or less for one of the following offenses, the court may impose up
21 to one year of community custody:

22 (a) A sex offense, other than failure to register under RCW
23 9A.44.130(1);

24 (b) A violent offense;

25 (c) A crime against a person under RCW 9.94A.411; or

26 (d) A felony violation of chapter 69.50 or 69.52 RCW, or an
27 attempt, conspiracy, or solicitation to commit such a crime.

28 (2) If an offender is sentenced to a first-time offender waiver,
29 the court may impose community custody as provided in RCW 9.94A.650.

30 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.94A RCW
31 to read as follows:

32 When a court sentences a person to a term of community custody, the
33 court shall impose conditions of community custody as provided in this
34 section.

35 (1) **Mandatory conditions.** As part of any term of community
36 custody, the court shall:

1 (a) Require the offender to inform the department of court-ordered
2 treatment upon request by the department;

3 (b) Require the offender to comply with any conditions imposed by
4 the department under section 10 of this act;

5 (c) If the offender was sentenced under RCW 9.94A.712 for an
6 offense listed in RCW 9.94A.712(1)(a), and the victim of the offense
7 was under eighteen years of age at the time of the offense, prohibit
8 the offender from residing in a community protection zone.

9 (2) **Waivable conditions.** Unless waived by the court, as part of
10 any term of community custody, the court shall order an offender to:

11 (a) Report to and be available for contact with the assigned
12 community corrections officer as directed;

13 (b) Work at department-approved education, employment, or community
14 restitution, or any combination thereof;

15 (c) Refrain from possessing or consuming controlled substances
16 except pursuant to lawfully issued prescriptions;

17 (d) Pay supervision fees as determined by the department; and

18 (e) Obtain prior approval of the department for the offender's
19 residence location and living arrangements.

20 (3) **Discretionary conditions.** As part of any term of community
21 custody, the court may order an offender to:

22 (a) Remain within, or outside of, a specified geographical
23 boundary;

24 (b) Refrain from direct or indirect contact with the victim of the
25 crime or a specified class of individuals;

26 (c) Participate in crime-related treatment or counseling services;

27 (d) Participate in rehabilitative programs or otherwise perform
28 affirmative conduct reasonably related to the circumstances of the
29 offense, the offender's risk of reoffending, or the safety of the
30 community;

31 (e) Refrain from consuming alcohol; or

32 (f) Comply with any crime-related prohibitions.

33 (4) **Special conditions.**

34 (a) In sentencing an offender convicted of a crime of domestic
35 violence, as defined in RCW 10.99.020, if the offender has a minor
36 child, or if the victim of the offense for which the offender was
37 convicted has a minor child, the court may order the offender to

1 participate in a domestic violence perpetrator program approved under
2 RCW 26.50.150.

3 (b)(i) In sentencing an offender convicted of an alcohol or drug
4 related traffic offense, the court shall require the offender to
5 complete a diagnostic evaluation by an alcohol or drug dependency
6 agency approved by the department of social and health services or a
7 qualified probation department, defined under RCW 46.61.516, that has
8 been approved by the department of social and health services. If the
9 offense was pursuant to chapter 46.61 RCW, the report shall be
10 forwarded to the department of licensing. If the offender is found to
11 have an alcohol or drug problem that requires treatment, the offender
12 shall complete treatment in a program approved by the department of
13 social and health services under chapter 70.96A RCW. If the offender
14 is found not to have an alcohol or drug problem that requires
15 treatment, the offender shall complete a course in an information
16 school approved by the department of social and health services under
17 chapter 70.96A RCW. The offender shall pay all costs for any
18 evaluation, education, or treatment required by this section, unless
19 the offender is eligible for an existing program offered or approved by
20 the department of social and health services.

21 (ii) For purposes of this section, "alcohol or drug related traffic
22 offense" means the following: Driving while under the influence as
23 defined by RCW 46.61.502, actual physical control while under the
24 influence as defined by RCW 46.61.504, vehicular homicide as defined by
25 RCW 46.61.520(1)(a), vehicular assault as defined by RCW
26 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050,
27 or assault by watercraft as defined by RCW 79A.60.060.

28 (iii) This subsection (4)(b) does not require the department of
29 social and health services to add new treatment or assessment
30 facilities nor affect its use of existing programs and facilities
31 authorized by law.

32 NEW SECTION. **Sec. 10.** A new section is added to chapter 9.94A RCW
33 to read as follows:

34 (1) Every person who is sentenced to a period of community custody
35 shall report to and be placed under the supervision of the department,
36 subject to RCW 9.94A.501.

1 (2)(a) The department shall assess the offender's risk of reoffense
2 and may establish and modify additional conditions of community custody
3 based upon the risk to community safety.

4 (b) Within the funds available for community custody, the
5 department shall determine conditions and duration of community custody
6 on the basis of risk to community safety, and shall supervise offenders
7 during community custody on the basis of risk to community safety and
8 conditions imposed by the court. The secretary shall adopt rules to
9 implement the provisions of this subsection (2)(b).

10 (3) If the offender is supervised by the department, the department
11 shall at a minimum instruct the offender to:

12 (a) Report as directed to a community corrections officer;

13 (b) Remain within prescribed geographical boundaries;

14 (c) Notify the community corrections officer of any change in the
15 offender's address or employment;

16 (d) Pay the supervision fee assessment; and

17 (e) Disclose the fact of supervision to any mental health or
18 chemical dependency treatment provider, as required by RCW 9.94A.722.

19 (4) The department may require the offender to participate in
20 rehabilitative programs, or otherwise perform affirmative conduct, and
21 to obey all laws.

22 (5) If the offender was sentenced pursuant to a conviction for a
23 sex offense, the department may impose electronic monitoring. Within
24 the resources made available by the department for this purpose, the
25 department shall carry out any electronic monitoring using the most
26 appropriate technology given the individual circumstances of the
27 offender. As used in this section, "electronic monitoring" means the
28 monitoring of an offender using an electronic offender tracking system
29 including, but not limited to, a system using radio frequency or active
30 or passive global positioning system technology.

31 (6) The department may not impose conditions that are contrary to
32 those ordered by the court and may not contravene or decrease court
33 imposed conditions.

34 (7)(a) The department shall notify the offender in writing of any
35 additional conditions or modifications.

36 (b) By the close of the next business day after receiving notice of
37 a condition imposed or modified by the department, an offender may
38 request an administrative review under rules adopted by the department.

1 The condition shall remain in effect unless the reviewing officer finds
2 that it is not reasonably related to the crime of conviction, the
3 offender's risk of reoffending, or the safety of the community.

4 (8) The department may require offenders to pay for special
5 services rendered including electronic monitoring, day reporting, and
6 telephone reporting, dependent on the offender's ability to pay. The
7 department may pay for these services for offenders who are not able to
8 pay.

9 (9)(a) When a sex offender has been sentenced pursuant to RCW
10 9.94A.712, the board shall exercise the authority prescribed in RCW
11 9.95.420 through 9.95.435.

12 (b) The department shall assess the offender's risk of recidivism
13 and shall recommend to the board any additional or modified conditions
14 based upon the risk to community safety. The board must consider and
15 may impose department-recommended conditions.

16 (c) If the department finds that an emergency exists requiring the
17 immediate imposition of additional conditions in order to prevent the
18 offender from committing a crime, the department may impose such
19 conditions. The department may not impose conditions that are contrary
20 to those set by the board or the court and may not contravene or
21 decrease court-imposed or board-imposed conditions. Conditions imposed
22 under this subsection shall take effect immediately after notice to the
23 offender by personal service, but shall not remain in effect longer
24 than seven working days unless approved by the board.

25 (10) In setting, modifying, and enforcing conditions of community
26 custody, the department shall be deemed to be performing a
27 quasi-judicial function.

28 NEW SECTION. **Sec. 11.** A new section is added to chapter 9.94A RCW
29 to read as follows:

30 No offender sentenced to a term of community custody under the
31 supervision of the department may own, use, or possess firearms or
32 ammunition. Offenders who own, use, or are found to be in actual or
33 constructive possession of firearms or ammunition shall be subject to
34 the violation process and sanctions under sections 15 and 21 of this
35 act and RCW 9.94A.737.

36 "Constructive possession" as used in this section means the power

1 and intent to control the firearm or ammunition. "Firearm" as used in
2 this section has the same definition as in RCW 9.41.010.

3 NEW SECTION. **Sec. 12.** A new section is added to chapter 9.94A RCW
4 to read as follows:

5 (1) Community custody shall begin: (a) Upon completion of the term
6 of confinement; (b) at such time as the offender is transferred to
7 community custody in lieu of earned release in accordance with RCW
8 9.94A.728 (1) or (2); or (c) at the time of sentencing if no term of
9 confinement is ordered.

10 (2) When an offender is sentenced to community custody, the
11 offender is subject to the conditions of community custody as of the
12 date of sentencing, unless otherwise ordered by the court.

13 (3) When an offender is sentenced to a community custody range
14 pursuant to section 7 (1) or (2) of this act, the department shall
15 discharge the offender from community custody on a date determined by
16 the department, which the department may modify, based on risk and
17 performance of the offender, within the range or at the end of the
18 period of earned release, whichever is later.

19 NEW SECTION. **Sec. 13.** A new section is added to chapter 9.94A RCW
20 to read as follows:

21 (1) When an offender is under community custody, the community
22 corrections officer may obtain information from the offender's mental
23 health treatment provider on the offender's status with respect to
24 evaluation, application for services, registration for services, and
25 compliance with the supervision plan, without the offender's consent,
26 as described under RCW 71.05.630.

27 (2) An offender under community custody who is civilly detained
28 under chapter 71.05 RCW, and subsequently discharged or conditionally
29 released to the community, shall be under the supervision of the
30 department for the duration of his or her period of community custody.
31 During any period of inpatient mental health treatment that falls
32 within the period of community custody, the inpatient treatment
33 provider and the supervising community corrections officer shall notify
34 each other about the offender's discharge, release, and legal status,
35 and shall share other relevant information.

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 9.94A RCW
2 to read as follows:

3 (1) At any time prior to the completion or termination of a sex
4 offender's term of community custody, if the court finds that public
5 safety would be enhanced, the court may impose and enforce an order
6 extending any or all of the conditions of community custody for a
7 period up to the maximum allowable sentence for the crime as it is
8 classified in chapter 9A.20 RCW, regardless of the expiration of the
9 offender's term of community custody.

10 (2) If a violation of a condition extended under this section
11 occurs after the expiration of the offender's term of community
12 custody, it shall be deemed a violation of the sentence for the
13 purposes of RCW 9.94A.631 and may be punishable as contempt of court as
14 provided for in RCW 7.21.040.

15 (3) If the court extends a condition beyond the expiration of the
16 term of community custody, the department is not responsible for
17 supervision of the offender's compliance with the condition.

18 NEW SECTION. **Sec. 15.** A new section is added to chapter 9.94A RCW
19 to read as follows:

20 (1)(a) An offender who violates any condition or requirement of a
21 sentence may be sanctioned with up to sixty days' confinement for each
22 violation.

23 (b) In lieu of confinement, an offender may be sanctioned with work
24 release, home detention with electronic monitoring, work crew,
25 community restitution, inpatient treatment, daily reporting, curfew,
26 educational or counseling sessions, supervision enhanced through
27 electronic monitoring, or any other sanctions available in the
28 community.

29 (2) If an offender was under community custody pursuant to one of
30 the following statutes, the offender may be sanctioned as follows:

31 (a) If the offender was transferred to community custody in lieu of
32 earned early release in accordance with RCW 9.94A.728(2), the offender
33 may be transferred to a more restrictive confinement status to serve up
34 to the remaining portion of the sentence, less credit for any period
35 actually spent in community custody or in detention awaiting
36 disposition of an alleged violation.

1 (b) If the offender was sentenced under the drug offender
2 sentencing alternative set out in RCW 9.94A.660, the offender may be
3 sanctioned in accordance with that section.

4 (c) If the offender was sentenced under the special sexual offender
5 sentencing alternative set out in RCW 9.94A.670, the suspended sentence
6 may be revoked and the offender committed to serve the original
7 sentence of confinement.

8 (d) If the offender was sentenced to a work ethic camp pursuant to
9 RCW 9.94A.690, the offender may be reclassified to serve the unexpired
10 term of his or her sentence in total confinement.

11 (e) If a sex offender was sentenced pursuant to RCW 9.94A.712, the
12 offender may be transferred to a more restrictive confinement status to
13 serve up to the remaining portion of the sentence, less credit for any
14 period actually spent in community custody or in detention awaiting
15 disposition of an alleged violation.

16 NEW SECTION. **Sec. 16.** A new section is added to chapter 9.94A RCW
17 to read as follows:

18 (1) If an offender has not completed his or her maximum term of
19 total confinement and is subject to a third violation hearing pursuant
20 to RCW 9.94A.737 for any violation of community custody and is found to
21 have committed the violation, the department shall return the offender
22 to total confinement in a state correctional facility to serve up to
23 the remaining portion of his or her sentence, unless it is determined
24 that returning the offender to a state correctional facility would
25 substantially interfere with the offender's ability to maintain
26 necessary community supports or to participate in necessary treatment
27 or programming and would substantially increase the offender's
28 likelihood of reoffending.

29 (2) The department may work with the Washington association of
30 sheriffs and police chiefs to establish and operate an electronic
31 monitoring program for low-risk offenders who violate the terms of
32 their community custody.

33 (3) Local governments, their subdivisions and employees, the
34 department and its employees, and the Washington association of
35 sheriffs and police chiefs and its employees are immune from civil
36 liability for damages arising from incidents involving low-risk

1 offenders who are placed on electronic monitoring unless it is shown
2 that an employee acted with gross negligence or bad faith.

3 NEW SECTION. **Sec. 17.** A new section is added to chapter 9.94A RCW
4 to read as follows:

5 (1) If a sanction of confinement is imposed by the court, the
6 following applies:

7 (a) If the sanction was imposed pursuant to section 15(1) of this
8 act, the sanction shall be served in a county facility.

9 (b) If the sanction was imposed pursuant to section 15(2) of this
10 act, the sanction shall be served in a state facility.

11 (2) If a sanction of confinement is imposed by the department, and
12 if the offender is an inmate as defined by RCW 72.09.015, no more than
13 eight days of the sanction, including any credit for time served, may
14 be served in a county facility. The balance of the sanction shall be
15 served in a state facility. In computing the eight-day period,
16 weekends and holidays shall be excluded. The department may negotiate
17 with local correctional authorities for an additional period of
18 detention.

19 (3) If a sanction of confinement is imposed by the board, it shall
20 be served in a state facility.

21 (4) Sanctions imposed pursuant to RCW 9.94A.670(3) shall be served
22 in a county facility.

23 (5) As used in this section, "county facility" means a facility
24 operated, licensed, or utilized under contract by the county, and
25 "state facility" means a facility operated, licensed, or utilized under
26 contract by the state.

27 NEW SECTION. **Sec. 18.** A new section is added to chapter 9.94A RCW
28 to read as follows:

29 The procedure for imposing sanctions for violations of sentence
30 conditions or requirements is as follows:

31 (1) If the offender was sentenced under the drug offender
32 sentencing alternative, any sanctions shall be imposed by the
33 department or the court pursuant to RCW 9.94A.660.

34 (2) If the offender was sentenced under the special sexual offender
35 sentencing alternative, any sanctions shall be imposed by the
36 department or the court pursuant to RCW 9.94A.670.

1 (3) If a sex offender was sentenced pursuant to RCW 9.94A.712, any
2 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

3 (4) In any other case, if the offender is being supervised by the
4 department, any sanctions shall be imposed by the department pursuant
5 to RCW 9.94A.737.

6 (5) If the offender is not being supervised by the department, any
7 sanctions shall be imposed by the court pursuant to section 19 of this
8 act.

9 NEW SECTION. **Sec. 19.** A new section is added to chapter 9.94A RCW
10 to read as follows:

11 (1) If an offender violates any condition or requirement of a
12 sentence, and the offender is not being supervised by the department,
13 the court may modify its order of judgment and sentence and impose
14 further punishment in accordance with this section.

15 (2) If an offender fails to comply with any of the conditions or
16 requirements of a sentence the following provisions apply:

17 (a) The court, upon the motion of the state, or upon its own
18 motion, shall require the offender to show cause why the offender
19 should not be punished for the noncompliance. The court may issue a
20 summons or a warrant of arrest for the offender's appearance;

21 (b) The state has the burden of showing noncompliance by a
22 preponderance of the evidence;

23 (c) If the court finds that a violation has been proved, it may
24 impose the sanctions specified in section 15(1) of this act.
25 Alternatively, the court may:

26 (i) Convert a term of partial confinement to total confinement;

27 (ii) Convert community restitution obligation to total or partial
28 confinement; or

29 (iii) Convert monetary obligations, except restitution and the
30 crime victim penalty assessment, to community restitution hours at the
31 rate of the state minimum wage as established in RCW 49.46.020 for each
32 hour of community restitution;

33 (d) If the court finds that the violation was not willful, the
34 court may modify its previous order regarding payment of legal
35 financial obligations and regarding community restitution obligations;
36 and

1 (e) If the violation involves a failure to undergo or comply with
2 a mental health status evaluation and/or outpatient mental health
3 treatment, the court shall seek a recommendation from the treatment
4 provider or proposed treatment provider. Enforcement of orders
5 concerning outpatient mental health treatment must reflect the
6 availability of treatment and must pursue the least restrictive means
7 of promoting participation in treatment. If the offender's failure to
8 receive care essential for health and safety presents a risk of serious
9 physical harm or probable harmful consequences, the civil detention and
10 commitment procedures of chapter 71.05 RCW shall be considered in
11 preference to incarceration in a local or state correctional facility.

12 (3) Any time served in confinement awaiting a hearing on
13 noncompliance shall be credited against any confinement ordered by the
14 court.

15 (4) Nothing in this section prohibits the filing of escape charges
16 if appropriate.

