
SUBSTITUTE SENATE BILL 6842

State of Washington

60th Legislature

2008 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senator Hargrove)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to providing greater clarification and uniformity
2 in community custody and sentencing law by reorganizing provisions,
3 simplifying the application of current laws to crimes committed after
4 the effective date of the offender accountability act through
5 nonsubstantive amendments, and applying the provisions of current law,
6 to the extent constitutionally permissible, to crimes committed prior
7 to the effective date of the offender accountability act; amending RCW
8 9.94A.737, 9.94A.740, 9.94A.501, 9.94A.505, 9.94A.610, 9.94A.612,
9 9.94A.625, 9.94A.650, 9.94A.670, 9.94A.690, 9.94A.728, 9.94A.760,
10 9.94A.775, 9.94A.780, 9.94A.820, 4.24.556, 9.95.017, 9.95.064,
11 9.95.110, 9.95.123, 9.95.420, 9.95.440, 46.61.524, 72.09.015,
12 72.09.270, 72.09.345, and 72.09.580; reenacting and amending RCW
13 9.94A.030, 9.94A.525, 9.94A.660, and 9.94A.712; adding new sections to
14 chapter 9.94A RCW; adding new sections to chapter 72.09 RCW; adding a
15 new chapter to Title 9 RCW; creating new sections; recodifying RCW
16 9.94A.628, 9.94A.634, 9.94A.700, 9.94A.705, 9.94A.710, 9.94A.610,
17 9.94A.612, 9.94A.614, 9.94A.616, 9.94A.618, and 9.94A.620; repealing
18 RCW 9.94A.545, 9.94A.713, 9.94A.715, 9.94A.720, 9.94A.800, 9.94A.830,
19 and 79A.60.070; providing an effective date; and providing an
20 expiration date.

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

2 NEW SECTION. **Sec. 1.** This act is intended to simplify the
3 provisions of the sentencing reform act relating to supervision of
4 offenders. The existing sentencing reform act contains numerous
5 provisions for supervision of different types of offenders. This
6 duplication has caused great confusion for judges, lawyers, offenders,
7 and the department of corrections.

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

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

25 **PART I**

26 **COMMUNITY CUSTODY**

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

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

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

35 (b) A violent offense;

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

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

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

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

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

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

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

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

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

24 (a) A sex offense, other than failure to register under RCW
25 9A.44.130(1);

26 (b) A violent offense;

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

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

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

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

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

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

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

5 (b) Require the offender to comply with any conditions imposed by
6 the department under section 5 of this act;

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

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

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

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

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

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

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

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

24 (a) Remain within, or outside of, a specified geographical
25 boundary;

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

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

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

33 (e) Refrain from consuming alcohol; or

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

35 (4) **Special conditions.**

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

1 convicted has a minor child, the court may order the offender to
2 participate in a domestic violence perpetrator program approved under
3 RCW 26.50.150.

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

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

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

33 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.94A RCW
34 to read as follows:

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

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

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

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

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

13 (b) Remain within prescribed geographical boundaries;

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

16 (d) Pay the supervision fee assessment; and

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

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

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

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

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

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

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

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

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

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

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

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

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

30 No offender sentenced to a term of community custody under the
31 supervision of the department may own, use, or possess firearms or
32 ammunition. Offenders who own, use, or are found to be in actual or
33 constructive possession of firearms or ammunition shall be subject to
34 the violation process and sanctions under sections 10 and 16 of this
35 act and RCW 9.94A.737.

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

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

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

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

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

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

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

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

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

1 to the remaining portion of the sentence, less credit for any period
2 actually spent in community custody or in detention awaiting
3 disposition of an alleged violation.

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

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

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

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

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

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

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

36 (3) Local governments, their subdivisions and employees, the
37 department and its employees, and the Washington association of

1 sheriffs and police chiefs and its employees are immune from civil
2 liability for damages arising from incidents involving low-risk
3 offenders who are placed on electronic monitoring unless it is shown
4 that an employee acted with gross negligence or bad faith.

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

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

9 (a) If the sanction was imposed pursuant to section 10(1) of this
10 act, the sanction shall be served in a county facility.

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

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

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

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

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

27 The procedure for imposing sanctions for violations of sentence
28 conditions or requirements is as follows:

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

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

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

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

4 (5) If the offender is not being supervised by the department, any
5 sanctions shall be imposed by the court pursuant to section 14 of this
6 act.

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

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

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

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

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

21 (c) If the court finds that a violation has been proved, it may
22 impose the sanctions specified in section 10(1) of this act.
23 Alternatively, the court may:

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

25 (ii) Convert community restitution obligation to total or partial
26 confinement; or

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

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

35 (e) If the violation involves a failure to undergo or comply with
36 a mental health status evaluation and/or outpatient mental health
37 treatment, the court shall seek a recommendation from the treatment

1 provider or proposed treatment provider. Enforcement of orders
2 concerning outpatient mental health treatment must reflect the
3 availability of treatment and must pursue the least restrictive means
4 of promoting participation in treatment. If the offender's failure to
5 receive care essential for health and safety presents a risk of serious
6 physical harm or probable harmful consequences, the civil detention and
7 commitment procedures of chapter 71.05 RCW shall be considered in
8 preference to incarceration in a local or state correctional facility.

9 (3) Any time served in confinement awaiting a hearing on
10 noncompliance shall be credited against any confinement ordered by the
11 court.

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

14 **Sec. 15.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to
15 read as follows:

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

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

33 ~~(3)(a) For a sex offender sentenced to a term of community custody
34 under RCW 9.94A.670 who violates any condition of community custody,
35 the department may impose a sanction of up to sixty days' confinement
36 in a local correctional facility for each violation. If the department~~

1 ~~imposes a sanction, the department shall submit within seventy two~~
2 ~~hours a report to the court and the prosecuting attorney outlining the~~
3 ~~violation or violations and the sanctions imposed.~~

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

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

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

33 ~~(4) If an offender has been arrested for a new felony offense while~~
34 ~~under community supervision, community custody, or community placement,~~
35 ~~the department shall hold the offender in total confinement until a~~
36 ~~hearing before the department as provided in this section or until the~~
37 ~~offender has been formally charged for the new felony offense,~~
38 ~~whichever is earlier. Nothing in this subsection shall be construed as~~

1 ~~to permit the department to hold an offender past his or her maximum~~
2 ~~term of total confinement if the offender has not completed the maximum~~
3 ~~term of total confinement or to permit the department to hold an~~
4 ~~offender past the offender's term of community supervision, community~~
5 ~~custody, or community placement.~~

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

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

15 ~~((7))~~ (2) The hearing procedures required under subsection
16 ~~((6))~~ (1) of this section shall be developed by rule and include the
17 following:

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

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

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

33 (d) The offender shall have the right to: (i) Be present at the
34 hearing; (ii) have the assistance of a person qualified to assist the
35 offender in the hearing, appointed by the hearing officer if the
36 offender has a language or communications barrier; (iii) testify or
37 remain silent; (iv) call witnesses and present documentary evidence;
38 and (v) question witnesses who appear and testify; and

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

9 ~~((+8))~~ (3) For purposes of this section, no finding of a violation
10 of conditions may be based on unconfirmed or unconfirmable allegations.

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

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

25 NEW SECTION. **Sec. 16.** (1) The secretary may issue warrants for
26 the arrest of any offender who violates a condition of community
27 custody. The arrest warrants shall authorize any law enforcement or
28 peace officer or community corrections officer of this state or any
29 other state where such offender may be located, to arrest the offender
30 and place him or her in total confinement pending disposition of the
31 alleged violation.

32 (2) A community corrections officer, if he or she has reasonable
33 cause to believe an offender has violated a condition of community
34 custody, may suspend the person's community custody status and arrest
35 or cause the arrest and detention in total confinement of the offender,
36 pending the determination of the secretary as to whether the violation

1 has occurred. The community corrections officer shall report to the
2 secretary all facts and circumstances and the reasons for the action of
3 suspending community custody status.

