
SENATE BILL 6151

State of Washington**57th Legislature****2001 Regular Session****By** Senators Long and Hargrove

Read first time 03/27/2001. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the management of high-risk sex offenders in the
2 civil commitment and criminal justice systems; amending RCW 36.70A.103,
3 9.94A.030, 9.94A.715, 9.94A.060, 9.94A.190, 9.94A.370, 9.94A.390,
4 9.95.005, 9.95.010, 9.95.011, 9.95.017, 9.95.052, 9.95.055, 9.95.064,
5 9.95.070, 9.95.080, 9.95.090, 9.95.110, 9.95.115, 9.95.120, 9.95.121,
6 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140,
7 9.95.145, 9.95.190, 9.95.250, 9.95.900, 9A.28.020, 9A.36.021,
8 9A.40.030, 9A.44.100, and 72.09.370; reenacting and amending RCW
9 9.94A.120; adding a new section to chapter 71.09 RCW; adding new
10 sections to chapter 9.94A RCW; adding a new section to chapter 72.09
11 RCW; adding new sections to chapter 9.95 RCW; creating new sections;
12 repealing RCW 9.95.0011; prescribing penalties; providing an effective
13 date; and declaring an emergency.

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

15 NEW SECTION. **Sec. 1.** (1) The legislature, in an effort to protect
16 the safety of Washington state residents, has authorized the civil
17 commitment of sexually violent predators and funded a program for the
18 treatment of such persons at the special commitment center on McNeil
19 Island. As a result of the treatment funded by the legislature, some

1 of the persons judged to be sexually violent predators have progressed
2 to the point where they have secured court orders permitting them to be
3 housed in a setting less restrictive than the present special
4 commitment center at McNeil Island, subject to appropriate strict
5 supervision.

6 Housing in an appropriately managed less restrictive setting on
7 McNeil Island is a step in the treatment of some of the persons
8 committed to the special commitment center, and without this step for
9 those judged by court order to be eligible, the special commitment
10 center may fail to fulfill its statutory and constitutional purpose.

11 Therefore, the legislature intends by this act to ensure the prompt
12 siting and timely operation of a secure community transition facility
13 on McNeil Island in furtherance of the treatment, management of these
14 offenders in the community, and other purposes of chapter 71.09 RCW.

15 (2) The legislature finds that there are some sex offenders who
16 might become eligible for civil commitment but who are more
17 appropriately managed through the criminal justice system, both because
18 they may be inappropriate for civil commitment and because the
19 legislature has a fiscal responsibility to the people of Washington to
20 manage community safety in the most cost-effective manner to meet the
21 needs of the public and the offenders.

22 Consequently, the legislature intends to address the sentencing and
23 supervision of offenders who commit certain sex offenses.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 71.09 RCW
25 to read as follows:

26 (1) The secretary is authorized to site and operate a secure
27 community transition facility for sexually violent predators on court-
28 ordered conditional release from the special commitment center as
29 provided under RCW 71.09.090, on McNeil Island.

30 (2) Notwithstanding RCW 36.70A.103 or any other law, until December
31 31, 2003, to the extent siting a secure community transition facility
32 on McNeil Island is inconsistent with local comprehensive plans and/or
33 development regulations, this statute preempts and supersedes those
34 local plans and regulations.

35 (3) Nothing in this section limits the state's authority to site an
36 essential public facility under RCW 36.70A.200 in conformance with
37 local comprehensive plans and development regulations.

1 **Sec. 3.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended to
2 read as follows:

3 State agencies shall comply with the local comprehensive plans and
4 development regulations and amendments thereto adopted pursuant to this
5 chapter except as otherwise provided in section 2 of this act.

6 **Sec. 4.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read
7 as follows:

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

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

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

20 ~~((+2))~~ (3) "Commission" means the sentencing guidelines
21 commission.

22 ~~((+3))~~ (4) "Community corrections officer" means an employee of
23 the department who is responsible for carrying out specific duties in
24 supervision of sentenced offenders and monitoring of sentence
25 conditions.

26 ~~((+4))~~ (5) "Community custody" means that portion of an offender's
27 sentence of confinement in lieu of earned release time or imposed
28 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
29 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
30 community subject to controls placed on the offender's movement and
31 activities by the department. For offenders placed on community
32 custody for crimes committed on or after July 1, 2000, the department
33 shall assess the offender's risk of reoffense and may establish and
34 modify conditions of community custody, in addition to those imposed by
35 the court, based upon the risk to community safety.

36 ~~((+5))~~ (6) "Community custody range" means the minimum and maximum
37 period of community custody included as part of a sentence under RCW

1 9.94A.715, as established by the commission or the legislature under
2 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

3 ~~((+6))~~ (7) "Community placement" means that period during which
4 the offender is subject to the conditions of community custody and/or
5 postrelease supervision, which begins either upon completion of the
6 term of confinement (postrelease supervision) or at such time as the
7 offender is transferred to community custody in lieu of earned release.
8 Community placement may consist of entirely community custody, entirely
9 postrelease supervision, or a combination of the two.

10 ~~((+7))~~ (8) "Community service" means compulsory service, without
11 compensation, performed for the benefit of the community by the
12 offender.

13 ~~((+8))~~ (9) "Community supervision" means a period of time during
14 which a convicted offender is subject to crime-related prohibitions and
15 other sentence conditions imposed by a court pursuant to this chapter
16 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any
17 offender has a chemical dependency that has contributed to his or her
18 offense, the conditions of supervision may, subject to available
19 resources, include treatment. For purposes of the interstate compact
20 for out-of-state supervision of parolees and probationers, RCW
21 9.95.270, community supervision is the functional equivalent of
22 probation and should be considered the same as probation by other
23 states.

24 ~~((+9))~~ (10) "Confinement" means total or partial confinement.

25 ~~((+10))~~ (11) "Conviction" means an adjudication of guilt pursuant
26 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
27 guilty, and acceptance of a plea of guilty.

28 ~~((+11))~~ (12) "Crime-related prohibition" means an order of a court
29 prohibiting conduct that directly relates to the circumstances of the
30 crime for which the offender has been convicted, and shall not be
31 construed to mean orders directing an offender affirmatively to
32 participate in rehabilitative programs or to otherwise perform
33 affirmative conduct. However, affirmative acts necessary to monitor
34 compliance with the order of a court may be required by the department.

35 ~~((+12))~~ (13) "Criminal history" means the list of a defendant's
36 prior convictions and juvenile adjudications, whether in this state, in
37 federal court, or elsewhere. The history shall include, where known,
38 for each conviction (a) whether the defendant has been placed on

1 probation and the length and terms thereof; and (b) whether the
2 defendant has been incarcerated and the length of incarceration.

3 ~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing
4 court that equals the difference between the offender's net daily
5 income and the reasonable obligations that the offender has for the
6 support of the offender and any dependents.

7 ~~((14))~~ (15) "Day reporting" means a program of enhanced
8 supervision designed to monitor the offender's daily activities and
9 compliance with sentence conditions, and in which the offender is
10 required to report daily to a specific location designated by the
11 department or the sentencing court.

12 ~~((15))~~ (16) "Department" means the department of corrections.

13 ~~((16))~~ (17) "Determinate sentence" means a sentence that states
14 with exactitude the number of actual years, months, or days of total
15 confinement, of partial confinement, of community supervision, the
16 number of actual hours or days of community service work, or dollars or
17 terms of a legal financial obligation. The fact that an offender
18 through earned release can reduce the actual period of confinement
19 shall not affect the classification of the sentence as a determinate
20 sentence.

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

33 ~~((18))~~ (19) "Drug offender sentencing alternative" is a
34 sentencing option available to persons convicted of a felony offense
35 other than a violent offense or a sex offense and who are eligible for
36 the option under RCW 9.94A.660.

37 ~~((19))~~ (20) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of
2 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
3 controlled substance (RCW 69.50.403);

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

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

10 (~~((20))~~) (21) "Earned release" means earned release from
11 confinement as provided in RCW 9.94A.150.

12 (~~((21))~~) (22) "Escape" means:

13 (a) Escape in the first degree (RCW 9A.76.110), escape in the
14 second degree (RCW 9A.76.120), willful failure to return from furlough
15 (RCW 72.66.060), willful failure to return from work release (RCW
16 72.65.070), or willful failure to be available for supervision by the
17 department while in community custody (RCW 72.09.310); or

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

21 (~~((22))~~) (23) "Felony traffic offense" means:

22 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
23 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
24 and-run injury-accident (RCW 46.52.020(4)); or

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

28 (~~((23))~~) (24) "Fine" means a specific sum of money ordered by the
29 sentencing court to be paid by the offender to the court over a
30 specific period of time.

31 (~~((24))~~) (25) "First-time offender" means any person who has no
32 prior convictions for a felony and is eligible for the first-time
33 offender waiver under RCW 9.94A.650.

34 (~~((25))~~) (26) "Home detention" means a program of partial
35 confinement available to offenders wherein the offender is confined in
36 a private residence subject to electronic surveillance.

37 (~~((26))~~) (27) "Legal financial obligation" means a sum of money
38 that is ordered by a superior court of the state of Washington for
39 legal financial obligations which may include restitution to the

1 victim, statutorily imposed crime victims' compensation fees as
2 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
3 drug funds, court-appointed attorneys' fees, and costs of defense,
4 fines, and any other financial obligation that is assessed to the
5 offender as a result of a felony conviction. Upon conviction for
6 vehicular assault while under the influence of intoxicating liquor or
7 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
8 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
9 legal financial obligations may also include payment to a public agency
10 of the expense of an emergency response to the incident resulting in
11 the conviction, subject to RCW 38.52.430.

12 ~~((+27))~~ (28) "Most serious offense" means any of the following
13 felonies or a felony attempt to commit any of the following felonies:

14 (a) Any felony defined under any law as a class A felony or
15 criminal solicitation of or criminal conspiracy to commit a class A
16 felony;

17 (b) Assault in the second degree;

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

19 (d) Child molestation in the second degree;

20 (e) Controlled substance homicide;

21 (f) Extortion in the first degree;

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

23 (h) Indecent liberties;

24 (i) Kidnapping in the second degree;

25 (j) Leading organized crime;

26 (k) Manslaughter in the first degree;

27 (l) Manslaughter in the second degree;

28 (m) Promoting prostitution in the first degree;

29 (n) Rape in the third degree;

30 (o) Robbery in the second degree;

31 (p) Sexual exploitation;

32 (q) Vehicular assault;

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

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

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.125;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

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

13 (ii) A prior conviction for indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
15 if: (A) The crime was committed against a child under the age of
16 fourteen; or (B) the relationship between the victim and perpetrator is
17 included in the definition of indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
20 through July 27, 1997.