17 **Sec. 20.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to
18 read as follows:

19 ~~(1) ((If an offender violates any condition or requirement of~~
20 ~~community custody, the department may transfer the offender to a more~~
21 ~~restrictive confinement status to serve up to the remaining portion of~~
22 ~~the sentence, less credit for any period actually spent in community~~
23 ~~custody or in detention awaiting disposition of an alleged violation~~
24 ~~and subject to the limitations of subsection (3) of this section.~~

25 ~~(2) If an offender has not completed his or her maximum term of~~
26 ~~total confinement and is subject to a third violation hearing for any~~
27 ~~violation of community custody and is found to have committed the~~
28 ~~violation, the department shall return the offender to total~~
29 ~~confinement in a state correctional facility to serve up to the~~
30 ~~remaining portion of his or her sentence, unless it is determined that~~
31 ~~returning the offender to a state correctional facility would~~
32 ~~substantially interfere with the offender's ability to maintain~~
33 ~~necessary community supports or to participate in necessary treatment~~
34 ~~or programming and would substantially increase the offender's~~
35 ~~likelihood of reoffending.~~

36 ~~(3)(a) For a sex offender sentenced to a term of community custody~~
37 ~~under RCW 9.94A.670 who violates any condition of community custody,~~

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

6 ~~(b) For a sex offender sentenced to a term of community custody~~
7 ~~under RCW 9.94A.710 who violates any condition of community custody~~
8 ~~after having completed his or her maximum term of total confinement,~~
9 ~~including time served on community custody in lieu of earned release,~~
10 ~~the department may impose a sanction of up to sixty days in a local~~
11 ~~correctional facility for each violation.~~

12 ~~(c) For an offender sentenced to a term of community custody under~~
13 ~~RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,~~
14 ~~for a crime committed on or after July 1, 2000, who violates any~~
15 ~~condition of community custody after having completed his or her~~
16 ~~maximum term of total confinement, including time served on community~~
17 ~~custody in lieu of earned release, the department may impose a sanction~~
18 ~~of up to sixty days in total confinement for each violation. The~~
19 ~~department may impose sanctions such as work release, home detention~~
20 ~~with electronic monitoring, work crew, community restitution, inpatient~~
21 ~~treatment, daily reporting, curfew, educational or counseling sessions,~~
22 ~~supervision enhanced through electronic monitoring, or any other~~
23 ~~sanctions available in the community.~~

24 ~~(d) For an offender sentenced to a term of community placement~~
25 ~~under RCW 9.94A.705 who violates any condition of community placement~~
26 ~~after having completed his or her maximum term of total confinement,~~
27 ~~including time served on community custody in lieu of earned release,~~
28 ~~the department may impose a sanction of up to sixty days in total~~
29 ~~confinement for each violation. The department may impose sanctions~~
30 ~~such as work release, home detention with electronic monitoring, work~~
31 ~~crew, community restitution, inpatient treatment, daily reporting,~~
32 ~~curfew, educational or counseling sessions, supervision enhanced~~
33 ~~through electronic monitoring, or any other sanctions available in the~~
34 ~~community.~~

35 ~~(4) If an offender has been arrested for a new felony offense while~~
36 ~~under community supervision, community custody, or community placement,~~
37 ~~the department shall hold the offender in total confinement until a~~
38 ~~hearing before the department as provided in this section or until the~~

1 ~~offender has been formally charged for the new felony offense,~~
2 ~~whichever is earlier. Nothing in this subsection shall be construed as~~
3 ~~to permit the department to hold an offender past his or her maximum~~
4 ~~term of total confinement if the offender has not completed the maximum~~
5 ~~term of total confinement or to permit the department to hold an~~
6 ~~offender past the offender's term of community supervision, community~~
7 ~~custody, or community placement.~~

8 ~~(5) The department shall be financially responsible for any portion~~
9 ~~of the sanctions authorized by this section that are served in a local~~
10 ~~correctional facility as the result of action by the department.~~

11 ~~(6))~~ If an offender is accused of violating any condition or
12 requirement of community custody, he or she is entitled to a hearing
13 before the department prior to the imposition of sanctions. The
14 hearing shall be considered as offender disciplinary proceedings and
15 shall not be subject to chapter 34.05 RCW. The department shall
16 develop hearing procedures and a structure of graduated sanctions.

17 ~~((7))~~ (2) The hearing procedures required under subsection
18 ~~((6))~~ (1) of this section shall be developed by rule and include the
19 following:

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

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

28 (c) The hearing shall be held unless waived by the offender, and
29 shall be electronically recorded. For offenders not in total
30 confinement, the hearing shall be held within fifteen working days, but
31 not less than twenty-four hours, after notice of the violation. For
32 offenders in total confinement, the hearing shall be held within five
33 working days, but not less than twenty-four hours, after notice of the
34 violation;

35 (d) The offender shall have the right to: (i) Be present at the
36 hearing; (ii) have the assistance of a person qualified to assist the
37 offender in the hearing, appointed by the hearing officer if the

1 offender has a language or communications barrier; (iii) testify or
2 remain silent; (iv) call witnesses and present documentary evidence;
3 and (v) question witnesses who appear and testify; and

4 (e) The sanction shall take effect if affirmed by the hearing
5 officer. Within seven days after the hearing officer's decision, the
6 offender may appeal the decision to a panel of three reviewing officers
7 designated by the secretary or by the secretary's designee. The
8 sanction shall be reversed or modified if a majority of the panel finds
9 that the sanction was not reasonably related to any of the following:
10 (i) The crime of conviction; (ii) the violation committed; (iii) the
11 offender's risk of reoffending; or (iv) the safety of the community.

12 ~~((8))~~ (3) For purposes of this section, no finding of a violation
13 of conditions may be based on unconfirmed or unconfirmable allegations.

14 ~~((9) The department shall work with the Washington association of
15 sheriffs and police chiefs to establish and operate an electronic
16 monitoring program for low risk offenders who violate the terms of
17 their community custody. Between January 1, 2006, and December 31,
18 2006, the department shall endeavor to place at least one hundred low-
19 risk community custody violators on the electronic monitoring program
20 per day if there are at least that many low risk offenders who qualify
21 for the electronic monitoring program.~~

22 ~~(10) Local governments, their subdivisions and employees, the
23 department and its employees, and the Washington association of
24 sheriffs and police chiefs and its employees shall be immune from civil
25 liability for damages arising from incidents involving low risk
26 offenders who are placed on electronic monitoring unless it is shown
27 that an employee acted with gross negligence or bad faith.)~~

28 NEW SECTION. Sec. 21. (1) The secretary may issue warrants for
29 the arrest of any offender who violates a condition of community
30 custody. The arrest warrants shall authorize any law enforcement or
31 peace officer or community corrections officer of this state or any
32 other state where such offender may be located, to arrest the offender
33 and place him or her in total confinement pending disposition of the
34 alleged violation.

35 (2) A community corrections officer, if he or she has reasonable
36 cause to believe an offender has violated a condition of community
37 custody, may suspend the person's community custody status and arrest

1 or cause the arrest and detention in total confinement of the offender,
2 pending the determination of the secretary as to whether the violation
3 has occurred. The community corrections officer shall report to the
4 secretary all facts and circumstances and the reasons for the action of
5 suspending community custody status.

6 (3) If an offender has been arrested for a new felony offense while
7 under community custody the department shall hold the offender in total
8 confinement until a hearing before the department as provided in this
9 section or until the offender has been formally charged for the new
10 felony offense, whichever is earlier. Nothing in this subsection shall
11 be construed as to permit the department to hold an offender past his
12 or her maximum term of total confinement if the offender has not
13 completed the maximum term of total confinement or to permit the
14 department to hold an offender past the offender's term of community
15 custody.

16 (4) A violation of a condition of community custody shall be deemed
17 a violation of the sentence for purposes of RCW 9.94A.631. The
18 authority granted to community corrections officers under this section
19 shall be in addition to that set forth in RCW 9.94A.631.

20 **Sec. 22.** RCW 9.94A.740 and 1999 c 196 s 9 are each amended to read
21 as follows:

22 (1) ~~((The secretary may issue warrants for the arrest of any
23 offender who violates a condition of community placement or community
24 custody. The arrest warrants shall authorize any law enforcement or
25 peace officer or community corrections officer of this state or any
26 other state where such offender may be located, to arrest the offender
27 and place him or her in total confinement pending disposition of the
28 alleged violation.))~~ When an offender is arrested pursuant to section
29 21 of this act, the department shall compensate the local jurisdiction
30 at the office of financial management's adjudicated rate, in accordance
31 with RCW 70.48.440. ~~((A community corrections officer, if he or she
32 has reasonable cause to believe an offender in community placement or
33 community custody has violated a condition of community placement or
34 community custody, may suspend the person's community placement or
35 community custody status and arrest or cause the arrest and detention
36 in total confinement of the offender, pending the determination of the
37 secretary as to whether the violation has occurred. The community~~

1 ~~corrections officer shall report to the secretary all facts and~~
2 ~~circumstances and the reasons for the action of suspending community~~
3 ~~placement or community custody status. A violation of a condition of~~
4 ~~community placement or community custody shall be deemed a violation of~~
5 ~~the sentence for purposes of RCW 9.94A.631. The authority granted to~~
6 ~~community corrections officers under this section shall be in addition~~
7 ~~to that set forth in RCW 9.94A.631.))~~

8 (2) Inmates, as defined in RCW 72.09.015, who have been transferred
9 to community custody and who are detained in a local correctional
10 facility are the financial responsibility of the department of
11 corrections, except as provided in subsection (3) of this section.
12 ~~((The community custody inmate shall be removed from the local~~
13 ~~correctional facility, except as provided in subsection (3) of this~~
14 ~~section, not later than eight days, excluding weekends and holidays,~~
15 ~~following admittance to the local correctional facility and~~
16 ~~notification that the inmate is available for movement to a state~~
17 ~~correctional institution.))~~

18 (3) ~~((The department may negotiate with local correctional~~
19 ~~authorities for an additional period of detention; however, sex~~
20 ~~offenders sanctioned for community custody violations under RCW~~
21 ~~9.94A.737(2) to a term of confinement shall remain in the local~~
22 ~~correctional facility for the complete term of the sanction.))~~ For
23 confinement sanctions imposed by the department under RCW
24 ~~((9.94A.737(2)(a)))~~ 9.94A.670, the local correctional facility shall be
25 financially responsible. ~~((For confinement sanctions imposed under RCW~~
26 ~~9.94A.737(2)(b), the department of corrections shall be financially~~
27 ~~responsible for that portion of the sanction served during the time in~~
28 ~~which the sex offender is on community custody in lieu of earned~~
29 ~~release, and the local correctional facility shall be financially~~
30 ~~responsible for that portion of the sanction served by the sex offender~~
31 ~~after the time in which the sex offender is on community custody in~~
32 ~~lieu of earned release.))~~

33 (4) The department, in consultation with the Washington association
34 of sheriffs and police chiefs and those counties in which the sheriff
35 does not operate a correctional facility, shall establish a methodology
36 for determining the department's local correctional facilities bed
37 utilization rate, for each county in calendar year 1998, for offenders

1 being held for violations of conditions of community custody(~~(~~
2 ~~community placement, or community supervision)~~). (~~For confinement~~
3 ~~sanctions imposed under RCW 9.94A.737(2) (c) or (d)~~)

4 (5) Except as provided in subsections (1) and (2) of this section,
5 the local correctional facility shall continue to be financially
6 responsible to the extent of the calendar year 1998 bed utilization
7 rate for confinement sanctions imposed by the department pursuant to
8 RCW 9.94A.737. If the department's use of bed space in local
9 correctional facilities of any county for such confinement sanctions
10 (~~imposed on offenders sentenced to a term of community custody under~~
11 ~~RCW 9.94A.737(2) (c) or (d)~~) exceeds the 1998 bed utilization rate for
12 the county, the department shall compensate the county for the excess
13 use at the per diem rate equal to the lowest rate charged by the county
14 under its contract with a municipal government during the year in which
15 the use occurs.

16 **Sec. 23.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c
17 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
18 amended to read as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

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

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

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

36 (5) "Community custody" means that portion of an offender's
37 sentence of confinement in lieu of earned release time or imposed

1 (~~pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,~~
2 ~~9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,~~) as part of a
3 sentence and served in the community subject to controls placed on the
4 offender's movement and activities by the department. (~~For offenders~~
5 ~~placed on community custody for crimes committed on or after July 1,~~
6 ~~2000, the department shall assess the offender's risk of reoffense and~~
7 ~~may establish and modify conditions of community custody, in addition~~
8 ~~to those imposed by the court, based upon the risk to community~~
9 ~~safety.))~~

10 (6) "Community custody range" means the minimum and maximum period
11 of community custody included as part of a sentence under RCW
12 9.94A.715, as established by the commission or the legislature under
13 RCW 9.94A.850 (~~for crimes committed on or after July 1, 2000~~)).

14 (~~("Community placement" means that period during which the~~
15 ~~offender is subject to the conditions of community custody and/or~~
16 ~~postrelease supervision, which begins either upon completion of the~~
17 ~~term of confinement (postrelease supervision) or at such time as the~~
18 ~~offender is transferred to community custody in lieu of earned release.~~
19 ~~Community placement may consist of entirely community custody, entirely~~
20 ~~postrelease supervision, or a combination of the two.~~

21 ~~(8))~~ "Community protection zone" means the area within eight
22 hundred eighty feet of the facilities and grounds of a public or
23 private school.

24 (~~(9))~~ (8) "Community restitution" means compulsory service,
25 without compensation, performed for the benefit of the community by the
26 offender.

27 (~~(10)~~ "Community supervision" means a period of time during which
28 a convicted offender is subject to crime-related prohibitions and other
29 sentence conditions imposed by a court pursuant to this chapter or RCW
30 16.52.200(6) or 46.61.524. Where the court finds that any offender has
31 a chemical dependency that has contributed to his or her offense, the
32 conditions of supervision may, subject to available resources, include
33 treatment. For purposes of the interstate compact for out-of-state
34 supervision of parolees and probationers, RCW 9.95.270, community
35 supervision is the functional equivalent of probation and should be
36 considered the same as probation by other states.

37 ~~(11))~~ (9) "Confinement" means total or partial confinement.

1 ~~((12))~~ (10) "Conviction" means an adjudication of guilt pursuant
2 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
3 guilty, and acceptance of a plea of guilty.

4 ~~((13))~~ (11) "Crime-related prohibition" means an order of a court
5 prohibiting conduct that directly relates to the circumstances of the
6 crime for which the offender has been convicted, and shall not be
7 construed to mean orders directing an offender affirmatively to
8 participate in rehabilitative programs or to otherwise perform
9 affirmative conduct. However, affirmative acts necessary to monitor
10 compliance with the order of a court may be required by the department.

11 ~~((14))~~ (12) "Criminal history" means the list of a defendant's
12 prior convictions and juvenile adjudications, whether in this state, in
13 federal court, or elsewhere.

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

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

22 (c) The determination of a defendant's criminal history is distinct
23 from the determination of an offender score. A prior conviction that
24 was not included in an offender score calculated pursuant to a former
25 version of the sentencing reform act remains part of the defendant's
26 criminal history.

27 ~~((15))~~ (13) "Day fine" means a fine imposed by the sentencing
28 court that equals the difference between the offender's net daily
29 income and the reasonable obligations that the offender has for the
30 support of the offender and any dependents.

31 ~~((16))~~ (14) "Day reporting" means a program of enhanced
32 supervision designed to monitor the offender's daily activities and
33 compliance with sentence conditions, and in which the offender is
34 required to report daily to a specific location designated by the
35 department or the sentencing court.

36 ~~((17))~~ (15) "Department" means the department of corrections.

37 ~~((18))~~ (16) "Determinate sentence" means a sentence that states
38 with exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community (~~supervision~~)
2 custody, the number of actual hours or days of community restitution
3 work, or dollars or terms of a legal financial obligation. The fact
4 that an offender through earned release can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

7 (~~(19)~~) (17) "Disposable earnings" means that part of the earnings
8 of an offender remaining after the deduction from those earnings of any
9 amount required by law to be withheld. For the purposes of this
10 definition, "earnings" means compensation paid or payable for personal
11 services, whether denominated as wages, salary, commission, bonuses, or
12 otherwise, and, notwithstanding any other provision of law making the
13 payments exempt from garnishment, attachment, or other process to
14 satisfy a court-ordered legal financial obligation, specifically
15 includes periodic payments pursuant to pension or retirement programs,
16 or insurance policies of any type, but does not include payments made
17 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
18 or Title 74 RCW.

19 (~~(20)~~) (18) "Drug offender sentencing alternative" is a
20 sentencing option available to persons convicted of a felony offense
21 other than a violent offense or a sex offense and who are eligible for
22 the option under RCW 9.94A.660.

23 (~~(21)~~) (19) "Drug offense" means:

24 (a) Any felony violation of chapter 69.50 RCW except possession of
25 a controlled substance (RCW 69.50.4013) or forged prescription for a
26 controlled substance (RCW 69.50.403);

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

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

33 (~~(22)~~) (20) "Earned release" means earned release from
34 confinement as provided in RCW 9.94A.728.

35 (~~(23)~~) (21) "Escape" means:

36 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
37 first degree (RCW 9A.76.110), escape in the second degree (RCW
38 9A.76.120), willful failure to return from furlough (RCW 72.66.060),

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

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

7 ~~((+24+))~~ (22) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
10 run injury-accident (RCW 46.52.020(4)), felony driving while under the
11 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
12 felony physical control of a vehicle while under the influence of
13 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

17 ~~((+25+))~~ (23) "Fine" means a specific sum of money ordered by the
18 sentencing court to be paid by the offender to the court over a
19 specific period of time.

20 ~~((+26+))~~ (24) "First-time offender" means any person who has no
21 prior convictions for a felony and is eligible for the first-time
22 offender waiver under RCW 9.94A.650.

23 ~~((+27+))~~ (25) "Home detention" means a program of partial
24 confinement available to offenders wherein the offender is confined in
25 a private residence subject to electronic surveillance.

26 ~~((+28+))~~ (26) "Legal financial obligation" means a sum of money
27 that is ordered by a superior court of the state of Washington for
28 legal financial obligations which may include restitution to the
29 victim, statutorily imposed crime victims' compensation fees as
30 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
31 drug funds, court-appointed attorneys' fees, and costs of defense,
32 fines, and any other financial obligation that is assessed to the
33 offender as a result of a felony conviction. Upon conviction for
34 vehicular assault while under the influence of intoxicating liquor or
35 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
36 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
37 legal financial obligations may also include payment to a public agency

1 of the expense of an emergency response to the incident resulting in
2 the conviction, subject to RCW 38.52.430.

3 ~~((+29+))~~ (27) "Most serious offense" means any of the following
4 felonies or a felony attempt to commit any of the following felonies:

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

8 (b) Assault in the second degree;

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

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

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

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

23 (q) Vehicular assault, when caused by the operation or driving of
24 a vehicle by a person while under the influence of intoxicating liquor
25 or any drug or by the operation or driving of a vehicle in a reckless
26 manner;

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

31 (s) Any other class B felony offense with a finding of sexual
32 motivation;

33 (t) Any other felony with a deadly weapon verdict under RCW
34 9.94A.602;

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

1 that under the laws of this state would be a felony classified as a
2 most serious offense under this subsection;

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

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

16 ((+30+)) (28) "Nonviolent offense" means an offense which is not a
17 violent offense.

