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HOUSE BILL 1131

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Costa, Blalock, Chopp, Conway, Lantz, Keiser, Poulsen, O'Brien, Murray, Gombosky, Cody and Anderson; by request of Governor Lowry

Read first time 01/15/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to domestic violence; amending RCW 5.60.060,  
2 9A.16.060, 9A.36.041, 10.31.100, and 9.94A.040; reenacting and amending  
3 RCW 9.94A.320 and 9.94A.120; adding a new section to chapter 40.24 RCW;  
4 adding a new section to chapter 70.58 RCW; prescribing penalties; and  
5 declaring an emergency.

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

7 **Sec. 1.** RCW 5.60.060 and 1996 c 156 s 1 are each amended to read  
8 as follows:

9 (1) A husband shall not be examined for or against his wife,  
10 without the consent of the wife, nor a wife for or against her husband  
11 without the consent of the husband; nor can either during marriage or  
12 afterward, be without the consent of the other, examined as to any  
13 communication made by one to the other during marriage. But this  
14 exception shall not apply to a civil action or proceeding by one  
15 against the other, nor to a criminal action or proceeding for a crime  
16 committed by one against the other, nor to a criminal action or  
17 proceeding against a spouse if the marriage occurred subsequent to the  
18 filing of formal charges against the defendant, nor to a criminal  
19 action or proceeding for a crime committed by said husband or wife

1 against any child of whom said husband or wife is the parent or  
2 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:  
3 PROVIDED, That the spouse of a person sought to be detained under  
4 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall  
5 be so informed by the court prior to being called as a witness.

6 (2) An attorney or counselor shall not, without the consent of his  
7 or her client, be examined as to any communication made by the client  
8 to him or her, or his or her advice given thereon in the course of  
9 professional employment.

10 (3) A member of the clergy or a priest shall not, without the  
11 consent of a person making the confession, be examined as to any  
12 confession made to him or her in his or her professional character, in  
13 the course of discipline enjoined by the church to which he or she  
14 belongs.

15 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,  
16 a physician or surgeon or osteopathic physician or surgeon shall not,  
17 without the consent of his or her patient, be examined in a civil  
18 action as to any information acquired in attending such patient, which  
19 was necessary to enable him or her to prescribe or act for the patient,  
20 except as follows:

21 (a) In any judicial proceedings regarding a child's injury,  
22 neglect, or sexual abuse or the cause thereof; and

23 (b) Ninety days after filing an action for personal injuries or  
24 wrongful death, the claimant shall be deemed to waive the physician-  
25 patient privilege. Waiver of the physician-patient privilege for any  
26 one physician or condition constitutes a waiver of the privilege as to  
27 all physicians or conditions, subject to such limitations as a court  
28 may impose pursuant to court rules.

29 (5) A public officer shall not be examined as a witness as to  
30 communications made to him or her in official confidence, when the  
31 public interest would suffer by the disclosure.

32 (6)(a) A peer support group counselor shall not, without consent of  
33 the law enforcement officer making the communication, be compelled to  
34 testify about any communication made to the counselor by the officer  
35 while receiving counseling. The counselor must be designated as such  
36 by the sheriff, police chief, or chief of the Washington state patrol,  
37 prior to the incident that results in counseling. The privilege only  
38 applies when the communication was made to the counselor while acting  
39 in his or her capacity as a peer support group counselor. The

1 privilege does not apply if the counselor was an initial responding  
2 officer, a witness, or a party to the incident which prompted the  
3 delivery of peer support group counseling services to the law  
4 enforcement officer.

5 (b) For purposes of this section, "peer support group counselor"  
6 means a:

7 (i) Law enforcement officer, or civilian employee of a law  
8 enforcement agency, who has received training to provide emotional and  
9 moral support and counseling to an officer who needs those services as  
10 a result of an incident in which the officer was involved while acting  
11 in his or her official capacity; or

12 (ii) Nonemployee counselor who has been designated by the sheriff,  
13 police chief, or chief of the Washington state patrol to provide  
14 emotional and moral support and counseling to an officer who needs  
15 those services as a result of an incident in which the officer was  
16 involved while acting in his or her official capacity.

17 (7) A sexual assault advocate may not, without the consent of the  
18 victim, be examined as to any communication made by the victim to the  
19 sexual assault advocate.

20 (a) For purposes of this section, "sexual assault advocate" means  
21 the employee or volunteer from a rape crisis center, victim assistance  
22 unit, program, or association, that provides information, medical or  
23 legal advocacy, counseling, or support to victims of sexual assault,  
24 who is designated by the victim to accompany the victim to the hospital  
25 or other health care facility and to proceedings concerning the alleged  
26 assault, including police and prosecution interviews and court  
27 proceedings.

28 (b) A sexual assault advocate may disclose a confidential  
29 communication without the consent of the victim if failure to disclose  
30 is likely to result in a clear, imminent risk of serious physical  
31 injury or death of the victim or another person. Any sexual assault  
32 advocate participating in good faith in the disclosing of records and  
33 communications under this section shall have immunity from any  
34 liability, civil, criminal, or otherwise, that might result from the  
35 action. In any proceeding, civil or criminal, arising out of a  
36 disclosure under this section, the good faith of the sexual assault  
37 advocate who disclosed the confidential communication shall be  
38 presumed.

1       (8) A domestic violence counselor or advocate may not, without the  
2 consent of the victim, be examined as to any communication made by the  
3 victim to the counselor or advocate. For purposes of this section,  
4 "domestic violence counselor or advocate" means the employee or  
5 volunteer from a domestic violence program or shelter, victim  
6 assistance unit, program, or association, that provides information,  
7 medical or legal advocacy, counseling, or support to victims of  
8 domestic violence, who is designated by the victim to accompany the  
9 victim to the hospital or other health care facility and to proceedings  
10 concerning the alleged assault or abuse, including police and  
11 prosecution interviews and court proceedings.