21 (~~(28)~~) (29) "Nonviolent offense" means an offense which is not a
22 violent offense.

23 (~~(29)~~) (30) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case is under superior court
26 jurisdiction under RCW 13.04.030 or has been transferred by the
27 appropriate juvenile court to a criminal court pursuant to RCW
28 13.40.110. Throughout this chapter, the terms "offender" and
29 "defendant" are used interchangeably.

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

38 (~~(31)~~) (32) "Persistent offender" is an offender who:

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

3 (ii) Has, before the commission of the offense under (a) of this
4 subsection, been convicted as an offender on at least two separate
5 occasions, whether in this state or elsewhere, of felonies that under
6 the laws of this state would be considered most serious offenses and
7 would be included in the offender score under RCW 9.94A.360; provided
8 that of the two or more previous convictions, at least one conviction
9 must have occurred before the commission of any of the other most
10 serious offenses for which the offender was previously convicted; or

11 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
12 of a child in the first degree, child molestation in the first degree,
13 rape in the second degree, rape of a child in the second degree, or
14 indecent liberties by forcible compulsion; (B) any of the following
15 offenses with a finding of sexual motivation: Murder in the first
16 degree, murder in the second degree, homicide by abuse, kidnapping in
17 the first degree, kidnapping in the second degree, assault in the first
18 degree, assault in the second degree, assault of a child in the first
19 degree, or burglary in the first degree~~((, with a finding of sexual~~
20 ~~motivation))~~; or (C) an attempt to commit any crime listed in this
21 subsection ~~((+31+))~~ (32)(b)(i); and

22 (ii) Has, before the commission of the offense under (b)(i) of this
23 subsection, been convicted as an offender on at least one occasion,
24 whether in this state or elsewhere, of an offense listed in (b)(i) of
25 this subsection. A conviction for rape of a child in the first degree
26 constitutes a conviction under (b)(i) of this subsection only when the
27 offender was sixteen years of age or older when the offender committed
28 the offense. A conviction for rape of a child in the second degree
29 constitutes a conviction under (b)(i) of this subsection only when the
30 offender was eighteen years of age or older when the offender committed
31 the offense.

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

34 ~~((+33+))~~ (34) "Predatory" has the meaning defined in RCW 71.09.020.

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

1 (~~(34)~~) (36) "Risk assessment" means the application of an
2 objective instrument supported by research and adopted by the
3 department for the purpose of assessing an offender's risk of
4 reoffense, taking into consideration the nature of the harm done by the
5 offender, place and circumstances of the offender related to risk, the
6 offender's relationship to any victim, and any information provided to
7 the department by victims. The results of a risk assessment shall not
8 be based on unconfirmed or unconfirmable allegations.

9 (~~(35)~~) (37) "Serious traffic offense" means:

10 (a) Driving while under the influence of intoxicating liquor or any
11 drug (RCW 46.61.502), actual physical control while under the influence
12 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
13 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
14 or

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

18 (~~(36)~~) (38) "Serious violent offense" is a subcategory of violent
19 offense and means:

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

21 (ii) Homicide by abuse;

22 (iii) Murder in the second degree;

23 (iv) Manslaughter in the first degree;

24 (v) Assault in the first degree;

25 (vi) Kidnapping in the first degree;

26 (vii) Rape in the first degree;

27 (viii) Assault of a child in the first degree; or

28 (ix) An attempt, criminal solicitation, or criminal conspiracy to
29 commit one of these felonies; or

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

33 (~~(37)~~) (39) "Sex offense" means:

34 (a) A felony that is a violation of:

35 (i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

36 (ii) RCW 9A.64.020;

37 (iii) RCW 9.68A.090; or

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

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 sex
3 offense in (a) of this subsection;

4 (c) A felony with a finding of sexual motivation under RCW
5 9.94A.127 or 13.40.135; or

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

9 (~~(38)~~) (40) "Sexual motivation" means that one of the purposes
10 for which the defendant committed the crime was for the purpose of his
11 or her sexual gratification.

12 (~~(39)~~) (41) "Standard sentence range" means the sentencing
13 court's discretionary range in imposing a nonappealable sentence.

14 (~~(40)~~) (42) "Statutory maximum sentence" means the maximum length
15 of time for which an offender may be confined as punishment for a crime
16 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
17 the crime, or other statute defining the maximum penalty for a crime.

18 (~~(41)~~) (43) "Total confinement" means confinement inside the
19 physical boundaries of a facility or institution operated or utilized
20 under contract by the state or any other unit of government for twenty-
21 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

22 (~~(42)~~) (44) "Transition training" means written and verbal
23 instructions and assistance provided by the department to the offender
24 during the two weeks prior to the offender's successful completion of
25 the work ethic camp program. The transition training shall include
26 instructions in the offender's requirements and obligations during the
27 offender's period of community custody.

28 (~~(43)~~) (45) "Victim" means any person who has sustained
29 emotional, psychological, physical, or financial injury to person or
30 property as a direct result of the crime charged.

31 (~~(44)~~) (46) "Violent offense" means:

32 (a) Any of the following felonies:

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

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

37 (iii) Manslaughter in the first degree;

38 (iv) Manslaughter in the second degree;

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

1 (vi) Kidnapping in the second degree;
2 (vii) Arson in the second degree;
3 (viii) Assault in the second degree;
4 (ix) Assault of a child in the second degree;
5 (x) Extortion in the first degree;
6 (xi) Robbery in the second degree;
7 (xii) Drive-by shooting;
8 (xiii) Vehicular assault; and
9 (xiv) Vehicular homicide, when proximately caused by the driving of
10 any vehicle by any person while under the influence of intoxicating
11 liquor or any drug as defined by RCW 46.61.502, or by the operation of
12 any vehicle in a reckless manner;

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

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

19 (~~(45)~~) (47) "Work crew" means a program of partial confinement
20 consisting of civic improvement tasks for the benefit of the community
21 that complies with RCW 9.94A.135.

22 (~~(46)~~) (48) "Work ethic camp" means an alternative incarceration
23 program as provided in RCW 9.94A.137 designed to reduce recidivism and
24 lower the cost of corrections by requiring offenders to complete a
25 comprehensive array of real-world job and vocational experiences,
26 character-building work ethics training, life management skills
27 development, substance abuse rehabilitation, counseling, literacy
28 training, and basic adult education.

29 (~~(47)~~) (49) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school.

32 **Sec. 5.** RCW 9.94A.715 and 2000 c 28 s 25 are each amended to read
33 as follows:

34 (1) When a court sentences a person to the custody of the
35 department for a sex offense not sentenced under section 6 of this act,
36 a violent offense, any crime against persons under RCW 9.94A.440(2), or
37 a felony offense under chapter 69.50 or 69.52 RCW not sentenced under
38 RCW 9.94A.660, committed on or after July 1, 2000, the court shall in

1 addition to the other terms of the sentence, sentence the offender to
2 community custody for the community custody range established under RCW
3 9.94A.040 or up to the period of earned release awarded pursuant to RCW
4 9.94A.150 (1) and (2), whichever is longer. The community custody
5 shall begin either upon completion of the term of confinement or at
6 such time as the offender is transferred to community custody in lieu
7 of earned release in accordance with RCW 9.94A.150 (1) and (2).

8 (2)(a) Unless a condition is waived by the court, the conditions of
9 community custody shall include those provided for in RCW 9.94A.700(4).
10 The conditions may also include those provided for in RCW 9.94A.700(5).
11 The court may also order the offender to participate in rehabilitative
12 programs or otherwise perform affirmative conduct reasonably related to
13 the circumstances of the offense, the offender's risk of reoffending,
14 or the safety of the community, and the department shall enforce such
15 conditions pursuant to subsection (6) of this section.

16 (b) As part of any sentence that includes a term of community
17 custody imposed under this subsection, the court shall also require the
18 offender to comply with any conditions imposed by the department under
19 RCW 9.94A.720. The department shall assess the offender's risk of
20 reoffense and may establish and modify additional conditions of the
21 offender's community custody based upon the risk to community safety.
22 In addition, the department may require the offender to participate in
23 rehabilitative programs, or otherwise perform affirmative conduct, and
24 to obey all laws.

25 (c) The department may not impose conditions that are contrary to
26 those ordered by the court and may not contravene or decrease court_
27 imposed conditions. The department shall notify the offender in
28 writing of any such conditions or modifications. In setting,
29 modifying, and enforcing conditions of community custody, the
30 department shall be deemed to be performing a quasi-judicial function.

31 (3) If an offender violates conditions imposed by the court or the
32 department pursuant to this section during community custody, the
33 department may transfer the offender to a more restrictive confinement
34 status and impose other available sanctions as provided in RCW
35 9.94A.205 and 9.94A.207.

36 (4) Except for terms of community custody under RCW 9.94A.670, the
37 department shall discharge the offender from community custody on a
38 date determined by the department, which the department may modify,

1 based on risk and performance of the offender, within the range or at
2 the end of the period of earned release, whichever is later.

3 (5) 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 imposed pursuant to this section
7 for a period up to the maximum allowable sentence for the crime as it
8 is classified in chapter 9A.20 RCW, regardless of the expiration of the
9 offender's term of community custody. If a violation of a condition
10 extended under this subsection occurs after the expiration of the
11 offender's term of community custody, it shall be deemed a violation of
12 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
13 contempt of court as provided for in RCW 7.21.040. If the court
14 extends a condition beyond the expiration of the term of community
15 custody, the department is not responsible for supervision of the
16 offender's compliance with the condition.

17 (6) Within the funds available for community custody, the
18 department shall determine conditions and duration of community custody
19 on the basis of risk to community safety, and shall supervise offenders
20 during community custody on the basis of risk to community safety and
21 conditions imposed by the court. The secretary shall adopt rules to
22 implement the provisions of this subsection.

