

CERTIFICATION OF ENROLLMENT

THIRD ENGROSSED SUBSTITUTE SENATE BILL 6151

Chapter 12, Laws of 2001

57th Legislature
2001 Second Special Session

SEX OFFENDERS--CIVIL COMMITMENT

EFFECTIVE DATE: 6/26/01 - Except sections 301 through 363, 501, and 503, which become effective 9/1/01.

Passed by the Senate June 21, 2001
YEAS 26 NAYS 13

BRAD OWEN
President of the Senate

Passed by the House June 21, 2001
YEAS 67 NAYS 14

FRANK CHOPP
**Speaker of the
House of Representatives**

CLYDE BALLARD
**Speaker of the
House of Representatives**

Approved June 26, 2001

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **THIRD ENGROSSED SUBSTITUTE SENATE BILL 6151** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

June 26, 2001 - 11:51 a.m.

**Secretary of State
State of Washington**

THIRD ENGROSSED SUBSTITUTE SENATE BILL 6151

AS AMENDED BY THE HOUSE

Passed Legislature - 2001 2nd Special Session

State of Washington 57th Legislature 2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Long and Hargrove)

READ FIRST TIME 04/06/01.

1 AN ACT Relating to the management of sex offenders in the civil
2 commitment and criminal justice systems; amending RCW 71.09.020,
3 36.70A.103, 36.70A.200, 9.94A.715, 9.94A.060, 9.94A.120, 9.94A.190,
4 9.94A.390, 9.94A.590, 9.94A.670, 9.95.005, 9.95.010, 9.95.011,
5 9.95.017, 9.95.020, 9.95.032, 9.95.052, 9.95.055, 9.95.064, 9.95.070,
6 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121,
7 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140,
8 9.95.190, 9.95.250, 9.95.280, 9.95.290, 9.95.300, 9.95.310, 9.95.320,
9 9.95.340, 9.95.350, 9.95.360, 9.95.370, 9.95.900, 9A.28.020, 9A.36.021,
10 9A.40.030, 9A.44.093, 9A.44.096, 9A.44.100, 9A.76.---, and 72.09.370;
11 reenacting and amending RCW 9.94A.030, 9.94A.320, 18.155.020, and
12 18.155.030; adding new sections to chapter 71.09 RCW; adding new
13 sections to chapter 72.09 RCW; adding new sections to chapter 9.94A
14 RCW; adding new sections to chapter 9.95 RCW; adding a new section to
15 chapter 4.24 RCW; creating new sections; repealing RCW 9.95.0011 and
16 9.95.145; prescribing penalties; providing an effective date; providing
17 expiration dates; and declaring an emergency.

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

PART I
GENERAL PROVISIONS

1
2
3 NEW SECTION. **Sec. 101.** The legislature intends the following
4 omnibus bill to address the management of sex offenders in the civil
5 commitment and criminal justice systems for purposes of public health,
6 safety, and welfare. Provisions address siting of and continued
7 operation of facilities for persons civilly committed under chapter
8 71.09 RCW and sentencing of persons who have committed sex offenses.
9 Other provisions address the need for sex offender treatment providers
10 with specific credentials. Additional provisions address the continued
11 operation or authorized expansion of criminal justice facilities at
12 McNeil Island, because these facilities are impacted by the civil
13 facilities on McNeil Island for persons committed under chapter 71.09
14 RCW.

15 **Sec. 102.** RCW 71.09.020 and 2001 c 286 s 4 are each amended to
16 read as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

19 ~~(1) ("Sexually violent predator" means any person who has been~~
20 ~~convicted of or charged with a crime of sexual violence and who suffers~~
21 ~~from a mental abnormality or personality disorder which makes the~~
22 ~~person likely to engage in predatory acts of sexual violence if not~~
23 ~~confined in a secure facility.~~

24 ~~(2) "Mental abnormality" means a congenital or acquired condition~~
25 ~~affecting the emotional or volitional capacity which predisposes the~~
26 ~~person to the commission of criminal sexual acts in a degree~~
27 ~~constituting such person a menace to the health and safety of others.)~~
28 "Department" means the department of social and health services.

29 (2) "Less restrictive alternative" means court-ordered treatment in
30 a setting less restrictive than total confinement which satisfies the
31 conditions set forth in RCW 71.09.092.