12       **Sec. 2.** RCW 9A.16.060 and 1975 1st ex.s. c 260 s 9A.16.060 are  
13 each amended to read as follows:

14       (1) In any prosecution for a crime, it is a defense that:

15       (a) The actor participated in the crime under compulsion by another  
16 who by threat or use of force created an apprehension in the mind of  
17 the actor that in case of refusal he or another would be liable to  
18 immediate death or immediate grievous bodily injury; and

19       (b) That such apprehension was reasonable upon the part of the  
20 actor; and

21       (c) That the actor would not have participated in the crime except  
22 for the duress involved.

23       (2) The defense of duress is not available if the crime charged is  
24 murder or manslaughter.

25       (3) The defense of duress is not available if the actor  
26 intentionally or recklessly places himself in a situation in which it  
27 is probable that he will be subject to duress.

28       (4) ~~((The defense of duress is not established solely by a showing~~  
29 ~~that a married person acted on the command of his or her spouse))~~  
30 Evidence that the defendant had suffered a continuing pattern of  
31 physical or sexual abuse and was acting under the influence of, or in  
32 response to, that abuse at the time of the offense is admissible for  
33 consideration of this defense.

34       **Sec. 3.** RCW 9A.36.041 and 1987 c 188 s 2 are each amended to read  
35 as follows:

1 (1) A person is guilty of assault in the fourth degree if, under  
2 circumstances not amounting to assault in the first, second, or third  
3 degree, or custodial assault, he or she assaults another.

4 (2) Assault in the fourth degree is a gross misdemeanor.

5 (3) The second or subsequent conviction of assault in the fourth  
6 degree against the same victim is a class C felony.

7 **Sec. 4.** RCW 10.31.100 and 1996 c 248 s 4 are each amended to read  
8 as follows:

9 A police officer having probable cause to believe that a person has  
10 committed or is committing a felony shall have the authority to arrest  
11 the person without a warrant. A police officer may arrest a person  
12 without a warrant for committing a misdemeanor or gross misdemeanor  
13 only when the offense is committed in the presence of the officer,  
14 except as provided in subsections (1) through (10) of this section.

15 (1) Any police officer having probable cause to believe that a  
16 person has committed or is committing a misdemeanor or gross  
17 misdemeanor, involving physical harm or threats of harm to any person  
18 or property or the unlawful taking of property or involving the use or  
19 possession of cannabis, or involving the acquisition, possession, or  
20 consumption of alcohol by a person under the age of twenty-one years  
21 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
22 or 9A.52.080, shall have the authority to arrest the person.

23 (2) A police officer shall arrest and take into custody, pending  
24 release on bail, personal recognizance, or court order, a person  
25 without a warrant when the officer has probable cause to believe that:

26 (a) An order has been issued of which the person has knowledge  
27 under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040,  
28 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW  
29 restraining the person and the person has violated the terms of the  
30 order restraining the person from acts or threats of violence or  
31 restraining the person from going onto the grounds of or entering a  
32 residence, workplace, school, or day care or, in the case of an order  
33 issued under RCW 26.44.063, imposing any other restrictions or  
34 conditions upon the person; or

35 (b) The person is sixteen years or older and within the preceding  
36 (~~four~~) twenty-four hours has assaulted a family or household member  
37 as defined in RCW 10.99.020 and the officer believes: (i) A felonious  
38 assault has occurred; (ii) an assault has occurred which has resulted

1 in bodily injury to the victim, whether the injury is observable by the  
2 responding officer or not; or (iii) that any physical action has  
3 occurred which was intended to cause another person reasonably to fear  
4 imminent serious bodily injury or death. Bodily injury means physical  
5 pain, illness, or an impairment of physical condition. When the  
6 officer has probable cause to believe that family or household members  
7 have assaulted each other, the officer is not required to arrest both  
8 persons. The officer shall arrest the person whom the officer believes  
9 to be the primary physical aggressor. In making this determination,  
10 the officer shall make every reasonable effort to consider: (i) The  
11 intent to protect victims of domestic violence under RCW 10.99.010;  
12 (ii) the comparative extent of injuries inflicted or serious threats  
13 creating fear of physical injury; and (iii) the history of domestic  
14 violence between the persons involved. Officers are immune from civil  
15 action for damages arising out of the good faith performance of their  
16 duties as prescribed by this section.

17 (3) Any police officer having probable cause to believe that a  
18 person has committed or is committing a violation of any of the  
19 following traffic laws shall have the authority to arrest the person:

20 (a) RCW 46.52.010, relating to duty on striking an unattended car  
21 or other property;

22 (b) RCW 46.52.020, relating to duty in case of injury to or death  
23 of a person or damage to an attended vehicle;

24 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
25 racing of vehicles;

26 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
27 influence of intoxicating liquor or drugs;

28 (e) RCW 46.20.342, relating to driving a motor vehicle while  
29 operator's license is suspended or revoked;

30 (f) RCW 46.61.525, relating to operating a motor vehicle in a  
31 negligent manner.

32 (4) A law enforcement officer investigating at the scene of a motor  
33 vehicle accident may arrest the driver of a motor vehicle involved in  
34 the accident if the officer has probable cause to believe that the  
35 driver has committed in connection with the accident a violation of any  
36 traffic law or regulation.