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

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

18 **Sec. 17.** RCW 9.94A.740 and 1999 c 196 s 9 are each amended to read
19 as follows:

20 (1) ~~((The secretary may issue warrants for the arrest of any
21 offender who violates a condition of community placement or community
22 custody. The arrest warrants shall authorize any law enforcement or
23 peace officer or community corrections officer of this state or any
24 other state where such offender may be located, to arrest the offender
25 and place him or her in total confinement pending disposition of the
26 alleged violation.))~~ When an offender is arrested pursuant to section
27 16 of this act, the department shall compensate the local jurisdiction
28 at the office of financial management's adjudicated rate, in accordance
29 with RCW 70.48.440. ~~((A community corrections officer, if he or she
30 has reasonable cause to believe an offender in community placement or
31 community custody has violated a condition of community placement or
32 community custody, may suspend the person's community placement or
33 community custody status and arrest or cause the arrest and detention
34 in total confinement of the offender, pending the determination of the
35 secretary as to whether the violation has occurred. The community
36 corrections officer shall report to the secretary all facts and
37 circumstances and the reasons for the action of suspending community~~

1 ~~placement or community custody status. A violation of a condition of~~
2 ~~community placement or community custody shall be deemed a violation of~~
3 ~~the sentence for purposes of RCW 9.94A.631. The authority granted to~~
4 ~~community corrections officers under this section shall be in addition~~
5 ~~to that set forth in RCW 9.94A.631.))~~

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

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

31 (4) The department, in consultation with the Washington association
32 of sheriffs and police chiefs and those counties in which the sheriff
33 does not operate a correctional facility, shall establish a methodology
34 for determining the department's local correctional facilities bed
35 utilization rate, for each county in calendar year 1998, for offenders
36 being held for violations of conditions of community custody(~~(~~
37 ~~community placement, or community supervision))~~. ~~((For confinement~~
38 ~~sanctions imposed under RCW 9.94A.737(2) (c) or (d)))~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (b) Assault in the second degree;

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

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

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

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (ii) Homicide by abuse;

38 (iii) Murder in the second degree;

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

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

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

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

14 (~~(50)~~) (47) "Violent offense" means:

15 (a) Any of the following felonies:

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

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

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

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

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

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

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

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

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

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

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

7 ~~((+51+))~~ (48) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 that complies with RCW 9.94A.725.

10 ~~((+52+))~~ (49) "Work ethic camp" means an alternative incarceration
11 program as provided in RCW 9.94A.690 designed to reduce recidivism and
12 lower the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 ~~((+53+))~~ (50) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

20 **Sec. 19.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read
21 as follows:

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

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

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

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

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

35 (A) A sex offense;

36 (B) A violent offense;

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

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

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

9 (A) A sex offense;

10 (B) A violent offense;

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

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

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

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

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

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

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

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

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

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

32 **Sec. 20.** RCW 9.94A.505 and 2006 c 73 s 6 are each amended to read
33 as follows:

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

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

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

4 (ii) (~~RCW 9.94A.700 and 9.94A.705, relating to community~~
5 ~~placement~~) Sections 2 and 3 of this act, relating to community
6 custody;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **Sec. 21.** RCW 9.94A.525 and 2007 c 199 s 8 and 2007 c 116 s 1 are
7 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

1 (e) If the present conviction is felony driving while under the
2 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
3 felony physical control of a vehicle while under the influence of
4 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
5 of felony driving while under the influence of intoxicating liquor or
6 any drug, felony physical control of a vehicle while under the
7 influence of intoxicating liquor or any drug, and serious traffic
8 offenses shall be included in the offender score if: (i) The prior
9 convictions were committed within five years since the last date of
10 release from confinement (including full-time residential treatment) or
11 entry of judgment and sentence; or (ii) the prior convictions would be
12 considered "prior offenses within ten years" as defined in RCW
13 46.61.5055.

14 (f) This subsection applies to both adult and juvenile prior
15 convictions.

16 (3) Out-of-state convictions for offenses shall be classified
17 according to the comparable offense definitions and sentences provided
18 by Washington law. Federal convictions for offenses shall be
19 classified according to the comparable offense definitions and
20 sentences provided by Washington law. If there is no clearly
21 comparable offense under Washington law or the offense is one that is
22 usually considered subject to exclusive federal jurisdiction, the
23 offense shall be scored as a class C felony equivalent if it was a
24 felony under the relevant federal statute.

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

28 (5)(a) In the case of multiple prior convictions, for the purpose
29 of computing the offender score, count all convictions separately,
30 except:

31 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
32 encompass the same criminal conduct, shall be counted as one offense,
33 the offense that yields the highest offender score. The current
34 sentencing court shall determine with respect to other prior adult
35 offenses for which sentences were served concurrently or prior juvenile
36 offenses for which sentences were served consecutively, whether those
37 offenses shall be counted as one offense or as separate offenses using
38 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and

1 if the court finds that they shall be counted as one offense, then the
2 offense that yields the highest offender score shall be used. The
3 current sentencing court may presume that such other prior offenses
4 were not the same criminal conduct from sentences imposed on separate
5 dates, or in separate counties or jurisdictions, or in separate
6 complaints, indictments, or informations;

7 (ii) In the case of multiple prior convictions for offenses
8 committed before July 1, 1986, for the purpose of computing the
9 offender score, count all adult convictions served concurrently as one
10 offense, and count all juvenile convictions entered on the same date as
11 one offense. Use the conviction for the offense that yields the
12 highest offender score.

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

19 (6) If the present conviction is one of the anticipatory offenses
20 of criminal attempt, solicitation, or conspiracy, count each prior
21 conviction as if the present conviction were for a completed offense.
22 When these convictions are used as criminal history, score them the
23 same as a completed crime.

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

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

35 (9) If the present conviction is for a serious violent offense,
36 count three points for prior adult and juvenile convictions for crimes
37 in this category, two points for each prior adult and juvenile violent

1 conviction (not already counted), one point for each prior adult
2 nonviolent felony conviction, and 1/2 point for each prior juvenile
3 nonviolent felony conviction.

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

9 (11) If the present conviction is for a felony traffic offense
10 count two points for each adult or juvenile prior conviction for
11 Vehicular Homicide or Vehicular Assault; for each felony offense count
12 one point for each adult and 1/2 point for each juvenile prior
13 conviction; for each serious traffic offense, other than those used for
14 an enhancement pursuant to RCW 46.61.520(2), count one point for each
15 adult and 1/2 point for each juvenile prior conviction; count one point
16 for each adult and 1/2 point for each juvenile prior conviction for
17 operation of a vessel while under the influence of intoxicating liquor
18 or any drug.

19 (12) If the present conviction is for homicide by watercraft or
20 assault by watercraft count two points for each adult or juvenile prior
21 conviction for homicide by watercraft or assault by watercraft; for
22 each felony offense count one point for each adult and 1/2 point for
23 each juvenile prior conviction; count one point for each adult and 1/2
24 point for each juvenile prior conviction for driving under the
25 influence of intoxicating liquor or any drug, actual physical control
26 of a motor vehicle while under the influence of intoxicating liquor or
27 any drug, or operation of a vessel while under the influence of
28 intoxicating liquor or any drug.

29 (13) If the present conviction is for manufacture of
30 methamphetamine count three points for each adult prior manufacture of
31 methamphetamine conviction and two points for each juvenile manufacture
32 of methamphetamine offense. If the present conviction is for a drug
33 offense and the offender has a criminal history that includes a sex
34 offense or serious violent offense, count three points for each adult
35 prior felony drug offense conviction and two points for each juvenile
36 drug offense. All other adult and juvenile felonies are scored as in
37 subsection (8) of this section if the current drug offense is violent,

1 or as in subsection (7) of this section if the current drug offense is
2 nonviolent.

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

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

10 (16) If the present conviction is for Burglary 2 or residential
11 burglary, count priors as in subsection (7) of this section; however,
12 count two points for each adult and juvenile prior Burglary 1
13 conviction, two points for each adult prior Burglary 2 or residential
14 burglary conviction, and one point for each juvenile prior Burglary 2
15 or residential burglary conviction.

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

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

26 (19) If the present conviction is for an offense committed while
27 the offender was under community (~~(placement)~~) custody, add one point.
28 For purposes of this subsection, community custody includes community
29 placement or postrelease supervision, as defined in chapter 9.-- RCW
30 (the new chapter created in section 52 of this act).

31 (20) If the present conviction is for Theft of a Motor Vehicle,
32 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
33 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
34 priors as in subsections (7) through (18) of this section; however
35 count one point for prior convictions of Vehicle Prowling 2, and three
36 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
37 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
38 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),

1 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
2 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
3 Permission 2 conviction.

4 (21) The fact that a prior conviction was not included in an
5 offender's offender score or criminal history at a previous sentencing
6 shall have no bearing on whether it is included in the criminal history
7 or offender score for the current offense. Accordingly, prior
8 convictions that were not counted in the offender score or included in
9 criminal history under repealed or previous versions of the sentencing
10 reform act shall be included in criminal history and shall count in the
11 offender score if the current version of the sentencing reform act
12 requires including or counting those convictions.

13 **Sec. 22.** RCW 9.94A.610 and 2003 c 53 s 61 are each amended to read
14 as follows:

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

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

25 (b) Any person specified in writing by the prosecuting attorney.
26 Information regarding witnesses requesting the notice, information
27 regarding any other person specified in writing by the prosecuting
28 attorney to receive the notice, and the notice are confidential and
29 shall not be available to the inmate.