18 ((+31+)) (29) "Offender" means a person who has committed a felony
19 established by state law and is eighteen years of age or older or is
20 less than eighteen years of age but whose case is under superior court
21 jurisdiction under RCW 13.04.030 or has been transferred by the
22 appropriate juvenile court to a criminal court pursuant to RCW
23 13.40.110. Throughout this chapter, the terms "offender" and
24 "defendant" are used interchangeably.

25 ((+32+)) (30) "Partial confinement" means confinement for no more
26 than one year in a facility or institution operated or utilized under
27 contract by the state or any other unit of government, or, if home
28 detention or work crew has been ordered by the court, in an approved
29 residence, for a substantial portion of each day with the balance of
30 the day spent in the community. Partial confinement includes work
31 release, home detention, work crew, and a combination of work crew and
32 home detention.

33 ((+33+)) (31) "Persistent offender" is an offender who:

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

36 (ii) Has, before the commission of the offense under (a) of this
37 subsection, been convicted as an offender on at least two separate
38 occasions, whether in this state or elsewhere, of felonies that under

1 the laws of this state would be considered most serious offenses and
2 would be included in the offender score under RCW 9.94A.525; provided
3 that of the two or more previous convictions, at least one conviction
4 must have occurred before the commission of any of the other most
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
7 of a child in the first degree, child molestation in the first degree,
8 rape in the second degree, rape of a child in the second degree, or
9 indecent liberties by forcible compulsion; (B) any of the following
10 offenses with a finding of sexual motivation: Murder in the first
11 degree, murder in the second degree, homicide by abuse, kidnapping in
12 the first degree, kidnapping in the second degree, assault in the first
13 degree, assault in the second degree, assault of a child in the first
14 degree, assault of a child in the second degree, or burglary in the
15 first degree; or (C) an attempt to commit any crime listed in this
16 subsection (~~(+33+)~~) (31)(b)(i); and

17 (ii) Has, before the commission of the offense under (b)(i) of this
18 subsection, been convicted as an offender on at least one occasion,
19 whether in this state or elsewhere, of an offense listed in (b)(i) of
20 this subsection or any federal or out-of-state offense or offense under
21 prior Washington law that is comparable to the offenses listed in
22 (b)(i) of this subsection. A conviction for rape of a child in the
23 first degree constitutes a conviction under (b)(i) of this subsection
24 only when the offender was sixteen years of age or older when the
25 offender committed the offense. A conviction for rape of a child in
26 the second degree constitutes a conviction under (b)(i) of this
27 subsection only when the offender was eighteen years of age or older
28 when the offender committed the offense.

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

31 ~~(+35+)~~) (32) "Predatory" means: (a) The perpetrator of the crime
32 was a stranger to the victim, as defined in this section; (b) the
33 perpetrator established or promoted a relationship with the victim
34 prior to the offense and the victimization of the victim was a
35 significant reason the perpetrator established or promoted the
36 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
37 volunteer, or other person in authority in any public or private school
38 and the victim was a student of the school under his or her authority

1 or supervision. For purposes of this subsection, "school" does not
2 include home-based instruction as defined in RCW 28A.225.010; (ii) a
3 coach, trainer, volunteer, or other person in authority in any
4 recreational activity and the victim was a participant in the activity
5 under his or her authority or supervision; or (iii) a pastor, elder,
6 volunteer, or other person in authority in any church or religious
7 organization, and the victim was a member or participant of the
8 organization under his or her authority.

9 ~~((36))~~ (33) "Private school" means a school regulated under
10 chapter 28A.195 or 28A.205 RCW.

11 ~~((37))~~ (34) "Public school" has the same meaning as in RCW
12 28A.150.010.

13 ~~((38))~~ (35) "Restitution" means a specific sum of money ordered
14 by the sentencing court to be paid by the offender to the court over a
15 specified period of time as payment of damages. The sum may include
16 both public and private costs.

17 ~~((39))~~ (36) "Risk assessment" means the application of an
18 objective instrument supported by research and adopted by the
19 department for the purpose of assessing an offender's risk of
20 reoffense, taking into consideration the nature of the harm done by the
21 offender, place and circumstances of the offender related to risk, the
22 offender's relationship to any victim, and any information provided to
23 the department by victims. The results of a risk assessment shall not
24 be based on unconfirmed or unconfirmable allegations.

25 ~~((40))~~ (37) "Serious traffic offense" means:

26 (a) Nonfelony driving while under the influence of intoxicating
27 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
28 while under the influence of intoxicating liquor or any drug (RCW
29 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
30 attended vehicle (RCW 46.52.020(5)); or

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

34 ~~((41))~~ (38) "Serious violent offense" is a subcategory of violent
35 offense and means:

36 (a)(i) Murder in the first degree;

37 (ii) Homicide by abuse;

38 (iii) Murder in the second degree;

1 (iv) Manslaughter in the first degree;
2 (v) Assault in the first degree;
3 (vi) Kidnapping in the first degree;
4 (vii) Rape in the first degree;
5 (viii) Assault of a child in the first degree; or
6 (ix) An attempt, criminal solicitation, or criminal conspiracy to
7 commit one of these felonies; or
8 (b) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a serious
10 violent offense under (a) of this subsection.
11 ~~((42))~~ (39) "Sex offense" means:
12 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
13 RCW 9A.44.130~~((11))~~ (12);
14 (ii) A violation of RCW 9A.64.020;
15 (iii) A felony that is a violation of chapter 9.68A RCW other than
16 RCW 9.68A.080; or
17 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
18 criminal solicitation, or criminal conspiracy to commit such crimes;
19 (b) Any conviction for a felony offense in effect at any time prior
20 to July 1, 1976, that is comparable to a felony classified as a sex
21 offense in (a) of this subsection;
22 (c) A felony with a finding of sexual motivation under RCW
23 9.94A.835 or 13.40.135; or
24 (d) Any federal or out-of-state conviction for an offense that
25 under the laws of this state would be a felony classified as a sex
26 offense under (a) of this subsection.
27 ~~((43))~~ (40) "Sexual motivation" means that one of the purposes
28 for which the defendant committed the crime was for the purpose of his
29 or her sexual gratification.
30 ~~((44))~~ (41) "Standard sentence range" means the sentencing
31 court's discretionary range in imposing a nonappealable sentence.
32 ~~((45))~~ (42) "Statutory maximum sentence" means the maximum length
33 of time for which an offender may be confined as punishment for a crime
34 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
35 the crime, or other statute defining the maximum penalty for a crime.
36 ~~((46))~~ (43) "Stranger" means that the victim did not know the
37 offender twenty-four hours before the offense.

1 (~~(47)~~) (44) "Total confinement" means confinement inside the
2 physical boundaries of a facility or institution operated or utilized
3 under contract by the state or any other unit of government for twenty-
4 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 (~~(48)~~) (45) "Transition training" means written and verbal
6 instructions and assistance provided by the department to the offender
7 during the two weeks prior to the offender's successful completion of
8 the work ethic camp program. The transition training shall include
9 instructions in the offender's requirements and obligations during the
10 offender's period of community custody.

11 (~~(49)~~) (46) "Victim" means any person who has sustained
12 emotional, psychological, physical, or financial injury to person or
13 property as a direct result of the crime charged.

14 (~~(50)~~) (47) "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 ~~((+51+))~~ (48) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 that complies with RCW 9.94A.725.

10 ~~((+52+))~~ (49) "Work ethic camp" means an alternative incarceration
11 program as provided in RCW 9.94A.690 designed to reduce recidivism and
12 lower 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 ~~((+53+))~~ (50) "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. 24.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read
21 as follows:

22 (1) When the department performs a risk assessment pursuant to RCW
23 9.94A.500, or to determine a person's conditions of supervision, the
24 risk assessment shall classify the offender or a probationer sentenced
25 in superior court into one of at least four risk categories.

26 (2) The department shall supervise every offender sentenced to a
27 term of community custody(~~(, community placement, or community~~
28 ~~supervision)) and every misdemeanor and gross misdemeanor probationer
29 ordered by a superior court to probation under the supervision of the
30 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:~~

31 (a) Whose risk assessment places that offender or probationer in
32 one of the two highest risk categories; or

33 (b) Regardless of the offender's or probationer's risk category if:

34 (i) The offender's or probationer's current conviction is for:

35 (A) A sex offense;

36 (B) A violent offense;

37 (C) A crime against persons as defined in RCW 9.94A.411;

1 (D) A felony that is domestic violence as defined in RCW 10.99.020;
2 (E) A violation of RCW 9A.52.025 (residential burglary);
3 (F) A violation of, or an attempt, solicitation, or conspiracy to
4 violate, RCW 69.50.401 by manufacture or delivery or possession with
5 intent to deliver methamphetamine; or

6 (G) A violation of, or an attempt, solicitation, or conspiracy to
7 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
8 (ii) The offender or probationer has a prior conviction for:

9 (A) A sex offense;

10 (B) A violent offense;

11 (C) A crime against persons as defined in RCW 9.94A.411;

12 (D) A felony that is domestic violence as defined in RCW 10.99.020;

13 (E) A violation of RCW 9A.52.025 (residential burglary);

14 (F) A violation of, or an attempt, solicitation, or conspiracy to
15 violate, RCW 69.50.401 by manufacture or delivery or possession with
16 intent to deliver methamphetamine; or

17 (G) A violation of, or an attempt, solicitation, or conspiracy to
18 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

19 (iii) The conditions of the offender's community custody(~~(~~
20 ~~community placement, or community supervision~~~~))~~ or the probationer's
21 supervision include chemical dependency treatment;

22 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;
23 or

24 (v) The offender is subject to supervision pursuant to RCW
25 9.94A.745.

26 (3) The department is not authorized to, and may not, supervise any
27 offender sentenced to a term of community custody(~~(~~
28 ~~community placement, or community supervision~~~~))~~ or any probationer unless the
29 offender or probationer is one for whom supervision is required under
30 subsection (2) of this section.

31 (4) This section expires July 1, 2010.

32 **Sec. 25.** RCW 9.94A.505 and 2006 c 73 s 6 are each amended to read
33 as follows:

34 (1) When a person is convicted of a felony, the court shall impose
35 punishment as provided in this chapter.

36 (2)(a) The court shall impose a sentence as provided in the
37 following sections and as applicable in the case:

1 (i) Unless another term of confinement applies, (~~the court shall~~
2 ~~impose~~) a sentence within the standard sentence range established in
3 RCW 9.94A.510 or 9.94A.517;

4 (ii) (~~RCW 9.94A.700 and 9.94A.705, relating to community~~
5 ~~placement~~) Sections 7 and 8 of this act, relating to community
6 custody;

7 (iii) (~~RCW 9.94A.710 and 9.94A.715, relating to community custody~~;

8 ~~(iv) RCW 9.94A.545, relating to community custody for offenders~~
9 ~~whose term of confinement is one year or less~~;

10 ~~(v))~~ RCW 9.94A.570, relating to persistent offenders;

11 (~~(vi))~~ (iv) RCW 9.94A.540, relating to mandatory minimum terms;

12 (~~(vii))~~ (v) RCW 9.94A.650, relating to the first-time offender
13 waiver;

14 (~~(viii))~~ (vi) RCW 9.94A.660, relating to the drug offender
15 sentencing alternative;

16 (~~(ix))~~ (vii) RCW 9.94A.670, relating to the special sex offender
17 sentencing alternative;

18 (~~(x))~~ (viii) RCW 9.94A.712, relating to certain sex offenses;

19 (~~(xi))~~ (ix) RCW 9.94A.535, relating to exceptional sentences;

20 (~~(xii))~~ (x) RCW 9.94A.589, relating to consecutive and concurrent
21 sentences;

22 (~~(xiii))~~ (xi) RCW 9.94A.603, relating to felony driving while
23 under the influence of intoxicating liquor or any drug and felony
24 physical control of a vehicle while under the influence of intoxicating
25 liquor or any drug.

26 (b) If a standard sentence range has not been established for the
27 offender's crime, the court shall impose a determinate sentence which
28 may include not more than one year of confinement; community
29 restitution work; (~~until July 1, 2000,~~) a term of community
30 (~~supervision~~) custody not to exceed one year (~~and on and after July~~
31 ~~1, 2000, a term of community custody not to exceed one year, subject to~~
32 ~~conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3))~~;
33 and/or other legal financial obligations. The court may impose a
34 sentence which provides more than one year of confinement if the court
35 finds reasons justifying an exceptional sentence as provided in RCW
36 9.94A.535.

37 (3) If the court imposes a sentence requiring confinement of thirty
38 days or less, the court may, in its discretion, specify that the

1 sentence be served on consecutive or intermittent days. A sentence
2 requiring more than thirty days of confinement shall be served on
3 consecutive days. Local jail administrators may schedule court-ordered
4 intermittent sentences as space permits.

5 (4) If a sentence imposed includes payment of a legal financial
6 obligation, it shall be imposed as provided in RCW 9.94A.750,
7 9.94A.753, 9.94A.760, and 43.43.7541.

8 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
9 court may not impose a sentence providing for a term of confinement or
10 (~~community supervision, community placement, or~~) community custody
11 (~~which~~) that exceeds the statutory maximum for the crime as provided
12 in chapter 9A.20 RCW.

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

17 (7) The court shall order restitution as provided in RCW 9.94A.750
18 and 9.94A.753.

19 (8) As a part of any sentence, the court may impose and enforce
20 crime-related prohibitions and affirmative conditions as provided in
21 this chapter.

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

33 (~~10~~)) In any sentence of partial confinement, the court may
34 require the offender to serve the partial confinement in work release,
35 in a program of home detention, on work crew, or in a combined program
36 of work crew and home detention.

37 (~~(11) In sentencing an offender convicted of a crime of domestic
38 violence, as defined in RCW 10.99.020, if the offender has a minor~~

1 ~~child, or if the victim of the offense for which the offender was~~
2 ~~convicted has a minor child, the court may, as part of any term of~~
3 ~~community supervision, community placement, or community custody, order~~
4 ~~the offender to participate in a domestic violence perpetrator program~~
5 ~~approved under RCW 26.50.150.)~~)

6 **Sec. 26.** RCW 9.94A.610 and 2003 c 53 s 61 are each amended to read
7 as follows:

8 (1) At the earliest possible date, and in no event later than ten
9 days before release except in the event of escape or emergency
10 furloughs as defined in RCW 72.66.010, the department of corrections
11 shall send written notice of parole, community (~~placement~~) custody,
12 work release placement, furlough, or escape about a specific inmate
13 convicted of a serious drug offense to the following if such notice has
14 been requested in writing about a specific inmate convicted of a
15 serious drug offense:

16 (a) Any witnesses who testified against the inmate in any court
17 proceedings involving the serious drug offense; and

18 (b) Any person specified in writing by the prosecuting attorney.
19 Information regarding witnesses requesting the notice, information
20 regarding any other person specified in writing by the prosecuting
21 attorney to receive the notice, and the notice are confidential and
22 shall not be available to the inmate.

23 (2) If an inmate convicted of a serious drug offense escapes from
24 a correctional facility, the department of corrections shall
25 immediately notify, by the most reasonable and expedient means
26 available, the chief of police of the city and the sheriff of the
27 county in which the inmate resided immediately before the inmate's
28 arrest and conviction. If previously requested, the department shall
29 also notify the witnesses who are entitled to notice under this
30 section. If the inmate is recaptured, the department shall send notice
31 to the persons designated in this subsection as soon as possible but in
32 no event later than two working days after the department learns of
33 such recapture.

34 (3) If any witness is under the age of sixteen, the notice required
35 by this section shall be sent to the parents or legal guardian of the
36 child.

1 (4) The department of corrections shall send the notices required
2 by this section to the last address provided to the department by the
3 requesting party. The requesting party shall furnish the department
4 with a current address.

5 (5) For purposes of this section, "serious drug offense" means an
6 offense under RCW 69.50.401(2) (a) or (b) or 69.50.4011(2) (a) or (b).

7 **Sec. 27.** RCW 9.94A.612 and 1996 c 215 s 4 are each amended to read
8 as follows:

9 (1) At the earliest possible date, and in no event later than
10 thirty days before release except in the event of escape or emergency
11 furloughs as defined in RCW 72.66.010, the department of corrections
12 shall send written notice of parole, release, community (~~placement~~)
13 custody, work release placement, furlough, or escape about a specific
14 inmate convicted of a violent offense, a sex offense as defined by RCW
15 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060
16 or 9A.46.110, to the following:

17 (a) The chief of police of the city, if any, in which the inmate
18 will reside or in which placement will be made in a work release
19 program; and

20 (b) The sheriff of the county in which the inmate will reside or in
21 which placement will be made in a work release program.

22 The sheriff of the county where the offender was convicted shall be
23 notified if the department does not know where the offender will
24 reside. The department shall notify the state patrol of the release of
25 all sex offenders, and that information shall be placed in the
26 Washington crime information center for dissemination to all law
27 enforcement.

28 (2) The same notice as required by subsection (1) of this section
29 shall be sent to the following if such notice has been requested in
30 writing about a specific inmate convicted of a violent offense, a sex
31 offense as defined by RCW 9.94A.030, or a felony harassment offense as
32 defined by RCW 9A.46.060 or 9A.46.110:

33 (a) The victim of the crime for which the inmate was convicted or
34 the victim's next of kin if the crime was a homicide;

35 (b) Any witnesses who testified against the inmate in any court
36 proceedings involving the violent offense;

1 (c) Any person specified in writing by the prosecuting attorney;
2 and

3 (d) Any person who requests such notice about a specific inmate
4 convicted of a sex offense as defined by RCW 9.94A.030 from the
5 department of corrections at least sixty days prior to the expected
6 release date of the offender.

7 Information regarding victims, next of kin, or witnesses requesting
8 the notice, information regarding any other person specified in writing
9 by the prosecuting attorney to receive the notice, and the notice are
10 confidential and shall not be available to the inmate. Whenever the
11 department of corrections mails notice pursuant to this subsection and
12 the notice is returned as undeliverable, the department shall attempt
13 alternative methods of notification, including a telephone call to the
14 person's last known telephone number.

15 (3) The existence of the notice requirements contained in
16 subsections (1) and (2) of this section shall not require an extension
17 of the release date in the event that the release plan changes after
18 notification.