32 (3) "Likely to engage in predatory acts of sexual violence if not
33 confined in a secure facility" means that the person more probably than
34 not will engage in such acts if released unconditionally from detention
35 on the sexually violent predator petition. Such likelihood must be
36 evidenced by a recent overt act if the person is not totally confined
37 at the time the petition is filed under RCW 71.09.030.

1 (4) "Mental abnormality" means a congenital or acquired condition
2 affecting the emotional or volitional capacity which predisposes the
3 person to the commission of criminal sexual acts in a degree
4 constituting such person a menace to the health and safety of others.

5 (5) "Predatory" means acts directed towards: (a) Strangers; (b)
6 individuals with whom a relationship has been established or promoted
7 for the primary purpose of victimization; or (c) persons of casual
8 acquaintance with whom no substantial personal relationship exists.

9 (~~(5)~~) (6) "Recent overt act" means any act or threat that has
10 either caused harm of a sexually violent nature or creates a reasonable
11 apprehension of such harm in the mind of an objective person who knows
12 of the history and mental condition of the person engaging in the act.

13 (~~(6)~~) (7) "Risk potential activity" or "risk potential facility"
14 means an activity or facility that provides a higher incidence of risk
15 to the public from persons conditionally released from the special
16 commitment center. Risk potential activities and facilities include:
17 Public and private schools, school bus stops, licensed day care and
18 licensed preschool facilities, public parks, publicly dedicated trails,
19 sports fields, playgrounds, recreational and community centers,
20 churches, synagogues, temples, mosques, and public libraries.

21 (8) "Secretary" means the secretary of social and health services
22 or the secretary's designee.

23 (9) "Secure facility" means a residential facility for persons
24 civily confined under the provisions of this chapter that includes
25 security measures sufficient to protect the community. Such facilities
26 include total confinement facilities, secure community transition
27 facilities, and any residence used as a court-ordered placement under
28 RCW 71.09.096.

29 (10) "Secure community transition facility" means a residential
30 facility for persons civilly committed and conditionally released to a
31 less restrictive alternative under this chapter. A secure community
32 transition facility has supervision and security, and either provides
33 or ensures the provision of sex offender treatment services. Secure
34 community transition facilities include but are not limited to the
35 facilities established pursuant to section 201 of this act and any
36 community-based facilities established under this chapter and operated
37 by the secretary or under contract with the secretary.

38 (11) "Sexually violent offense" means an act committed on, before,
39 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as

1 rape in the first degree, rape in the second degree by forcible
2 compulsion, rape of a child in the first or second degree, statutory
3 rape in the first or second degree, indecent liberties by forcible
4 compulsion, indecent liberties against a child under age fourteen,
5 incest against a child under age fourteen, or child molestation in the
6 first or second degree; (b) a felony offense in effect at any time
7 prior to July 1, 1990, that is comparable to a sexually violent offense
8 as defined in (a) of this subsection, or any federal or out-of-state
9 conviction for a felony offense that under the laws of this state would
10 be a sexually violent offense as defined in this subsection; (c) an act
11 of murder in the first or second degree, assault in the first or second
12 degree, assault of a child in the first or second degree, kidnapping in
13 the first or second degree, burglary in the first degree, residential
14 burglary, or unlawful imprisonment, which act, either at the time of
15 sentencing for the offense or subsequently during civil commitment
16 proceedings pursuant to this chapter ((71.09-RCW)), has been determined
17 beyond a reasonable doubt to have been sexually motivated, as that term
18 is defined in RCW 9.94A.030; or (d) an act as described in chapter
19 9A.28 RCW, that is an attempt, criminal solicitation, or criminal
20 conspiracy to commit one of the felonies designated in (a), (b), or (c)
21 of this subsection.

22 ~~((7) "Less restrictive alternative" means court-ordered treatment
23 in a setting less restrictive than total confinement which satisfies
24 the conditions set forth in RCW 71.09.092.~~

25 ~~(8) "Secretary" means the secretary of social and health services
26 or his or her designee.))~~

27 (12) "Sexually violent predator" means any person who has been
28 convicted of or charged with a crime of sexual violence and who suffers
29 from a mental abnormality or personality disorder which makes the
30 person likely to engage in predatory acts of sexual violence if not
31 confined in a secure facility.