30 (2) If an inmate convicted of a serious drug offense escapes from
31 a correctional facility, the department of corrections shall
32 immediately notify, by the most reasonable and expedient means
33 available, the chief of police of the city and the sheriff of the
34 county in which the inmate resided immediately before the inmate's
35 arrest and conviction. If previously requested, the department shall
36 also notify the witnesses who are entitled to notice under this
37 section. If the inmate is recaptured, the department shall send notice

1 to the persons designated in this subsection as soon as possible but in
2 no event later than two working days after the department learns of
3 such recapture.

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

7 (4) The department of corrections shall send the notices required
8 by this section to the last address provided to the department by the
9 requesting party. The requesting party shall furnish the department
10 with a current address.

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

13 **Sec. 23.** RCW 9.94A.612 and 1996 c 215 s 4 are each amended to read
14 as follows:

15 (1) At the earliest possible date, and in no event later than
16 thirty days before release except in the event of escape or emergency
17 furloughs as defined in RCW 72.66.010, the department of corrections
18 shall send written notice of parole, release, community (~~placement~~)
19 custody, work release placement, furlough, or escape about a specific
20 inmate convicted of a violent offense, a sex offense as defined by RCW
21 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060
22 or 9A.46.110, to the following:

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

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

28 The sheriff of the county where the offender was convicted shall be
29 notified if the department does not know where the offender will
30 reside. The department shall notify the state patrol of the release of
31 all sex offenders, and that information shall be placed in the
32 Washington crime information center for dissemination to all law
33 enforcement.

34 (2) The same notice as required by subsection (1) of this section
35 shall be sent to the following if such notice has been requested in
36 writing about a specific inmate convicted of a violent offense, a sex

1 offense as defined by RCW 9.94A.030, or a felony harassment offense as
2 defined by RCW 9A.46.060 or 9A.46.110:

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

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

7 (c) Any person specified in writing by the prosecuting attorney;
8 and

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

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

21 (3) The existence of the notice requirements contained in
22 subsections (1) and (2) of this section shall not require an extension
23 of the release date in the event that the release plan changes after
24 notification.

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

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

4 (6) The department of corrections shall send the notices required
5 by this chapter to the last address provided to the department by the
6 requesting party. The requesting party shall furnish the department
7 with a current address.

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

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

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

16 (8) For purposes of this section the following terms have the
17 following meanings:

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

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

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

24 **Sec. 24.** RCW 9.94A.625 and 2000 c 226 s 5 are each amended to read
25 as follows:

26 (1) A term of confinement ordered in a sentence pursuant to this
27 chapter shall be tolled by any period of time during which the offender
28 has absented himself or herself from confinement without the prior
29 approval of the entity in whose custody the offender has been placed.
30 A term of partial confinement shall be tolled during any period of time
31 spent in total confinement pursuant to a new conviction or pursuant to
32 sanctions for violation of sentence conditions on a separate felony
33 conviction.

34 (2) Any term of community custody(~~(, community placement, or~~
35 ~~community supervision~~)) shall be tolled by any period of time during
36 which the offender has absented himself or herself from supervision

1 without prior approval of the entity under whose supervision the
2 offender has been placed.

3 (3) Any period of community custody(~~(, community placement, or~~
4 ~~community supervision)~~) shall be tolled during any period of time the
5 offender is in confinement for any reason. However, if an offender is
6 detained pursuant to RCW 9.94A.740 or 9.94A.631 and is later found not
7 to have violated a condition or requirement of community custody(~~(,~~
8 ~~community placement, or community supervision)~~), time spent in
9 confinement due to such detention shall not toll the period of
10 community custody(~~(, community placement, or community supervision)~~).

11 (4) For terms of confinement or community custody(~~(, community~~
12 ~~placement, or community supervision)~~), the date for the tolling of the
13 sentence shall be established by the entity responsible for the
14 confinement or supervision.

15 **Sec. 25.** RCW 9.94A.650 and 2006 c 73 s 9 are each amended to read
16 as follows:

17 (1) This section applies to offenders who have never been
18 previously convicted of a felony in this state, federal court, or
19 another state, and who have never participated in a program of deferred
20 prosecution for a felony, and who are convicted of a felony that is
21 not:

22 (a) Classified as a violent offense or a sex offense under this
23 chapter;

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

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

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

33 (e) Felony driving while under the influence of intoxicating liquor
34 or any drug or felony physical control of a vehicle while under the
35 influence of intoxicating liquor or any drug.

36 (2) In sentencing a first-time offender the court may waive the
37 imposition of a sentence within the standard sentence range and impose

1 a sentence which may include up to ninety days of confinement in a
2 facility operated or utilized under contract by the county and a
3 requirement that the offender refrain from committing new offenses.
4 (~~The sentence may also include a term of community supervision or~~
5 ~~community custody as specified in subsection (3) of this section,~~
6 ~~which, in addition to crime related prohibitions, may include~~
7 ~~requirements that the offender perform any one or more of the~~
8 ~~following:~~

9 ~~(a) Devote time to a specific employment or occupation;~~

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

13 ~~(c) Pursue a prescribed, secular course of study or vocational~~
14 ~~training;~~

15 ~~(d) Remain within prescribed geographical boundaries and notify the~~
16 ~~community corrections officer prior to any change in the offender's~~
17 ~~address or employment;~~

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

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

21 (3) (~~The terms and statuses applicable to sentences under~~
22 ~~subsection (2) of this section are:~~

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

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

35 (4) (~~The department shall discharge from community supervision any~~
36 ~~offender sentenced under this section before July 25, 1999, who has~~
37 ~~served at least one year of community supervision and has completed any~~
38 ~~treatment ordered by the court.)) As a condition of community custody,~~

1 in addition to any conditions authorized in section 4 of this act, the
2 court may order the offender to pay all court-ordered legal financial
3 obligations and/or perform community restitution work.

4 **Sec. 26.** RCW 9.94A.660 and 2006 c 339 s 302 and 2006 c 73 s 10 are
5 each reenacted and amended to read as follows:

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

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

11 (b) The offender is convicted of a felony that is not a felony
12 driving while under the influence of intoxicating liquor or any drug
13 under RCW 46.61.502(6) or felony physical control of a vehicle while
14 under the influence of intoxicating liquor or any drug under RCW
15 46.61.504(6);

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

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

26 (e) The offender has not been found by the United States attorney
27 general to be subject to a deportation detainer or order and does not
28 become subject to a deportation order during the period of the
29 sentence;

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

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

35 (2) A motion for a sentence under this section may be made by the
36 court, the offender, or the state. If the sentencing court determines

1 that the offender is eligible for this alternative, the court may order
2 an examination of the offender. The examination shall, at a minimum,
3 address the following issues:

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

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

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

11 (d) Whether the offender and the community will benefit from the
12 use of the alternative.

13 (3) The examination report must contain:

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

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

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

20 (ii) The recommended frequency and length of treatment, including
21 both residential chemical dependency treatment and treatment in the
22 community;

23 (iii) A proposed monitoring plan, including any requirements
24 regarding living conditions, lifestyle requirements, and monitoring by
25 family members and others; and

26 (iv) Recommended crime-related prohibitions and affirmative
27 conditions.

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

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

1 (a) A period of total confinement in a state facility for one-half
2 of the midpoint of the standard sentence range or twelve months,
3 whichever is greater. During incarceration in the state facility,
4 offenders sentenced under this subsection shall undergo a comprehensive
5 substance abuse assessment and receive, within available resources,
6 treatment services appropriate for the offender. The treatment
7 services shall be designed by the division of alcohol and substance
8 abuse of the department of social and health services, in cooperation
9 with the department of corrections;

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

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

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

24 (e) A term of community custody pursuant to (~~RCW 9.94A.715~~)
25 section 2 of this act to be imposed upon failure to complete or
26 administrative termination from the special drug offender sentencing
27 alternative program.

28 (6) The residential chemical dependency treatment-based alternative
29 shall include:

30 (a) A term of community custody equal to one-half of the midpoint
31 of the standard sentence range or two years, whichever is greater,
32 conditioned on the offender entering and remaining in residential
33 chemical dependency treatment certified under chapter 70.96A RCW for a
34 period set by the court between three and six months. If the court
35 imposes a term of community custody, the department shall, within
36 available resources, make chemical dependency assessment and treatment
37 services available to the offender during the term of community
38 custody. The court shall impose, as conditions of community custody,

1 treatment and other conditions as proposed in the plan under subsection
2 (3)(b) of this section. (~~The department may impose conditions and~~
3 ~~sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),~~
4 ~~9.94A.737, and 9.94A.740.~~) The court shall schedule a progress
5 hearing during the period of residential chemical dependency treatment,
6 and schedule a treatment termination hearing for three months before
7 the expiration of the term of community custody;

8 (b) Before the progress hearing and treatment termination hearing,
9 the treatment provider and the department shall submit written reports
10 to the court and parties regarding the offender's compliance with
11 treatment and monitoring requirements, and recommendations regarding
12 termination from treatment. At the hearing, the court may:

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

16 (ii) Continue the hearing to a date before the expiration date of
17 community custody, with or without modifying the conditions of
18 community custody; or

19 (iii) Impose a term of total confinement equal to one-half the
20 midpoint of the standard sentence range, followed by a term of
21 community custody under (~~RCW 9.94A.715~~) section 2 of this act;

22 (c) If the court imposes a term of total confinement under (b)(iii)
23 of this subsection, the department shall, within available resources,
24 make chemical dependency assessment and treatment services available to
25 the offender during the terms of total confinement and community
26 custody.