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

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 9.94A RCW
31 to read as follows:

32 (1)(a) Except when (b) of this subsection applies, an offender
33 shall be sentenced under this section if the offender has:

34 (i) Been convicted of an offense listed in RCW 9.94A.030(32)(b),
35 committed after the effective date of this section, and the offender is
36 not a persistent offender; or

37 (ii) A prior conviction for an offense listed in RCW
38 9.94A.030(32)(b), and is convicted of any sex offense, which the court

1 finds was predatory and which was committed after the effective date of
2 this section.

3 (b) An offender convicted of rape of a child in the first or second
4 degree who was seventeen years of age or younger at the time of the
5 offense shall not be sentenced under this section unless the court
6 finds that the offense was committed using forcible compulsion.

7 For purposes of (a)(ii) of this subsection, failure to register is
8 not a sex offense.

9 (2) Upon a finding that the offender is subject to sentencing under
10 this section, the court shall impose a sentence to a maximum term
11 consisting of the statutory maximum sentence for the offense and a
12 minimum term either within the standard sentence range for the offense,
13 or outside the standard sentence range pursuant to RCW 9.94A.390, if
14 the offender is otherwise eligible for such a sentence.

15 (3) A person sentenced under subsection (2) of this section shall
16 serve the sentence in a facility or institution operated, or utilized
17 under contract, by the state.

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

24 (5)(a) Unless a condition is waived by the court, the conditions of
25 community custody shall include those provided for in RCW 9.94A.700(4).
26 The conditions may also include those provided for in RCW 9.94A.700(5).
27 The court may also order the offender to participate in rehabilitative
28 programs or otherwise perform affirmative conduct reasonably related to
29 the circumstances of the offense, the offender's risk of reoffending,
30 or the safety of the community, and the department and the board shall
31 enforce such conditions pursuant to sections 7, 10, and 11 of this act.

32 (b) As part of any sentence under this section, the court shall
33 also require the offender to comply with any conditions imposed by the
34 board under sections 7 and 9 through 12 of this act.

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

37 (1) The department shall assess the offender's risk of reoffense
38 and shall recommend to the board any additional or modified conditions

1 of the offender's community custody based upon the risk to community
2 safety. In addition, the department shall make a recommendation with
3 regard to, and the board may require the offender to participate in,
4 rehabilitative programs, or otherwise perform affirmative conduct, and
5 obey all laws.

6 (2) The department may not recommend and the board may not impose
7 conditions that are contrary to those ordered by the court and may not
8 contravene or decrease court-imposed conditions. The board shall
9 notify the offender in writing of any such conditions or modifications.

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

13 (4) If an offender violates conditions imposed by the court, the
14 department, or the board during community custody, the board or the
15 department may transfer the offender to a more restrictive confinement
16 status and impose other available sanctions as provided in section 12
17 of this act.

18 (5) By the close of the next business day, after receiving notice
19 of a condition imposed by the board or the department, an offender may
20 request an administrative review under rules adopted by the board. The
21 condition shall remain in effect unless the reviewing officer finds
22 that it is not reasonably related to any of the following:

- 23 (a) The crime of conviction;
- 24 (b) The offender's risk of reoffending; or
- 25 (c) The safety of the community.

26 (6) An offender released by the board under section 9 of this act
27 shall be subject to the supervision of the department until the
28 expiration of the maximum term of the sentence. The department shall
29 monitor the offender's compliance with release conditions imposed by
30 the court, department, or board, and promptly report any violations to
31 the board. The board shall impose the conditions and instructions
32 provided for in RCW 9.94A.720 and may modify conditions of release
33 following written notice to the offender. Any violation of release
34 conditions established or modified by the board shall be subject to the
35 provisions of sections 10 through 13 of this act.

36 (7) If the department finds that an emergency exists requiring the
37 immediate imposition of conditions of release in addition to those set
38 by the board under section 9 of this act and subsection (1) of this
39 section in order to prevent the offender from committing a crime, the

1 department may impose additional conditions. The department may not
2 impose conditions that are contrary to those set by the board or the
3 court and may not contravene or decrease court-imposed or board-imposed
4 conditions. Conditions imposed under this subsection shall take effect
5 immediately after notice to the offender by personal service, but shall
6 not remain in effect longer than seven working days unless approved by
7 the board under subsection (6) of this section within seven working
8 days. The board and the secretary shall adopt rules to implement the
9 provisions of this subsection.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 72.09 RCW
11 to read as follows:

12 The department shall provide the offender with the opportunity for
13 sex offender treatment during incarceration.

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

16 (1)(a) Before the expiration of the minimum term, as part of the
17 end of sentence review process under RCW 72.09.340, 72.09.345, and
18 where appropriate, 72.09.370, the department shall conduct, and the
19 offender shall participate in, an examination of the offender,
20 incorporating methodologies that are recognized by experts in the
21 prediction of sexual dangerousness, and including a prediction of the
22 probability that the offender will engage in predatory sex offenses if
23 released.

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

26 (2) The department shall recommend to the board any release
27 conditions necessary to supplement conditions ordered by the court,
28 based on the offender's risk to community safety.

29 (3) No later than ninety days before expiration of the minimum
30 term, but after the board receives the results from the end of sentence
31 review process and the recommendations for additional or modified
32 conditions of community custody from the department, the board shall
33 conduct a hearing to determine whether it is likely that the offender
34 will engage in predatory sex offenses if released on conditions to be
35 set by the board. The board may consider an offender's failure to
36 participate in an evaluation under subsection (1) of this section in
37 determining whether to release the offender. The board shall order the

1 offender released, under such affirmative and other conditions as the
2 board determines appropriate, unless the board determines by a
3 preponderance of the evidence that, despite such conditions, it is more
4 likely than not that the offender will commit predatory sex offenses if
5 released. If the board does not order the offender released, the board
6 shall establish a new minimum term, not to exceed two years.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 9.95 RCW
8 to read as follows:

9 Whenever the board or a community corrections officer of this state
10 has reason to believe an offender released under section 9 of this act
11 has violated a release condition or the laws of this state, any
12 community corrections officer may arrest or cause the arrest and
13 detention of the offender pending a determination by the board whether
14 sanctions should be imposed or the offender's community custody should
15 be revoked. The community corrections officer shall report all facts
16 and circumstances surrounding the alleged violation to the board, with
17 recommendations.

18 NEW SECTION. **Sec. 11.** A new section is added to chapter 9.95 RCW
19 to read as follows:

20 Any offender released under section 9 of this act who is arrested
21 and detained in physical custody by the authority of a community
22 corrections officer, or upon the written order of the board, shall not
23 be released from custody on bail or personal recognizance, except upon
24 approval of the board and the issuance by the board of an order
25 reinstating the offender's release on the same or modified conditions.
26 All chiefs of police, marshals of cities and towns, sheriffs of
27 counties, and all police, prison, and peace officers and constables
28 shall execute any such order in the same manner as any ordinary
29 criminal process.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 9.95 RCW
31 to read as follows:

32 (1) If an offender released by the board under section 9 of this
33 act violates any condition or requirement of community custody, the
34 board may transfer the offender to a more restrictive confinement
35 status to serve up to the remaining portion of the sentence, less
36 credit for any period actually spent in community custody or in

1 detention awaiting disposition of an alleged violation and subject to
2 the limitations of subsection (2) of this section.

3 (2) Whenever an offender released by the board under section 9 of
4 this act violates any condition or requirement of community custody,
5 the board may impose sanctions such as work release, home detention
6 with electronic monitoring, work crew, community service, inpatient
7 treatment, daily reporting, curfew, educational or counseling sessions,
8 supervision enhanced through electronic monitoring, or any other
9 sanctions available in the community or may suspend or revoke the
10 release to community custody following the hearing specified in
11 subsection (3) of this section.

12 (3) If an offender released by the board under section 9 of this
13 act is accused of violating any condition or requirement of community
14 custody, he or she is entitled to a hearing before the board prior to
15 the imposition of sanctions. The hearing shall be considered as
16 offender disciplinary proceedings and shall not be subject to chapter
17 34.05 RCW. The board shall develop hearing procedures and a structure
18 of graduated sanctions consistent with the hearing procedures and
19 graduated sanctions developed pursuant to RCW 9.94A.205. The board may
20 suspend the offender's release to community custody and confine the
21 offender in a state correctional institution prior to the hearing.

22 (4) The hearing procedures required under subsection (3) of this
23 section shall be developed by rule and include the following:

24 (a) Hearings shall be conducted by members of the board unless the
25 board enters into an agreement with the department to use the hearing
26 officers established under RCW 9.94A.205;

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

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

1 (d) The offender shall have the right to: (i) Be present at the
2 hearing; (ii) have the assistance of a person qualified to assist the
3 offender in the hearing, appointed by the hearing officer if the
4 offender has a language or communications barrier; (iii) testify or
5 remain silent; (iv) call witnesses and present documentary evidence;
6 (v) question witnesses who appear and testify; and (vi) be represented
7 by counsel if revocation of the release to community custody is a
8 possible sanction for the violation; and

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

17 (5) For purposes of this section, no finding of a violation of
18 conditions may be based on unconfirmed or unconfirmable allegations.

19 NEW SECTION. **Sec. 13.** A new section is added to chapter 9.95 RCW
20 to read as follows:

21 In the event the board suspends release status of an offender
22 released under section 9 of this act by reason of an alleged violation
23 of a condition of release, or pending disposition of a new criminal
24 charge, the board may nullify the suspension order and reinstate
25 release under previous conditions or any new conditions the board
26 determines advisable. Before the board may nullify a suspension order
27 and reinstate release, it shall determine that the best interests of
28 society and the offender shall be served by such reinstatement rather
29 than return to confinement.

30 **Sec. 14.** RCW 9.94A.060 and 1996 c 232 s 3 are each amended to read
31 as follows:

32 (1) The commission consists of twenty voting members, one of whom
33 the governor shall designate as chairperson. With the exception of ex
34 officio voting members, the voting members of the commission shall be
35 appointed by the governor, subject to confirmation by the senate.