32 (13) "Total confinement facility" means a facility that provides
33 supervision and sex offender treatment services in a total confinement
34 setting. Total confinement facilities include the special commitment
35 center and any similar facility designated as a secure facility by the
36 secretary.

37 **PART II**
38 **SITING AND OPERATION OF SECURE COMMUNITY TRANSITION FACILITIES**

1 NEW SECTION. **Sec. 201.** A new section is added to chapter 71.09
2 RCW to read as follows:

3 (1)(a) The secretary is authorized to site, construct, occupy, and
4 operate a secure community transition facility on McNeil Island for
5 persons authorized to petition for a less restrictive alternative under
6 RCW 71.09.090(1) and who are conditionally released and a special
7 commitment center on McNeil Island with up to four hundred four beds as
8 a total confinement facility under this chapter, subject to
9 appropriated funding for those purposes. The secure community
10 transition facility shall be authorized for the number of beds needed
11 to ensure compliance with the orders of the superior courts under this
12 chapter and the federal district court for the western district of
13 Washington. The total number of transitional beds shall be limited to
14 fifteen. The residents occupying these beds shall be the only
15 residents eligible for transitional services occurring in Pierce
16 county. In no event shall more than fifteen residents of the secure
17 community transition facility be participating in off-island
18 transitional, educational, or employment activity at the same time in
19 Pierce county. The department shall provide the Pierce county sheriff,
20 or his or her designee, with a list of the fifteen residents so
21 designated, along with their photographs and physical descriptions, and
22 it shall be immediately updated whenever a residential change occurs.
23 The Pierce county sheriff, or his or her designee, shall be provided an
24 opportunity to confirm the residential status of each resident leaving
25 McNeil Island.

26 (b) For purposes of this subsection, "transitional beds" means beds
27 only for residents in halfway house status who are judged by a
28 qualified expert to be suitable to leave the island for treatment,
29 education, and employment.

30 (2)(a) The secretary is authorized to site, either within the
31 secure community transition facility established pursuant to
32 subsection (1) of this section, or within the special commitment
33 center, up to nine pretransitional beds.

34 (b) Residents assigned to pretransitional beds shall not be
35 permitted to leave McNeil Island for education, employment, treatment,
36 or community activities in Pierce county.

37 (c) For purposes of this subsection, "pretransitional beds" means
38 beds for residents whose progress toward a less secure residential
39 environment and transition into more complete community involvement is

1 projected to take substantially longer than a typical resident of the
2 special commitment center.

3 (3) Notwithstanding RCW 36.70A.103 or any other law, this statute
4 preempts and supersedes local plans, development regulations,
5 permitting requirements, inspection requirements, and all other laws as
6 necessary to enable the secretary to site, construct, occupy, and
7 operate a secure community transition facility on McNeil Island and a
8 total confinement facility on McNeil Island.

9 (4) To the greatest extent possible, until June 30, 2003, persons
10 who were not civilly committed from the county in which the secure
11 community transition facility established pursuant to subsection (1) of
12 this section is located may not be conditionally released to a setting
13 in that same county less restrictive than that facility.

14 (5) As of the effective date of this section, the state shall
15 immediately cease any efforts in effect on such date to site secure
16 community transition facilities, other than the facility authorized by
17 subsection (1) of this section, and shall instead site such facilities
18 in accordance with the provisions of this section.

19 (6) The department must:

20 (a) Identify the minimum and maximum number of secure community
21 transition facility beds in addition to the facility established under
22 subsection (1) of this section that may be necessary for the period of
23 May 2004 through May 2007 and provide notice of these numbers to all
24 counties by August 31, 2001;

25 (b) In consultation with the joint select committee established in
26 section 225 of this act, develop and publish policy guidelines for the
27 siting and operation of secure community transition facilities by
28 October 1, 2001; and

29 (c) Provide a status report to the appropriate committees of the
30 legislature by December 1, 2002, on the development of facilities under
31 the incentive program established in section 204 of this act. The
32 report shall include a projection of the anticipated number of secure
33 community transition facility beds that will become operational between
34 May 2004 and May 2007. If it appears that an insufficient number of
35 beds will be operational, the department's report shall recommend a
36 progression of methods to facilitate siting in counties and cities
37 including, if necessary, preemption of local land use planning process
38 and other laws.