19 (4) If an inmate convicted of a violent offense, a sex offense as
20 defined by RCW 9.94A.030, or a felony harassment offense as defined by
21 RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the
22 department of corrections shall immediately notify, by the most
23 reasonable and expedient means available, the chief of police of the
24 city and the sheriff of the county in which the inmate resided
25 immediately before the inmate's arrest and conviction. If previously
26 requested, the department shall also notify the witnesses and the
27 victim of the crime for which the inmate was convicted or the victim's
28 next of kin if the crime was a homicide. If the inmate is recaptured,
29 the department shall send notice to the persons designated in this
30 subsection as soon as possible but in no event later than two working
31 days after the department learns of such recapture.

32 (5) If the victim, the victim's next of kin, or any witness is
33 under the age of sixteen, the notice required by this section shall be
34 sent to the parents or legal guardian of the child.

35 (6) The department of corrections shall send the notices required
36 by this chapter to the last address provided to the department by the
37 requesting party. The requesting party shall furnish the department
38 with a current address.

1 (7) The department of corrections shall keep, for a minimum of two
2 years following the release of an inmate, the following:

3 (a) A document signed by an individual as proof that that person is
4 registered in the victim or witness notification program; and

5 (b) A receipt showing that an individual registered in the victim
6 or witness notification program was mailed a notice, at the
7 individual's last known address, upon the release or movement of an
8 inmate.

9 (8) For purposes of this section the following terms have the
10 following meanings:

11 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

12 (b) "Next of kin" means a person's spouse, parents, siblings and
13 children.

14 (9) Nothing in this section shall impose any liability upon a chief
15 of police of a city or sheriff of a county for failing to request in
16 writing a notice as provided in subsection (1) of this section.

17 **Sec. 28.** RCW 9.94A.625 and 2000 c 226 s 5 are each amended to read
18 as follows:

19 (1) A term of confinement ordered in a sentence pursuant to this
20 chapter shall be tolled by any period of time during which the offender
21 has absented himself or herself from confinement without the prior
22 approval of the entity in whose custody the offender has been placed.
23 A term of partial confinement shall be tolled during any period of time
24 spent in total confinement pursuant to a new conviction or pursuant to
25 sanctions for violation of sentence conditions on a separate felony
26 conviction.

27 (2) Any term of community custody(~~(, community placement, or~~
28 ~~community supervision))~~) shall be tolled by any period of time during
29 which the offender has absented himself or herself from supervision
30 without prior approval of the entity under whose supervision the
31 offender has been placed.

32 (3) Any period of community custody(~~(, community placement, or~~
33 ~~community supervision))~~) shall be tolled during any period of time the
34 offender is in confinement for any reason. However, if an offender is
35 detained pursuant to RCW 9.94A.740 or 9.94A.631 and is later found not
36 to have violated a condition or requirement of community custody(~~(,~~

1 ~~community placement, or community supervision~~)), time spent in
2 confinement due to such detention shall not toll the period of
3 community custody(~~(, community placement, or community supervision)~~)).

4 (4) For terms of confinement or community custody(~~(, community~~
5 ~~placement, or community supervision)~~), the date for the tolling of the
6 sentence shall be established by the entity responsible for the
7 confinement or supervision.

8 **Sec. 29.** RCW 9.94A.650 and 2006 c 73 s 9 are each amended to read
9 as follows:

10 (1) This section applies to offenders who have never been
11 previously convicted of a felony in this state, federal court, or
12 another state, and who have never participated in a program of deferred
13 prosecution for a felony, and who are convicted of a felony that is
14 not:

15 (a) Classified as a violent offense or a sex offense under this
16 chapter;

17 (b) Manufacture, delivery, or possession with intent to manufacture
18 or deliver a controlled substance classified in Schedule I or II that
19 is a narcotic drug or flunitrazepam classified in Schedule IV;

20 (c) Manufacture, delivery, or possession with intent to deliver a
21 methamphetamine, its salts, isomers, and salts of its isomers as
22 defined in RCW 69.50.206(d)(2);

23 (d) The selling for profit of any controlled substance or
24 counterfeit substance classified in Schedule I, RCW 69.50.204, except
25 leaves and flowering tops of marihuana; or

26 (e) Felony driving while under the influence of intoxicating liquor
27 or any drug or felony physical control of a vehicle while under the
28 influence of intoxicating liquor or any drug.

29 (2) In sentencing a first-time offender the court may waive the
30 imposition of a sentence within the standard sentence range and impose
31 a sentence which may include up to ninety days of confinement in a
32 facility operated or utilized under contract by the county and a
33 requirement that the offender refrain from committing new offenses.
34 (~~The sentence may also include a term of community supervision or~~
35 ~~community custody as specified in subsection (3) of this section,~~
36 ~~which, in addition to crime related prohibitions, may include~~

1 requirements that the offender perform any one or more of the
2 following:

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

4 (b) Undergo available outpatient treatment for up to the period
5 specified in subsection (3) of this section, or inpatient treatment not
6 to exceed the standard range of confinement for that offense;

7 (c) Pursue a prescribed, secular course of study or vocational
8 training;

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

12 (e) Report as directed to a community corrections officer; or

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

15 (3) ((The terms and statuses applicable to sentences under
16 subsection (2) of this section are:

17 (a) For sentences imposed on or after July 25, 1999, for crimes
18 committed before July 1, 2000, up to one year of community supervision.
19 If treatment is ordered, the period of community supervision may
20 include up to the period of treatment, but shall not exceed two years;
21 and

22 (b) For crimes committed on or after July 1, 2000,)) The court may
23 impose up to one year of community custody unless treatment is ordered,
24 in which case the period of community custody may include up to the
25 period of treatment, but shall not exceed two years. ((Any term of
26 community custody imposed under this section is subject to conditions
27 and sanctions as authorized in this section and in RCW 9.94A.715 (2)
28 and (3).))

29 (4) ((The department shall discharge from community supervision any
30 offender sentenced under this section before July 25, 1999, who has
31 served at least one year of community supervision and has completed any
32 treatment ordered by the court.)) As a condition of community custody,
33 in addition to any conditions authorized in section 9 of this act, the
34 court may order the offender to pay all court-ordered legal financial
35 obligations and/or perform community restitution work.

36 **Sec. 30.** RCW 9.94A.660 and 2006 c 339 s 302 and 2006 c 73 s 10 are
37 each reenacted and amended to read as follows:

1 (1) An offender is eligible for the special drug offender
2 sentencing alternative if:

3 (a) The offender is convicted of a felony that is not a violent
4 offense or sex offense and the violation does not involve a sentence
5 enhancement under RCW 9.94A.533 (3) or (4);

6 (b) The offender is convicted of a felony that is not a felony
7 driving while under the influence of intoxicating liquor or any drug
8 under RCW 46.61.502(6) or felony physical control of a vehicle while
9 under the influence of intoxicating liquor or any drug under RCW
10 46.61.504(6);

11 (c) The offender has no current or prior convictions for a sex
12 offense at any time or violent offense within ten years before
13 conviction of the current offense, in this state, another state, or the
14 United States;

15 (d) For a violation of the Uniform Controlled Substances Act under
16 chapter 69.50 RCW or a criminal solicitation to commit such a violation
17 under chapter 9A.28 RCW, the offense involved only a small quantity of
18 the particular controlled substance as determined by the judge upon
19 consideration of such factors as the weight, purity, packaging, sale
20 price, and street value of the controlled substance;

21 (e) The offender has not been found by the United States attorney
22 general to be subject to a deportation detainer or order and does not
23 become subject to a deportation order during the period of the
24 sentence;

25 (f) The standard sentence range for the current offense is greater
26 than one year; and

27 (g) The offender has not received a drug offender sentencing
28 alternative more than once in the prior ten years before the current
29 offense.

30 (2) A motion for a sentence under this section may be made by the
31 court, the offender, or the state. If the sentencing court determines
32 that the offender is eligible for this alternative, the court may order
33 an examination of the offender. The examination shall, at a minimum,
34 address the following issues:

35 (a) Whether the offender suffers from drug addiction;

36 (b) Whether the addiction is such that there is a probability that
37 criminal behavior will occur in the future;

1 (c) Whether effective treatment for the offender's addiction is
2 available from a provider that has been licensed or certified by the
3 division of alcohol and substance abuse of the department of social and
4 health services; and

5 (d) Whether the offender and the community will benefit from the
6 use of the alternative.

7 (3) The examination report must contain:

8 (a) Information on the issues required to be addressed in
9 subsection (2) of this section; and

10 (b) A proposed treatment plan that must, at a minimum, contain:

11 (i) A proposed treatment provider that has been licensed or
12 certified by the division of alcohol and substance abuse of the
13 department of social and health services;

14 (ii) The recommended frequency and length of treatment, including
15 both residential chemical dependency treatment and treatment in the
16 community;

17 (iii) A proposed monitoring plan, including any requirements
18 regarding living conditions, lifestyle requirements, and monitoring by
19 family members and others; and

20 (iv) Recommended crime-related prohibitions and affirmative
21 conditions.

22 (4) After receipt of the examination report, if the court
23 determines that a sentence under this section is appropriate, the court
24 shall waive imposition of a sentence within the standard sentence range
25 and impose a sentence consisting of either a prison-based alternative
26 under subsection (5) of this section or a residential chemical
27 dependency treatment-based alternative under subsection (6) of this
28 section. The residential chemical dependency treatment-based
29 alternative is only available if the midpoint of the standard range is
30 twenty-four months or less.

31 (5) The prison-based alternative shall include:

32 (a) A period of total confinement in a state facility for one-half
33 of the midpoint of the standard sentence range or twelve months,
34 whichever is greater. During incarceration in the state facility,
35 offenders sentenced under this subsection shall undergo a comprehensive
36 substance abuse assessment and receive, within available resources,
37 treatment services appropriate for the offender. The treatment

1 services shall be designed by the division of alcohol and substance
2 abuse of the department of social and health services, in cooperation
3 with the department of corrections;

4 (b) The remainder of the midpoint of the standard range as a term
5 of community custody which must include appropriate substance abuse
6 treatment in a program that has been approved by the division of
7 alcohol and substance abuse of the department of social and health
8 services. If the department finds that conditions of community custody
9 have been willfully violated, the offender may be reclassified to serve
10 the remaining balance of the original sentence. An offender who fails
11 to complete the program or who is administratively terminated from the
12 program shall be reclassified to serve the unexpired term of his or her
13 sentence as ordered by the sentencing court;

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

16 (d) A requirement to submit to urinalysis or other testing to
17 monitor that status; and

18 (e) A term of community custody pursuant to ~~((RCW 9.94A.715))~~
19 section 7 of this act to be imposed upon failure to complete or
20 administrative termination from the special drug offender sentencing
21 alternative program.

22 (6) The residential chemical dependency treatment-based alternative
23 shall include:

24 (a) A term of community custody equal to one-half of the midpoint
25 of the standard sentence range or two years, whichever is greater,
26 conditioned on the offender entering and remaining in residential
27 chemical dependency treatment certified under chapter 70.96A RCW for a
28 period set by the court between three and six months. If the court
29 imposes a term of community custody, the department shall, within
30 available resources, make chemical dependency assessment and treatment
31 services available to the offender during the term of community
32 custody. The court shall impose, as conditions of community custody,
33 treatment and other conditions as proposed in the plan under subsection
34 (3)(b) of this section. ~~((The department may impose conditions and
35 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
36 9.94A.737, and 9.94A.740.))~~ The court shall schedule a progress
37 hearing during the period of residential chemical dependency treatment,

1 and schedule a treatment termination hearing for three months before
2 the expiration of the term of community custody;

3 (b) Before the progress hearing and treatment termination hearing,
4 the treatment provider and the department shall submit written reports
5 to the court and parties regarding the offender's compliance with
6 treatment and monitoring requirements, and recommendations regarding
7 termination from treatment. At the hearing, the court may:

8 (i) Authorize the department to terminate the offender's community
9 custody status on the expiration date determined under (a) of this
10 subsection; or

11 (ii) Continue the hearing to a date before the expiration date of
12 community custody, with or without modifying the conditions of
13 community custody; or

14 (iii) Impose a term of total confinement equal to one-half the
15 midpoint of the standard sentence range, followed by a term of
16 community custody under ~~((RCW 9.94A.715))~~ section 7 of this act;

17 (c) If the court imposes a term of total confinement under (b)(iii)
18 of this subsection, the department shall, within available resources,
19 make chemical dependency assessment and treatment services available to
20 the offender during the terms of total confinement and community
21 custody.

22 ~~(7) ((If the court imposes a sentence under this section, the court
23 may prohibit the offender from using alcohol or controlled substances
24 and may require that the monitoring for controlled substances be
25 conducted by the department or by a treatment alternatives to street
26 crime program or a comparable court or agency referred program.))~~ The
27 offender may be required to pay thirty dollars per month while on
28 community custody to offset the cost of monitoring for alcohol or
29 controlled substances. ~~((In addition,))~~

30 (8) The court may impose any of the following conditions:

31 ~~(a) ((Devote time to a specific employment or training;~~

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

35 ~~(c) Report as directed to a community corrections officer;~~

36 ~~(d))~~ Pay all court-ordered legal financial obligations; or

37 ~~((e))~~ (b) Perform community restitution work(~~;~~

38 ~~(f) Stay out of areas designated by the sentencing court;~~

1 ~~(g) Such other conditions as the court may require such as~~
2 ~~affirmative conditions~~)).

3 ~~((+8))~~ (9)(a) The court may bring any offender sentenced under
4 this section back into court at any time on its own initiative to
5 evaluate the offender's progress in treatment or to determine if any
6 violations of the conditions of the sentence have occurred.

7 (b) If the offender is brought back to court, the court may modify
8 the ~~((terms))~~ conditions of the community custody or impose sanctions
9 under (c) of this subsection.

10 (c) The court may order the offender to serve a term of total
11 confinement within the standard range of the offender's current offense
12 at any time during the period of community custody if the offender
13 violates the conditions or requirements of the sentence or if the
14 offender is failing to make satisfactory progress in treatment.

15 (d) An offender ordered to serve a term of total confinement under
16 (c) of this subsection shall receive credit for any time previously
17 served under this section.

18 ~~((+9))~~ (10) In serving a term of community custody imposed upon
19 failure to complete, or administrative termination from, the special
20 drug offender sentencing alternative program, the offender shall
21 receive no credit for time served in community custody prior to
22 termination of the offender's participation in the program.

23 (11) If an offender sentenced to the prison-based alternative under
24 subsection (5) of this section is found by the United States attorney
25 general to be subject to a deportation order, a hearing shall be held
26 by the department unless waived by the offender, and, if the department
27 finds that the offender is subject to a valid deportation order, the
28 department may administratively terminate the offender from the program
29 and reclassify the offender to serve the remaining balance of the
30 original sentence.

31 ~~((+10))~~ (12) An offender sentenced under this section shall be
32 subject to all rules relating to earned release time with respect to
33 any period served in total confinement.

34 ~~((+11))~~ (13) Costs of examinations and preparing treatment plans
35 under subsections (2) and (3) of this section may be paid, at the
36 option of the county, from funds provided to the county from the
37 criminal justice treatment account under RCW 70.96A.350.

1 **Sec. 31.** RCW 9.94A.670 and 2006 c 133 s 1 are each amended to read
2 as follows:

3 (1) Unless the context clearly requires otherwise, the definitions
4 in this subsection apply to this section only.

5 (a) "Sex offender treatment provider" or "treatment provider" means
6 a certified sex offender treatment provider or a certified affiliate
7 sex offender treatment provider as defined in RCW 18.155.020.

8 (b) "Substantial bodily harm" means bodily injury that involves a
9 temporary but substantial disfigurement, or that causes a temporary but
10 substantial loss or impairment of the function of any body part or
11 organ, or that causes a fracture of any body part or organ.

12 (c) "Victim" means any person who has sustained emotional,
13 psychological, physical, or financial injury to person or property as
14 a result of the crime charged. "Victim" also means a parent or
15 guardian of a victim who is a minor child unless the parent or guardian
16 is the perpetrator of the offense.

17 (2) An offender is eligible for the special sex offender sentencing
18 alternative if:

19 (a) The offender has been convicted of a sex offense other than a
20 violation of RCW 9A.44.050 or a sex offense that is also a serious
21 violent offense. If the conviction results from a guilty plea, the
22 offender must, as part of his or her plea of guilty, voluntarily and
23 affirmatively admit he or she committed all of the elements of the
24 crime to which the offender is pleading guilty. This alternative is
25 not available to offenders who plead guilty to the offense charged
26 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d
27 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

28 (b) The offender has no prior convictions for a sex offense as
29 defined in RCW 9.94A.030 or any other felony sex offenses in this or
30 any other state;

31 (c) The offender has no prior adult convictions for a violent
32 offense that was committed within five years of the date the current
33 offense was committed;

34 (d) The offense did not result in substantial bodily harm to the
35 victim;

36 (e) The offender had an established relationship with, or
37 connection to, the victim such that the sole connection with the victim
38 was not the commission of the crime; and

1 (f) The offender's standard sentence range for the offense includes
2 the possibility of confinement for less than eleven years.

3 (3) If the court finds the offender is eligible for this
4 alternative, the court, on its own motion or the motion of the state or
5 the offender, may order an examination to determine whether the
6 offender is amenable to treatment.

7 (a) The report of the examination shall include at a minimum the
8 following:

9 (i) The offender's version of the facts and the official version of
10 the facts;

11 (ii) The offender's offense history;

12 (iii) An assessment of problems in addition to alleged deviant
13 behaviors;

14 (iv) The offender's social and employment situation; and

15 (v) Other evaluation measures used.

16 The report shall set forth the sources of the examiner's
17 information.

18 (b) The examiner shall assess and report regarding the offender's
19 amenability to treatment and relative risk to the community. A
20 proposed treatment plan shall be provided and shall include, at a
21 minimum:

22 (i) Frequency and type of contact between offender and therapist;

23 (ii) Specific issues to be addressed in the treatment and
24 description of planned treatment modalities;

25 (iii) Monitoring plans, including any requirements regarding living
26 conditions, lifestyle requirements, and monitoring by family members
27 and others;

28 (iv) Anticipated length of treatment; and

29 (v) Recommended crime-related prohibitions and affirmative
30 conditions, which must include, to the extent known, an identification
31 of specific activities or behaviors that are precursors to the
32 offender's offense cycle, including, but not limited to, activities or
33 behaviors such as viewing or listening to pornography or use of alcohol
34 or controlled substances.