36 (2) The voting membership consists of the following:

1 (a) The head of the state agency having general responsibility for
2 adult correction programs, as an ex officio member;

3 (b) The director of financial management or designee, as an ex
4 officio member;

5 (c) (~~Until the indeterminate sentence review board ceases to exist~~
6 ~~pursuant to RCW 9.95.0011,~~) The chair of the indeterminate sentence
7 review board, as an ex officio member;

8 (d) The head of the state agency, or the agency head's designee,
9 having responsibility for juvenile corrections programs, as an ex
10 officio member;

11 (e) Two prosecuting attorneys;

12 (f) Two attorneys with particular expertise in defense work;

13 (g) Four persons who are superior court judges;

14 (h) One person who is the chief law enforcement officer of a county
15 or city;

16 (i) Four members of the public who are not prosecutors, defense
17 attorneys, judges, or law enforcement officers, one of whom is a victim
18 of crime or a crime victims' advocate;

19 (j) One person who is an elected official of a county government,
20 other than a prosecuting attorney or sheriff;

21 (k) One person who is an elected official of a city government;

22 (l) One person who is an administrator of juvenile court services.

23 In making the appointments, the governor shall endeavor to assure
24 that the commission membership includes adequate representation and
25 expertise relating to both the adult criminal justice system and the
26 juvenile justice system. In making the appointments, the governor
27 shall seek the recommendations of Washington prosecutors in respect to
28 the prosecuting attorney members, of the Washington state bar
29 association in respect to the defense attorney members, of the
30 association of superior court judges in respect to the members who are
31 judges, of the Washington association of sheriffs and police chiefs in
32 respect to the member who is a law enforcement officer, of the
33 Washington state association of counties in respect to the member who
34 is a county official, of the association of Washington cities in
35 respect to the member who is a city official, of the office of crime
36 victims advocacy and other organizations of crime victims in respect to
37 the member who is a victim of crime or a crime victims' advocate, and
38 of the Washington association of juvenile court administrators in

1 respect to the member who is an administrator of juvenile court
2 services.

3 (3)(a) All voting members of the commission, except ex officio
4 voting members, shall serve terms of three years and until their
5 successors are appointed and confirmed.

6 (b) The governor shall stagger the terms of the members appointed
7 under subsection (2)(j), (k), and (l) of this section by appointing one
8 of them for a term of one year, one for a term of two years, and one
9 for a term of three years.

10 (4) The speaker of the house of representatives and the president
11 of the senate may each appoint two nonvoting members to the commission,
12 one from each of the two largest caucuses in each house. The members
13 so appointed shall serve two-year terms, or until they cease to be
14 members of the house from which they were appointed, whichever occurs
15 first.

16 (5) The members of the commission shall be reimbursed for travel
17 expenses as provided in RCW 43.03.050 and 43.03.060. Legislative
18 members shall be reimbursed by their respective houses as provided
19 under RCW 44.04.120(~~(, as now existing or hereafter amended)~~). Members
20 shall be compensated in accordance with RCW 43.03.250.

21 **Sec. 15.** RCW 9.94A.120 and 2000 c 226 s 2, 2000 c 43 s 1, and 2000
22 c 28 s 5 are each reenacted and amended to read as follows:

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

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

27 (i) Unless another term of confinement applies, the court shall
28 impose a sentence within the standard sentence range established in RCW
29 9.94A.310;

30 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

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

32 (iv) RCW 9.94A.383, relating to community custody for offenders
33 whose term of confinement is one year or less;

34 (v) RCW 9.94A.560, relating to persistent offenders;

35 (vi) RCW 9.94A.590, relating to mandatory minimum terms;

36 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

37 (viii) RCW 9.94A.660, relating to the drug offender sentencing
38 alternative;

1 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
2 alternative;

3 (x) Section 6 of this act, relating to certain sex offenses;

4 (xi) RCW 9.94A.390, relating to exceptional sentences;

5 (~~(xi)~~) (xii) RCW 9.94A.400, relating to consecutive and
6 concurrent sentences.

7 (b) If a standard sentence range has not been established for the
8 offender's crime, the court shall impose a determinate sentence which
9 may include not more than one year of confinement; community service
10 work; until July 1, 2000, a term of community supervision not to exceed
11 one year and on and after July 1, 2000, a term of community custody not
12 to exceed one year, subject to conditions and sanctions as authorized
13 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.
14 The court may impose a sentence which provides more than one year of
15 confinement if the court finds reasons justifying an exceptional
16 sentence as provided in RCW 9.94A.390.

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

23 (4) If a sentence imposed includes payment of a legal financial
24 obligation, it shall be imposed as provided in RCW 9.94A.140,
25 9.94A.142, and 9.94A.145.

26 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a
27 court may not impose a sentence providing for a term of confinement or
28 community supervision, community placement, or community custody which
29 exceeds the statutory maximum for the crime as provided in chapter
30 9A.20 RCW.

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

35 (7) The court shall order restitution as provided in RCW 9.94A.140
36 and 9.94A.142.

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

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

12 (10) In any sentence of partial confinement, the court may require
13 the offender to serve the partial confinement in work release, in a
14 program of home detention, on work crew, or in a combined program of
15 work crew and home detention.

16 (11) In sentencing an offender convicted of a crime of domestic
17 violence, as defined in RCW 10.99.020, if the offender has a minor
18 child, or if the victim of the offense for which the offender was
19 convicted has a minor child, the court may, as part of any term of
20 community supervision, community placement, or community custody, order
21 the offender to participate in a domestic violence perpetrator program
22 approved under RCW 26.50.150.

23 **Sec. 16.** RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read
24 as follows:

25 (1) A sentence that includes a term or terms of confinement
26 totaling more than one year shall be served in a facility or
27 institution operated, or utilized under contract, by the state. Except
28 as provided in subsection (3) of this section, a sentence of not more
29 than one year of confinement shall be served in a facility operated,
30 licensed, or utilized under contract, by the county, or if home
31 detention or work crew has been ordered by the court, in the residence
32 of either the offender or a member of the offender's immediate family.

33 (2) If a county uses a state partial confinement facility for the
34 partial confinement of a person sentenced to confinement for not more
35 than one year, the county shall reimburse the state for the use of the
36 facility as provided in this subsection. The office of financial
37 management shall set the rate of reimbursement based upon the average
38 per diem cost per offender in the facility. The office of financial

1 management shall determine to what extent, if any, reimbursement shall
2 be reduced or eliminated because of funds provided by the legislature
3 to the department for the purpose of covering the cost of county use of
4 state partial confinement facilities. The office of financial
5 management shall reestablish reimbursement rates each even-numbered
6 year.

7 (3) A person who is sentenced for a felony to a term of not more
8 than one year, and who is committed or returned to incarceration in a
9 state facility on another felony conviction, either under the
10 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter
11 shall serve all terms of confinement, including a sentence of not more
12 than one year, in a facility or institution operated, or utilized under
13 contract, by the state, consistent with the provisions of RCW
14 9.94A.400.

15 (4) Notwithstanding any other provision of this section, a sentence
16 imposed pursuant to RCW 9.94A.660 which has a standard sentence range
17 of over one year, regardless of length, shall be served in a facility
18 or institution operated, or utilized under contract, by the state.

19 (5) Sentences imposed pursuant to section 6 of this act shall be
20 served in a facility or institution operated, or utilized under
21 contract, by the state.

22 **Sec. 17.** RCW 9.94A.370 and 2000 c 28 s 12 are each amended to read
23 as follows:

24 (1) The intersection of the column defined by the offender score
25 and the row defined by the offense seriousness score determines the
26 standard sentence range (see RCW 9.94A.310, (Table 1)). The additional
27 time for deadly weapon findings or for those offenses enumerated in RCW
28 9.94A.310(4) that were committed in a state correctional facility or
29 county jail shall be added to the entire standard sentence range. The
30 court may impose any sentence within the range that it deems
31 appropriate. All standard sentence ranges are expressed in terms of
32 total confinement.

33 (2) In determining any sentence, the trial court may rely on no
34 more information than is admitted by the plea agreement, or admitted,
35 acknowledged, or proved in a trial or at the time of sentencing.
36 Acknowledgement includes not objecting to information stated in the
37 presentence reports. Where the defendant disputes material facts, the
38 court must either not consider the fact or grant an evidentiary hearing

1 on the point. The facts shall be deemed proved at the hearing by a
2 preponderance of the evidence. Facts that establish the elements of a
3 more serious crime or additional crimes may not be used to go outside
4 the standard sentence range except upon stipulation or when
5 specifically provided for in RCW 9.94A.390(2) (d), (e), (g), ((and))
6 (h), (m), and (n).

7 **Sec. 18.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read
8 as follows:

9 The court may impose a sentence outside the standard sentence range
10 for an offense if it finds, considering the purpose of this chapter,
11 that there are substantial and compelling reasons justifying an
12 exceptional sentence. Whenever a sentence outside the standard
13 sentence range is imposed, the court shall set forth the reasons for
14 its decision in written findings of fact and conclusions of law. A
15 sentence outside the standard sentence range shall be a determinate
16 sentence unless it is imposed on an offender sentenced under section 6
17 of this act. An exceptional sentence imposed on an offender sentenced
18 under section 6 of this act shall be to a minimum term set by the court
19 and a maximum term equal to the statutory maximum sentence for the
20 offense of conviction under chapter 9A.20 RCW.

21 If the sentencing court finds that an exceptional sentence outside
22 the standard sentence range should be imposed, the sentence is subject
23 to review only as provided for in RCW 9.94A.210(4).

24 A departure from the standards in RCW 9.94A.400 (1) and (2)
25 governing whether sentences are to be served consecutively or
26 concurrently is an exceptional sentence subject to the limitations in
27 this section, and may be appealed by the offender or the state as set
28 forth in RCW 9.94A.210 (2) through (6).

29 The following are illustrative factors which the court may consider
30 in the exercise of its discretion to impose an exceptional sentence.
31 The following are illustrative only and are not intended to be
32 exclusive reasons for exceptional sentences.

33 (1) Mitigating Circumstances

34 (a) To a significant degree, the victim was an initiator, willing
35 participant, aggressor, or provoker of the incident.

36 (b) Before detection, the defendant compensated, or made a good
37 faith effort to compensate, the victim of the criminal conduct for any
38 damage or injury sustained.