1 (7)(a) The total number of secure community transition facility
2 beds that may be required to be sited in a county between the effective
3 date of this section and June 30, 2008, may be no greater than the
4 total number of persons civilly committed from that county, or detained
5 at the special commitment center under a pending civil commitment
6 petition from that county where a finding of probable cause had been
7 made on April 1, 2001. The total number of secure community transition
8 facility beds required to be sited in each county between July 1, 2008,
9 and June 30, 2015, may be no greater than the total number of persons
10 civilly committed from that county or detained at the special
11 commitment center under a pending civil commitment petition from that
12 county where a finding of probable cause had been made as of July 1,
13 2008.

14 (b) Counties and cities that provide secure community transition
15 facility beds above the maximum number that they could be required to
16 site under this subsection are eligible for a bonus grant under the
17 incentive provisions in section 204 of this act. The county where the
18 special commitment center is located shall receive this bonus grant for
19 the number of beds in the facility established in subsection (1) of
20 this section in excess of the maximum number established by this
21 subsection.

22 (c) No secure community transition facilities in addition to the
23 one established in subsection (1) of this section may be required to be
24 sited in the county where the special commitment center is located
25 until after June 30, 2008, provided however, that the county and its
26 cities may elect to site additional secure community transition
27 facilities and shall be eligible under the incentive provisions of
28 section 204 of this act for any additional facilities meeting the
29 requirements of that section.

30 (8) In identifying potential sites within a county for the location
31 of a secure community transition facility, the department shall work
32 with and assist local governments to provide for the equitable
33 distribution of such facilities. In coordinating and deciding upon the
34 siting of secure community transition facilities, great weight shall be
35 given by the county and cities within the county to:

36 (a) The number and location of existing residential facility beds
37 operated by the department of corrections or the mental health division
38 of the department of social and health services in each jurisdiction in
39 the county; and

1 (b) The number of registered sex offenders classified as level II
2 or level III and the number of sex offenders registered as homeless
3 residing in each jurisdiction in the county.

4 (9)(a) "Equitable distribution" means siting or locating secure
5 community transition facilities in a manner that will not cause a
6 disproportionate grouping of similar facilities either in any one
7 county, or in any one jurisdiction or community within a county, as
8 relevant; and

9 (b) "Jurisdiction" means a city, town, or geographic area of a
10 county in which district political or judicial authority may be
11 exercised.

12 NEW SECTION. **Sec. 202.** A new section is added to chapter 72.09
13 RCW to read as follows:

14 The secretary is authorized to operate a correctional facility on
15 McNeil Island for the confinement of sex offenders and other offenders
16 sentenced by the courts, and to make necessary repairs, renovations,
17 additions, and improvements to state property for that purpose,
18 notwithstanding any local comprehensive plans, development regulations,
19 permitting requirements, or any other local laws. Operation of the
20 correctional facility and other state facilities authorized by this
21 section and other law includes access to adequate docking facilities on
22 state-owned tidelands at the town of Steilacoom.

23 **Sec. 203.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended
24 to read as follows:

25 State agencies shall comply with the local comprehensive plans and
26 development regulations and amendments thereto adopted pursuant to this
27 chapter except as otherwise provided in sections 201 (1) through (3)
28 and 202 of this act.

29 The provisions of this act do not affect the state's authority to
30 site any other essential public facility under RCW 36.70A.200 in
31 conformance with local comprehensive plans and development regulations
32 adopted pursuant to chapter 36.70A RCW.

33 NEW SECTION. **Sec. 204.** A new section is added to chapter 71.09
34 RCW to read as follows:

35 (1) Upon receiving the notification required by section 201 of this
36 act, counties must promptly notify the cities within the county of the

1 maximum number of secure community transition facility beds that may be
2 required and the projected number of beds to be needed in that county.

3 (2) The incentive grants provided under this section are subject to
4 the following provisions:

5 (a) Counties and the cities within the county must notify each
6 other of siting plans to promote the establishment and equitable
7 distribution of secure community transition facilities;

8 (b) Development regulations, ordinances, plans, laws, and criteria
9 established for siting must be consistent with statutory requirements
10 and rules applicable to siting and operating secure community
11 transition facilities;

12 (c) The minimum size for any facility is three beds; and

13 (d) The department must approve any sites selected.