35 (c) The court on its own motion may order, or on a motion by the
36 state shall order, a second examination regarding the offender's
37 amenability to treatment. The examiner shall be selected by the party

1 making the motion. The offender shall pay the cost of any second
2 examination ordered unless the court finds the defendant to be indigent
3 in which case the state shall pay the cost.

4 (4) After receipt of the reports, the court shall consider whether
5 the offender and the community will benefit from use of this
6 alternative, consider whether the alternative is too lenient in light
7 of the extent and circumstances of the offense, consider whether the
8 offender has victims in addition to the victim of the offense, consider
9 whether the offender is amenable to treatment, consider the risk the
10 offender would present to the community, to the victim, or to persons
11 of similar age and circumstances as the victim, and consider the
12 victim's opinion whether the offender should receive a treatment
13 disposition under this section. The court shall give great weight to
14 the victim's opinion whether the offender should receive a treatment
15 disposition under this section. If the sentence imposed is contrary to
16 the victim's opinion, the court shall enter written findings stating
17 its reasons for imposing the treatment disposition. The fact that the
18 offender admits to his or her offense does not, by itself, constitute
19 amenability to treatment. If the court determines that this
20 alternative is appropriate, the court shall then impose a sentence or,
21 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
22 standard sentence range. If the sentence imposed is less than eleven
23 years of confinement, the court may suspend the execution of the
24 sentence (~~((and impose the following conditions of suspension:))~~) as
25 provided in this section.

26 (5) As conditions of the suspended sentence, the court must impose
27 the following:

28 (a) (~~((The court shall order the offender to serve))~~) A term of
29 confinement of up to twelve months or the maximum term within the
30 standard range, whichever is less. The court may order the offender to
31 serve a term of confinement greater than twelve months or the maximum
32 term within the standard range based on the presence of an aggravating
33 circumstance listed in RCW 9.94A.535(3). In no case shall the term of
34 confinement exceed the statutory maximum sentence for the offense. The
35 court may order the offender to serve all or part of his or her term of
36 confinement in partial confinement. An offender sentenced to a term of
37 confinement under this subsection is not eligible for earned release
38 under RCW 9.92.151 or 9.94A.728.

1 (b) (~~The court shall place the offender on~~) A term of community
2 custody (~~for~~) equal to the length of the suspended sentence, the
3 length of the maximum term imposed pursuant to RCW 9.94A.712, or three
4 years, whichever is greater, and require the offender to comply with
5 any conditions imposed by the department under (~~RCW 9.94A.720~~)
6 section 9 of this act.

7 (c) (~~The court shall order~~) Treatment for any period up to five
8 years in duration. The court, in its discretion, shall order
9 outpatient sex offender treatment or inpatient sex offender treatment,
10 if available. A community mental health center may not be used for
11 such treatment unless it has an appropriate program designed for sex
12 offender treatment. The offender shall not change sex offender
13 treatment providers or treatment conditions without first notifying the
14 prosecutor, the community corrections officer, and the court. If any
15 party or the court objects to a proposed change, the offender shall not
16 change providers or conditions without court approval after a hearing.

17 (d) (~~As conditions of the suspended sentence, the court shall~~
18 ~~impose~~) Specific prohibitions and affirmative conditions relating to
19 the known precursor activities or behaviors identified in the proposed
20 treatment plan under subsection (3)(b)(v) of this section or identified
21 in an annual review under subsection (~~(7)~~) (8)(b) of this section.

22 (~~(5)~~) (6) As conditions of the suspended sentence, the court may
23 impose one or more of the following:

24 (a) Crime-related prohibitions;

25 (b) Require the offender to devote time to a specific employment or
26 occupation;

27 (c) Require the offender to remain within prescribed geographical
28 boundaries and notify the court or the community corrections officer
29 prior to any change in the offender's address or employment;

30 (d) Require the offender to report as directed to the court and a
31 community corrections officer;

32 (e) Require the offender to pay all court-ordered legal financial
33 obligations as provided in RCW 9.94A.030;

34 (f) Require the offender to perform community restitution work; or

35 (g) Require the offender to reimburse the victim for the cost of
36 any counseling required as a result of the offender's crime.

37 (~~(6)~~) (7) At the time of sentencing, the court shall set a

1 treatment termination hearing for three months prior to the anticipated
2 date for completion of treatment.

3 ~~((+7))~~ (8)(a) The sex offender treatment provider shall submit
4 quarterly reports on the offender's progress in treatment to the court
5 and the parties. The report shall reference the treatment plan and
6 include at a minimum the following: Dates of attendance, offender's
7 compliance with requirements, treatment activities, the offender's
8 relative progress in treatment, and any other material specified by the
9 court at sentencing.

10 (b) The court shall conduct a hearing on the offender's progress in
11 treatment at least once a year. At least fourteen days prior to the
12 hearing, notice of the hearing shall be given to the victim. The
13 victim shall be given the opportunity to make statements to the court
14 regarding the offender's supervision and treatment. At the hearing,
15 the court may modify conditions of community custody including, but not
16 limited to, crime-related prohibitions and affirmative conditions
17 relating to activities and behaviors identified as part of, or relating
18 to precursor activities and behaviors in, the offender's offense cycle
19 or revoke the suspended sentence.

20 ~~((+8))~~ (9) At least fourteen days prior to the treatment
21 termination hearing, notice of the hearing shall be given to the
22 victim. The victim shall be given the opportunity to make statements
23 to the court regarding the offender's supervision and treatment. Prior
24 to the treatment termination hearing, the treatment provider and
25 community corrections officer shall submit written reports to the court
26 and parties regarding the offender's compliance with treatment and
27 monitoring requirements, and recommendations regarding termination from
28 treatment, including proposed community custody conditions. The court
29 may order an evaluation regarding the advisability of termination from
30 treatment by a sex offender treatment provider who may not be the same
31 person who treated the offender under subsection ~~((+4))~~ (5) of this
32 section or any person who employs, is employed by, or shares profits
33 with the person who treated the offender under subsection ~~((+4))~~ (5)
34 of this section unless the court has entered written findings that such
35 evaluation is in the best interest of the victim and that a successful
36 evaluation of the offender would otherwise be impractical. The
37 offender shall pay the cost of the evaluation. At the treatment
38 termination hearing the court may: (a) Modify conditions of community

1 custody, and either (b) terminate treatment, or (c) extend treatment in
2 two-year increments for up to the remaining period of community
3 custody.

4 ~~((+9+))~~ (10)(a) If a violation of conditions other than a second
5 violation of the prohibitions or affirmative conditions relating to
6 precursor behaviors or activities imposed under subsection ~~((+4+))~~
7 (5)(d) or ~~((+7+))~~ (8)(b) of this section occurs during community
8 custody, the department shall either impose sanctions as provided for
9 in ~~((RCW 9.94A.737(2)(a+))~~ section 15(1) of this act or refer the
10 violation to the court and recommend revocation of the suspended
11 sentence as provided for in subsections ~~((+6+))~~ (7) and ~~((+8+))~~ (9) of
12 this section.

13 (b) If a second violation of the prohibitions or affirmative
14 conditions relating to precursor behaviors or activities imposed under
15 subsection ~~((+4+))~~ (5)(d) or ~~((+7+))~~ (8)(b) of this section occurs
16 during community custody, the department shall refer the violation to
17 the court and recommend revocation of the suspended sentence as
18 provided in subsection ~~((+10+))~~ (11) of this section.

19 ~~((+10+))~~ (11) The court may revoke the suspended sentence at any
20 time during the period of community custody and order execution of the
21 sentence if: (a) The offender violates the conditions of the suspended
22 sentence, or (b) the court finds that the offender is failing to make
23 satisfactory progress in treatment. All confinement time served during
24 the period of community custody shall be credited to the offender if
25 the suspended sentence is revoked.

26 ~~((+11+))~~ (12) If the offender violates a requirement of the
27 sentence that is not a condition of the suspended sentence pursuant to
28 subsection (5) or (6) of this section, the department may impose
29 sanctions pursuant to section 15(1) of this act.

30 (13) The offender's sex offender treatment provider may not be the
31 same person who examined the offender under subsection (3) of this
32 section or any person who employs, is employed by, or shares profits
33 with the person who examined the offender under subsection (3) of this
34 section, unless the court has entered written findings that such
35 treatment is in the best interests of the victim and that successful
36 treatment of the offender would otherwise be impractical. Examinations
37 and treatment ordered pursuant to this subsection shall only be

1 conducted by certified sex offender treatment providers or certified
2 affiliate sex offender treatment providers under chapter 18.155 RCW
3 unless the court finds that:

4 (a) The offender has already moved to another state or plans to
5 move to another state for reasons other than circumventing the
6 certification requirements; or

7 (b)(i) No certified sex offender treatment providers or certified
8 affiliate sex offender treatment providers are available for treatment
9 within a reasonable geographical distance of the offender's home; and

10 (ii) The evaluation and treatment plan comply with this section and
11 the rules adopted by the department of health.

12 ((+12+)) (14) If the offender is less than eighteen years of age
13 when the charge is filed, the state shall pay for the cost of initial
14 evaluation and treatment.

15 **Sec. 32.** RCW 9.94A.690 and 2006 c 73 s 11 are each amended to read
16 as follows:

17 (1)(a) An offender is eligible to be sentenced to a work ethic camp
18 if the offender:

19 (i) Is sentenced to a term of total confinement of not less than
20 twelve months and one day or more than thirty-six months;

21 (ii) Has no current or prior convictions for any sex offenses or
22 for violent offenses; and

23 (iii) Is not currently subject to a sentence for, or being
24 prosecuted for, a violation of felony driving while under the influence
25 of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of
26 physical control of a vehicle while under the influence of intoxicating
27 liquor or any drug (RCW 46.61.504(6)), a violation of the uniform
28 controlled substances act, or a criminal solicitation to commit such a
29 violation under chapter 9A.28 or 69.50 RCW.

30 (b) The length of the work ethic camp shall be at least one hundred
31 twenty days and not more than one hundred eighty days.

32 (2) If the sentencing court determines that the offender is
33 eligible for the work ethic camp and is likely to qualify under
34 subsection (3) of this section, the judge shall impose a sentence
35 within the standard sentence range and may recommend that the offender
36 serve the sentence at a work ethic camp. In sentencing an offender to
37 the work ethic camp, the court shall specify: (a) That upon completion

1 of the work ethic camp the offender shall be released on community
2 custody for any remaining time of total confinement; (b) the applicable
3 conditions of (~~supervision on~~) community custody (~~status~~) as
4 (~~required by RCW 9.94A.700(4) and~~) authorized by (~~RCW 9.94A.700(5)~~)
5 section 9 of this act; and (c) that violation of the conditions may
6 result in a return to total confinement for the balance of the
7 offender's remaining time of confinement.

8 (3) The department shall place the offender in the work ethic camp
9 program, subject to capacity, unless: (a) The department determines
10 that the offender has physical or mental impairments that would prevent
11 participation and completion of the program; (b) the department
12 determines that the offender's custody level prevents placement in the
13 program; (c) the offender refuses to agree to the terms and conditions
14 of the program; (d) the offender has been found by the United States
15 attorney general to be subject to a deportation detainer or order; or
16 (e) the offender has participated in the work ethic camp program in the
17 past.

18 (4) An offender who fails to complete the work ethic camp program,
19 who is administratively terminated from the program, or who otherwise
20 violates any conditions of supervision, as defined by the department,
21 shall be reclassified to serve the unexpired term of his or her
22 sentence as ordered by the sentencing court and shall be subject to all
23 rules relating to earned release time.

24 (5) During the last two weeks prior to release from the work ethic
25 camp program the department shall provide the offender with
26 comprehensive transition training.

27 **Sec. 33.** RCW 9.94A.712 and 2006 c 124 s 3, 2006 c 122 s 5, and
28 2005 c 436 s 2 are each reenacted and amended to read as follows:

29 (1) An offender who is not a persistent offender shall be sentenced
30 under this section if the offender:

31 (a) Is convicted of:

32 (i) Rape in the first degree, rape in the second degree, rape of a
33 child in the first degree, child molestation in the first degree, rape
34 of a child in the second degree, or indecent liberties by forcible
35 compulsion;

36 (ii) Any of the following offenses with a finding of sexual
37 motivation: Murder in the first degree, murder in the second degree,

1 homicide by abuse, kidnapping in the first degree, kidnapping in the
2 second degree, assault in the first degree, assault in the second
3 degree, assault of a child in the first degree, assault of a child in
4 the second degree, or burglary in the first degree; or

5 (iii) An attempt to commit any crime listed in this subsection
6 (1)(a);

7 (~~committed on or after September 1, 2001;~~) or

8 (b) Has a prior conviction for an offense listed in RCW
9 9.94A.030(~~(+33)~~) (31)(b), and is convicted of any sex offense (~~which~~
10 ~~was committed after September 1, 2001.~~

11 ~~For purposes of this subsection (1)(b),~~) other than failure to
12 register (~~is not a sex offense~~)).

13 (2) An offender convicted of rape of a child in the first or second
14 degree or child molestation in the first degree who was seventeen years
15 of age or younger at the time of the offense shall not be sentenced
16 under this section.

17 (3)(a) Upon a finding that the offender is subject to sentencing
18 under this section, the court shall impose a sentence to a maximum term
19 and a minimum term.

20 (b) The maximum term shall consist of the statutory maximum
21 sentence for the offense.

22 (c)(i) Except as provided in (c)(ii) of this subsection, the
23 minimum term shall be either within the standard sentence range for the
24 offense, or outside the standard sentence range pursuant to RCW
25 9.94A.535, if the offender is otherwise eligible for such a sentence.

26 (ii) If the offense that caused the offender to be sentenced under
27 this section was rape of a child in the first degree, rape of a child
28 in the second degree, or child molestation in the first degree, and
29 there has been a finding that the offense was predatory under RCW
30 9.94A.836, the minimum term shall be either the maximum of the standard
31 sentence range for the offense or twenty-five years, whichever is
32 greater. If the offense that caused the offender to be sentenced under
33 this section was rape in the first degree, rape in the second degree,
34 indecent liberties by forcible compulsion, or kidnapping in the first
35 degree with sexual motivation, and there has been a finding that the
36 victim was under the age of fifteen at the time of the offense under
37 RCW 9.94A.837, the minimum term shall be either the maximum of the
38 standard sentence range for the offense or twenty-five years, whichever

1 is greater. If the offense that caused the offender to be sentenced
2 under this section is rape in the first degree, rape in the second
3 degree with forcible compulsion, indecent liberties with forcible
4 compulsion, or kidnapping in the first degree with sexual motivation,
5 and there has been a finding under RCW 9.94A.838 that the victim was,
6 at the time of the offense, developmentally disabled, mentally
7 disordered, or a frail elder or vulnerable adult, the minimum sentence
8 shall be either the maximum of the standard sentence range for the
9 offense or twenty-five years, whichever is greater.

10 (d) The minimum terms in (c)(ii) of this subsection do not apply to
11 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or
12 (v). The minimum term for such a juvenile shall be imposed under
13 (c)(i) of this subsection.

14 (4) A person sentenced under subsection (3) of this section shall
15 serve the sentence in a facility or institution operated, or utilized
16 under contract, by the state.

17 (5) When a court sentences a person to the custody of the
18 department under this section, the court shall, in addition to the
19 other terms of the sentence, sentence the offender to community custody
20 under the supervision of the department and the authority of the board
21 for any period of time the person is released from total confinement
22 before the expiration of the maximum sentence.

23 ~~(6)(a)((i) Unless a condition is waived by the court, the~~
24 ~~conditions of community custody shall include those provided for in RCW~~
25 ~~9.94A.700(4). The conditions may also include those provided for in~~
26 ~~RCW 9.94A.700(5). The court may also order the offender to participate~~
27 ~~in rehabilitative programs or otherwise perform affirmative conduct~~
28 ~~reasonably related to the circumstances of the offense, the offender's~~
29 ~~risk of reoffending, or the safety of the community, and the department~~
30 ~~and the board shall enforce such conditions pursuant to RCW 9.94A.713,~~
31 ~~9.95.425, and 9.95.430.~~

32 ~~(ii) If the offense that caused the offender to be sentenced under~~
33 ~~this section was an offense listed in subsection (1)(a) of this section~~
34 ~~and the victim of the offense was under eighteen years of age at the~~
35 ~~time of the offense, the court shall, as a condition of community~~
36 ~~custody, prohibit the offender from residing in a community protection~~
37 ~~zone.~~

1 ~~(b))~~) As part of any sentence under this section, the court shall
2 also require the offender to comply with any conditions imposed by the
3 board under RCW (~~9.94A.713 and~~) 9.95.420 through 9.95.435.

4 (b) An offender released by the board under RCW 9.95.420 is subject
5 to the supervision of the department until the expiration of the
6 maximum term of the sentence. The department shall monitor the
7 offender's compliance with conditions of community custody imposed by
8 the court, department, or board, and promptly report any violations to
9 the board. Any violation of conditions of community custody
10 established or modified by the board are subject to the provisions of
11 RCW 9.95.425 through 9.95.440.

12 **Sec. 34.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to
13 read as follows:

14 No person serving a sentence imposed pursuant to this chapter and
15 committed to the custody of the department shall leave the confines of
16 the correctional facility or be released prior to the expiration of the
17 sentence except as follows:

18 (1) Except as otherwise provided for in subsection (2) of this
19 section, the term of the sentence of an offender committed to a
20 correctional facility operated by the department may be reduced by
21 earned release time in accordance with procedures that shall be
22 developed and promulgated by the correctional agency having
23 jurisdiction in which the offender is confined. The earned release
24 time shall be for good behavior and good performance, as determined by
25 the correctional agency having jurisdiction. The correctional agency
26 shall not credit the offender with earned release credits in advance of
27 the offender actually earning the credits. Any program established
28 pursuant to this section shall allow an offender to earn early release
29 credits for presentence incarceration. If an offender is transferred
30 from a county jail to the department, the administrator of a county
31 jail facility shall certify to the department the amount of time spent
32 in custody at the facility and the amount of earned release time. An
33 offender who has been convicted of a felony committed after July 23,
34 1995, that involves any applicable deadly weapon enhancements under RCW
35 9.94A.533 (3) or (4), or both, shall not receive any good time credits
36 or earned release time for that portion of his or her sentence that
37 results from any deadly weapon enhancements.