1 (c) The defendant committed the crime under duress, coercion,
2 threat, or compulsion insufficient to constitute a complete defense but
3 which significantly affected his or her conduct.

4 (d) The defendant, with no apparent predisposition to do so, was
5 induced by others to participate in the crime.

6 (e) The defendant's capacity to appreciate the wrongfulness of his
7 or her conduct, or to conform his or her conduct to the requirements of
8 the law, was significantly impaired. Voluntary use of drugs or alcohol
9 is excluded.

10 (f) The offense was principally accomplished by another person and
11 the defendant manifested extreme caution or sincere concern for the
12 safety or well-being of the victim.

13 (g) The operation of the multiple offense policy of RCW 9.94A.400
14 results in a presumptive sentence that is clearly excessive in light of
15 the purpose of this chapter, as expressed in RCW 9.94A.010.

16 (h) The defendant or the defendant's children suffered a continuing
17 pattern of physical or sexual abuse by the victim of the offense and
18 the offense is a response to that abuse.

19 (2) Aggravating Circumstances

20 (a) The defendant's conduct during the commission of the current
21 offense manifested deliberate cruelty to the victim.

22 (b) The defendant knew or should have known that the victim of the
23 current offense was particularly vulnerable or incapable of resistance
24 due to extreme youth, advanced age, disability, or ill health.

25 (c) The current offense was a violent offense, and the defendant
26 knew that the victim of the current offense was pregnant.

27 (d) The current offense was a major economic offense or series of
28 offenses, so identified by a consideration of any of the following
29 factors:

30 (i) The current offense involved multiple victims or multiple
31 incidents per victim;

32 (ii) The current offense involved attempted or actual monetary loss
33 substantially greater than typical for the offense;

34 (iii) The current offense involved a high degree of sophistication
35 or planning or occurred over a lengthy period of time; or

36 (iv) The defendant used his or her position of trust, confidence,
37 or fiduciary responsibility to facilitate the commission of the current
38 offense.

1 (e) The current offense was a major violation of the Uniform
2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
3 trafficking in controlled substances, which was more onerous than the
4 typical offense of its statutory definition: The presence of ANY of
5 the following may identify a current offense as a major VUCSA:

6 (i) The current offense involved at least three separate
7 transactions in which controlled substances were sold, transferred, or
8 possessed with intent to do so;

9 (ii) The current offense involved an attempted or actual sale or
10 transfer of controlled substances in quantities substantially larger
11 than for personal use;

12 (iii) The current offense involved the manufacture of controlled
13 substances for use by other parties;

14 (iv) The circumstances of the current offense reveal the offender
15 to have occupied a high position in the drug distribution hierarchy;

16 (v) The current offense involved a high degree of sophistication or
17 planning, occurred over a lengthy period of time, or involved a broad
18 geographic area of disbursement; or

19 (vi) The offender used his or her position or status to facilitate
20 the commission of the current offense, including positions of trust,
21 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
22 other medical professional).

23 (f) The current offense included a finding of sexual motivation
24 pursuant to RCW 9.94A.127.

25 (g) The offense was part of an ongoing pattern of sexual abuse of
26 the same victim under the age of eighteen years manifested by multiple
27 incidents over a prolonged period of time.

28 (h) The current offense involved domestic violence, as defined in
29 RCW 10.99.020, and one or more of the following was present:

30 (i) The offense was part of an ongoing pattern of psychological,
31 physical, or sexual abuse of the victim manifested by multiple
32 incidents over a prolonged period of time;

33 (ii) The offense occurred within sight or sound of the victim's or
34 the offender's minor children under the age of eighteen years; or

35 (iii) The offender's conduct during the commission of the current
36 offense manifested deliberate cruelty or intimidation of the victim.

37 (i) The operation of the multiple offense policy of RCW 9.94A.400
38 results in a presumptive sentence that is clearly too lenient in light
39 of the purpose of this chapter, as expressed in RCW 9.94A.010.

1 (j) The defendant's prior unscored misdemeanor or prior unscored
2 foreign criminal history results in a presumptive sentence that is
3 clearly too lenient in light of the purpose of this chapter, as
4 expressed in RCW 9.94A.010.

5 (k) The offense resulted in the pregnancy of a child victim of
6 rape.

7 (l) The defendant knew that the victim of the current offense was
8 a youth who was not residing with a legal custodian and the defendant
9 established or promoted the relationship for the primary purpose of
10 victimization.

11 (m) The defendant's current offense is a predatory sex offense, and
12 the defendant has a history of similar acts, and lacks amenability to
13 treatment.

14 (n) The defendant's current offense is a predatory sex offense and
15 the defendant's conduct involved multiple incidents of cruelty or
16 sexual deviance, directed at the victim over a prolonged period of
17 time.

18 NEW SECTION. Sec. 19. A new section is added to chapter 9.95 RCW
19 to read as follows:

20 (1) "Board" means the indeterminate sentence review board.

21 (2) "Community custody" means that portion of an offender's
22 sentence subject to controls including crime-related prohibitions and
23 affirmative conditions from the court, the board, or the department of
24 corrections based on risk to community safety, that is served under
25 supervision in the community, and which may be modified or revoked for
26 violations of release conditions.

27 (3) "Crime-related prohibition" has the meaning defined in RCW
28 9.94A.030.

29 (4) "Department" means the department of corrections.

30 (5) "Parole" means that portion of a person's sentence for a crime
31 committed before July 1, 1984, served on conditional release in the
32 community subject to board controls and revocation and under
33 supervision of the department.

34 (6) "Secretary" means the secretary of the department of
35 corrections or his or her designee.

36 **Sec. 20.** RCW 9.95.005 and 1986 c 224 s 4 are each amended to read
37 as follows:

1 The board shall meet at ~~((the penitentiary and the reformatory))~~
2 major state correctional institutions at such times as may be necessary
3 for a full and complete study of the cases of all convicted persons
4 whose durations of confinement are to be determined by it ~~((or))~~; whose
5 community custody supervision is under the board's authority; or whose
6 applications for parole come before it. Other times and places of
7 meetings may also be fixed by the board.

8 The superintendents of the different institutions shall provide
9 suitable quarters for the board and assistants while in the discharge
10 of their duties.

11 **Sec. 21.** RCW 9.95.010 and 1955 c 133 s 2 are each amended to read
12 as follows:

13 When a person, whose crime was committed before July 1, 1984, is
14 convicted of any felony, except treason, murder in the first degree, or
15 carnal knowledge of a child under ten years, and a new trial is not
16 granted, the court shall sentence such person to the penitentiary, or,
17 if the law allows and the court sees fit to exercise such discretion,
18 to the reformatory, and shall fix the maximum term of such person's
19 sentence only.

20 The maximum term to be fixed by the court shall be the maximum
21 provided by law for the crime of which such person was convicted, if
22 the law provides for a maximum term. If the law does not provide a
23 maximum term for the crime of which such person was convicted the court
24 shall fix such maximum term, which may be for any number of years up to
25 and including life imprisonment but in any case where the maximum term
26 is fixed by the court it shall be fixed at not less than twenty years.

27 **Sec. 22.** RCW 9.95.011 and 1993 c 144 s 3 are each amended to read
28 as follows:

29 (1) When the court commits a convicted person to the department of
30 corrections on or after July 1, 1986, for an offense committed before
31 July 1, 1984, the court shall, at the time of sentencing or revocation
32 of probation, fix the minimum term. The term so fixed shall not exceed
33 the maximum sentence provided by law for the offense of which the
34 person is convicted.

35 The court shall attempt to set the minimum term reasonably
36 consistent with the purposes, standards, and sentencing ranges adopted
37 under RCW 9.94A.040, but the court is subject to the same limitations

1 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through
2 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The
3 court's minimum term decision is subject to review to the same extent
4 as a minimum term decision by the parole board before July 1, 1986.

5 Thereafter, the expiration of the minimum term set by the court
6 minus any time credits earned under RCW 9.95.070 and 9.95.110
7 constitutes the parole eligibility review date, at which time the board
8 may consider the convicted person for parole under RCW 9.95.100 and
9 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
10 board's authority to reduce or increase the minimum term, once set by
11 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
12 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

13 (2) Not less than ninety days prior to the expiration of the
14 minimum term, of a person sentenced under section 6 of this act, for a
15 sex offense committed after July 1, 2001, less any time credits
16 permitted by statute, the board shall review the person for conditional
17 release to community custody as provided in section 9 of this act. If
18 the board does not release the person, it shall set a new minimum term
19 not to exceed two years. The board shall review the person again not
20 less than ninety days prior to the expiration of the new minimum term.

21 **Sec. 23.** RCW 9.95.017 and 1986 c 224 s 11 are each amended to read
22 as follows:

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

26 The proposed criteria should take into consideration RCW
27 9.95.009(2). Before submission to the governor, the board shall
28 solicit comments and review on their proposed criteria for parole
29 release. These proposed criteria shall be submitted for consideration
30 by the 1987 legislature.

31 (2) Persons committed to the department of corrections and who are
32 under the authority of the board for crimes committed on or after July
33 1, 2001, are subject to the criteria for duration of confinement,
34 release to community custody, and length of community custody
35 established in sections 6 through 13 of this act.

36 **Sec. 24.** RCW 9.95.052 and 1986 c 224 s 10 are each amended to read
37 as follows:

1 At any time after the board (or the court after July 1, 1986) has
2 determined the minimum term of confinement of any person subject to
3 confinement in a state correctional institution for a crime committed
4 before July 1, 1984, the board may request the superintendent of such
5 correctional institution to conduct a full review of such person's
6 prospects for rehabilitation and report to the board the facts of such
7 review and the resulting findings. Upon the basis of such report and
8 such other information and investigation that the board deems
9 appropriate, the board may redetermine and refix such convicted
10 person's minimum term of confinement whether the term was set by the
11 board or the court.

12 The board shall not reduce a person's minimum term of confinement
13 unless the board has received from the department of corrections all
14 institutional conduct reports relating to the person.