14 (3) Any county or city that makes a commitment to initiate the
15 process to site one or more secure community transition facilities by
16 February 1, 2002, shall receive a planning grant as proposed and
17 approved by the department of community, trade, and economic
18 development.

19 (4) Any county or city that has issued all necessary permits by May
20 1, 2003, for one or more secure community transition facilities that
21 comply with the requirements of this section shall receive an incentive
22 grant in the amount of fifty thousand dollars for each bed sited.

23 (5) To encourage the rapid permitting of sites, any county or city
24 that has issued all necessary permits by January 1, 2003, for one or
25 more secure community transition facilities that comply with the
26 requirements of this section shall receive a bonus in the amount of
27 twenty percent of the amount provided under subsection (4) of this
28 section.

29 (6) Any county or city that establishes secure community transition
30 facility beds in excess of the maximum number that could be required to
31 be sited in that county shall receive a bonus payment of one hundred
32 thousand dollars for each bed established in excess of the maximum
33 requirement.

34 (7) No payment shall be made under subsection (4), (5), or (6) of
35 this section until all necessary permits have been issued.

36 **Sec. 205.** RCW 36.70A.200 and 1998 c 171 s 3 are each amended to
37 read as follows:

1 (1) The comprehensive plan of each county and city that is planning
2 under (~~this chapter~~) RCW 36.70A.040 shall include a process for
3 identifying and siting essential public facilities. Essential public
4 facilities include those facilities that are typically difficult to
5 site, such as airports, state education facilities and state or
6 regional transportation facilities as defined in RCW 47.06.140, state
7 and local correctional facilities, solid waste handling facilities, and
8 in-patient facilities including substance abuse facilities, mental
9 health facilities, (~~and~~) group homes, and secure community transition
10 facilities as defined in RCW 71.09.020.

11 (2) Each county and city planning under RCW 36.70A.040 shall, not
12 later than the deadline specified in RCW 36.70A.130, establish a
13 process, or amend its existing process, for identifying and siting
14 essential public facilities, and adopt or amend its development
15 regulations as necessary to provide for the siting of secure community
16 transition facilities consistent with statutory requirements applicable
17 to these facilities.

18 (3) Any city or county not planning under RCW 36.70A.040 shall, not
19 later than the deadline specified in RCW 36.70A.130, establish a
20 process for siting secure community transition facilities and adopt or
21 amend its development regulations as necessary to provide for the
22 siting of such facilities consistent with statutory requirements
23 applicable to these facilities.

24 (4) The office of financial management shall maintain a list of
25 those essential state public facilities that are required or likely to
26 be built within the next six years. The office of financial management
27 may at any time add facilities to the list.

28 (5) No local comprehensive plan or development regulation may
29 preclude the siting of essential public facilities.

30 NEW SECTION. Sec. 206. A new section is added to chapter 71.09
31 RCW to read as follows:

32 The provisions of this act shall not be construed to limit siting
33 of secure community transition facilities to residential neighborhoods.

34 NEW SECTION. Sec. 207. Beginning on the effective date of this
35 section, the state shall immediately enter into negotiations for a
36 mitigation agreement with: (1) The county in which the secure
37 community transition facility established pursuant to section 201(1) of

1 this act is located; (2) each community in which the persons from that
2 facility will reside or regularly spend time in pursuant to court
3 orders for regular work or education, or to receive social services, or
4 will regularly be transported through to reach those other communities;
5 and (3) educational institutions in the communities identified in
6 subsections (1) and (2) of this section. The negotiations must be
7 toward an agreement that will provide state funding, as appropriated
8 for this purpose, in an amount adequate to mitigate anticipated or
9 realized increased costs resulting from any increased risks to public
10 safety brought about by the presence of sexually violent predators in
11 those communities due to the siting of the secure community transition
12 facility established pursuant to section 201(1) of this act. This
13 section expires June 30, 2003.

14 NEW SECTION. **Sec. 208.** A new section is added to chapter 71.09
15 RCW to read as follows:

16 (1) The department shall make reasonable efforts to distribute the
17 impact of the employment, education, and social services needs of the
18 residents of the secure community transition facility established
19 pursuant to section 201(1) of this act among the adjoining counties and
20 not to concentrate the residents' use of resources in any one
21 community.