1 (a) In the case of an offender convicted of a serious violent
2 offense, or a sex offense that is a class A felony, committed on or
3 after July 1, 1990, and before July 1, 2003, the aggregate earned
4 release time may not exceed fifteen percent of the sentence. In the
5 case of an offender convicted of a serious violent offense, or a sex
6 offense that is a class A felony, committed on or after July 1, 2003,
7 the aggregate earned release time may not exceed ten percent of the
8 sentence.

9 (b)(i) In the case of an offender who qualifies under (b)(ii) of
10 this subsection, the aggregate earned release time may not exceed fifty
11 percent of the sentence.

12 (ii) An offender is qualified to earn up to fifty percent of
13 aggregate earned release time under this subsection (1)(b) if he or
14 she:

15 (A) Is classified in one of the two lowest risk categories under
16 (b)(iii) of this subsection;

17 (B) Is not confined pursuant to a sentence for:

18 (I) A sex offense;

19 (II) A violent offense;

20 (III) A crime against persons as defined in RCW 9.94A.411;

21 (IV) A felony that is domestic violence as defined in RCW
22 10.99.020;

23 (V) A violation of RCW 9A.52.025 (residential burglary);

24 (VI) A violation of, or an attempt, solicitation, or conspiracy to
25 violate, RCW 69.50.401 by manufacture or delivery or possession with
26 intent to deliver methamphetamine; or

27 (VII) A violation of, or an attempt, solicitation, or conspiracy to
28 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

29 (C) Has no prior conviction for:

30 (I) A sex offense;

31 (II) A violent offense;

32 (III) A crime against persons as defined in RCW 9.94A.411;

33 (IV) A felony that is domestic violence as defined in RCW
34 10.99.020;

35 (V) A violation of RCW 9A.52.025 (residential burglary);

36 (VI) A violation of, or an attempt, solicitation, or conspiracy to
37 violate, RCW 69.50.401 by manufacture or delivery or possession with
38 intent to deliver methamphetamine; or

1 (VII) A violation of, or an attempt, solicitation, or conspiracy to
2 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

3 (D) Participates in programming or activities as directed by the
4 offender's individual reentry plan as provided under RCW 72.09.270 to
5 the extent that such programming or activities are made available by
6 the department; and

7 (E) Has not committed a new felony after July 22, 2007, while under
8 (~~community supervision, community placement, or~~) community custody.

9 (iii) For purposes of determining an offender's eligibility under
10 this subsection (1)(b), the department shall perform a risk assessment
11 of every offender committed to a correctional facility operated by the
12 department who has no current or prior conviction for a sex offense, a
13 violent offense, a crime against persons as defined in RCW 9.94A.411,
14 a felony that is domestic violence as defined in RCW 10.99.020, a
15 violation of RCW 9A.52.025 (residential burglary), a violation of, or
16 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
17 manufacture or delivery or possession with intent to deliver
18 methamphetamine, or a violation of, or an attempt, solicitation, or
19 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
20 substance to a minor). The department must classify each assessed
21 offender in one of four risk categories between highest and lowest
22 risk.

23 (iv) The department shall recalculate the earned release time and
24 reschedule the expected release dates for each qualified offender under
25 this subsection (1)(b).

26 (v) This subsection (1)(b) applies retroactively to eligible
27 offenders serving terms of total confinement in a state correctional
28 facility as of July 1, 2003.

29 (vi) This subsection (1)(b) does not apply to offenders convicted
30 after July 1, 2010.

31 (c) In no other case shall the aggregate earned release time exceed
32 one-third of the total sentence;

33 (2)(a) (~~A person convicted of a sex offense or an offense
34 categorized as a serious violent offense, assault in the second degree,
35 vehicular homicide, vehicular assault, assault of a child in the second
36 degree, any crime against persons where it is determined in accordance
37 with RCW 9.94A.602 that the offender or an accomplice was armed with a
38 deadly weapon at the time of commission, or any felony offense under~~

1 ~~chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become~~
2 ~~eligible, in accordance with a program developed by the department, for~~
3 ~~transfer to community custody status in lieu of earned release time~~
4 ~~pursuant to subsection (1) of this section;~~

5 ~~(b))~~ A person convicted of a sex offense, a violent offense, any
6 crime against persons under RCW 9.94A.411(2), or a felony offense under
7 chapter 69.50 or 69.52 RCW, ~~((committed on or after July 1, 2000,))~~ may
8 become eligible, in accordance with a program developed by the
9 department, for transfer to community custody ~~((status))~~ in lieu of
10 earned release time pursuant to subsection (1) of this section;

11 ~~((e))~~ (b) The department shall, as a part of its program for
12 release to the community in lieu of earned release, require the
13 offender to propose a release plan that includes an approved residence
14 and living arrangement. All offenders with ~~((community placement or))~~
15 community custody terms eligible for release to community custody
16 ~~((status))~~ in lieu of earned release shall provide an approved
17 residence and living arrangement prior to release to the community;

18 ~~((d))~~ (c) The department may deny transfer to community custody
19 ~~((status))~~ in lieu of earned release time pursuant to subsection (1) of
20 this section if the department determines an offender's release plan,
21 including proposed residence location and living arrangements, may
22 violate the conditions of the sentence or conditions of supervision,
23 place the offender at risk to violate the conditions of the sentence,
24 place the offender at risk to reoffend, or present a risk to victim
25 safety or community safety. The department's authority under this
26 section is independent of any court-ordered condition of sentence or
27 statutory provision regarding conditions for community custody ~~((or~~
28 ~~community placement))~~;

29 ~~((e))~~ (d) If the department denies transfer to community custody
30 ~~((status))~~ in lieu of earned early release pursuant to ~~((d))~~ (c) of
31 this subsection, the department may transfer an offender to partial
32 confinement in lieu of earned early release up to three months. The
33 three months in partial confinement is in addition to that portion of
34 the offender's term of confinement that may be served in partial
35 confinement as provided in this section;

36 ~~((f))~~ (e) An offender serving a term of confinement imposed under
37 RCW 9.94A.670~~((4))~~ (5)(a) is not eligible for earned release credits
38 under this section;

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

5 (4)(a) The secretary may authorize an extraordinary medical
6 placement for an offender when all of the following conditions exist:

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

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

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

14 (b) An offender sentenced to death or to life imprisonment without
15 the possibility of release or parole is not eligible for an
16 extraordinary medical placement.

17 (c) The secretary shall require electronic monitoring for all
18 offenders in extraordinary medical placement unless the electronic
19 monitoring equipment interferes with the function of the offender's
20 medical equipment or results in the loss of funding for the offender's
21 medical care. The secretary shall specify who shall provide the
22 monitoring services and the terms under which the monitoring shall be
23 performed.

24 (d) The secretary may revoke an extraordinary medical placement
25 under this subsection at any time;

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

30 (6) No more than the final six months of the offender's term of
31 confinement may be served in partial confinement designed to aid the
32 offender in finding work and reestablishing himself or herself in the
33 community. This is in addition to that period of earned early release
34 time that may be exchanged for partial confinement pursuant to
35 subsection (2)((+e)) (d) of this section;

36 (7) The governor may pardon any offender;

37 (8) The department may release an offender from confinement any

1 time within ten days before a release date calculated under this
2 section; (~~and~~)

3 (9) An offender may leave a correctional facility prior to
4 completion of his or her sentence if the sentence has been reduced as
5 provided in RCW 9.94A.870(~~(-)~~); and

6 (10) Notwithstanding any other provisions of this section, an
7 offender sentenced for a felony crime listed in RCW 9.94A.540 as
8 subject to a mandatory minimum sentence of total confinement shall not
9 be released from total confinement before the completion of the listed
10 mandatory minimum sentence for that felony crime of conviction unless
11 allowed under RCW 9.94A.540, however persistent offenders are not
12 eligible for extraordinary medical placement.

13 **Sec. 35.** RCW 9.94A.760 and 2005 c 263 s 1 are each amended to read
14 as follows:

15 (1) Whenever a person is convicted in superior court, the court may
16 order the payment of a legal financial obligation as part of the
17 sentence. The court must on either the judgment and sentence or on a
18 subsequent order to pay, designate the total amount of a legal
19 financial obligation and segregate this amount among the separate
20 assessments made for restitution, costs, fines, and other assessments
21 required by law. On the same order, the court is also to set a sum
22 that the offender is required to pay on a monthly basis towards
23 satisfying the legal financial obligation. If the court fails to set
24 the offender monthly payment amount, the department shall set the
25 amount if the department has active supervision of the offender,
26 otherwise the county clerk shall set the amount. Upon receipt of an
27 offender's monthly payment, restitution shall be paid prior to any
28 payments of other monetary obligations. After restitution is
29 satisfied, the county clerk shall distribute the payment proportionally
30 among all other fines, costs, and assessments imposed, unless otherwise
31 ordered by the court.

32 (2) If the court determines that the offender, at the time of
33 sentencing, has the means to pay for the cost of incarceration, the
34 court may require the offender to pay for the cost of incarceration at
35 a rate of fifty dollars per day of incarceration, if incarcerated in a
36 prison, or the court may require the offender to pay the actual cost of
37 incarceration per day of incarceration, if incarcerated in a county

1 jail. In no case may the court require the offender to pay more than
2 one hundred dollars per day for the cost of incarceration. Payment of
3 other court-ordered financial obligations, including all legal
4 financial obligations and costs of supervision shall take precedence
5 over the payment of the cost of incarceration ordered by the court.
6 All funds recovered from offenders for the cost of incarceration in the
7 county jail shall be remitted to the county and the costs of
8 incarceration in a prison shall be remitted to the department.

9 (3) The court may add to the judgment and sentence or subsequent
10 order to pay a statement that a notice of payroll deduction is to be
11 issued immediately. If the court chooses not to order the immediate
12 issuance of a notice of payroll deduction at sentencing, the court
13 shall add to the judgment and sentence or subsequent order to pay a
14 statement that a notice of payroll deduction may be issued or other
15 income-withholding action may be taken, without further notice to the
16 offender if a monthly court-ordered legal financial obligation payment
17 is not paid when due, and an amount equal to or greater than the amount
18 payable for one month is owed.

19 If a judgment and sentence or subsequent order to pay does not
20 include the statement that a notice of payroll deduction may be issued
21 or other income-withholding action may be taken if a monthly legal
22 financial obligation payment is past due, the department or the county
23 clerk may serve a notice on the offender stating such requirements and
24 authorizations. Service shall be by personal service or any form of
25 mail requiring a return receipt.

26 (4) Independent of the department or the county clerk, the party or
27 entity to whom the legal financial obligation is owed shall have the
28 authority to use any other remedies available to the party or entity to
29 collect the legal financial obligation. These remedies include
30 enforcement in the same manner as a judgment in a civil action by the
31 party or entity to whom the legal financial obligation is owed.
32 Restitution collected through civil enforcement must be paid through
33 the registry of the court and must be distributed proportionately
34 according to each victim's loss when there is more than one victim.
35 The judgment and sentence shall identify the party or entity to whom
36 restitution is owed so that the state, party, or entity may enforce the
37 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or
38 9.94A.753(6) to a victim of rape of a child or a victim's child born

1 from the rape, the Washington state child support registry shall be
2 identified as the party to whom payments must be made. Restitution
3 obligations arising from the rape of a child in the first, second, or
4 third degree that result in the pregnancy of the victim may be enforced
5 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).
6 All other legal financial obligations for an offense committed prior to
7 July 1, 2000, may be enforced at any time during the ten-year period
8 following the offender's release from total confinement or within ten
9 years of entry of the judgment and sentence, whichever period ends
10 later. Prior to the expiration of the initial ten-year period, the
11 superior court may extend the criminal judgment an additional ten years
12 for payment of legal financial obligations including crime victims'
13 assessments. All other legal financial obligations for an offense
14 committed on or after July 1, 2000, may be enforced at any time the
15 offender remains under the court's jurisdiction. For an offense
16 committed on or after July 1, 2000, the court shall retain jurisdiction
17 over the offender, for purposes of the offender's compliance with
18 payment of the legal financial obligations, until the obligation is
19 completely satisfied, regardless of the statutory maximum for the
20 crime. The department may only supervise the offender's compliance
21 with payment of the legal financial obligations during any period in
22 which the department is authorized to supervise the offender in the
23 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
24 confined in a state correctional institution or a correctional facility
25 pursuant to a transfer agreement with the department, and the
26 department shall supervise the offender's compliance during any such
27 period. The department is not responsible for supervision of the
28 offender during any subsequent period of time the offender remains
29 under the court's jurisdiction. The county clerk is authorized to
30 collect unpaid legal financial obligations at any time the offender
31 remains under the jurisdiction of the court for purposes of his or her
32 legal financial obligations.

33 (5) In order to assist the court in setting a monthly sum that the
34 offender must pay during the period of supervision, the offender is
35 required to report to the department for purposes of preparing a
36 recommendation to the court. When reporting, the offender is required,
37 under oath, to respond truthfully and honestly to all questions

1 concerning present, past, and future earning capabilities and the
2 location and nature of all property or financial assets. The offender
3 is further required to bring all documents requested by the department.

4 (6) After completing the investigation, the department shall make
5 a report to the court on the amount of the monthly payment that the
6 offender should be required to make towards a satisfied legal financial
7 obligation.

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

22 (b) Subsequent to any period of supervision, or if the department
23 is not authorized to supervise the offender in the community, the
24 county clerk may make a recommendation to the court that the offender's
25 monthly payment schedule be modified so as to reflect a change in
26 financial circumstances. If the county clerk sets the monthly payment
27 amount, or if the department set the monthly payment amount and the
28 department has subsequently turned the collection of the legal
29 financial obligation over to the county clerk, the clerk may modify the
30 monthly payment amount without the matter being returned to the court.
31 During the period of repayment, the county clerk may require the
32 offender to report to the clerk for the purpose of reviewing the
33 appropriateness of the collection schedule for the legal financial
34 obligation. During this reporting, the offender is required under oath
35 to respond truthfully and honestly to all questions concerning earning
36 capabilities and the location and nature of all property or financial
37 assets. The offender shall bring all documents requested by the county
38 clerk in order to prepare the collection schedule.

1 (8) After the judgment and sentence or payment order is entered,
2 the department is authorized, for any period of supervision, to collect
3 the legal financial obligation from the offender. Subsequent to any
4 period of supervision or, if the department is not authorized to
5 supervise the offender in the community, the county clerk is authorized
6 to collect unpaid legal financial obligations from the offender. Any
7 amount collected by the department shall be remitted daily to the
8 county clerk for the purpose of disbursements. The department and the
9 county clerks are authorized, but not required, to accept credit cards
10 as payment for a legal financial obligation, and any costs incurred
11 related to accepting credit card payments shall be the responsibility
12 of the offender.

13 (9) The department or any obligee of the legal financial obligation
14 may seek a mandatory wage assignment for the purposes of obtaining
15 satisfaction for the legal financial obligation pursuant to RCW
16 9.94A.7701. Any party obtaining a wage assignment shall notify the
17 county clerk. The county clerks shall notify the department, or the
18 administrative office of the courts, whichever is providing the monthly
19 billing for the offender.

20 (10) The requirement that the offender pay a monthly sum towards a
21 legal financial obligation constitutes a condition or requirement of a
22 sentence and the offender is subject to the penalties for noncompliance
23 as provided in RCW 9.94A.634 (as recodified by this act), 9.94A.737, or
24 9.94A.740.

25 (11)(a) Until January 1, 2004, the department shall mail
26 individualized monthly billings to the address known by the department
27 for each offender with an unsatisfied legal financial obligation.

28 (b) Beginning January 1, 2004, the administrative office of the
29 courts shall mail individualized monthly billings to the address known
30 by the office for each offender with an unsatisfied legal financial
31 obligation.

32 (c) The billing shall direct payments, other than outstanding cost
33 of supervision assessments under RCW 9.94A.780, parole assessments
34 under RCW 72.04A.120, and cost of probation assessments under RCW
35 9.95.214, to the county clerk, and cost of supervision, parole, or
36 probation assessments to the department.

37 (d) The county clerk shall provide the administrative office of the

1 courts with notice of payments by such offenders no less frequently
2 than weekly.

3 (e) The county clerks, the administrative office of the courts, and
4 the department shall maintain agreements to implement this subsection.

5 (12) The department shall arrange for the collection of unpaid
6 legal financial obligations during any period of supervision in the
7 community through the county clerk. The department shall either
8 collect unpaid legal financial obligations or arrange for collections
9 through another entity if the clerk does not assume responsibility or
10 is unable to continue to assume responsibility for collection pursuant
11 to subsection (4) of this section. The costs for collection services
12 shall be paid by the offender.

13 (13) The county clerk may access the records of the employment
14 security department for the purposes of verifying employment or income,
15 seeking any assignment of wages, or performing other duties necessary
16 to the collection of an offender's legal financial obligations.

17 (14) Nothing in this chapter makes the department, the state, the
18 counties, or any state or county employees, agents, or other persons
19 acting on their behalf liable under any circumstances for the payment
20 of these legal financial obligations or for the acts of any offender
21 who is no longer, or was not, subject to supervision by the department
22 for a term of community custody, (~~community placement, or community~~
23 ~~supervision,~~) and who remains under the jurisdiction of the court for
24 payment of legal financial obligations.

25 **Sec. 36.** RCW 9.94A.775 and 2003 c 379 s 17 are each amended to
26 read as follows:

27 If an offender with an unsatisfied legal financial obligation is
28 not subject to supervision by the department for a term of (~~community~~
29 ~~placement,~~) community custody, (~~or community supervision,~~) or has
30 not completed payment of all legal financial obligations included in
31 the sentence at the expiration of his or her term of (~~community~~
32 ~~placement,~~) community custody, (~~or community supervision,~~) the
33 department shall notify the administrative office of the courts of the
34 termination of the offender's supervision and provide information to
35 the administrative office of the courts to enable the county clerk to
36 monitor payment of the remaining obligations. The county clerk is
37 authorized to monitor payment after such notification. The secretary

1 of corrections and the administrator for the courts shall enter into an
2 interagency agreement to facilitate the electronic transfer of
3 information about offenders, unpaid obligations, and payees to carry
4 out the purposes of this section.

5 **Sec. 37.** RCW 9.94A.780 and 2003 c 379 s 18 are each amended to
6 read as follows:

7 (1) Whenever a punishment imposed under this chapter requires
8 supervision services to be provided, the offender shall pay to the
9 department of corrections the monthly assessment, prescribed under
10 subsection (2) of this section, which shall be for the duration of the
11 terms of supervision and which shall be considered as payment or part
12 payment of the cost of providing supervision to the offender. The
13 department may exempt or defer a person from the payment of all or any
14 part of the assessment based upon any of the following factors:

15 (a) The offender has diligently attempted but has been unable to
16 obtain employment that provides the offender sufficient income to make
17 such payments.