15 **Sec. 25.** RCW 9.95.055 and 1992 c 7 s 25 are each amended to read
16 as follows:

17 The indeterminate sentence review board is hereby granted
18 authority, in the event of a declaration by the governor that a war
19 emergency exists, including a general mobilization, and for the
20 duration thereof only, to reduce downward the minimum term, as set by
21 the board, of any inmate under the jurisdiction of the board confined
22 in a state correctional facility, who will be accepted by and inducted
23 into the armed services: PROVIDED, That a reduction downward shall not
24 be made under this section for those inmates who are confined for
25 treason, murder in the first degree or carnal knowledge of a female
26 child under ten years: AND PROVIDED FURTHER, That no such inmate shall
27 be released under this section who is (~~found to be a sexual psychopath~~
28 ~~under the provisions of and as defined by chapter 71.12 RCW~~) being
29 considered for civil commitment as a sexually violent predator under
30 chapter 71.09 RCW or was sentenced under section 6 of this act for a
31 crime committed on or after July 1, 2001.

32 **Sec. 26.** RCW 9.95.064 and 1989 c 276 s 4 are each amended to read
33 as follows:

34 (1) In order to minimize the trauma to the victim, the court may
35 attach conditions on release of (~~a defendant~~) an offender under RCW
36 9.95.062, convicted of a crime committed before July 1, 1984, regarding

1 the whereabouts of the defendant, contact with the victim, or other
2 conditions.

3 (2) Offenders released under section 9 of this act are subject to
4 crime-related prohibitions and affirmative conditions established by
5 the court, the department of corrections, and the board pursuant to RCW
6 9.94A.715 and sections 6 through 13 of this act.

7 **Sec. 27.** RCW 9.95.070 and 1999 c 143 s 19 are each amended to read
8 as follows:

9 (1) Every prisoner, convicted of a crime committed before July 1,
10 1984, who has a favorable record of conduct at the penitentiary or the
11 reformatory, and who performs in a faithful, diligent, industrious,
12 orderly and peaceable manner the work, duties, and tasks assigned to
13 him or her to the satisfaction of the superintendent of the
14 penitentiary or reformatory, and in whose behalf the superintendent of
15 the penitentiary or reformatory files a report certifying that his or
16 her conduct and work have been meritorious and recommending allowance
17 of time credits to him or her, shall upon, but not until, the adoption
18 of such recommendation by the indeterminate sentence review board, be
19 allowed time credit reductions from the term of imprisonment fixed by
20 the board.

21 (2) Offenders sentenced under section 6 of this act for a crime
22 committed on or after July 1, 2001, are subject to the earned release
23 provisions for sex offenders established in RCW 9.94A.150.

24 **Sec. 28.** RCW 9.95.080 and 1992 c 7 s 26 are each amended to read
25 as follows:

26 In case any convicted person under the jurisdiction of the
27 indeterminate sentence review board undergoing sentence in a state
28 correctional ((~~facility~~)) institution commits any infractions of the
29 rules and regulations of the institution, the board may revoke any
30 order theretofore made determining the length of time such convicted
31 person shall be imprisoned, including the forfeiture of all or a
32 portion of credits earned or to be earned, pursuant to the provisions
33 of RCW 9.95.110, and make a new order determining the length of time
34 the person shall serve, not exceeding the maximum penalty provided by
35 law for the crime for which the person was convicted, or the maximum
36 fixed by the court. Such revocation and redetermination shall not be
37 had except upon a hearing before the indeterminate sentence review

1 board. At such hearing the convicted person shall be present and
2 entitled to be heard and may present evidence and witnesses in his or
3 her behalf.

4 **Sec. 29.** RCW 9.95.090 and 1999 c 143 s 20 are each amended to read
5 as follows:

6 (1) The board shall require of every able bodied (~~convicted person~~
7 ~~imprisoned in the penitentiary or the reformatory~~) offender confined
8 in a state correctional institution for a crime committed before July
9 1, 1984, as many hours of faithful labor in each and every day during
10 his or her term of imprisonment as shall be prescribed by the rules and
11 regulations of the institution in which he or she is confined.

12 (2) Offenders sentenced under section 6 of this act for crimes
13 committed on or after July 1, 2001, shall perform work or other
14 programming as required by the department of corrections during their
15 term of confinement.

16 **Sec. 30.** RCW 9.95.110 and 1999 c 143 s 21 are each amended to read
17 as follows:

18 (1) The board may permit (~~a convicted person~~) an offender
19 convicted of a crime committed before July 1, 1984, to leave the
20 buildings and enclosures of (~~the penitentiary or the reformatory~~) a
21 state correctional institution on parole, after such convicted person
22 has served the period of confinement fixed for him or her by the board,
23 less time credits for good behavior and diligence in work: PROVIDED,
24 That in no case shall an inmate be credited with more than one-third of
25 his or her sentence as fixed by the board.

26 The board may establish rules and regulations under which (~~a~~
27 ~~convicted person~~) an offender may be allowed to leave the confines of
28 (~~the penitentiary or the reformatory~~) a state correctional
29 institution on parole, and may return such person to the confines of
30 the institution from which he or she was paroled, at its discretion.

31 (2) The board may permit an offender convicted of a crime committed
32 on or after July 1, 2001, and sentenced under section 6 of this act, to
33 leave a state correctional institution on community custody according
34 to the provisions of sections 6 through 13 of this act. The person may
35 be returned to the institution following a violation of his or her
36 conditions of release to community custody pursuant to the hearing
37 provisions of RCW 9.94A.205.

1 **Sec. 31.** RCW 9.95.115 and 1989 c 259 s 3 are each amended to read
2 as follows:

3 The indeterminate sentence review board is hereby granted authority
4 to parole any person sentenced to the custody of the department of
5 corrections, under a mandatory life sentence for a crime committed
6 prior to July 1, 1984, except those persons sentenced to life without
7 the possibility of parole. No such person shall be granted parole
8 unless the person has been continuously confined therein for a period
9 of twenty consecutive years less earned good time: PROVIDED, That no
10 such person shall be released under parole who is ~~((found to be a~~
11 ~~sexual psychopath under the provisions of and as defined by chapter~~
12 ~~71.06 RCW))~~ subject to civil commitment as a sexually violent predator
13 under chapter 71.09 RCW.

14 **Sec. 32.** RCW 9.95.120 and 1999 c 143 s 22 are each amended to read
15 as follows:

16 Whenever the board or a ~~((probation and parole))~~ community
17 corrections officer of this state has reason to believe a ~~((convicted))~~
18 person convicted of a crime committed before July 1, 1984, has breached
19 a condition of his or her parole or violated the law of any state where
20 he or she may then be or the rules and regulations of the board, any
21 ~~((probation and parole))~~ community corrections officer of this state
22 may arrest or cause the arrest and detention and suspension of parole
23 of such convicted person pending a determination by the board whether
24 the parole of such convicted person shall be revoked. All facts and
25 circumstances surrounding the violation by such convicted person shall
26 be reported to the board by the ~~((probation and parole))~~ community
27 corrections officer, with recommendations. The board, after
28 consultation with the secretary of corrections, shall make all rules
29 and regulations concerning procedural matters, which shall include the
30 time when state ~~((probation and parole))~~ community corrections officers
31 shall file with the board reports required by this section, procedures
32 pertaining thereto and the filing of such information as may be
33 necessary to enable the board to perform its functions under this
34 section. On the basis of the report by the ~~((probation and parole))~~
35 community corrections officer, or at any time upon its own discretion,
36 the board may revise or modify the conditions of parole or order the
37 suspension of parole by the issuance of a written order bearing its
38 seal, which order shall be sufficient warrant for all peace officers to

1 take into custody any convicted person who may be on parole and retain
2 such person in their custody until arrangements can be made by the
3 board for his or her return to a state correctional institution for
4 convicted felons. Any such revision or modification of the conditions
5 of parole or the order suspending parole shall be personally served
6 upon the parolee.

7 Any parolee arrested and detained in physical custody by the
8 authority of a state (~~(probation and parole)~~) community corrections
9 officer, or upon the written order of the board, shall not be released
10 from custody on bail or personal recognizance, except upon approval of
11 the board and the issuance by the board of an order of reinstatement on
12 parole on the same or modified conditions of parole.

13 All chiefs of police, marshals of cities and towns, sheriffs of
14 counties, and all police, prison, and peace officers and constables
15 shall execute any such order in the same manner as any ordinary
16 criminal process.

17 Whenever a paroled prisoner is accused of a violation of his or her
18 parole, other than the commission of, and conviction for, a felony or
19 misdemeanor under the laws of this state or the laws of any state where
20 he or she may then be, he or she shall be entitled to a fair and
21 impartial hearing of such charges within thirty days from the time that
22 he or she is served with charges of the violation of conditions of
23 (~~(his)~~) parole after his or her arrest and detention. The hearing
24 shall be held before one or more members of the board at a place or
25 places, within this state, reasonably near the site of the alleged
26 violation or violations of parole.

27 In the event that the board suspends a parole by reason of an
28 alleged parole violation or in the event that a parole is suspended
29 pending the disposition of a new criminal charge, the board shall have
30 the power to nullify the order of suspension and reinstate the
31 individual to parole under previous conditions or any new conditions
32 that the board may determine advisable. Before the board shall nullify
33 an order of suspension and reinstate a parole they shall have
34 determined that the best interests of society and the individual shall
35 best be served by such reinstatement rather than a return to a penal
36 institution.

37 **Sec. 33.** RCW 9.95.121 and 1981 c 136 s 38 are each amended to read
38 as follows:

1 (1) For offenders convicted of crimes committed before July 1,
2 1984, within fifteen days from the date of notice to the department of
3 corrections of the arrest and detention of the alleged parole violator,
4 he or she shall be personally served by a state ((probation and
5 parole)) community corrections officer with a copy of the factual
6 allegations of the violation of the conditions of parole, and, at the
7 same time shall be advised of his or her right to an on-site parole
8 revocation hearing and of his or her rights and privileges as provided
9 in RCW 9.95.120 through 9.95.126. The alleged parole violator, after
10 service of the allegations of violations of the conditions of parole
11 and the advice of rights may waive the on-site parole revocation
12 hearing as provided in RCW 9.95.120, and admit one or more of the
13 alleged violations of the conditions of parole. If the board accepts
14 the waiver it shall either, (1) reinstate the parolee on parole under
15 the same or modified conditions, or (2) revoke the parole of the
16 parolee and enter an order of parole revocation and return to state
17 custody. A determination of a new minimum sentence shall be made
18 within thirty days of return to state custody which shall not exceed
19 the maximum sentence as provided by law for the crime of which the
20 parolee was originally convicted or the maximum fixed by the court.