37 (5) Any police officer having probable cause to believe that a  
38 person has committed or is committing a violation of RCW 88.12.025  
39 shall have the authority to arrest the person.

1 (6) An officer may act upon the request of a law enforcement  
2 officer in whose presence a traffic infraction was committed, to stop,  
3 detain, arrest, or issue a notice of traffic infraction to the driver  
4 who is believed to have committed the infraction. The request by the  
5 witnessing officer shall give an officer the authority to take  
6 appropriate action under the laws of the state of Washington.

7 (7) Any police officer having probable cause to believe that a  
8 person has committed or is committing any act of indecent exposure, as  
9 defined in RCW 9A.88.010, may arrest the person.

10 (8) A police officer may arrest and take into custody, pending  
11 release on bail, personal recognizance, or court order, a person  
12 without a warrant when the officer has probable cause to believe that  
13 an order has been issued of which the person has knowledge under  
14 chapter 10.14 RCW and the person has violated the terms of that order.

15 (9) Any police officer having probable cause to believe that a  
16 person has, within twenty-four hours of the alleged violation,  
17 committed a violation of RCW 9A.50.020 may arrest such person.

18 (10) A police officer having probable cause to believe that a  
19 person illegally possesses or illegally has possessed a firearm or  
20 other dangerous weapon on private or public elementary or secondary  
21 school premises shall have the authority to arrest the person.

22 For purposes of this subsection, the term "firearm" has the meaning  
23 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
24 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

25 (11) Except as specifically provided in subsections (2), (3), (4),  
26 and (6) of this section, nothing in this section extends or otherwise  
27 affects the powers of arrest prescribed in Title 46 RCW.

28 (12) No police officer may be held criminally or civilly liable for  
29 making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police  
30 officer acts in good faith and without malice.

31 **Sec. 5.** RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and 1996  
32 c 36 s 2 are each reenacted and amended to read as follows:

33 TABLE 2

34 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

35 XV Aggravated Murder 1 (RCW 10.95.020)

1     XIV           Murder 1 (RCW 9A.32.030)  
2                   Homicide by abuse (RCW 9A.32.055)  
3     XIII           Murder 2 (RCW 9A.32.050)  
4     XII            Assault 1 (RCW 9A.36.011)  
5                    Assault of a Child 1 (RCW 9A.36.120)  
6     XI             Rape 1 (RCW 9A.44.040)  
7                    Rape of a Child 1 (RCW 9A.44.073)  
8     X              Kidnapping 1 (RCW 9A.40.020)  
9                    Rape 2 (RCW 9A.44.050)  
10                   Rape of a Child 2 (RCW 9A.44.076)  
11                   Child Molestation 1 (RCW 9A.44.083)  
12                   Damaging building, etc., by explosion with  
13                    threat to human being (RCW  
14                    70.74.280(1))  
15                   Over 18 and deliver heroin or narcotic from  
16                    Schedule I or II to someone under 18  
17                    (RCW 69.50.406)  
18                   Leading Organized Crime (RCW  
19                    9A.82.060(1)(a))  
20     IX             Assault of a Child 2 (RCW 9A.36.130)  
21                    Robbery 1 (RCW 9A.56.200)  
22                    Manslaughter 1 (RCW 9A.32.060)  
23                    Explosive devices prohibited (RCW  
24                    70.74.180)  
25                    Indecent Liberties (with forcible  
26                    compulsion) (RCW 9A.44.100(1)(a))  
27                    Endangering life and property by explosives  
28                    with threat to human being (RCW  
29                    70.74.270)  
30                    Over 18 and deliver narcotic from Schedule  
31                    III, IV, or V or a nonnarcotic from  
32                    Schedule I-V to someone under 18 and 3  
33                    years junior (RCW 69.50.406)  
34                    Controlled Substance Homicide (RCW  
35                    69.50.415)

1 Sexual Exploitation (RCW 9.68A.040)  
2 Inciting Criminal Profiteering (RCW  
3 9A.82.060(1)(b))  
4 Vehicular Homicide, by being under the  
5 influence of intoxicating liquor or  
6 any drug (RCW 46.61.520)

7 VIII Arson 1 (RCW 9A.48.020)  
8 Promoting Prostitution 1 (RCW 9A.88.070)  
9 Selling for profit (controlled or  
10 counterfeit) any controlled substance  
11 (RCW 69.50.410)  
12 Manufacture, deliver, or possess with  
13 intent to deliver heroin or cocaine  
14 (RCW 69.50.401(a)(1)(i))  
15 Manufacture, deliver, or possess with  
16 intent to deliver methamphetamine (RCW  
17 69.50.401(a)(1)(ii))  
18 Possession of ephedrine or pseudoephedrine  
19 with intent to manufacture  
20 methamphetamine (RCW 69.50.440)  
21 Vehicular Homicide, by the operation of any  
22 vehicle in a reckless manner (RCW  
23 46.61.520)

24 VII Burglary 1 (RCW 9A.52.020)  
25 Vehicular Homicide, by disregard for the  
26 safety of others (RCW 46.61.520)  
27 Introducing Contraband 1 (RCW 9A.76.140)  
28 Indecent Liberties (without forcible  
29 compulsion) (RCW 9A.44.100(1) (b) and  
30 (c))  
31 Child Molestation 2 (RCW 9A.44.086)  
32 Dealing in depictions of minor engaged in  
33 sexually explicit conduct (RCW  
34 9.68A.050)

1           Sending, bringing into state depictions of  
2           minor engaged in sexually explicit  
3           conduct (RCW 9.68A.060)  
4           Involving a minor in drug dealing (RCW  
5           69.50.401(f))  
6           Reckless Endangerment 1 (RCW 9A.36.045)  
7           Unlawful Possession of a Firearm in the  
8           first degree (RCW 9.41.040(1)(a))  
  