18 (b) The offender is a student in a school, college, university, or
19 a course of vocational or technical training designed to fit the
20 student for gainful employment.

21 (c) The offender has an employment handicap, as determined by an
22 examination acceptable to or ordered by the department.

23 (d) The offender's age prevents him or her from obtaining
24 employment.

25 (e) The offender is responsible for the support of dependents and
26 the payment of the assessment constitutes an undue hardship on the
27 offender.

28 (f) Other extenuating circumstances as determined by the
29 department.

30 (2) The department of corrections shall adopt a rule prescribing
31 the amount of the assessment. The department may, if it finds it
32 appropriate, prescribe a schedule of assessments that shall vary in
33 accordance with the intensity or cost of the supervision. The
34 department may not prescribe any assessment that is less than ten
35 dollars nor more than fifty dollars.

36 (3) All amounts required to be paid under this section shall be

1 collected by the department of corrections and deposited by the
2 department in the dedicated fund established pursuant to RCW 72.11.040.

3 (4) This section shall not apply to probation services provided
4 under an interstate compact pursuant to chapter 9.95 RCW or to
5 probation services provided for persons placed on probation prior to
6 June 10, 1982.

7 (5) If a county clerk assumes responsibility for collection of
8 unpaid legal financial obligations under RCW 9.94A.760, or under any
9 agreement with the department under that section, whether before or
10 after the completion of any period of (~~community placement,~~)
11 community custody, (~~or community supervision,~~) the clerk may impose
12 a monthly or annual assessment for the cost of collections. The amount
13 of the assessment shall not exceed the actual cost of collections. The
14 county clerk may exempt or defer payment of all or part of the
15 assessment based upon any of the factors listed in subsection (1) of
16 this section. The offender shall pay the assessment under this
17 subsection to the county clerk who shall apply it to the cost of
18 collecting legal financial obligations under RCW 9.94A.760.

19 **Sec. 38.** RCW 9.94A.820 and 2004 c 38 s 10 are each amended to read
20 as follows:

21 (1) Sex offender examinations and treatment ordered as a special
22 condition of (~~community placement or~~) community custody under this
23 chapter shall be conducted only by certified sex offender treatment
24 providers or certified affiliate sex offender treatment providers under
25 chapter 18.155 RCW unless the court or the department finds that: (a)
26 The offender has already moved to another state or plans to move to
27 another state for reasons other than circumventing the certification
28 requirements; (b) the treatment provider is employed by the department;
29 or (c)(i) no certified sex offender treatment providers or certified
30 affiliate sex offender treatment providers are available to provide
31 treatment within a reasonable geographic distance of the offender's
32 home, as determined in rules adopted by the secretary; and (ii) the
33 evaluation and treatment plan comply with the rules adopted by the
34 department of health. A treatment provider selected by an offender
35 under (c) of this subsection, who is not certified by the department of
36 health shall consult with a certified sex offender treatment provider
37 during the offender's period of treatment to ensure compliance with the

1 rules adopted by the department of health. The frequency and content
2 of the consultation shall be based on the recommendation of the
3 certified sex offender treatment provider.

4 (2) A sex offender's failure to participate in treatment required
5 as a condition of (~~community placement or~~) community custody is a
6 violation that will not be excused on the basis that no treatment
7 provider was located within a reasonable geographic distance of the
8 offender's home.

9 **Sec. 39.** RCW 4.24.556 and 2004 c 38 s 1 are each amended to read
10 as follows:

11 (1) A certified sex offender treatment provider, or a certified
12 affiliate sex offender treatment provider who has completed at least
13 fifty percent of the required hours under the supervision of a
14 certified sex offender treatment provider, acting in the course of his
15 or her duties, providing treatment to a person who has been released to
16 a less restrictive alternative under chapter 71.09 RCW or to a level
17 III sex offender on community custody as a court (~~or~~), department, or
18 board ordered condition of sentence is not negligent because he or she
19 treats a high risk offender; sex offenders are known to have a risk of
20 reoffense. The treatment provider is not liable for civil damages
21 resulting from the reoffense of a client unless the treatment
22 provider's acts or omissions constituted gross negligence or willful or
23 wanton misconduct. This limited liability provision does not eliminate
24 the treatment provider's duty to warn of and protect from a client's
25 threatened violent behavior if the client communicates a serious threat
26 of physical violence against a reasonably ascertainable victim or
27 victims. In addition to any other requirements to report violations,
28 the sex offender treatment provider is obligated to report an
29 offender's expressions of intent to harm or other predatory behavior,
30 whether or not there is an ascertainable victim, in progress reports
31 and other established processes that enable courts and supervising
32 entities to assess and address the progress and appropriateness of
33 treatment. This limited liability provision applies only to the
34 conduct of certified sex offender treatment providers, and certified
35 affiliate sex offender treatment providers who have completed at least
36 fifty percent of the required hours under the supervision of a

1 certified sex offender treatment provider, and not the conduct of the
2 state.

3 (2) Sex offender treatment providers who provide services to the
4 department of corrections by identifying risk factors and notifying the
5 department of risks for the subset of high risk offenders who are not
6 amenable to treatment and who are under court order for treatment or
7 supervision are practicing within the scope of their profession.

8 **Sec. 40.** RCW 9.95.017 and 2003 c 218 s 2 are each amended to read
9 as follows:

10 (1) The board shall cause to be prepared criteria for duration of
11 confinement, release on parole, and length of parole for persons
12 committed to prison for crimes committed before July 1, 1984.

13 The proposed criteria should take into consideration RCW
14 9.95.009(2). Before submission to the governor, the board shall
15 solicit comments and review on their proposed criteria for parole
16 release.

17 (2) Persons committed to the department of corrections and who are
18 under the authority of the board for crimes committed on or after
19 September 1, 2001, are subject to the provisions for duration of
20 confinement, release to community custody, and length of community
21 custody established in RCW 9.94A.712, (~~(9.94A.713)~~) section 10 of this
22 act, 72.09.335, and 9.95.420 through 9.95.440.

23 **Sec. 41.** RCW 9.95.064 and 2001 2nd sp.s. c 12 s 326 are each
24 amended to read as follows:

25 (1) In order to minimize the trauma to the victim, the court may
26 attach conditions on release of an offender under RCW 9.95.062,
27 convicted of a crime committed before July 1, 1984, regarding the
28 whereabouts of the defendant, contact with the victim, or other
29 conditions.

30 (2) Offenders released under RCW 9.95.420 are subject to crime-
31 related prohibitions and affirmative conditions established by the
32 court, the department of corrections, or the board pursuant to RCW
33 (~~(9.94A.715 and)~~) 9.94A.712, (~~(9.94A.713)~~) section 10 of this act,
34 72.09.335, and 9.95.420 through 9.95.440.

1 **Sec. 42.** RCW 9.95.110 and 2003 c 218 s 7 are each amended to read
2 as follows:

3 (1) The board may permit an offender convicted of a crime committed
4 before July 1, 1984, to leave the buildings and enclosures of a state
5 correctional institution on parole, after such convicted person has
6 served the period of confinement fixed for him or her by the board,
7 less time credits for good behavior and diligence in work: PROVIDED,
8 That in no case shall an inmate be credited with more than one-third of
9 his or her sentence as fixed by the board.

10 The board may establish rules and regulations under which an
11 offender may be allowed to leave the confines of a state correctional
12 institution on parole, and may return such person to the confines of
13 the institution from which he or she was paroled, at its discretion.

14 (2) The board may permit an offender convicted of a crime committed
15 on or after September 1, 2001, and sentenced under RCW 9.94A.712, to
16 leave a state correctional institution on community custody according
17 to the provisions of RCW 9.94A.712, (~~(9.94A.713)~~) section 10 of this
18 act, 72.09.335, and 9.95.420 through 9.95.440. The person may be
19 returned to the institution following a violation of his or her
20 conditions of release to community custody pursuant to the hearing
21 provisions of RCW 9.95.435.

22 **Sec. 43.** RCW 9.95.123 and 2001 2nd sp.s. c 12 s 336 are each
23 amended to read as follows:

24 In conducting on-site parole hearings or community custody
25 revocation (~~((hearings or community custody))~~) or violations hearings,
26 the board shall have the authority to administer oaths and
27 affirmations, examine witnesses, receive evidence, and issue subpoenas
28 for the compulsory attendance of witnesses and the production of
29 evidence for presentation at such hearings. Subpoenas issued by the
30 board shall be effective throughout the state. Witnesses in attendance
31 at any on-site parole or community custody revocation hearing shall be
32 paid the same fees and allowances, in the same manner and under the
33 same conditions as provided for witnesses in the courts of the state in
34 accordance with chapter 2.40 RCW. If any person fails or refuses to
35 obey a subpoena issued by the board, or obeys the subpoena but refuses
36 to testify concerning any matter under examination at the hearing, the
37 board may petition the superior court of the county where the hearing

1 is being conducted for enforcement of the subpoena: PROVIDED, That an
2 offer to pay statutory fees and mileage has been made to the witness at
3 the time of the service of the subpoena. The petition shall be
4 accompanied by a copy of the subpoena and proof of service, and shall
5 set forth in what specific manner the subpoena has not been complied
6 with, and shall ask an order of the court to compel the witness to
7 appear and testify before the board. The court, upon such petition,
8 shall enter an order directing the witness to appear before the court
9 at a time and place to be fixed in such order and then and there to
10 show cause why he or she has not responded to the subpoena or has
11 refused to testify. A copy of the order shall be served upon the
12 witness. If it appears to the court that the subpoena was properly
13 issued and that the particular questions which the witness refuses to
14 answer are reasonable and relevant, the court shall enter an order that
15 the witness appear at the time and place fixed in the order and testify
16 or produce the required papers, and on failing to obey the order, the
17 witness shall be dealt with as for contempt of court.

18 **Sec. 44.** RCW 9.95.420 and 2007 c 363 s 2 are each amended to read
19 as follows:

20 (1)(a) Except as provided in (c) of this subsection, before the
21 expiration of the minimum term, as part of the end of sentence review
22 process under RCW 72.09.340, 72.09.345, and where appropriate,
23 72.09.370, the department shall conduct, and the offender shall
24 participate in, an examination of the offender, incorporating
25 methodologies that are recognized by experts in the prediction of
26 sexual dangerousness, and including a prediction of the probability
27 that the offender will engage in sex offenses if released.

28 (b) The board may contract for an additional, independent
29 examination, subject to the standards in this section.

30 (c) If at the time the sentence is imposed by the superior court
31 the offender's minimum term has expired or will expire within one
32 hundred twenty days of the sentencing hearing, the department shall
33 conduct, within ninety days of the offender's arrival at a department
34 of corrections facility, and the offender shall participate in, an
35 examination of the offender, incorporating methodologies that are
36 recognized by experts in the prediction of sexual dangerousness, and

1 including a prediction of the probability that the offender will engage
2 in sex offenses if released.

3 (2) The board shall impose the conditions and instructions provided
4 for in (~~RCW 9.94A.720~~) section 10 of this act. The board shall
5 consider the department's recommendations and may impose conditions in
6 addition to those recommended by the department. The board may impose
7 or modify conditions of community custody following notice to the
8 offender.

9 (3)(a) Except as provided in (b) of this subsection, no later than
10 ninety days before expiration of the minimum term, but after the board
11 receives the results from the end of sentence review process and the
12 recommendations for additional or modified conditions of community
13 custody from the department, the board shall conduct a hearing to
14 determine whether it is more likely than not that the offender will
15 engage in sex offenses if released on conditions to be set by the
16 board. The board may consider an offender's failure to participate in
17 an evaluation under subsection (1) of this section in determining
18 whether to release the offender. The board shall order the offender
19 released, under such affirmative and other conditions as the board
20 determines appropriate, unless the board determines by a preponderance
21 of the evidence that, despite such conditions, it is more likely than
22 not that the offender will commit sex offenses if released. If the
23 board does not order the offender released, the board shall establish
24 a new minimum term as provided in RCW 9.95.011.

25 (b) If at the time the offender's minimum term has expired or will
26 expire within one hundred twenty days of the offender's arrival at a
27 department of correction's facility, then no later than one hundred
28 twenty days after the offender's arrival at a department of corrections
29 facility, but after the board receives the results from the end of
30 sentence review process and the recommendations for additional or
31 modified conditions of community custody from the department, the board
32 shall conduct a hearing to determine whether it is more likely than not
33 that the offender will engage in sex offenses if released on conditions
34 to be set by the board. The board may consider an offender's failure
35 to participate in an evaluation under subsection (1) of this section in
36 determining whether to release the offender. The board shall order the
37 offender released, under such affirmative and other conditions as the
38 board determines appropriate, unless the board determines by a

1 preponderance of the evidence that, despite such conditions, it is more
2 likely than not that the offender will commit sex offenses if released.
3 If the board does not order the offender released, the board shall
4 establish a new minimum term as provided in RCW 9.95.011.

5 (4) In a hearing conducted under subsection (3) of this section,
6 the board shall provide opportunities for the victims of any crimes for
7 which the offender has been convicted to present oral, video, written,
8 or in-person testimony to the board. The procedures for victim input
9 shall be developed by rule. To facilitate victim involvement, county
10 prosecutor's offices shall ensure that any victim impact statements and
11 known contact information for victims of record are forwarded as part
12 of the judgment and sentence.

13 **Sec. 45.** RCW 9.95.440 and 2003 c 218 s 6 are each amended to read
14 as follows:

15 In the event the board suspends the release status of an offender
16 released under RCW 9.95.420 by reason of an alleged violation of a
17 condition of release, or pending disposition of a new criminal charge,
18 the board may nullify the suspension order and reinstate release under
19 previous conditions or any new conditions the board determines
20 advisable under ((RCW 9.94A.713(5))) section 10 of this act. Before
21 the board may nullify a suspension order and reinstate release, it
22 shall determine that the best interests of society and the offender
23 shall be served by such reinstatement rather than return to
24 confinement.

25 **Sec. 46.** RCW 46.61.524 and 2006 c 73 s 16 are each amended to read
26 as follows:

27 ((1) A person convicted under RCW 46.61.502(6), 46.61.504(6),
28 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community
29 custody imposed under RCW 9.94A.545 or community placement imposed
30 under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or
31 drug dependency agency approved by the department of social and health
32 services or a qualified probation department, as defined under RCW
33 46.61.516 that has been approved by the department of social and health
34 services. This report shall be forwarded to the department of
35 licensing. If the person is found to have an alcohol or drug problem
36 that requires treatment, the person shall complete treatment in a

1 ~~program approved by the department of social and health services under~~
2 ~~chapter 70.96A RCW. If the person is found not to have an alcohol or~~
3 ~~drug problem that requires treatment, he or she shall complete a course~~
4 ~~in an information school approved by the department of social and~~
5 ~~health services under chapter 70.96A RCW. The convicted person shall~~
6 ~~pay all costs for any evaluation, education, or treatment required by~~
7 ~~this section, unless the person is eligible for an existing program~~
8 ~~offered or approved by the department of social and health services.~~
9 ~~Nothing in chapter 348, Laws of 1991 requires the addition of new~~
10 ~~treatment or assessment facilities nor affects the department of social~~
11 ~~and health services use of existing programs and facilities authorized~~
12 ~~by law.~~

13 (2)) As provided for under RCW 46.20.285, the department shall
14 revoke the license, permit to drive, or a nonresident privilege of a
15 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
16 assault under RCW 46.61.522. The department shall determine the
17 eligibility of a person convicted of vehicular homicide under RCW
18 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to
19 receive a license based upon the report provided by the designated
20 alcoholism treatment facility or probation department designated
21 pursuant to section 9(4)(b) of this act, and shall deny reinstatement
22 until satisfactory progress in an approved program has been established
23 and the person is otherwise qualified.

24 **Sec. 47.** RCW 72.09.015 and 2007 c 483 s 202 are each amended to
25 read as follows:

26 The definitions in this section apply throughout this chapter.

27 (1) "Adult basic education" means education or instruction designed
28 to achieve general competence of skills in reading, writing, and oral
29 communication, including English as a second language and preparation
30 and testing services for obtaining a high school diploma or a general
31 equivalency diploma.

32 (2) "Base level of correctional services" means the minimum level
33 of field services the department of corrections is required by statute
34 to provide for the supervision and monitoring of offenders.

35 (3) "Community custody" has the same meaning as that provided in
36 RCW 9.94A.030 and also includes community placement and community
37 supervision as defined in section 52 of this act.

1 (4) "Contraband" means any object or communication the secretary
2 determines shall not be allowed to be: (a) Brought into; (b) possessed
3 while on the grounds of; or (c) sent from any institution under the
4 control of the secretary.

5 ~~((+4))~~ (5) "County" means a county or combination of counties.

6 ~~((+5))~~ (6) "Department" means the department of corrections.

7 ~~((+6))~~ (7) "Earned early release" means earned release as
8 authorized by RCW 9.94A.728.

9 ~~((+7))~~ (8) "Evidence-based" means a program or practice that has
10 had multiple-site random controlled trials across heterogeneous
11 populations demonstrating that the program or practice is effective in
12 reducing recidivism for the population.

13 ~~((+8))~~ (9) "Extended family visit" means an authorized visit
14 between an inmate and a member of his or her immediate family that
15 occurs in a private visiting unit located at the correctional facility
16 where the inmate is confined.

17 ~~((+9))~~ (10) "Good conduct" means compliance with department rules
18 and policies.

19 ~~((+10))~~ (11) "Good performance" means successful completion of a
20 program required by the department, including an education, work, or
21 other program.

22 ~~((+11))~~ (12) "Immediate family" means the inmate's children,
23 stepchildren, grandchildren, great grandchildren, parents, stepparents,
24 grandparents, great grandparents, siblings, and a person legally
25 married to an inmate. "Immediate family" does not include an inmate
26 adopted by another inmate or the immediate family of the adopted or
27 adopting inmate.

28 ~~((+12))~~ (13) "Indigent inmate," "indigent," and "indigency" mean
29 an inmate who has less than a ten-dollar balance of disposable income
30 in his or her institutional account on the day a request is made to
31 utilize funds and during the thirty days previous to the request.