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

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

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

37 (b) ~~Remain within prescribed geographical boundaries and notify the~~

1 ~~court or the community corrections officer before any change in the~~
2 ~~offender's address or employment;~~

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

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

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

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

7 ~~(g) Such other conditions as the court may require such as~~
8 ~~affirmative conditions)).~~

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

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

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

21 ~~(d) An offender ordered to serve a term of total confinement under~~
22 ~~(c) of this subsection shall receive credit for any time previously~~
23 ~~served under this section.~~

24 ~~((9)) (10) In serving a term of community custody imposed upon~~
25 ~~failure to complete, or administrative termination from, the special~~
26 ~~drug offender sentencing alternative program, the offender shall~~
27 ~~receive no credit for time served in community custody prior to~~
28 ~~termination of the offender's participation in the program.~~

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

37 ~~((10)) (12) An offender sentenced under this section shall be~~

1 subject to all rules relating to earned release time with respect to
2 any period served in total confinement.

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

7 **Sec. 27.** RCW 9.94A.670 and 2006 c 133 s 1 are each amended to read
8 as follows:

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

11 (a) "Sex offender treatment provider" or "treatment provider" means
12 a certified sex offender treatment provider or a certified affiliate
13 sex offender treatment provider as defined in RCW 18.155.020.

14 (b) "Substantial bodily harm" means bodily injury that involves a
15 temporary but substantial disfigurement, or that causes a temporary but
16 substantial loss or impairment of the function of any body part or
17 organ, or that causes a fracture of any body part or organ.

18 (c) "Victim" means any person who has sustained emotional,
19 psychological, physical, or financial injury to person or property as
20 a result of the crime charged. "Victim" also means a parent or
21 guardian of a victim who is a minor child unless the parent or guardian
22 is the perpetrator of the offense.

23 (2) An offender is eligible for the special sex offender sentencing
24 alternative if:

25 (a) The offender has been convicted of a sex offense other than a
26 violation of RCW 9A.44.050 or a sex offense that is also a serious
27 violent offense. If the conviction results from a guilty plea, the
28 offender must, as part of his or her plea of guilty, voluntarily and
29 affirmatively admit he or she committed all of the elements of the
30 crime to which the offender is pleading guilty. This alternative is
31 not available to offenders who plead guilty to the offense charged
32 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d
33 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

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

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

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

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

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

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

15 (a) The report of the examination shall include at a minimum the
16 following:

17 (i) The offender's version of the facts and the official version of
18 the facts;

19 (ii) The offender's offense history;

20 (iii) An assessment of problems in addition to alleged deviant
21 behaviors;

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

23 (v) Other evaluation measures used.

24 The report shall set forth the sources of the examiner's
25 information.

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

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

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

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

36 (iv) Anticipated length of treatment; and

37 (v) Recommended crime-related prohibitions and affirmative
38 conditions, which must include, to the extent known, an identification

1 of specific activities or behaviors that are precursors to the
2 offender's offense cycle, including, but not limited to, activities or
3 behaviors such as viewing or listening to pornography or use of alcohol
4 or controlled substances.

5 (c) The court on its own motion may order, or on a motion by the
6 state shall order, a second examination regarding the offender's
7 amenability to treatment. The examiner shall be selected by the party
8 making the motion. The offender shall pay the cost of any second
9 examination ordered unless the court finds the defendant to be indigent
10 in which case the state shall pay the cost.

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

33 (5) As conditions of the suspended sentence, the court must impose
34 the following:

35 (a) (~~The court shall order the offender to serve~~) A term of
36 confinement of up to twelve months or the maximum term within the
37 standard range, whichever is less. The court may order the offender to
38 serve a term of confinement greater than twelve months or the maximum

1 term within the standard range based on the presence of an aggravating
2 circumstance listed in RCW 9.94A.535(3). In no case shall the term of
3 confinement exceed the statutory maximum sentence for the offense. The
4 court may order the offender to serve all or part of his or her term of
5 confinement in partial confinement. An offender sentenced to a term of
6 confinement under this subsection is not eligible for earned release
7 under RCW 9.92.151 or 9.94A.728.

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

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

24 (d) (~~As conditions of the suspended sentence, the court shall~~
25 ~~impose~~) Specific prohibitions and affirmative conditions relating to
26 the known precursor activities or behaviors identified in the proposed
27 treatment plan under subsection (3)(b)(v) of this section or identified
28 in an annual review under subsection (~~(+7)~~) (8)(b) of this section.

29 (~~(+5)~~) (6) As conditions of the suspended sentence, the court may
30 impose one or more of the following:

31 (a) Crime-related prohibitions;

32 (b) Require the offender to devote time to a specific employment or
33 occupation;

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

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

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

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

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

6 ~~((+6+))~~ (7) At the time of sentencing, the court shall set a
7 treatment termination hearing for three months prior to the anticipated
8 date for completion of treatment.

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

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

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

1 with the person who treated the offender under subsection ~~((+4))~~ (5)
2 of this section unless the court has entered written findings that such
3 evaluation is in the best interest of the victim and that a successful
4 evaluation of the offender would otherwise be impractical. The
5 offender shall pay the cost of the evaluation. At the treatment
6 termination hearing the court may: (a) Modify conditions of community
7 custody, and either (b) terminate treatment, or (c) extend treatment in
8 two-year increments for up to the remaining period of community
9 custody.

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

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

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

32 ~~((+11))~~ (12) If the offender violates a requirement of the
33 sentence that is not a condition of the suspended sentence pursuant to
34 subsection (5) or (6) of this section, the department may impose
35 sanctions pursuant to section 10(1) of this act.

36 (13) The offender's sex offender treatment provider may not be the
37 same person who examined the offender under subsection (3) of this
38 section or any person who employs, is employed by, or shares profits

1 with the person who examined the offender under subsection (3) of this
2 section, unless the court has entered written findings that such
3 treatment is in the best interests of the victim and that successful
4 treatment of the offender would otherwise be impractical. Examinations
5 and treatment ordered pursuant to this subsection shall only be
6 conducted by certified sex offender treatment providers or certified
7 affiliate sex offender treatment providers under chapter 18.155 RCW
8 unless the court finds that:

9 (a) The offender has already moved to another state or plans to
10 move to another state for reasons other than circumventing the
11 certification requirements; or

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

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

17 (~~(12)~~) (14) If the offender is less than eighteen years of age
18 when the charge is filed, the state shall pay for the cost of initial
19 evaluation and treatment.

20 **Sec. 28.** RCW 9.94A.690 and 2006 c 73 s 11 are each amended to read
21 as follows:

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

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

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

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

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

1 (2) If the sentencing court determines that the offender is
2 eligible for the work ethic camp and is likely to qualify under
3 subsection (3) of this section, the judge shall impose a sentence
4 within the standard sentence range and may recommend that the offender
5 serve the sentence at a work ethic camp. In sentencing an offender to
6 the work ethic camp, the court shall specify: (a) That upon completion
7 of the work ethic camp the offender shall be released on community
8 custody for any remaining time of total confinement; (b) the applicable
9 conditions of (~~supervision on~~) community custody (~~status~~) as
10 (~~required by RCW 9.94A.700(4) and~~) authorized by (~~RCW 9.94A.700(5)~~)
11 section 4 of this act; and (c) that violation of the conditions may
12 result in a return to total confinement for the balance of the
13 offender's remaining time of confinement.

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

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

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

33 **Sec. 29.** RCW 9.94A.712 and 2006 c 124 s 3, 2006 c 122 s 5, and
34 2005 c 436 s 2 are each reenacted and amended to read as follows:

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

37 (a) Is convicted of:

1 (i) Rape in the first degree, rape in the second degree, rape of a
2 child in the first degree, child molestation in the first degree, rape
3 of a child in the second degree, or indecent liberties by forcible
4 compulsion;

5 (ii) Any of the following offenses with a finding of sexual
6 motivation: Murder in the first degree, murder in the second degree,
7 homicide by abuse, kidnapping in the first degree, kidnapping in the
8 second degree, assault in the first degree, assault in the second
9 degree, assault of a child in the first degree, assault of a child in
10 the second degree, or burglary in the first degree; or

11 (iii) An attempt to commit any crime listed in this subsection
12 (1)(a);
13 (~~committed on or after September 1, 2001;~~) or

14 (b) Has a prior conviction for an offense listed in RCW
15 9.94A.030(~~(+33)~~) (31)(b), and is convicted of any sex offense (~~which~~
16 ~~was committed after September 1, 2001.~~

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

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

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

26 (b) The maximum term shall consist of the statutory maximum
27 sentence for the offense.