22 (2) The department shall develop policies to ensure that, to the
23 extent possible, placement of persons eligible in the future for
24 conditional release to a setting less restrictive than the facility
25 established pursuant to section 201(1) of this act will be equitably
26 distributed among the counties and within jurisdictions in the county.

27 NEW SECTION. **Sec. 209.** The department of social and health
28 services shall, by August 1, 2001, and prior to operating the secure
29 community transition facility established pursuant to section 201(1) of
30 this act, hold at least three public hearings in the affected
31 communities within the county where the facility is located.

32 The purpose of the public hearings is to seek input from county and
33 city officials, local law enforcement officials, and the public
34 regarding operations and security measures needed to adequately protect
35 the community from any increased risk to public safety brought about by
36 the presence of persons conditionally released from the special
37 commitment center in these communities due to the siting of the

1 facility. The department shall ensure that persons have a full
2 opportunity to speak to the issues to be addressed during each hearing.

3 NEW SECTION. **Sec. 210.** The secretary of social and health
4 services shall coordinate with the secretary of corrections and the
5 appropriate local or state law enforcement agency or agencies to
6 establish a twenty-four-hour law enforcement presence on McNeil Island
7 before any person is admitted to the secure community transition
8 facility established under section 201(1) of this act. Law enforcement
9 shall coordinate with the emergency response team for McNeil Island to
10 provide planning and coordination in the event of an escape from the
11 special commitment center or the secure community transition facility.

12 In addition, or if no law enforcement agency will provide a law
13 enforcement presence on the island, not more than ten correctional
14 employees, as selected by the secretary of corrections, who are members
15 of the emergency response team for the McNeil Island correctional
16 facility, shall have the powers and duties of a general authority peace
17 officer while acting in a law enforcement capacity. If there is no law
18 enforcement agency to provide the law enforcement presence, those
19 correctional employees selected as peace officers shall provide a
20 twenty-four-hour presence and shall not have correctional duties at the
21 correctional facility in addition to the emergency response team while
22 acting in a law enforcement capacity.

23 NEW SECTION. **Sec. 211.** A new section is added to chapter 71.09
24 RCW to read as follows:

25 (1) By August 1, 2001, the department must provide the appropriate
26 committees of the legislature with a transportation plan to address the
27 issues of coordinating the movement of residents of the secure
28 community transition facility established pursuant to section 201(1) of
29 this act between McNeil Island and the mainland with the movement of
30 others who must use the same docks or equipment within the funds
31 appropriated for this purpose.

32 (2) If the department does not provide a separate vessel for
33 transporting residents of the secure community transition facility
34 established in section 201(1) of this act between McNeil Island and the
35 mainland, the plan shall include at least the following components:

1 (a) The residents shall be separated from minors and vulnerable
2 adults, except vulnerable adults who have been found to be sexually
3 violent predators.

4 (b) The residents shall not be transported during times when
5 children are normally coming to and from the mainland for school.

6 (3) The department shall designate a separate waiting area at the
7 points of debarkation, and residents shall be required to remain in
8 this area while awaiting transportation.

9 (4) The department shall provide law enforcement agencies in the
10 counties and cities in which residents of the secure community
11 transition facility established pursuant to section 201(1) of this act
12 regularly participate in employment, education, or social services, or
13 through which these persons are regularly transported, with a copy of
14 the court's order of conditional release with respect to these persons.

15 NEW SECTION. **Sec. 212.** A new section is added to chapter 71.09
16 RCW to read as follows:

17 When considering whether a person civilly committed under this
18 chapter and conditionally released to a secure community transition
19 facility is appropriate for release to a placement that is less
20 restrictive than that facility, the court shall comply with the
21 procedures set forth in RCW 71.09.090 through 71.09.096. In addition,
22 the court shall consider whether the person has progressed in treatment
23 to the point that a significant change in the person's routine,
24 including but not limited to a change of employment, education,
25 residence, or sex offender treatment provider will not cause the person
26 to regress to the point that the person presents a greater risk to the
27 community than can reasonably be addressed in the proposed placement.