32 ~~((+13))~~ (14) "Individual reentry plan" means the plan to prepare
33 an offender for release into the community. It should be developed
34 collaboratively between the department and the offender and based on an
35 assessment of the offender using a standardized and comprehensive tool
36 to identify the ~~((offenders-[offender's]))~~ offender's risks and needs.
37 The individual reentry plan describes actions that should occur to
38 prepare individual offenders for release from prison or jail, specifies

1 the supervision and services they will experience in the community, and
2 describes an offender's eventual discharge to aftercare upon successful
3 completion of supervision. An individual reentry plan is updated
4 throughout the period of an offender's incarceration and supervision to
5 be relevant to the offender's current needs and risks.

6 ((+14+)) (15) "Inmate" means a person committed to the custody of
7 the department, including but not limited to persons residing in a
8 correctional institution or facility and persons released from such
9 facility on furlough, work release, or community custody, and persons
10 received from another state, state agency, county, or federal
11 jurisdiction.

12 ((+15+)) (16) "Privilege" means any goods or services, education or
13 work programs, or earned early release days, the receipt of which are
14 directly linked to an inmate's (a) good conduct; and (b) good
15 performance. Privileges do not include any goods or services the
16 department is required to provide under the state or federal
17 Constitution or under state or federal law.

18 ((+16+)) (17) "Promising practice" means a practice that presents,
19 based on preliminary information, potential for becoming a
20 research-based or consensus-based practice.

21 ((+17+)) (18) "Research-based" means a program or practice that has
22 some research demonstrating effectiveness, but that does not yet meet
23 the standard of evidence-based practices.

24 ((+18+)) (19) "Secretary" means the secretary of corrections or his
25 or her designee.

26 ((+19+)) (20) "Significant expansion" includes any expansion into
27 a new product line or service to the class I business that results from
28 an increase in benefits provided by the department, including a
29 decrease in labor costs, rent, or utility rates (for water, sewer,
30 electricity, and disposal), an increase in work program space, tax
31 advantages, or other overhead costs.

32 ((+20+)) (21) "Superintendent" means the superintendent of a
33 correctional facility under the jurisdiction of the Washington state
34 department of corrections, or his or her designee.

35 ((+21+)) (22) "Unfair competition" means any net competitive
36 advantage that a business may acquire as a result of a correctional
37 industries contract, including labor costs, rent, tax advantages,
38 utility rates (water, sewer, electricity, and disposal), and other

1 overhead costs. To determine net competitive advantage, the
2 correctional industries board shall review and quantify any expenses
3 unique to operating a for-profit business inside a prison.

4 ~~((+22+))~~ (23) "Vocational training" or "vocational education" means
5 "vocational education" as defined in RCW 72.62.020.

6 ~~((+23+))~~ (24) "Washington business" means an in-state manufacturer
7 or service provider subject to chapter 82.04 RCW existing on June 10,
8 2004.

9 ~~((+24+))~~ (25) "Work programs" means all classes of correctional
10 industries jobs authorized under RCW 72.09.100.

11 **Sec. 48.** RCW 72.09.270 and 2007 c 483 s 203 are each amended to
12 read as follows:

13 (1) The department of corrections shall develop an individual
14 reentry plan as defined in RCW 72.09.015 for every offender who is
15 committed to the jurisdiction of the department except:

16 (a) Offenders who are sentenced to life without the possibility of
17 release or sentenced to death under chapter 10.95 RCW; and

18 (b) Offenders who are subject to the provisions of 8 U.S.C. Sec.
19 1227.

20 (2) The individual reentry plan may be one document, or may be a
21 series of individual plans that combine to meet the requirements of
22 this section.

23 (3) In developing individual reentry plans, the department shall
24 assess all offenders using standardized and comprehensive tools to
25 identify the criminogenic risks, programmatic needs, and educational
26 and vocational skill levels for each offender. The assessment tool
27 should take into account demographic biases, such as culture, age, and
28 gender, as well as the needs of the offender, including any learning
29 disabilities, substance abuse or mental health issues, and social or
30 behavior deficits.

31 (4)(a) The initial assessment shall be conducted as early as
32 sentencing, but, whenever possible, no later than forty-five days of
33 being sentenced to the jurisdiction of the department of corrections.

34 (b) The offender's individual reentry plan shall be developed as
35 soon as possible after the initial assessment is conducted, but,
36 whenever possible, no later than sixty days after completion of the

1 assessment, and shall be periodically reviewed and updated as
2 appropriate.

3 (5) The individual reentry plan shall, at a minimum, include:

4 (a) A plan to maintain contact with the inmate's children and
5 family, if appropriate. The plan should determine whether parenting
6 classes, or other services, are appropriate to facilitate successful
7 reunification with the offender's children and family;

8 (b) An individualized portfolio for each offender that includes the
9 offender's education achievements, certifications, employment, work
10 experience, skills, and any training received prior to and during
11 incarceration; and

12 (c) A plan for the offender during the period of incarceration
13 through reentry into the community that addresses the needs of the
14 offender including education, employment, substance abuse treatment,
15 mental health treatment, family reunification, and other areas which
16 are needed to facilitate a successful reintegration into the community.

17 (6)(a) Prior to discharge of any offender, the department shall:

18 (i) Evaluate the offender's needs and, to the extent possible,
19 connect the offender with existing services and resources that meet
20 those needs; and

21 (ii) Connect the offender with a community justice center and/or
22 community transition coordination network in the area in which the
23 offender will be residing once released from the correctional system if
24 one exists.

25 (b) If the department recommends partial confinement in an
26 offender's individual reentry plan, the department shall maximize the
27 period of partial confinement for the offender as allowed pursuant to
28 RCW 9.94A.728 to facilitate the offender's transition to the community.

29 (7) The department shall establish mechanisms for sharing
30 information from individual reentry plans to those persons involved
31 with the offender's treatment, programming, and reentry, when deemed
32 appropriate. When feasible, this information shall be shared
33 electronically.

34 (8)(a) In determining the county of discharge for an offender
35 released to community custody (~~or community placement~~), the
36 department may not approve a residence location that is not in the
37 offender's county of origin unless it is determined by the department
38 that the offender's return to his or her county of origin would be

1 inappropriate considering any court-ordered condition of the offender's
2 sentence, victim safety concerns, negative influences on the offender
3 in the community, or the location of family or other sponsoring persons
4 or organizations that will support the offender.

5 (b) If the offender is not returned to his or her county of origin,
6 the department shall provide the law and justice council of the county
7 in which the offender is placed with a written explanation.

8 (c) For purposes of this section, the offender's county of origin
9 means the county of the offender's first felony conviction in
10 Washington.

11 (9) Nothing in this section creates a vested right in programming,
12 education, or other services.

13 **Sec. 49.** RCW 72.09.345 and 1997 c 364 s 4 are each amended to read
14 as follows:

15 (1) In addition to any other information required to be released
16 under this chapter, the department is authorized, pursuant to RCW
17 4.24.550, to release relevant information that is necessary to protect
18 the public concerning offenders convicted of sex offenses.

19 (2) In order for public agencies to have the information necessary
20 to notify the public as authorized in RCW 4.24.550, the secretary shall
21 establish and administer an end-of-sentence review committee for the
22 purposes of assigning risk levels, reviewing available release plans,
23 and making appropriate referrals for sex offenders. The committee
24 shall assess, on a case-by-case basis, the public risk posed by sex
25 offenders who are: (a) Preparing for their release from confinement
26 for sex offenses committed on or after July 1, 1984; and (b) accepted
27 from another state under a reciprocal agreement under the interstate
28 compact authorized in chapter 72.74 RCW.

29 (3) Notwithstanding any other provision of law, the committee shall
30 have access to all relevant records and information in the possession
31 of public agencies relating to the offenders under review, including
32 police reports; prosecutors' statements of probable cause; presentence
33 investigations and reports; complete judgments and sentences; current
34 classification referrals; criminal history summaries; violation and
35 disciplinary reports; all psychological evaluations and psychiatric
36 hospital reports; sex offender treatment program reports; and juvenile

1 records. Records and information obtained under this subsection shall
2 not be disclosed outside the committee unless otherwise authorized by
3 law.

4 (4) The committee shall review each sex offender under its
5 authority before the offender's release from confinement or start of
6 the offender's term of (~~community placement or~~) community custody in
7 order to: (a) Classify the offender into a risk level for the purposes
8 of public notification under RCW 4.24.550; (b) where available, review
9 the offender's proposed release plan in accordance with the
10 requirements of RCW 72.09.340; and (c) make appropriate referrals.

11 (5) The committee shall classify as risk level I those sex
12 offenders whose risk assessments indicate a low risk of reoffense
13 within the community at large. The committee shall classify as risk
14 level II those offenders whose risk assessments indicate a moderate
15 risk of reoffense within the community at large. The committee shall
16 classify as risk level III those offenders whose risk assessments
17 indicate a high risk of reoffense within the community at large.

18 (6) The committee shall issue to appropriate law enforcement
19 agencies, for their use in making public notifications under RCW
20 4.24.550, narrative notices regarding the pending release of sex
21 offenders from the department's facilities. The narrative notices
22 shall, at a minimum, describe the identity and criminal history
23 behavior of the offender and shall include the department's risk level
24 classification for the offender. For sex offenders classified as
25 either risk level II or III, the narrative notices shall also include
26 the reasons underlying the classification.

27 **Sec. 50.** RCW 72.09.580 and 1999 c 196 s 12 are each amended to
28 read as follows:

29 Except as specifically prohibited by other law, and for purposes of
30 determining, modifying, or monitoring compliance with conditions of
31 community custody(~~(, community placement, or community supervision as~~
32 ~~authorized under RCW 9.94A.505 and 9.94A.545)), the department:~~

33 (1) Shall have access to all relevant records and information in
34 the possession of public agencies relating to offenders, including
35 police reports, prosecutors' statements of probable cause, complete
36 criminal history information, psychological evaluations and psychiatric

1 hospital reports, sex offender treatment program reports, and juvenile
2 records; and

3 (2) May require periodic reports from providers of treatment or
4 other services required by the court or the department, including
5 progress reports, evaluations and assessments, and reports of
6 violations of conditions imposed by the court or the department.

7 NEW SECTION. **Sec. 51.** (1) This chapter codifies sentencing
8 provisions that may be applicable to sentences for crimes committed
9 prior to July 1, 2000.

10 (2) This chapter supplements chapter 9.94A RCW and should be read
11 in conjunction with that chapter.

12 NEW SECTION. **Sec. 52.** In addition to the definitions set out in
13 RCW 9.94A.030, the following definitions apply for purposes of this
14 chapter:

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

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

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

34 NEW SECTION. **Sec. 53.** The court may order an offender whose
35 sentence includes community placement or community supervision to

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

11 NEW SECTION. **Sec. 54.** A person convicted of a sex offense or an
12 offense categorized as a serious violent offense, assault in the second
13 degree, vehicular homicide, vehicular assault, assault of a child in
14 the second degree, any crime against persons where it is determined in
15 accordance with RCW 9.94A.602 that the offender or an accomplice was
16 armed with a deadly weapon at the time of commission, or any felony
17 offense under chapter 69.50 or 69.52 RCW, committed before July 1,
18 2000, may become eligible, in accordance with a program developed by
19 the department, for transfer to community custody status in lieu of
20 earned release time pursuant to RCW 9.94A.728(1).

21 NEW SECTION. **Sec. 55.** (1) Sections 6 through 58 of this act apply
22 to all sentences imposed or reimposed on or after August 1, 2009, for
23 any crime committed on or after the effective date of this section.

24 (2) Sections 6 through 58 of this act also apply to all sentences
25 imposed or reimposed on or after August 1, 2009, for crimes committed
26 prior to the effective date of this section, to the extent that such
27 application is constitutionally permissible.

28 (3) To the extent that application of sections 6 through 58 of this
29 act is not constitutionally permissible with respect to any offender,
30 the sentence for such offender shall be governed by the law as it
31 existed before the effective date of this section, or on such prior
32 date as may be constitutionally required, notwithstanding any amendment
33 or repeal of provisions of such law.

34 (4) If application of sections 6 through 58 of this act is not
35 constitutionally permissible with respect to any offender, the judgment

1 and sentence shall specify the particular sentencing provisions that
2 will not apply to such offender. Whenever practical, the judgment and
3 sentence shall use the terminology set out in this act.

4 (5) The sentencing guidelines commission shall prepare a summary of
5 the circumstances under which application of sections 6 through 58 of
6 this act is not constitutionally permissible. The summary should
7 include recommendations of conditions that could be included in
8 judgments and sentences in order to prevent unconstitutional
9 application of the act. This summary shall be incorporated into the
10 *Adult Sentencing Guidelines Manual*.

11 (6) Sections 6 through 58 of this act shall not affect the
12 enforcement of any sentence that was imposed prior to August 1, 2009,
13 unless the offender is resentenced after that date.

14 NEW SECTION. **Sec. 56.** (1) The following sections are recodified
15 as part of a new chapter in Title 9 RCW: RCW 9.94A.628, 9.94A.634,
16 9.94A.700, 9.94A.705, and 9.94A.710.

17 (2) RCW 9.94A.610 (as amended by this act), 9.94A.612 (as amended
18 by this act), 9.94A.614, 9.94A.616, 9.94A.618, and 9.94A.620 are each
19 recodified as sections in chapter 72.09 RCW.

20 (3) Sections 51 through 54 of this act are added to the new chapter
21 created in subsection (1) of this section.

22 (4) The code reviser is authorized to improve the organization of
23 chapter 9.94A RCW by renumbering existing sections and adding
24 subchapter headings.

25 (5) The code reviser shall correct any cross-references to sections
26 affected by this section in other sections of the code.

27 NEW SECTION. **Sec. 57.** The following acts or parts of acts are
28 each repealed:

29 (1) RCW 9.94A.545 (Community custody) and 2006 c 128 s 4, 2003 c
30 379 s 8, 2000 c 28 s 13, 1999 c 196 s 10, 1988 c 143 s 23, & 1984 c 209
31 s 22;

32 (2) RCW 9.94A.713 (Nonpersistent offenders--Conditions) and 2006 c
33 130 s 1 & 2001 2nd sp.s. c 12 s 304;

34 (3) RCW 9.94A.715 (Community custody for specified offenders--
35 Conditions) and 2006 c 130 s 2, 2006 c 128 s 5, 2003 c 379 s 6, 2001
36 2nd sp.s. c 12 s 302, 2001 c 10 s 5, & 2000 c 28 s 25;

1 (4) RCW 9.94A.720 (Supervision of offenders) and 2003 c 379 s 7,
2 2002 c 175 s 14, & 2000 c 28 s 26;
3 (5) RCW 9.94A.800 (Sex offender treatment in correctional facility)
4 and 2000 c 28 s 34;
5 (6) RCW 9.94A.830 (Legislative finding and intent--Commitment of
6 felony sexual offenders after July 1, 1987) and 1987 c 402 s 2 & 1986
7 c 301 s 1; and
8 (7) RCW 79A.60.070 (Conviction under RCW 79A.60.050 or 79A.60.060--
9 Community supervision or community placement--Conditions) and 2000 c 11
10 s 96 & 1998 c 219 s 3.

11 NEW SECTION. **Sec. 58.** The repealers in section 57 of this act
12 shall not affect the validity of any sentence that was imposed prior to
13 the effective date of this section or the authority of the department
14 of corrections to supervise any offender pursuant to such sentence.

15 NEW SECTION. **Sec. 59.** The code reviser shall report to the 2009
16 legislature on any amendments necessary to accomplish the purposes of
17 this act.

18 NEW SECTION. **Sec. 60.** Section 24 of this act expires July 1,
19 2010.

20 NEW SECTION. **Sec. 61.** Sections 6 through 60 of this act take
21 effect August 1, 2009.

22 NEW SECTION. **Sec. 62.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected."

ADOPTED 03/12/2008

1 On page 1, line 2 of the title, after "sentences;" strike the
2 remainder of the title and insert "amending RCW 9.94A.500, 9.94A.530,
3 9.94A.737, 9.94A.740, 9.94A.501, 9.94A.505, 9.94A.610, 9.94A.612,
4 9.94A.625, 9.94A.650, 9.94A.670, 9.94A.690, 9.94A.728, 9.94A.760,
5 9.94A.775, 9.94A.780, 9.94A.820, 4.24.556, 9.95.017, 9.95.064,
6 9.95.110, 9.95.123, 9.95.420, 9.95.440, 46.61.524, 72.09.015,
7 72.09.270, 72.09.345, and 72.09.580; reenacting and amending RCW
8 9.94A.525, 9.94A.030, 9.94A.660, and 9.94A.712; adding new sections to
9 chapter 9.94A RCW; adding new sections to chapter 72.09 RCW; adding a
10 new chapter to Title 9 RCW; creating new sections; recodifying RCW
11 9.94A.628, 9.94A.634, 9.94A.700, 9.94A.705, 9.94A.710, 9.94A.610,
12 9.94A.612, 9.94A.614, 9.94A.616, 9.94A.618, and 9.94A.620; repealing
13 RCW 9.94A.545, 9.94A.713, 9.94A.715, 9.94A.720, 9.94A.800, 9.94A.830,
14 and 79A.60.070; providing an effective date; and providing an
15 expiration date."

EFFECT: (1) Deletes section 2 of bill including amendatory language providing that if a defendant at sentencing fails to affirmatively set forth the defendant's version of the defendant's criminal history, the defendant is deemed to have admitted that the state's version of the defendant's criminal history is correct.

(2) Adds provisions reorganizing and simplifying the supervision provisions of the Sentencing Reform Act (SRA). Defines supervision as "community custody" and removes all other terms. Consolidates conditions that the court may include in an offender's sentence as part of community custody in one section. Removes date references to reflect that the current SRA applies to all offenders sentenced after the effective date of the reorganizing sections.

(3) Moves obsolete provisions, including the definitions of community supervision, community placement, and postrelease supervision, to a separate chapter.

(4) Makes no substantive changes to those provisions that apply to offenders who committed their crimes after the effective date of the Offender Accountability Act (OAA). Pre-OAA offenders (those offenders to which community placement and other terms applied) are given different treatment under this bill.

(a) Requires the court to apply the provisions of the SRA to the extent that it is constitutionally permissible to offenders sentenced after the effective date of the reorganizing provisions for crimes committed prior to July 1, 2000.

(b) Requires the court to specify in the judgment and sentencing those provisions that do not apply.

(c) Directs the Sentencing Guidelines Commission to prepare a summary of the circumstances under which application of the reorganizing provisions are not constitutionally permissible.

(5) Provides a delayed effective date for the reorganizing provisions (sections 6 through 60) to allow the Code Reviser to report to the 2009 Legislature any amendment necessary to accomplish the purposes of this act.

(6) Adds a severability clause in the event that any provision of the act is held to be invalid.

--- END ---