21 If the waiver made by the parolee is rejected by the board it shall
22 hold an on-site parole revocation hearing under the provisions of RCW
23 9.95.120 through 9.95.126.

24 (2) Offenders sentenced under section 6 of this act are subject to
25 the violation hearing process established in section 12 of this act.

26 **Sec. 34.** RCW 9.95.122 and 1999 c 143 s 23 are each amended to read
27 as follows:

28 (1) At any on-site parole revocation hearing for a person convicted
29 of a crime committed before July 1, 1984, the alleged parole violator
30 shall be entitled to be represented by an attorney of his or her own
31 choosing and at his or her own expense, except, upon the presentation
32 of satisfactory evidence of indigency and the request for the
33 appointment of an attorney by the alleged parole violator, the board
34 may cause the appointment of an attorney to represent the alleged
35 parole violator to be paid for at state expense, and, in addition, the
36 board may assume all or such other expenses in the presentation of
37 evidence on behalf of the alleged parole violator as it may have
38 authorized: PROVIDED, That funds are available for the payment of

1 attorneys' fees and expenses. Attorneys for the representation of
2 alleged parole violators in on-site hearings shall be appointed by the
3 superior courts for the counties wherein the on-site parole revocation
4 hearing is to be held and such attorneys shall be compensated in such
5 manner and in such amount as shall be fixed in a schedule of fees
6 adopted by rule of the board.

7 (2) The rights of offenders sentenced under section 6 of this act
8 are defined in section 12 of this act.

9 **Sec. 35.** RCW 9.95.123 and 1999 c 143 s 24 are each amended to read
10 as follows:

11 In conducting on-site parole or community custody revocation
12 hearings or community custody violations hearings, the board shall have
13 the authority to administer oaths and affirmations, examine witnesses,
14 receive evidence, and issue subpoenas for the compulsory attendance of
15 witnesses and the production of evidence for presentation at such
16 hearings. Subpoenas issued by the board shall be effective throughout
17 the state. Witnesses in attendance at any on-site parole or community
18 custody revocation hearing shall be paid the same fees and allowances,
19 in the same manner and under the same conditions as provided for
20 witnesses in the courts of the state in accordance with chapter 2.40
21 RCW (~~as now or hereafter amended~~). If any person fails or refuses to
22 obey a subpoena issued by the board, or obeys the subpoena but refuses
23 to testify concerning any matter under examination at the hearing, the
24 board may petition the superior court of the county where the hearing
25 is being conducted for enforcement of the subpoena: PROVIDED, That an
26 offer to pay statutory fees and mileage has been made to the witness at
27 the time of the service of the subpoena. The petition shall be
28 accompanied by a copy of the subpoena and proof of service, and shall
29 set forth in what specific manner the subpoena has not been complied
30 with, and shall ask an order of the court to compel the witness to
31 appear and testify before the board. The court, upon such petition,
32 shall enter an order directing the witness to appear before the court
33 at a time and place to be fixed in such order and then and there to
34 show cause why he or she has not responded to the subpoena or has
35 refused to testify. A copy of the order shall be served upon the
36 witness. If it appears to the court that the subpoena was properly
37 issued and that the particular questions which the witness refuses to
38 answer are reasonable and relevant, the court shall enter an order that

1 the witness appear at the time and place fixed in the order and testify
2 or produce the required papers, and on failing to obey ((said)) the
3 order, the witness shall be dealt with as for contempt of court.

4 **Sec. 36.** RCW 9.95.124 and 1999 c 143 s 25 are each amended to read
5 as follows:

6 At all on-site parole revocation hearings for offenders convicted
7 of crimes committed before July 1, 1984, the ((~~probation and parole~~))
8 community corrections officers of the department of corrections, having
9 made the allegations of the violations of the conditions of parole, may
10 be represented by the attorney general. The attorney general may make
11 independent recommendations to the board about whether the violations
12 constitute sufficient cause for the revocation of the parole and the
13 return of the parolee to a state correctional institution for convicted
14 felons. The hearings shall be open to the public unless the board for
15 specifically stated reasons closes the hearing in whole or in part.
16 The hearings shall be recorded either manually or by a mechanical
17 recording device. An alleged parole violator may be requested to
18 testify and any such testimony shall not be used against him or her in
19 any criminal prosecution. The board shall adopt rules governing the
20 formal and informal procedures authorized by this chapter and make
21 rules of practice before the board in on-site parole revocation
22 hearings, together with forms and instructions.

23 **Sec. 37.** RCW 9.95.125 and 1993 c 140 s 2 are each amended to read
24 as follows:

25 After the on-site parole revocation hearing for a person convicted
26 of a crime committed before July 1, 1984, has been concluded, the
27 members of the board having heard the matter shall enter their decision
28 of record within ten days, and make findings and conclusions upon the
29 allegations of the violations of the conditions of parole. If the
30 member, or members having heard the matter, should conclude that the
31 allegations of violation of the conditions of parole have not been
32 proven by a preponderance of the evidence, or, those which have been
33 proven by a preponderance of the evidence are not sufficient cause for
34 the revocation of parole, then the parolee shall be reinstated on
35 parole on the same or modified conditions of parole. For parole
36 violations not resulting in new convictions, modified conditions of
37 parole may include sanctions according to an administrative sanction

1 grid. If the member or members having heard the matter should conclude
2 that the allegations of violation of the conditions of parole have been
3 proven by a preponderance of the evidence and constitute sufficient
4 cause for the revocation of parole, then such member or members shall
5 enter an order of parole revocation and return the parole violator to
6 state custody. Within thirty days of the return of such parole
7 violator to a state correctional institution (~~((for convicted felons))~~)
8 the board shall enter an order determining a new minimum term not
9 exceeding the maximum penalty provided by law for the crime for which
10 the parole violator was originally convicted or the maximum fixed by
11 the court.

12 **Sec. 38.** RCW 9.95.126 and 1969 c 98 s 8 are each amended to read
13 as follows:

14 All officers and employees of the state, counties, cities and
15 political subdivisions of this state shall cooperate with the board
16 (~~((of prison terms and paroles))~~) in making available suitable facilities
17 for conducting parole or community custody revocation hearings.

18 **Sec. 39.** RCW 9.95.130 and 1993 c 140 s 3 are each amended to read
19 as follows:

20 From and after the suspension, cancellation, or revocation of the
21 parole of any (~~((convicted person))~~) offender convicted of a crime
22 committed before July 1, 1984, and until his or her return to custody
23 the (~~((convicted person))~~) offender shall be deemed an escapee and a
24 fugitive from justice. The indeterminate sentence review board may
25 deny credit against the maximum sentence any time during which he or
26 she is an escapee and fugitive from justice.

27 **Sec. 40.** RCW 9.95.140 and 1992 c 7 s 27 are each amended to read
28 as follows:

29 (1) The (~~((indeterminate sentence review))~~) board shall cause a
30 complete record to be kept of every prisoner under the jurisdiction of
31 the board released on parole or community custody. Such records shall
32 be organized in accordance with the most modern methods of filing and
33 indexing so that there will be always immediately available complete
34 information about each such prisoner. Subject to information sharing
35 provisions related to mentally ill offenders, the end of sentence
36 review committee, and the department of corrections, the board may make

1 rules as to the privacy of such records and their use by others than
2 the board and its staff. In determining the rules regarding
3 dissemination of information regarding convicted sex offenders
4 convicted of crimes committed before July 1, 1984, who are under the
5 board's jurisdiction, the board shall consider the provisions of
6 section 116, chapter 3, Laws of 1990 and RCW 4.24.550 and shall be
7 immune from liability for the release of information concerning sex
8 offenders as provided in RCW 4.24.550.

9 The superintendents of state correctional facilities and all
10 officers and employees thereof and all other public officials shall at
11 all times cooperate with the board and furnish to the board, its
12 officers, and employees such information as may be necessary to enable
13 it to perform its functions, and such superintendents and other
14 employees shall at all times give the members of the board, its
15 officers, and employees free access to all prisoners confined in the
16 state correctional facilities.

17 (2) Offenders sentenced under section 6 of this act shall be
18 subject to the determinations of the end of sentence review committee
19 regarding risk level and subject to sex offender registration and
20 community notification on the same basis as any other offender
21 sentenced under chapter 9.94A RCW for a crime committed on or after
22 July 1, 1984.

23 **Sec. 41.** RCW 9.95.145 and 1997 c 364 s 5 are each amended to read
24 as follows:

25 (1) For offenders convicted of crimes committed before July 1,
26 1984, in addition to any other information required to be released
27 under this chapter, the indeterminate sentence review board may,
28 pursuant to RCW 4.24.550, release information concerning inmates under
29 the jurisdiction of the indeterminate sentence review board who are
30 convicted of sex offenses as defined in RCW 9.94A.030.

31 (2) In order for public agencies to have the information necessary
32 for notifying the public about sex offenders as authorized in RCW
33 4.24.550, the board shall issue to appropriate law enforcement agencies
34 narrative notices regarding the pending release from confinement of any
35 sex offenders under the board's jurisdiction. The narrative notices
36 shall, at a minimum, describe the identity and criminal history
37 behavior of the offender. For sex offenders being discharged from
38 custody on serving the maximum punishment provided by law or fixed by

1 the court, the narrative notices shall also include the board's or the
2 end of sentence review committee's risk level classification for the
3 offender and the reasons underlying the classification.

4 (3)(a) For the purposes of this section, and for offenders
5 convicted of sex offenses committed before July 1, 1984, the board
6 shall classify as risk level I those offenders whose risk assessments
7 indicate a low risk of reoffense within the community at large. The
8 board shall classify as risk level II those offenders whose risk
9 assessments indicate a moderate risk of reoffense within the community
10 at large. The board shall classify as risk level III those offenders
11 whose risk assessments indicate a high risk of reoffense within the
12 community at large.