28 NEW SECTION. **Sec. 213.** A new section is added to chapter 71.09
29 RCW to read as follows:

30 (1) Except with respect to the secure community transition facility
31 established pursuant to section 201 of this act, the secretary shall
32 develop policy guidelines that balance the average response time of
33 emergency services to the general area of a proposed secure community
34 transition facility against the proximity of the proposed site to risk
35 potential activities and facilities in existence at the time the site
36 is listed for consideration.

1 (2) In balancing the competing criteria of proximity and response
2 time the policy guidelines shall endeavor to achieve an average law
3 enforcement response time not greater than five minutes and in no case
4 shall the policy guidelines permit location of a facility adjacent to,
5 immediately across a street or parking lot from, or within the line of
6 sight of a risk potential activity or facility in existence at the time
7 a site is listed for consideration. "Within the line of sight" means
8 that it is possible to reasonably visually distinguish and recognize
9 individuals.

10 (3) The policy guidelines shall require that great weight be given
11 to sites that are the farthest removed from any risk potential
12 activity.

13 (4) The policy guidelines shall specify how distance from the
14 location is measured and any variations in the measurement based on the
15 size of the property within which a proposed facility is to be located.

16 (5) The policy guidelines shall establish a method to analyze and
17 compare the criteria for each site in terms of public safety and
18 security, site characteristics, and program components. In making a
19 decision regarding a site following the analysis and comparison, the
20 secretary shall give priority to public safety and security
21 considerations. The analysis and comparison of the criteria are to be
22 documented and made available at the public hearings prescribed in
23 section 219 of this act.

24 (6) Policy guidelines adopted by the secretary under this section
25 shall be considered by counties and cities when providing for the
26 siting of secure community transition facilities as required under RCW
27 36.70A.200.

28 NEW SECTION. **Sec. 214.** A new section is added to chapter 71.09
29 RCW to read as follows:

30 The secretary shall establish policy guidelines for the siting of
31 secure community transition facilities, other than the secure community
32 transition facility established pursuant to section 201 of this act,
33 which shall include at least the following minimum requirements:

34 (1) The following criteria must be considered prior to any real
35 property being listed for consideration for the location of or use as
36 a secure community transition facility:

37 (a) The proximity and response time criteria established under
38 section 213 of this act;

1 (b) The site or building is available for lease for the anticipated
2 use period or for purchase;

3 (c) Security monitoring services and appropriate back-up systems
4 are available and reliable;

5 (d) Appropriate mental health and sex offender treatment providers
6 must be available within a reasonable commute; and

7 (e) Appropriate permitting for a secure community transition
8 facility must be possible under the zoning code of the local
9 jurisdiction.

10 (2) For sites which meet the criteria of subsection (1) of this
11 section, the department shall analyze and compare the criteria in
12 subsections (3) through (5) of this section using the method
13 established in section 213 of this act.

14 (3) Public safety and security criteria shall include at least the
15 following:

16 (a) Whether limited visibility between the facility and adjacent
17 properties can be achieved prior to placement of any person;

18 (b) The distance from, and number of, risk potential activities and
19 facilities, as measured using the rules adopted under section 213 of
20 this act;

21 (c) The existence of or ability to establish barriers between the
22 site and the risk potential facilities and activities;

23 (d) Suitability of the buildings to be used for the secure
24 community transition facility with regard to existing or feasibly
25 modified features; and

26 (e) The availability of electronic monitoring that allows a
27 resident's location to be determined with specificity.

28 (4) Site characteristics criteria shall include at least the
29 following:

30 (a) Reasonableness of rental, lease, or sale terms including length
31 and renewability of a lease or rental agreement;

32 (b) Traffic and access patterns associated with the real property;

33 (c) Feasibility of complying with zoning requirements within the
34 necessary time frame; and

35 (d) A contractor or contractors are available to install, monitor,
36 and repair the necessary security and alarm systems.

37 (5) Program characteristics criteria shall include at least the
38 following:

1 (a) Reasonable proximity to available medical, mental health, sex
2 offender, and chemical dependency treatment providers and facilities;

3 (b) Suitability of the location for programming, staffing, and
4 support considerations;

5 (c) Proximity to employment, educational, vocational, and other
6 treatment plan components.