9       VI       Bribery (RCW 9A.68.010)  
10           Manslaughter 2 (RCW 9A.32.070)  
11           Rape of a Child 3 (RCW 9A.44.079)  
12           Intimidating a Juror/Witness (RCW  
13           9A.72.110, 9A.72.130)  
14           Damaging building, etc., by explosion with  
15           no threat to human being (RCW  
16           70.74.280(2))  
17           Endangering life and property by explosives  
18           with no threat to human being (RCW  
19           70.74.270)  
20           Incest 1 (RCW 9A.64.020(1))  
21           Manufacture, deliver, or possess with  
22           intent to deliver narcotics from  
23           Schedule I or II (except heroin or  
24           cocaine) (RCW 69.50.401(a)(1)(i))  
25           Intimidating a Judge (RCW 9A.72.160)  
26           Bail Jumping with Murder 1 (RCW  
27           9A.76.170(2)(a))  
28           Theft of a Firearm (RCW 9A.56.300)  
  
29       V       Persistent prison misbehavior (RCW  
30           9.94.070)  
31           Criminal Mistreatment 1 (RCW 9A.42.020)  
32           Abandonment of dependent person 1 (RCW  
33           9A.42.060)  
34           Rape 3 (RCW 9A.44.060)  
35           Sexual Misconduct with a Minor 1 (RCW  
36           9A.44.093)  
37           Child Molestation 3 (RCW 9A.44.089)  
38           Kidnapping 2 (RCW 9A.40.030)

1 Extortion 1 (RCW 9A.56.120)  
2 Incest 2 (RCW 9A.64.020(2))  
3 Perjury 1 (RCW 9A.72.020)  
4 Extortionate Extension of Credit (RCW  
5 9A.82.020)  
6 Advancing money or property for  
7 extortionate extension of credit (RCW  
8 9A.82.030)  
9 Extortionate Means to Collect Extensions of  
10 Credit (RCW 9A.82.040)  
11 Rendering Criminal Assistance 1 (RCW  
12 9A.76.070)  
13 Bail Jumping with class A Felony (RCW  
14 9A.76.170(2)(b))  
15 Sexually Violating Human Remains (RCW  
16 9A.44.105)  
17 Delivery of imitation controlled substance  
18 by person eighteen or over to person  
19 under eighteen (RCW 69.52.030(2))  
20 Possession of a Stolen Firearm (RCW  
21 9A.56.310)

22 IV Residential Burglary (RCW 9A.52.025)  
23 Theft of Livestock 1 (RCW 9A.56.080)  
24 Robbery 2 (RCW 9A.56.210)  
25 Assault 2 (RCW 9A.36.021)  
26 Escape 1 (RCW 9A.76.110)  
27 Arson 2 (RCW 9A.48.030)  
28 Commercial Bribery (RCW 9A.68.060)  
29 Bribing a Witness/Bribe Received by Witness  
30 (RCW 9A.72.090, 9A.72.100)  
31 Malicious Harassment (RCW 9A.36.080)  
32 Threats to Bomb (RCW 9.61.160)  
33 Willful Failure to Return from Furlough  
34 (RCW 72.66.060)  
35 Hit and Run -- Injury Accident (RCW  
36 46.52.020(4))  
37 Hit and Run with Vessel -- Injury Accident  
38 (RCW 88.12.155(3))  
39 Vehicular Assault (RCW 46.61.522)

1 Manufacture, deliver, or possess with  
2 intent to deliver narcotics from  
3 Schedule III, IV, or V or nonnarcotics  
4 from Schedule I-V (except marijuana or  
5 methamphetamines) (RCW 69.50.401(a)(1)  
6 (iii) through (v))  
7 Influencing Outcome of Sporting Event (RCW  
8 9A.82.070)  
9 Use of Proceeds of Criminal Profiteering  
10 (RCW 9A.82.080 (1) and (2))  
11 Knowingly Trafficking in Stolen Property  
12 (RCW 9A.82.050(2))  
13 III Criminal Mistreatment 2 (RCW 9A.42.030)  
14 Abandonment of dependent person 2 (RCW  
15 9A.42.070)  
16 Extortion 2 (RCW 9A.56.130)  
17 Unlawful Imprisonment (RCW 9A.40.040)  
18 Assault 3 (RCW 9A.36.031)  
19 Assault 4 (RCW 9A.36.041) (Second or  
20 subsequent conviction against the same  
21 victim)  
22 Assault of a Child 3 (RCW 9A.36.140)  
23 Custodial Assault (RCW 9A.36.100)  
24 Unlawful possession of firearm in the  
25 second degree (RCW 9.41.040(1)(b))  
26 Harassment (RCW 9A.46.020)  
27 Promoting Prostitution 2 (RCW 9A.88.080)  
28 Willful Failure to Return from Work Release  
29 (RCW 72.65.070)  
30 Burglary 2 (RCW 9A.52.030)  
31 Introducing Contraband 2 (RCW 9A.76.150)  
32 Communication with a Minor for Immoral  
33 Purposes (RCW 9.68A.090)  
34 Patronizing a Juvenile Prostitute (RCW  
35 9.68A.100)  
36 Escape 2 (RCW 9A.76.120)  
37 Perjury 2 (RCW 9A.72.030)  
38 Bail Jumping with class B or C Felony (RCW  
39 9A.76.170(2)(c))