28 (c)(i) Except as provided in (c)(ii) of this subsection, the
29 minimum term shall be either within the standard sentence range for the
30 offense, or outside the standard sentence range pursuant to RCW
31 9.94A.535, if the offender is otherwise eligible for such a sentence.

32 (ii) If the offense that caused the offender to be sentenced under
33 this section was rape of a child in the first degree, rape of a child
34 in the second degree, or child molestation in the first degree, and
35 there has been a finding that the offense was predatory under RCW
36 9.94A.836, the minimum term shall be either the maximum of the standard
37 sentence range for the offense or twenty-five years, whichever is
38 greater. If the offense that caused the offender to be sentenced under

1 this section was rape in the first degree, rape in the second degree,
2 indecent liberties by forcible compulsion, or kidnapping in the first
3 degree with sexual motivation, and there has been a finding that the
4 victim was under the age of fifteen at the time of the offense under
5 RCW 9.94A.837, the minimum term shall be either the maximum of the
6 standard sentence range for the offense or twenty-five years, whichever
7 is greater. If the offense that caused the offender to be sentenced
8 under this section is rape in the first degree, rape in the second
9 degree with forcible compulsion, indecent liberties with forcible
10 compulsion, or kidnapping in the first degree with sexual motivation,
11 and there has been a finding under RCW 9.94A.838 that the victim was,
12 at the time of the offense, developmentally disabled, mentally
13 disordered, or a frail elder or vulnerable adult, the minimum sentence
14 shall be either the maximum of the standard sentence range for the
15 offense or twenty-five years, whichever is greater.

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

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

23 (5) When a court sentences a person to the custody of the
24 department under this section, the court shall, in addition to the
25 other terms of the sentence, sentence the offender to community custody
26 under the supervision of the department and the authority of the board
27 for any period of time the person is released from total confinement
28 before the expiration of the maximum sentence.

29 ~~(6)(a)((i) Unless a condition is waived by the court, the~~
30 ~~conditions of community custody shall include those provided for in RCW~~
31 ~~9.94A.700(4). The conditions may also include those provided for in~~
32 ~~RCW 9.94A.700(5). The court may also order the offender to participate~~
33 ~~in rehabilitative programs or otherwise perform affirmative conduct~~
34 ~~reasonably related to the circumstances of the offense, the offender's~~
35 ~~risk of reoffending, or the safety of the community, and the department~~
36 ~~and the board shall enforce such conditions pursuant to RCW 9.94A.713,~~
37 ~~9.95.425, and 9.95.430.~~

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

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

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

18 **Sec. 30.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to
19 read as follows:

20 No person serving a sentence imposed pursuant to this chapter and
21 committed to the custody of the department shall leave the confines of
22 the correctional facility or be released prior to the expiration of the
23 sentence except as follows:

24 (1) Except as otherwise provided for in subsection (2) of this
25 section, the term of the sentence of an offender committed to a
26 correctional facility operated by the department may be reduced by
27 earned release time in accordance with procedures that shall be
28 developed and promulgated by the correctional agency having
29 jurisdiction in which the offender is confined. The earned release
30 time shall be for good behavior and good performance, as determined by
31 the correctional agency having jurisdiction. The correctional agency
32 shall not credit the offender with earned release credits in advance of
33 the offender actually earning the credits. Any program established
34 pursuant to this section shall allow an offender to earn early release
35 credits for presentence incarceration. If an offender is transferred
36 from a county jail to the department, the administrator of a county
37 jail facility shall certify to the department the amount of time spent

1 in custody at the facility and the amount of earned release time. An
2 offender who has been convicted of a felony committed after July 23,
3 1995, that involves any applicable deadly weapon enhancements under RCW
4 9.94A.533 (3) or (4), or both, shall not receive any good time credits
5 or earned release time for that portion of his or her sentence that
6 results from any deadly weapon enhancements.

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

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

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

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

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

24 (I) A sex offense;

25 (II) A violent offense;

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

27 (IV) A felony that is domestic violence as defined in RCW
28 10.99.020;

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

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

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

35 (C) Has no prior conviction for:

36 (I) A sex offense;

37 (II) A violent offense;

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

1 (IV) A felony that is domestic violence as defined in RCW
2 10.99.020;

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

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

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

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

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

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

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

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

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

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

1 (2)(a) ~~((A person convicted of a sex offense or an offense~~
2 ~~categorized as a serious violent offense, assault in the second degree,~~
3 ~~vehicular homicide, vehicular assault, assault of a child in the second~~
4 ~~degree, any crime against persons where it is determined in accordance~~
5 ~~with RCW 9.94A.602 that the offender or an accomplice was armed with a~~
6 ~~deadly weapon at the time of commission, or any felony offense under~~
7 ~~chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become~~
8 ~~eligible, in accordance with a program developed by the department, for~~
9 ~~transfer to community custody status in lieu of earned release time~~
10 ~~pursuant to subsection (1) of this section;~~

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

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

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

35 ~~((e))~~ (d) If the department denies transfer to community custody
36 ~~((status))~~ in lieu of earned early release pursuant to ~~((d))~~ (c) of
37 this subsection, the department may transfer an offender to partial
38 confinement in lieu of earned early release up to three months. The

1 three months in partial confinement is in addition to that portion of
2 the offender's term of confinement that may be served in partial
3 confinement as provided in this section;

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

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

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

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

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

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

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

23 (c) The secretary shall require electronic monitoring for all
24 offenders in extraordinary medical placement unless the electronic
25 monitoring equipment interferes with the function of the offender's
26 medical equipment or results in the loss of funding for the offender's
27 medical care. The secretary shall specify who shall provide the
28 monitoring services and the terms under which the monitoring shall be
29 performed.

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

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

36 (6) No more than the final six months of the offender's term of
37 confinement may be served in partial confinement designed to aid the
38 offender in finding work and reestablishing himself or herself in the

1 community. This is in addition to that period of earned early release
2 time that may be exchanged for partial confinement pursuant to
3 subsection (2)((~~e~~)) (d) of this section;

4 (7) The governor may pardon any offender;

5 (8) The department may release an offender from confinement any
6 time within ten days before a release date calculated under this
7 section; (~~and~~)

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

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

18 **Sec. 31.** RCW 9.94A.760 and 2005 c 263 s 1 are each amended to read
19 as follows:

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

1 (2) If the court determines that the offender, at the time of
2 sentencing, has the means to pay for the cost of incarceration, the
3 court may require the offender to pay for the cost of incarceration at
4 a rate of fifty dollars per day of incarceration, if incarcerated in a
5 prison, or the court may require the offender to pay the actual cost of
6 incarceration per day of incarceration, if incarcerated in a county
7 jail. In no case may the court require the offender to pay more than
8 one hundred dollars per day for the cost of incarceration. Payment of
9 other court-ordered financial obligations, including all legal
10 financial obligations and costs of supervision shall take precedence
11 over the payment of the cost of incarceration ordered by the court.
12 All funds recovered from offenders for the cost of incarceration in the
13 county jail shall be remitted to the county and the costs of
14 incarceration in a prison shall be remitted to the department.

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

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

32 (4) Independent of the department or the county clerk, the party or
33 entity to whom the legal financial obligation is owed shall have the
34 authority to use any other remedies available to the party or entity to
35 collect the legal financial obligation. These remedies include
36 enforcement in the same manner as a judgment in a civil action by the
37 party or entity to whom the legal financial obligation is owed.
38 Restitution collected through civil enforcement must be paid through

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

1 (5) In order to assist the court in setting a monthly sum that the
2 offender must pay during the period of supervision, the offender is
3 required to report to the department for purposes of preparing a
4 recommendation to the court. When reporting, the offender is required,
5 under oath, to respond truthfully and honestly to all questions
6 concerning present, past, and future earning capabilities and the
7 location and nature of all property or financial assets. The offender
8 is further required to bring all documents requested by the department.

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

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

27 (b) Subsequent to any period of supervision, or if the department
28 is not authorized to supervise the offender in the community, the
29 county clerk may make a recommendation to the court that the offender's
30 monthly payment schedule be modified so as to reflect a change in
31 financial circumstances. If the county clerk sets the monthly payment
32 amount, or if the department set the monthly payment amount and the
33 department has subsequently turned the collection of the legal
34 financial obligation over to the county clerk, the clerk may modify the
35 monthly payment amount without the matter being returned to the court.
36 During the period of repayment, the county clerk may require the
37 offender to report to the clerk for the purpose of reviewing the
38 appropriateness of the collection schedule for the legal financial

1 obligation. During this reporting, the offender is required under oath
2 to respond truthfully and honestly to all questions concerning earning
3 capabilities and the location and nature of all property or financial
4 assets. The offender shall bring all documents requested by the county
5 clerk in order to prepare the collection schedule.