13 (b) For purposes of this section, and for offenders sentenced under
14 section 6 of this act, the end of sentence review committee shall
15 determine the offender's risk level classification. The board shall
16 notify law enforcement of the offender's pending release as provided in
17 subsection (2) of this section. Community notification shall be
18 performed by law enforcement, not by the board.

19 **Sec. 42.** RCW 9.95.190 and 1992 c 7 s 28 are each amended to read
20 as follows:

21 The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall
22 apply to all convicted persons serving time in a state correctional
23 facility for crimes committed before July 1, 1984, to the end that at
24 all times the same provisions relating to sentences, imprisonments, and
25 paroles of prisoners shall apply to all inmates thereof.

26 **Sec. 43.** RCW 9.95.250 and 1981 c 136 s 43 are each amended to read
27 as follows:

28 In order to carry out the provisions of this chapter 9.95 RCW the
29 parole officers working under the supervision of the secretary of
30 corrections shall be known as (~~probation and parole~~) community
31 corrections officers.

32 **Sec. 44.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to read
33 as follows:

34 The following sections of law do not apply to any felony offense
35 committed on or after July 1, 1984, except offenses committed on or
36 after the effective date of this section and sentenced under section 6

1 of this act: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.010, 9.95.015,
2 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.040, 9.95.052, 9.95.070,
3 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121,
4 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140,
5 9.95.150, 9.95.160, 9.95.170, 9.95.190, 9.95.200, 9.95.210, 9.95.220,
6 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.350, and
7 9.95.360.

8 **Sec. 45.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to
9 read as follows:

10 (1) A person is guilty of an attempt to commit crime if, with
11 intent to commit a specific crime, he or she does any act which is a
12 substantial step toward the commission of that crime.

13 (2) If the conduct in which a person engages otherwise constitutes
14 an attempt to commit a crime, it is no defense to a prosecution of such
15 attempt that the crime charged to have been attempted was, under the
16 attendant circumstances, factually or legally impossible of commission.

17 (3) An attempt to commit a crime is a:

18 (a) Class A felony when the crime attempted is murder in the first
19 degree, murder in the second degree, (~~(or)~~) arson in the first degree,
20 child molestation in the first degree, indecent liberties by forcible
21 compulsion, rape in the first degree, rape in the second degree, rape
22 of a child in the first degree, or rape of a child in the second
23 degree;

24 (b) Class B felony when the crime attempted is a class A felony
25 other than murder in the first degree, murder in the second degree,
26 (~~(or)~~) arson in the first degree, child molestation in the first
27 degree, indecent liberties by forcible compulsion, rape in the first
28 degree, rape in the second degree, rape of a child in the first degree,
29 or rape of a child in the second degree;

30 (c) Class C felony when the crime attempted is a class B felony;

31 (d) Gross misdemeanor when the crime attempted is a class C felony;

32 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
33 misdemeanor.

34 **Sec. 46.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to read
35 as follows:

36 (1) A person is guilty of assault in the second degree if he or
37 she, under circumstances not amounting to assault in the first degree:

1 (a) Intentionally assaults another and thereby recklessly inflicts
2 substantial bodily harm; or

3 (b) Intentionally and unlawfully causes substantial bodily harm to
4 an unborn quick child by intentionally and unlawfully inflicting any
5 injury upon the mother of such child; or

6 (c) Assaults another with a deadly weapon; or

7 (d) With intent to inflict bodily harm, administers to or causes to
8 be taken by another, poison or any other destructive or noxious
9 substance; or

10 (e) With intent to commit a felony, assaults another; or

11 (f) Knowingly inflicts bodily harm which by design causes such pain
12 or agony as to be the equivalent of that produced by torture.

13 (2) Assault in the second degree is a class B felony, except that
14 assault in the second degree with a finding of sexual motivation under
15 RCW 9.94A.127 or 13.40.135 is a class A felony.

16 **Sec. 47.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are
17 each amended to read as follows:

18 (1) A person is guilty of kidnapping in the second degree if he or
19 she intentionally abducts another person under circumstances not
20 amounting to kidnapping in the first degree.

21 (2) In any prosecution for kidnapping in the second degree, it is
22 a defense if established by the defendant by a preponderance of the
23 evidence that (a) the abduction does not include the use of or intent
24 to use or threat to use deadly force, and (b) the actor is a relative
25 of the person abducted, and (c) the actor's sole intent is to assume
26 custody of that person. Nothing contained in this paragraph shall
27 constitute a defense to a prosecution for, or preclude a conviction of,
28 any other crime.

29 (3) Kidnapping in the second degree is a class B felony, except
30 that kidnapping in the second degree with a finding of sexual
31 motivation under RCW 9.94A.127 or 13.40.135 is a class A felony.

32 **Sec. 48.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
33 read as follows:

34 (1) A person is guilty of indecent liberties when he or she
35 knowingly causes another person who is not his or her spouse to have
36 sexual contact with him or her or another:

37 (a) By forcible compulsion;

1 (b) When the other person is incapable of consent by reason of
2 being mentally defective, mentally incapacitated, or physically
3 helpless;

4 (c) When the victim is developmentally disabled and the perpetrator
5 is a person who is not married to the victim and who has supervisory
6 authority over the victim;

7 (d) When the perpetrator is a health care provider, the victim is
8 a client or patient, and the sexual contact occurs during a treatment
9 session, consultation, interview, or examination. It is an affirmative
10 defense that the defendant must prove by a preponderance of the
11 evidence that the client or patient consented to the sexual contact
12 with the knowledge that the sexual contact was not for the purpose of
13 treatment;

14 (e) When the victim is a resident of a facility for mentally
15 disordered or chemically dependent persons and the perpetrator is a
16 person who is not married to the victim and has supervisory authority
17 over the victim; or

18 (f) When the victim is a frail elder or vulnerable adult and the
19 perpetrator is a person who is not married to the victim and who has a
20 significant relationship with the victim.

21 (2) Indecent liberties is a class B felony, except that indecent
22 liberties by forcible compulsion is a class A felony.

23 **Sec. 49.** RCW 72.09.370 and 1999 c 214 s 2 are each amended to read
24 as follows:

25 (1) The secretary shall identify offenders in confinement or
26 partial confinement who: (a) Are reasonably believed to be dangerous
27 to themselves or others; and (b) have a mental disorder. In
28 determining an offender's dangerousness, the secretary shall consider
29 behavior known to the department and factors, based on research, that
30 are linked to an increased risk for dangerousness of mentally ill
31 offenders and shall include consideration of an offender's chemical
32 dependency or abuse.

33 (2) Prior to release of an offender identified under this section,
34 a team consisting of representatives of the department of corrections,
35 the division of mental health, and, as necessary, the indeterminate
36 sentence review board, other divisions or administrations within the
37 department of social and health services, specifically including the
38 division of alcohol and substance abuse and the division of

1 developmental disabilities, the appropriate regional support network,
2 and the providers, as appropriate, shall develop a plan, as determined
3 necessary by the team, for delivery of treatment and support services
4 to the offender upon release. The team may include a school district
5 representative for offenders under the age of twenty-one. The team
6 shall consult with the offender's counsel, if any, and, as appropriate,
7 the offender's family and community. The team shall notify the crime
8 victim/witness program, which shall provide notice to all people
9 registered to receive notice under RCW 9.94A.155 of the proposed
10 release plan developed by the team. Victims, witnesses, and other
11 interested people notified by the department may provide information
12 and comments to the department on potential safety risk to specific
13 individuals or classes of individuals posed by the specific offender.
14 The team may recommend: (a) That the offender be evaluated by the
15 county designated mental health professional, as defined in chapter
16 71.05 RCW; (b) department-supervised community treatment; or (c)
17 voluntary community mental health or chemical dependency or abuse
18 treatment.

19 (3) Prior to release of an offender identified under this section,
20 the team shall determine whether or not an evaluation by a county
21 designated mental health professional is needed. If an evaluation is
22 recommended, the supporting documentation shall be immediately
23 forwarded to the appropriate county designated mental health
24 professional. The supporting documentation shall include the
25 offender's criminal history, history of judicially required or
26 administratively ordered involuntary antipsychotic medication while in
27 confinement, and any known history of involuntary civil commitment.

28 (4) If an evaluation by a county designated mental health
29 professional is recommended by the team, such evaluation shall occur
30 not more than ten days, nor less than five days, prior to release.

31 (5) A second evaluation by a county designated mental health
32 professional shall occur on the day of release if requested by the
33 team, based upon new information or a change in the offender's mental
34 condition, and the initial evaluation did not result in an emergency
35 detention or a summons under chapter 71.05 RCW.

36 (6) If the county designated mental health professional determines
37 an emergency detention under chapter 71.05 RCW is necessary, the
38 department shall release the offender only to a state hospital or to a

1 consenting evaluation and treatment facility. The department shall
2 arrange transportation of the offender to the hospital or facility.

3 (7) If the county designated mental health professional believes
4 that a less restrictive alternative treatment is appropriate, he or she
5 shall seek a summons, pursuant to the provisions of chapter 71.05 RCW,
6 to require the offender to appear at an evaluation and treatment
7 facility. If a summons is issued, the offender shall remain within the
8 corrections facility until completion of his or her term of confinement
9 and be transported, by corrections personnel on the day of completion,
10 directly to the identified evaluation and treatment facility.

11 (8) The secretary shall adopt rules to implement this section.

12 NEW SECTION. **Sec. 50.** RCW 9.95.0011 (Indeterminate sentence
13 review board--Report--Recommendation of governor) and 1997 c 350 s 1,
14 1989 c 259 s 4, & 1986 c 224 s 12 are each repealed.

15 NEW SECTION. **Sec. 51.** The secretary of corrections and the
16 indeterminate sentence review board may adopt rules to implement this
17 act.

18 NEW SECTION. **Sec. 52.** (1) Sections 4 through 51 of this act shall
19 not affect the validity of any sentence imposed under any other law for
20 any offense committed before, on, or after the effective date of this
21 section.

22 (2) Sections 4 through 51 of this act shall apply to offenses
23 committed on or after the effective date of this section.

24 NEW SECTION. **Sec. 53.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 54.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and takes effect
31 July 1, 2001, except for sections 1 through 3 of this act which take
32 effect immediately.

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