1 Intimidating a Public Servant (RCW  
2 9A.76.180)  
3 Tampering with a Witness (RCW 9A.72.120)  
4 Manufacture, deliver, or possess with  
5 intent to deliver marijuana (RCW  
6 69.50.401(a)(1)(iii))  
7 Delivery of a material in lieu of a  
8 controlled substance (RCW  
9 69.50.401(c))  
10 Manufacture, distribute, or possess with  
11 intent to distribute an imitation  
12 controlled substance (RCW  
13 69.52.030(1))  
14 Recklessly Trafficking in Stolen Property  
15 (RCW 9A.82.050(1))  
16 Theft of livestock 2 (RCW 9A.56.080)  
17 Securities Act violation (RCW 21.20.400)  
18 II Unlawful Practice of Law (RCW 2.48.180)  
19 Malicious Mischief 1 (RCW 9A.48.070)  
20 Possession of Stolen Property 1 (RCW  
21 9A.56.150)  
22 Theft 1 (RCW 9A.56.030)  
23 Trafficking in Insurance Claims (RCW  
24 48.30A.015)  
25 Unlicensed Practice of a Profession or  
26 Business (RCW 18.130.190(7))  
27 Health Care False Claims (RCW 48.80.030)  
28 Possession of controlled substance that is  
29 either heroin or narcotics from  
30 Schedule I or II (RCW 69.50.401(d))  
31 Possession of phencyclidine (PCP) (RCW  
32 69.50.401(d))  
33 Create, deliver, or possess a counterfeit  
34 controlled substance (RCW  
35 69.50.401(b))  
36 Computer Trespass 1 (RCW 9A.52.110)  
37 Escape from Community Custody (RCW  
38 72.09.310)

1 I Theft 2 (RCW 9A.56.040)  
2 Possession of Stolen Property 2 (RCW  
3 9A.56.160)  
4 Forgery (RCW 9A.60.020)  
5 Taking Motor Vehicle Without Permission  
6 (RCW 9A.56.070)  
7 Vehicle Prowl 1 (RCW 9A.52.095)  
8 Attempting to Elude a Pursuing Police  
9 Vehicle (RCW 46.61.024)  
10 Malicious Mischief 2 (RCW 9A.48.080)  
11 Reckless Burning 1 (RCW 9A.48.040)  
12 Unlawful Issuance of Checks or Drafts (RCW  
13 9A.56.060)  
14 Unlawful Use of Food Stamps (RCW 9.91.140  
15 (2) and (3))  
16 False Verification for Welfare (RCW  
17 74.08.055)  
18 Forged Prescription (RCW 69.41.020)  
19 Forged Prescription for a Controlled  
20 Substance (RCW 69.50.403)  
21 Possess Controlled Substance that is a  
22 Narcotic from Schedule III, IV, or V  
23 or Non-narcotic from Schedule I-V  
24 (except phencyclidine) (RCW  
25 69.50.401(d))

26 **Sec. 6.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c  
27 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as  
28 follows:

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

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

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

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

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

30 (5) In sentencing a first-time offender the court may waive the  
31 imposition of a sentence within the sentence range and impose a  
32 sentence which may include up to ninety days of confinement in a  
33 facility operated or utilized under contract by the county and a  
34 requirement that the offender refrain from committing new offenses.  
35 The sentence may also include up to two years of community supervision,  
36 which, in addition to crime-related prohibitions, may include  
37 requirements that the offender perform any one or more of the  
38 following:

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

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

4 (c) Pursue a prescribed, secular course of study or vocational  
5 training;

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

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

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

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

15 (i) The offender is convicted of the manufacture, delivery, or  
16 possession with intent to manufacture or deliver a controlled substance  
17 classified in Schedule I or II that is a narcotic drug or a felony that  
18 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
19 criminal solicitation, or criminal conspiracy to commit such crimes,  
20 and the violation does not involve a sentence enhancement under RCW  
21 9.94A.310 (3) or (4);

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

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

28 (b) If the midpoint of the standard range is greater than one year  
29 and the sentencing judge determines that the offender is eligible for  
30 this option and that the offender and the community will benefit from  
31 the use of the special drug offender sentencing alternative, the judge  
32 may waive imposition of a sentence within the standard range and impose  
33 a sentence that must include a period of total confinement in a state  
34 facility for one-half of the midpoint of the standard range. During  
35 incarceration in the state facility, offenders sentenced under this  
36 subsection shall undergo a comprehensive substance abuse assessment and  
37 receive, within available resources, treatment services appropriate for  
38 the offender. The treatment services shall be designed by the division  
39 of alcohol and substance abuse of the department of social and health

1 services, in cooperation with the department of corrections. If the  
2 midpoint of the standard range is twenty-four months or less, no more  
3 than three months of the sentence may be served in a work release  
4 status. The court shall also impose one year of concurrent community  
5 custody and community supervision that must include appropriate  
6 outpatient substance abuse treatment, crime-related prohibitions  
7 including a condition not to use illegal controlled substances, and a  
8 requirement to submit to urinalysis or other testing to monitor that  
9 status. The court may require that the monitoring for controlled  
10 substances be conducted by the department or by a treatment  
11 alternatives to street crime program or a comparable court or agency-  
12 referred program. The offender may be required to pay thirty dollars  
13 per month while on community custody to offset the cost of monitoring.  
14 In addition, the court shall impose three or more of the following  
15 conditions:

- 16 (i) Devote time to a specific employment or training;
  - 17 (ii) Remain within prescribed geographical boundaries and notify  
18 the court or the community corrections officer before any change in the  
19 offender's address or employment;
  - 20 (iii) Report as directed to a community corrections officer;
  - 21 (iv) Pay all court-ordered legal financial obligations;
  - 22 (v) Perform community service work;
  - 23 (vi) Stay out of areas designated by the sentencing judge.
- 24 (c) If the offender violates any of the sentence conditions in (b)  
25 of this subsection, the department shall impose sanctions  
26 administratively, with notice to the prosecuting attorney and the  
27 sentencing court. Upon motion of the court or the prosecuting  
28 attorney, a violation hearing shall be held by the court. If the court  
29 finds that conditions have been willfully violated, the court may  
30 impose confinement consisting of up to the remaining one-half of the  
31 midpoint of the standard range. All total confinement served during  
32 the period of community custody shall be credited to the offender,  
33 regardless of whether the total confinement is served as a result of  
34 the original sentence, as a result of a sanction imposed by the  
35 department, or as a result of a violation found by the court. The term  
36 of community supervision shall be tolled by any period of time served  
37 in total confinement as a result of a violation found by the court.
- 38 (d) The department shall determine the rules for calculating the  
39 value of a day fine based on the offender's income and reasonable

1 obligations which the offender has for the support of the offender and  
2 any dependents. These rules shall be developed in consultation with  
3 the administrator for the courts, the office of financial management,  
4 and the commission.

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

13 (8)(a)(i) When an offender is convicted of a sex offense other than  
14 a violation of RCW 9A.44.050 or a sex offense that is also a serious  
15 violent offense and has no prior convictions for a sex offense or any  
16 other felony sex offenses in this or any other state, the sentencing  
17 court, on its own motion or the motion of the state or the defendant,  
18 may order an examination to determine whether the defendant is amenable  
19 to treatment.

20 The report of the examination shall include at a minimum the  
21 following: The defendant's version of the facts and the official  
22 version of the facts, the defendant's offense history, an assessment of  
23 problems in addition to alleged deviant behaviors, the offender's  
24 social and employment situation, and other evaluation measures used.  
25 The report shall set forth the sources of the evaluator's information.

26 The examiner shall assess and report regarding the defendant's  
27 amenability to treatment and relative risk to the community. A  
28 proposed treatment plan shall be provided and shall include, at a  
29 minimum:

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

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

33 (C) Monitoring plans, including any requirements regarding living  
34 conditions, lifestyle requirements, and monitoring by family members  
35 and others;

36 (D) Anticipated length of treatment; and

37 (E) Recommended crime-related prohibitions.

38 The court on its own motion may order, or on a motion by the state  
39 shall order, a second examination regarding the offender's amenability

1 to treatment. The evaluator shall be selected by the party making the  
2 motion. The defendant shall pay the cost of any second examination  
3 ordered unless the court finds the defendant to be indigent in which  
4 case the state shall pay the cost.

5 (ii) After receipt of the reports, the court shall consider whether  
6 the offender and the community will benefit from use of this special  
7 sexual offender sentencing alternative and consider the victim's  
8 opinion whether the offender should receive a treatment disposition  
9 under this subsection. If the court determines that this special sex  
10 offender sentencing alternative is appropriate, the court shall then  
11 impose a sentence within the sentence range. If this sentence is less  
12 than eight years of confinement, the court may suspend the execution of  
13 the sentence and impose the following conditions of suspension:

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

19 (B) The court shall order treatment for any period up to three  
20 years in duration. The court in its discretion shall order outpatient  
21 sex offender treatment or inpatient sex offender treatment, if  
22 available. A community mental health center may not be used for such  
23 treatment unless it has an appropriate program designed for sex  
24 offender treatment. The offender shall not change sex offender  
25 treatment providers or treatment conditions without first notifying the  
26 prosecutor, the community corrections officer, and the court, and shall  
27 not change providers without court approval after a hearing if the  
28 prosecutor or community corrections officer object to the change. In  
29 addition, as conditions of the suspended sentence, the court may impose  
30 other sentence conditions including up to six months of confinement,  
31 not to exceed the sentence range of confinement for that offense,  
32 crime-related prohibitions, and requirements that the offender perform  
33 any one or more of the following:

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

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

38 (III) Report as directed to the court and a community corrections  
39 officer;

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

4 (V) Make recoupment to the victim for the cost of any counseling  
5 required as a result of the offender's crime.

6 (iii) The sex offender therapist shall submit quarterly reports on  
7 the defendant's progress in treatment to the court and the parties.  
8 The report shall reference the treatment plan and include at a minimum  
9 the following: Dates of attendance, defendant's compliance with  
10 requirements, treatment activities, the defendant's relative progress  
11 in treatment, and any other material as specified by the court at  
12 sentencing.

13 (iv) At the time of sentencing, the court shall set a treatment  
14 termination hearing for three months prior to the anticipated date for  
15 completion of treatment. Prior to the treatment termination hearing,  
16 the treatment professional and community corrections officer shall  
17 submit written reports to the court and parties regarding the  
18 defendant's compliance with treatment and monitoring requirements, and  
19 recommendations regarding termination from treatment, including  
20 proposed community supervision conditions. Either party may request  
21 and the court may order another evaluation regarding the advisability  
22 of termination from treatment. The defendant shall pay the cost of any  
23 additional evaluation ordered unless the court finds the defendant to  
24 be indigent in which case the state shall pay the cost. At the  
25 treatment termination hearing the court may: (A) Modify conditions of  
26 community custody, and either (B) terminate treatment, or (C) extend  
27 treatment for up to the remaining period of community custody.

28 (v) If a violation of conditions occurs during community custody,  
29 the department shall either impose sanctions as provided for in RCW  
30 9.94A.205(2)(a) or refer the violation to the court and recommend  
31 revocation of the suspended sentence as provided for in (a)(vi) of this  
32 subsection.