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

18 (9) The department or any obligee of the legal financial obligation
19 may seek a mandatory wage assignment for the purposes of obtaining
20 satisfaction for the legal financial obligation pursuant to RCW
21 9.94A.7701. Any party obtaining a wage assignment shall notify the
22 county clerk. The county clerks shall notify the department, or the
23 administrative office of the courts, whichever is providing the monthly
24 billing for the offender.

25 (10) The requirement that the offender pay a monthly sum towards a
26 legal financial obligation constitutes a condition or requirement of a
27 sentence and the offender is subject to the penalties for noncompliance
28 as provided in RCW 9.94A.634 (as recodified by this act), 9.94A.737, or
29 9.94A.740.

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

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

37 (c) The billing shall direct payments, other than outstanding cost
38 of supervision assessments under RCW 9.94A.780, parole assessments

1 under RCW 72.04A.120, and cost of probation assessments under RCW
2 9.95.214, to the county clerk, and cost of supervision, parole, or
3 probation assessments to the department.

4 (d) The county clerk shall provide the administrative office of the
5 courts with notice of payments by such offenders no less frequently
6 than weekly.

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

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

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

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

29 **Sec. 32.** RCW 9.94A.775 and 2003 c 379 s 17 are each amended to
30 read as follows:

31 If an offender with an unsatisfied legal financial obligation is
32 not subject to supervision by the department for a term of (~~community~~
33 ~~placement~~) community custody, (~~or community supervision~~) or has
34 not completed payment of all legal financial obligations included in
35 the sentence at the expiration of his or her term of (~~community~~
36 ~~placement~~) community custody, (~~or community supervision~~) the
37 department shall notify the administrative office of the courts of the

1 termination of the offender's supervision and provide information to
2 the administrative office of the courts to enable the county clerk to
3 monitor payment of the remaining obligations. The county clerk is
4 authorized to monitor payment after such notification. The secretary
5 of corrections and the administrator for the courts shall enter into an
6 interagency agreement to facilitate the electronic transfer of
7 information about offenders, unpaid obligations, and payees to carry
8 out the purposes of this section.

9 **Sec. 33.** RCW 9.94A.780 and 2003 c 379 s 18 are each amended to
10 read as follows:

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

19 (a) The offender has diligently attempted but has been unable to
20 obtain employment that provides the offender sufficient income to make
21 such payments.

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

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

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

29 (e) The offender is responsible for the support of dependents and
30 the payment of the assessment constitutes an undue hardship on the
31 offender.

32 (f) Other extenuating circumstances as determined by the
33 department.

34 (2) The department of corrections shall adopt a rule prescribing
35 the amount of the assessment. The department may, if it finds it
36 appropriate, prescribe a schedule of assessments that shall vary in

1 accordance with the intensity or cost of the supervision. The
2 department may not prescribe any assessment that is less than ten
3 dollars nor more than fifty dollars.

4 (3) All amounts required to be paid under this section shall be
5 collected by the department of corrections and deposited by the
6 department in the dedicated fund established pursuant to RCW 72.11.040.

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

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

23 **Sec. 34.** RCW 9.94A.820 and 2004 c 38 s 10 are each amended to read
24 as follows:

25 (1) Sex offender examinations and treatment ordered as a special
26 condition of (~~community placement or~~) community custody under this
27 chapter shall be conducted only by certified sex offender treatment
28 providers or certified affiliate sex offender treatment providers under
29 chapter 18.155 RCW unless the court or the department finds that: (a)
30 The offender has already moved to another state or plans to move to
31 another state for reasons other than circumventing the certification
32 requirements; (b) the treatment provider is employed by the department;
33 or (c)(i) no certified sex offender treatment providers or certified
34 affiliate sex offender treatment providers are available to provide
35 treatment within a reasonable geographic distance of the offender's
36 home, as determined in rules adopted by the secretary; and (ii) the
37 evaluation and treatment plan comply with the rules adopted by the

1 department of health. A treatment provider selected by an offender
2 under (c) of this subsection, who is not certified by the department of
3 health shall consult with a certified sex offender treatment provider
4 during the offender's period of treatment to ensure compliance with the
5 rules adopted by the department of health. The frequency and content
6 of the consultation shall be based on the recommendation of the
7 certified sex offender treatment provider.

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

13 **PART IV**

14 **TERMINOLOGY CHANGES AND TECHNICAL AMENDMENTS--OTHER CHAPTERS**

15 **Sec. 35.** RCW 4.24.556 and 2004 c 38 s 1 are each amended to read
16 as follows:

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

1 and other established processes that enable courts and supervising
2 entities to assess and address the progress and appropriateness of
3 treatment. This limited liability provision applies only to the
4 conduct of certified sex offender treatment providers, and certified
5 affiliate sex offender treatment providers who have completed at least
6 fifty percent of the required hours under the supervision of a
7 certified sex offender treatment provider, and not the conduct of the
8 state.

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

14 **Sec. 36.** RCW 9.95.017 and 2003 c 218 s 2 are each amended to read
15 as follows:

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

19 The proposed criteria should take into consideration RCW
20 9.95.009(2). Before submission to the governor, the board shall
21 solicit comments and review on their proposed criteria for parole
22 release.

23 (2) Persons committed to the department of corrections and who are
24 under the authority of the board for crimes committed on or after
25 September 1, 2001, are subject to the provisions for duration of
26 confinement, release to community custody, and length of community
27 custody established in RCW 9.94A.712, (~~9.94A.713~~) section 4 of this
28 act, 72.09.335, and 9.95.420 through 9.95.440.

29 **Sec. 37.** RCW 9.95.064 and 2001 2nd sp.s. c 12 s 326 are each
30 amended to read as follows:

31 (1) In order to minimize the trauma to the victim, the court may
32 attach conditions on release of an offender under RCW 9.95.062,
33 convicted of a crime committed before July 1, 1984, regarding the
34 whereabouts of the defendant, contact with the victim, or other
35 conditions.

1 (2) Offenders released under RCW 9.95.420 are subject to crime-
2 related prohibitions and affirmative conditions established by the
3 court, the department of corrections, or the board pursuant to RCW
4 ((9.94A.715 and)) 9.94A.712, ((9.94A.713)) section 4 of this act,
5 72.09.335, and 9.95.420 through 9.95.440.

6 **Sec. 38.** RCW 9.95.110 and 2003 c 218 s 7 are each amended to read
7 as follows:

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

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

19 (2) The board may permit an offender convicted of a crime committed
20 on or after September 1, 2001, and sentenced under RCW 9.94A.712, to
21 leave a state correctional institution on community custody according
22 to the provisions of RCW 9.94A.712, ((9.94A.713)) section 4 of this
23 act, 72.09.335, and 9.95.420 through 9.95.440. The person may be
24 returned to the institution following a violation of his or her
25 conditions of release to community custody pursuant to the hearing
26 provisions of RCW 9.95.435.

27 **Sec. 39.** RCW 9.95.123 and 2001 2nd sp.s. c 12 s 336 are each
28 amended to read as follows:

29 In conducting on-site parole hearings or community custody
30 revocation ((~~hearings or community custody~~)) or violations hearings,
31 the board shall have the authority to administer oaths and
32 affirmations, examine witnesses, receive evidence, and issue subpoenas
33 for the compulsory attendance of witnesses and the production of
34 evidence for presentation at such hearings. Subpoenas issued by the
35 board shall be effective throughout the state. Witnesses in attendance
36 at any on-site parole or community custody revocation hearing shall be

1 paid the same fees and allowances, in the same manner and under the
2 same conditions as provided for witnesses in the courts of the state in
3 accordance with chapter 2.40 RCW. If any person fails or refuses to
4 obey a subpoena issued by the board, or obeys the subpoena but refuses
5 to testify concerning any matter under examination at the hearing, the
6 board may petition the superior court of the county where the hearing
7 is being conducted for enforcement of the subpoena: PROVIDED, That an
8 offer to pay statutory fees and mileage has been made to the witness at
9 the time of the service of the subpoena. The petition shall be
10 accompanied by a copy of the subpoena and proof of service, and shall
11 set forth in what specific manner the subpoena has not been complied
12 with, and shall ask an order of the court to compel the witness to
13 appear and testify before the board. The court, upon such petition,
14 shall enter an order directing the witness to appear before the court
15 at a time and place to be fixed in such order and then and there to
16 show cause why he or she has not responded to the subpoena or has
17 refused to testify. A copy of the order shall be served upon the
18 witness. If it appears to the court that the subpoena was properly
19 issued and that the particular questions which the witness refuses to
20 answer are reasonable and relevant, the court shall enter an order that
21 the witness appear at the time and place fixed in the order and testify
22 or produce the required papers, and on failing to obey the order, the
23 witness shall be dealt with as for contempt of court.

24 **Sec. 40.** RCW 9.95.420 and 2007 c 363 s 2 are each amended to read
25 as follows:

26 (1)(a) Except as provided in (c) of this subsection, before the
27 expiration of the minimum term, as part of the end of sentence review
28 process under RCW 72.09.340, 72.09.345, and where appropriate,
29 72.09.370, the department shall conduct, and the offender shall
30 participate in, an examination of the offender, incorporating
31 methodologies that are recognized by experts in the prediction of
32 sexual dangerousness, and including a prediction of the probability
33 that the offender will engage in sex offenses if released.

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

36 (c) If at the time the sentence is imposed by the superior court
37 the offender's minimum term has expired or will expire within one

1 hundred twenty days of the sentencing hearing, the department shall
2 conduct, within ninety days of the offender's arrival at a department
3 of corrections facility, and the offender shall participate in, an
4 examination of the offender, incorporating methodologies that are
5 recognized by experts in the prediction of sexual dangerousness, and
6 including a prediction of the probability that the offender will engage
7 in sex offenses if released.

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

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

30 (b) If at the time the offender's minimum term has expired or will
31 expire within one hundred twenty days of the offender's arrival at a
32 department of correction's facility, then no later than one hundred
33 twenty days after the offender's arrival at a department of corrections
34 facility, but after the board receives the results from the end of
35 sentence review process and the recommendations for additional or
36 modified conditions of community custody from the department, the board
37 shall conduct a hearing to determine whether it is more likely than not
38 that the offender will engage in sex offenses if released on conditions

1 to be set by the board. The board may consider an offender's failure
2 to participate in an evaluation under subsection (1) of this section in
3 determining whether to release the offender. The board shall order the
4 offender released, under such affirmative and other conditions as the
5 board determines appropriate, unless the board determines by a
6 preponderance of the evidence that, despite such conditions, it is more
7 likely than not that the offender will commit sex offenses if released.
8 If the board does not order the offender released, the board shall
9 establish a new minimum term as provided in RCW 9.95.011.

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

18 **Sec. 41.** RCW 9.95.440 and 2003 c 218 s 6 are each amended to read
19 as follows:

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

29 **Sec. 42.** RCW 46.61.524 and 2006 c 73 s 16 are each amended to read
30 as follows:

31 ~~((1) A person convicted under RCW 46.61.502(6), 46.61.504(6),~~
32 ~~46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community~~
33 ~~custody imposed under RCW 9.94A.545 or community placement imposed~~
34 ~~under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or~~
35 ~~drug dependency agency approved by the department of social and health~~
36 ~~services or a qualified probation department, as defined under RCW~~

1 ~~46.61.516 that has been approved by the department of social and health~~
2 ~~services. This report shall be forwarded to the department of~~
3 ~~licensing. If the person is found to have an alcohol or drug problem~~
4 ~~that requires treatment, the person shall complete treatment in a~~
5 ~~program approved by the department of social and health services under~~
6 ~~chapter 70.96A RCW. If the person is found not to have an alcohol or~~
7 ~~drug problem that requires treatment, he or she shall complete a course~~
8 ~~in an information school approved by the department of social and~~
9 ~~health services under chapter 70.96A RCW. The convicted person shall~~
10 ~~pay all costs for any evaluation, education, or treatment required by~~
11 ~~this section, unless the person is eligible for an existing program~~
12 ~~offered or approved by the department of social and health services.~~
13 ~~Nothing in chapter 348, Laws of 1991 requires the addition of new~~
14 ~~treatment or assessment facilities nor affects the department of social~~
15 ~~and health services use of existing programs and facilities authorized~~
16 ~~by law.~~

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

28 **Sec. 43.** RCW 72.09.015 and 2007 c 483 s 202 are each amended to
29 read as follows:

30 The definitions in this section apply throughout this chapter.

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

36 (2) "Base level of correctional services" means the minimum level

1 of field services the department of corrections is required by statute
2 to provide for the supervision and monitoring of offenders.

3 (3) "Community custody" has the same meaning as that provided in
4 RCW 9.94A.030 and also includes community placement and community
5 supervision as defined in section 48 of this act.

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

10 ((+4)) (5) "County" means a county or combination of counties.

11 ((+5)) (6) "Department" means the department of corrections.

12 ((+6)) (7) "Earned early release" means earned release as
13 authorized by RCW 9.94A.728.

14 ((+7)) (8) "Evidence-based" means a program or practice that has
15 had multiple-site random controlled trials across heterogeneous
16 populations demonstrating that the program or practice is effective in
17 reducing recidivism for the population.

18 ((+8)) (9) "Extended family visit" means an authorized visit
19 between an inmate and a member of his or her immediate family that
20 occurs in a private visiting unit located at the correctional facility
21 where the inmate is confined.

22 ((+9)) (10) "Good conduct" means compliance with department rules
23 and policies.

24 ((+10)) (11) "Good performance" means successful completion of a
25 program required by the department, including an education, work, or
26 other program.

27 ((+11)) (12) "Immediate family" means the inmate's children,
28 stepchildren, grandchildren, great grandchildren, parents, stepparents,
29 grandparents, great grandparents, siblings, and a person legally
30 married to an inmate. "Immediate family" does not include an inmate
31 adopted by another inmate or the immediate family of the adopted or
32 adopting inmate.

33 ((+12)) (13) "Indigent inmate," "indigent," and "indigency" mean
34 an inmate who has less than a ten-dollar balance of disposable income
35 in his or her institutional account on the day a request is made to
36 utilize funds and during the thirty days previous to the request.

37 ((+13)) (14) "Individual reentry plan" means the plan to prepare
38 an offender for release into the community. It should be developed

1 collaboratively between the department and the offender and based on an
2 assessment of the offender using a standardized and comprehensive tool
3 to identify the (~~offenders' [offender's]~~) offender's risks and needs.
4 The individual reentry plan describes actions that should occur to
5 prepare individual offenders for release from prison or jail, specifies
6 the supervision and services they will experience in the community, and
7 describes an offender's eventual discharge to aftercare upon successful
8 completion of supervision. An individual reentry plan is updated
9 throughout the period of an offender's incarceration and supervision to
10 be relevant to the offender's current needs and risks.

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

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

23 (~~(+16)~~) (17) "Promising practice" means a practice that presents,
24 based on preliminary information, potential for becoming a
25 research-based or consensus-based practice.

26 (~~(+17)~~) (18) "Research-based" means a program or practice that has
27 some research demonstrating effectiveness, but that does not yet meet
28 the standard of evidence-based practices.

29 (~~(+18)~~) (19) "Secretary" means the secretary of corrections or his
30 or her designee.

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

37 (~~(+20)~~) (21) "Superintendent" means the superintendent of a

1 correctional facility under the jurisdiction of the Washington state
2 department of corrections, or his or her designee.

3 ~~((+21+))~~ (22) "Unfair competition" means any net competitive
4 advantage that a business may acquire as a result of a correctional
5 industries contract, including labor costs, rent, tax advantages,
6 utility rates (water, sewer, electricity, and disposal), and other
7 overhead costs. To determine net competitive advantage, the
8 correctional industries board shall review and quantify any expenses
9 unique to operating a for-profit business inside a prison.

10 ~~((+22+))~~ (23) "Vocational training" or "vocational education" means
11 "vocational education" as defined in RCW 72.62.020.

12 ~~((+23+))~~ (24) "Washington business" means an in-state manufacturer
13 or service provider subject to chapter 82.04 RCW existing on June 10,
14 2004.

15 ~~((+24+))~~ (25) "Work programs" means all classes of correctional
16 industries jobs authorized under RCW 72.09.100.

17 **Sec. 44.** RCW 72.09.270 and 2007 c 483 s 203 are each amended to
18 read as follows:

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

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

24 (b) Offenders who are subject to the provisions of 8 U.S.C. Sec.
25 1227.

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

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

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

4 (b) The offender's individual reentry plan shall be developed as
5 soon as possible after the initial assessment is conducted, but,
6 whenever possible, no later than sixty days after completion of the
7 assessment, and shall be periodically reviewed and updated as
8 appropriate.

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

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

14 (b) An individualized portfolio for each offender that includes the
15 offender's education achievements, certifications, employment, work
16 experience, skills, and any training received prior to and during
17 incarceration; and

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

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

24 (i) Evaluate the offender's needs and, to the extent possible,
25 connect the offender with existing services and resources that meet
26 those needs; and

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

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

35 (7) The department shall establish mechanisms for sharing
36 information from individual reentry plans to those persons involved
37 with the offender's treatment, programming, and reentry, when deemed

1 appropriate. When feasible, this information shall be shared
2 electronically.

3 (8)(a) In determining the county of discharge for an offender
4 released to community custody (~~(or community placement)~~), the
5 department may not approve a residence location that is not in the
6 offender's county of origin unless it is determined by the department
7 that the offender's return to his or her county of origin would be
8 inappropriate considering any court-ordered condition of the offender's
9 sentence, victim safety concerns, negative influences on the offender
10 in the community, or the location of family or other sponsoring persons
11 or organizations that will support the offender.