33 (vi) The court may revoke the suspended sentence at any time during  
34 the period of community custody and order execution of the sentence if:  
35 (A) The defendant violates the conditions of the suspended sentence, or  
36 (B) the court finds that the defendant is failing to make satisfactory  
37 progress in treatment. All confinement time served during the period  
38 of community custody shall be credited to the offender if the suspended  
39 sentence is revoked.

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

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

14 For purposes of this subsection, "victim" means any person who has  
15 sustained emotional, psychological, physical, or financial injury to  
16 person or property as a result of the crime charged. "Victim" also  
17 means a parent or guardian of a victim who is a minor child unless the  
18 parent or guardian is the perpetrator of the offense.

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

26 Except for an offender who has been convicted of a violation of RCW  
27 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
28 before the expiration of his or her term of confinement, the department  
29 of corrections may request the court to convert the balance of  
30 confinement to community supervision and to place conditions on the  
31 offender including crime-related prohibitions and requirements that the  
32 offender perform any one or more of the following:

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

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

37 (iii) Report as directed to the court and a community corrections  
38 officer;

39 (iv) Undergo available outpatient treatment.

1 If the offender violates any of the terms of his or her community  
2 supervision, the court may order the offender to serve out the balance  
3 of his or her community supervision term in confinement in the custody  
4 of the department of corrections.

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

9 (c) Offenders convicted and sentenced for a sex offense committed  
10 prior to July 1, 1987, may, subject to available funds, request an  
11 evaluation by the department of corrections to determine whether they  
12 are amenable to treatment. If the offender is determined to be  
13 amenable to treatment, the offender may request placement in a  
14 treatment program within a correctional facility operated by the  
15 department. Placement in such treatment program is subject to  
16 available funds.

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

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

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

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

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

23 (iii) The offender shall not consume controlled substances except  
24 pursuant to lawfully issued prescriptions;

25 (iv) An offender in community custody shall not unlawfully possess  
26 controlled substances;

27 (v) The offender shall pay supervision fees as determined by the  
28 department of corrections; and

29 (vi) The residence location and living arrangements are subject to  
30 the prior approval of the department of corrections during the period  
31 of community placement.

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

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

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

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

3 (iv) The offender shall not consume alcohol;

4 (v) The offender shall comply with any crime-related prohibitions;  
5 or

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

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

15 (10)(a) When a court sentences a person to the custody of the  
16 department of corrections for an offense categorized as a sex offense  
17 committed on or after June 6, 1996, the court shall, in addition to  
18 other terms of the sentence, sentence the offender to community custody  
19 for three years or up to the period of earned early release awarded  
20 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The  
21 community custody shall begin either upon completion of the term of  
22 confinement or at such time as the offender is transferred to community  
23 custody in lieu of earned early release in accordance with RCW  
24 9.94A.150 (1) and (2).

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

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

1 community custody, it shall be deemed a violation of the sentence for  
2 the purposes of RCW 9.94A.195 and may be punishable as contempt of  
3 court as provided for in RCW 7.21.040.

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

10 (12) If a sentence imposed includes payment of a legal financial  
11 obligation, the sentence shall specify the total amount of the legal  
12 financial obligation owed, and shall require the offender to pay a  
13 specified monthly sum toward that legal financial obligation.  
14 Restitution to victims shall be paid prior to any other payments of  
15 monetary obligations. Any legal financial obligation that is imposed  
16 by the court may be collected by the department, which shall deliver  
17 the amount paid to the county clerk for credit. The offender's  
18 compliance with payment of legal financial obligations shall be  
19 supervised by the department. All monetary payments ordered shall be  
20 paid no later than ten years after the last date of release from  
21 confinement pursuant to a felony conviction or the date the sentence  
22 was entered. Independent of the department, the party or entity to  
23 whom the legal financial obligation is owed shall have the authority to  
24 utilize any other remedies available to the party or entity to collect  
25 the legal financial obligation. Nothing in this section makes the  
26 department, the state, or any of its employees, agents, or other  
27 persons acting on their behalf liable under any circumstances for the  
28 payment of these legal financial obligations. If an order includes  
29 restitution as one of the monetary assessments, the county clerk shall  
30 make disbursements to victims named in the order.

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

35 (14) All offenders sentenced to terms involving community  
36 supervision, community service, community placement, or legal financial  
37 obligation shall be under the supervision of the department of  
38 corrections and shall follow explicitly the instructions and conditions  
39 of the department of corrections.

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

6 (b) For sex offenders sentenced to terms involving community  
7 custody for crimes committed on or after June 6, 1996, the department  
8 may include, in addition to the instructions in (a) of this subsection,  
9 any appropriate conditions of supervision, including but not limited  
10 to, prohibiting the offender from having contact with any other  
11 specified individuals or specific class of individuals. The conditions  
12 authorized under this subsection (14)(b) may be imposed by the  
13 department prior to or during a sex offender's community custody term.  
14 If a violation of conditions imposed by the court or the department  
15 pursuant to subsection (10) of this section occurs during community  
16 custody, it shall be deemed a violation of community placement for the  
17 purposes of RCW 9.94A.207 and shall authorize the department to  
18 transfer an offender to a more restrictive confinement status as  
19 provided in RCW 9.94A.205. At any time prior to the completion of a  
20 sex offender's term of community custody, the department may recommend  
21 to the court that any or all of the conditions imposed by the court or  
22 the department pursuant to subsection (10) of this section be continued  
23 beyond the expiration of the offender's term of community custody as  
24 authorized in subsection (10)(c) of this section.

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

30 (15) All offenders sentenced to terms involving community  
31 supervision, community service, or community placement under the  
32 supervision of the department of corrections shall not own, use, or  
33 possess firearms or ammunition. Offenders who own, use, or are found  
34 to be in actual or constructive possession of firearms or ammunition  
35 shall be subject to the appropriate violation process and sanctions.  
36 "Constructive possession" as used in this subsection means the power  
37 and intent to control the firearm or ammunition. "Firearm" as used in  
38 this subsection means a weapon or device from which a projectile may be  
39 fired by an explosive such as gunpowder.

1 (16) The sentencing court shall give the offender credit for all  
2 confinement time served before the sentencing if that confinement was  
3 solely in regard to the offense for which the offender is being  
4 sentenced.

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

10 (18) The court shall order restitution whenever the offender is  
11 convicted of a felony that results in injury to any person or damage to  
12 or loss of property, whether the offender is sentenced to confinement  
13 or placed under community supervision, unless extraordinary  
14 circumstances exist that make restitution inappropriate in the court's  
15 judgment. The court shall set forth the extraordinary circumstances in  
16 the record if it does not order restitution.

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

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

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

32 (22) In sentencing an offender convicted of domestic violence, the  
33 sentence may also include up to two years of community supervision  
34 which, in addition to crime-related prohibitions, may include batterer  
35 treatment in a state-certified program. In setting the length and  
36 conditions of supervision, the court shall consider the existence of  
37 any no-contact, restraining, protection, or antiharassment order in  
38 which the offender is named as the respondent.

1       **Sec. 7.** RCW 9.94A.040 and 1996 c 232 s 1 are each amended to read  
2 as follows:

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

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

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

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

11       (ii) The intent of the legislature to emphasize confinement for the  
12 violent offender and alternatives to confinement for the nonviolent  
13 offender.

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

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

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

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

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

1 (f) Evaluate the effectiveness of existing disposition standards  
2 and related statutes in implementing policies set forth in RCW  
3 13.40.010 generally, specifically review the guidelines relating to the  
4 confinement of minor and first offenders as well as the use of  
5 diversion, and review the application of current and proposed juvenile  
6 sentencing standards and guidelines for potential adverse impacts on  
7 the sentencing outcomes of racial and ethnic minority youth;

8 (g) Solicit the comments and suggestions of the juvenile justice  
9 community concerning disposition standards, and make recommendations to  
10 the legislature regarding revisions or modifications of the standards  
11 in accordance with RCW 9.94A.045. The evaluations shall be submitted  
12 to the legislature on December 1 of each odd-numbered year. The  
13 department of social and health services shall provide the commission  
14 with available data concerning the implementation of the disposition  
15 standards and related statutes and their effect on the performance of  
16 the department's responsibilities relating to juvenile offenders, and  
17 with recommendations for modification of the disposition standards.  
18 The office of the administrator for the courts shall provide the  
19 commission with available data on diversion and dispositions of  
20 juvenile offenders under chapter 13.40 RCW; and

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

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

25 (ii) The capacity of state and local juvenile and adult facilities  
26 and resources; and

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

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

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

33 (a) If the maximum term in the range is one year or less, the  
34 minimum term in the range shall be no less than one-third of the  
35 maximum term in the range, except that if the maximum term in the range  
36 is ninety days or less, the minimum term may be less than one-third of  
37 the maximum;

1 (b) If the maximum term in the range is greater than one year, the  
2 minimum term in the range shall be no less than seventy-five percent of  
3 the maximum term in the range; and

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

6 (5) The sentencing guidelines commission shall study and establish  
7 nonbinding guidelines for the imposition of court-ordered batterer  
8 treatment in a state-certified program as part of the sentence of a  
9 person convicted of domestic violence. The guidelines shall address  
10 the different types of relationships that fall under the definition of  
11 "domestic violence." The commission shall consult with the Washington  
12 state coalition against domestic violence, the Washington association  
13 of domestic violence perpetrator intervention professionals, and  
14 associations of superior court judges, district and municipal court  
15 judges, misdemeanor probation, prosecuting attorneys, and defense  
16 attorneys. The commission shall present its recommendations to the  
17 1998 legislature.

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

20 NEW SECTION. Sec. 8. A new section is added to chapter 40.24 RCW  
21 to read as follows:

22 A program participant, or an individual authorized under RCW  
23 40.24.030 to apply on behalf of that participant, may request that the  
24 department of health not make a birth certificate and other records  
25 filed under chapter 70.58 RCW containing the name of or other  
26 identifying information about that program participant available for  
27 public inspection or copying except as provided under section 9 of this  
28 act.

29 NEW SECTION. Sec. 9. A new section is added to chapter 70.58 RCW  
30 to read as follows:

31 Upon request by a program participant or on behalf of a program  
32 participant under section 8 of this act, the department shall not make  
33 a birth certificate and other records filed under this chapter  
34 containing the name of or other identifying information about that  
35 program participant available for public inspection and copying except  
36 under the following circumstances:

1 (1) To a law enforcement agency when requested by that agency in  
2 accordance with rules adopted by the secretary of state under chapter  
3 40.24 RCW;

4 (2) If directed by a court order, to the person identified in that  
5 order; or

6 (3) For legitimate research proposals reviewed and approved by an  
7 institutional review board in accordance with chapter 42.48 RCW.

8 NEW SECTION. **Sec. 10.** Sections 8 and 9 of this act are necessary  
9 for the immediate preservation of the public peace, health, or safety,  
10 or support of the state government and its existing public  
11 institutions, and take effect immediately.

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