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

15 (c) For purposes of this section, the offender's county of origin
16 means the county of the offender's first felony conviction in
17 Washington.

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

20 **Sec. 45.** RCW 72.09.345 and 1997 c 364 s 4 are each amended to read
21 as follows:

22 (1) In addition to any other information required to be released
23 under this chapter, the department is authorized, pursuant to RCW
24 4.24.550, to release relevant information that is necessary to protect
25 the public concerning offenders convicted of sex offenses.

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

36 (3) Notwithstanding any other provision of law, the committee shall
37 have access to all relevant records and information in the possession

1 of public agencies relating to the offenders under review, including
2 police reports; prosecutors' statements of probable cause; presentence
3 investigations and reports; complete judgments and sentences; current
4 classification referrals; criminal history summaries; violation and
5 disciplinary reports; all psychological evaluations and psychiatric
6 hospital reports; sex offender treatment program reports; and juvenile
7 records. Records and information obtained under this subsection shall
8 not be disclosed outside the committee unless otherwise authorized by
9 law.

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

17 (5) The committee shall classify as risk level I those sex
18 offenders whose risk assessments indicate a low risk of reoffense
19 within the community at large. The committee shall classify as risk
20 level II those offenders whose risk assessments indicate a moderate
21 risk of reoffense within the community at large. The committee shall
22 classify as risk level III those offenders whose risk assessments
23 indicate a high risk of reoffense within the community at large.

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

33 **Sec. 46.** RCW 72.09.580 and 1999 c 196 s 12 are each amended to
34 read as follows:

35 Except as specifically prohibited by other law, and for purposes of
36 determining, modifying, or monitoring compliance with conditions of

1 community custody(~~(, community placement, or community supervision as~~
2 ~~authorized under RCW 9.94A.505 and 9.94A.545))~~), the department:

3 (1) Shall have access to all relevant records and information in
4 the possession of public agencies relating to offenders, including
5 police reports, prosecutors' statements of probable cause, complete
6 criminal history information, psychological evaluations and psychiatric
7 hospital reports, sex offender treatment program reports, and juvenile
8 records; and

9 (2) May require periodic reports from providers of treatment or
10 other services required by the court or the department, including
11 progress reports, evaluations and assessments, and reports of
12 violations of conditions imposed by the court or the department.

13 **PART V**

14 **RECODIFICATION OF OBSOLETE PROVISIONS.**

15 NEW SECTION. **Sec. 47.** (1) This chapter codifies sentencing
16 provisions that may be applicable to sentences for crimes committed
17 prior to July 1, 2000.

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

20 NEW SECTION. **Sec. 48.** In addition to the definitions set out in
21 RCW 9.94A.030, the following definitions apply for purposes of this
22 chapter:

23 (1) "Community placement" means that period during which the
24 offender is subject to the conditions of community custody and/or
25 postrelease supervision, which begins either upon completion of the
26 term of confinement (postrelease supervision) or at such time as the
27 offender is transferred to community custody in lieu of earned release.
28 Community placement may consist of entirely community custody, entirely
29 postrelease supervision, or a combination of the two.

30 (2) "Community supervision" means a period of time during which a
31 convicted offender is subject to crime-related prohibitions and other
32 sentence conditions imposed by a court pursuant to this chapter or RCW
33 16.52.200(6) or 46.61.524. Where the court finds that any offender has
34 a chemical dependency that has contributed to his or her offense, the
35 conditions of supervision may, subject to available resources, include

1 treatment. For purposes of the interstate compact for out-of-state
2 supervision of parolees and probationers, RCW 9.95.270, community
3 supervision is the functional equivalent of probation and should be
4 considered the same as probation by other states.

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

7 NEW SECTION. **Sec. 49.** The court may order an offender whose
8 sentence includes community placement or community supervision to
9 undergo a mental status evaluation and to participate in available
10 outpatient mental health treatment, if the court finds that reasonable
11 grounds exist to believe that the offender is a mentally ill person as
12 defined in RCW 71.24.025, and that this condition is likely to have
13 influenced the offense. An order requiring mental status evaluation or
14 treatment must be based on a presentence report and, if applicable,
15 mental status evaluations that have been filed with the court to
16 determine the offender's competency or eligibility for a defense of
17 insanity. The court may order additional evaluations at a later date
18 if deemed appropriate

19 NEW SECTION. **Sec. 50.** A person convicted of a sex offense or an
20 offense categorized as a serious violent offense, assault in the second
21 degree, vehicular homicide, vehicular assault, assault of a child in
22 the second degree, any crime against persons where it is determined in
23 accordance with RCW 9.94A.602 that the offender or an accomplice was
24 armed with a deadly weapon at the time of commission, or any felony
25 offense under chapter 69.50 or 69.52 RCW, committed before July 1,
26 2000, may become eligible, in accordance with a program developed by
27 the department, for transfer to community custody status in lieu of
28 earned release time pursuant to RCW 9.94A.728(1).

29 **PART VI**

30 **EFFECTIVE DATES AND TRANSITIONAL PROVISIONS**

31 NEW SECTION. **Sec. 51.** (1) This act applies to all sentences
32 imposed or reimposed on or after August 1, 2009, for any crime
33 committed on or after the effective date of this section.

1 (2) This act also applies to all sentences imposed or reimposed on
2 or after August 1, 2009, for crimes committed prior to the effective
3 date of this section, to the extent that such application is
4 constitutionally permissible.

5 (3) To the extent that application of this act is not
6 constitutionally permissible with respect to any offender, the sentence
7 for such offender shall be governed by the law as it existed before the
8 effective date of this section, or on such prior date as may be
9 constitutionally required, notwithstanding any amendment or repeal of
10 provisions of such law.

11 (4) If application of any portion of this act is not
12 constitutionally permissible with respect to any offender, the judgment
13 and sentence shall specify the particular sentencing provisions that
14 will not apply to such offender. Whenever practical, the judgment and
15 sentence shall use the terminology set out in this act.

16 (5) The sentencing guidelines commission shall prepare a summary of
17 the circumstances under which application of this act is not
18 constitutionally permissible. The summary should include
19 recommendations of conditions that could be included in judgments and
20 sentences in order to prevent unconstitutional application of the act.
21 This summary shall be incorporated into the *Adult Sentencing Guidelines*
22 *Manual*.

23 (6) This act shall not affect the enforcement of any sentence that
24 was imposed prior to August 1, 2009, unless the offender is resentenced
25 after that date.

26 NEW SECTION. **Sec. 52.** (1) The following sections are recodified
27 as part of a new chapter in Title 9 RCW: RCW 9.94A.628, 9.94A.634,
28 9.94A.700, 9.94A.705, and 9.94A.710.

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

32 (3) Sections 47 through 50 of this act are added to the new chapter
33 created in subsection (1) of this section.

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

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

3 NEW SECTION. **Sec. 53.** The following acts or parts of acts are
4 each repealed:

5 (1) RCW 9.94A.545 (Community custody) and 2006 c 128 s 4, 2003 c
6 379 s 8, 2000 c 28 s 13, 1999 c 196 s 10, 1988 c 143 s 23, & 1984 c 209
7 s 22;

8 (2) RCW 9.94A.713 (Nonpersistent offenders--Conditions) and 2006 c
9 130 s 1 & 2001 2nd sp.s. c 12 s 304;

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

13 (4) RCW 9.94A.720 (Supervision of offenders) and 2003 c 379 s 7,
14 2002 c 175 s 14, & 2000 c 28 s 26;

15 (5) RCW 9.94A.800 (Sex offender treatment in correctional facility)
16 and 2000 c 28 s 34;

17 (6) RCW 9.94A.830 (Legislative finding and intent--Commitment of
18 felony sexual offenders after July 1, 1987) and 1987 c 402 s 2 & 1986
19 c 301 s 1; and

20 (7) RCW 79A.60.070 (Conviction under RCW 79A.60.050 or 79A.60.060--
21 Community supervision or community placement--Conditions) and 2000 c 11
22 s 96 & 1998 c 219 s 3.

23 NEW SECTION. **Sec. 54.** The repealers in section 53 of this act
24 shall not affect the validity of any sentence that was imposed prior to
25 the effective date of this section or the authority of the department
26 of corrections to supervise any offender pursuant to such sentence.

27 NEW SECTION. **Sec. 55.** The code reviser shall report to the 2009
28 legislature on any amendments necessary to accomplish the purposes of
29 this act.

30 NEW SECTION. **Sec. 56.** Part headings used in this act are not any
31 part of the law.

32 NEW SECTION. **Sec. 57.** Section 19 of this act expires July 1,

1 2010.

2 NEW SECTION. **Sec. 58.** This act takes effect August 1, 2009.

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