7 (6) For purposes of this section "available" or "availability" of
8 qualified treatment providers includes provider qualifications and
9 willingness to provide services, average commute time, and cost of
10 services.

11 NEW SECTION. **Sec. 215.** A new section is added to chapter 71.09
12 RCW to read as follows:

13 (1) Security systems for all secure community transition facilities
14 shall meet the following minimum qualifications:

15 (a) The security panel must be a commercial grade panel with
16 tamper-proof switches and a key-lock to prevent unauthorized access.

17 (b) There must be an emergency electrical supply system which shall
18 include a battery back-up system and a generator.

19 (c) The system must include personal panic devices for all staff.

20 (d) The security system must be capable of being monitored and
21 signaled either by telephone through either a land or cellular
22 telephone system or by private radio network in the event of a total
23 dial-tone failure or through equivalent technologies.

24 (e) The department shall issue photo-identification badges to all
25 staff which must be worn at all times.

26 (2) Security systems for the secure community transition facility
27 established pursuant to section 201(1) of this act shall also include
28 a fence and provide the maximum protection appropriate in a civil
29 facility for persons in less than total confinement.

30 NEW SECTION. **Sec. 216.** A new section is added to chapter 71.09
31 RCW to read as follows:

32 (1) Secure community transition facilities shall meet the following
33 minimum staffing requirements:

34 (a) At any time the census of a facility is six or fewer residents,
35 the facility shall maintain a minimum staffing ratio of one staff per
36 resident during normal waking hours and two awake staff per three
37 residents during normal sleeping hours.

1 (b) At any time the census of a facility is six or fewer residents,
2 all staff shall be classified as residential rehabilitation counselor
3 II or have a classification that indicates a higher level of skill,
4 experience, and training.

5 (c) Before being assigned to a facility, all staff shall have
6 training in sex offender issues, self-defense, and crisis de-escalation
7 skills in addition to departmental orientation and, as appropriate,
8 management training. All staff with resident treatment or care duties
9 must participate in ongoing in-service training.

10 (d) All staff must pass a departmental background check and the
11 check is not subject to the limitations in chapter 9.96A RCW. A person
12 who has been convicted of a felony, or any sex offense, may not be
13 employed at the secure community transition facility or be approved as
14 an escort for a resident of the facility.

15 (2) With respect to the facility established pursuant to section
16 201(1) of this act, the department shall, no later than December 1,
17 2001, provide a staffing plan to the appropriate committees of the
18 legislature that will cover the growth of that facility to its full
19 capacity.

20 NEW SECTION. **Sec. 217.** A new section is added to chapter 71.09
21 RCW to read as follows:

22 (1) Unless otherwise ordered by the court:

23 (a) Residents of a secure community transition facility shall wear
24 electronic monitoring devices at all times. To the extent that
25 electronic monitoring devices that employ global positioning system
26 technology are available and funds for this purpose are appropriated by
27 the legislature, the department shall use these devices.

28 (b) At least one staff member, or other court-authorized and
29 department-approved person must escort each resident when the resident
30 leaves the secure community transition facility for appointments,
31 employment, or other approved activities. Escorting persons must
32 supervise the resident closely and maintain close proximity to the
33 resident. The escort must immediately notify the department of any
34 serious violation, as defined in section 221 of this act, by the
35 resident and must immediately notify law enforcement of any violation
36 of law by the resident.

37 (2) Staff members of the special commitment center and any other
38 total confinement facility and any secure community transition facility

1 must be trained in self-defense and appropriate crisis responses
2 including incident de-escalation. Prior to escorting a person outside
3 of a facility, staff members must also have training in the offense
4 pattern of the offender they are escorting. The escort may not be a
5 relative of the resident.

6 (3) Any escort must carry a cellular telephone or a similar device
7 at all times when escorting a resident of a secure community transition
8 facility.

9 (4) The department shall require training in offender pattern,
10 self-defense, and incident response for all court-authorized escorts
11 who are not employed by the department or the department of
12 corrections.

13 NEW SECTION. **Sec. 218.** A new section is added to chapter 71.09
14 RCW to read as follows:

15 Notwithstanding the provisions of section 217 of this act,
16 residents of the secure community transition facility established
17 pursuant to section 201(1) of this act must be escorted at any time the
18 resident leaves the facility.

19 NEW SECTION. **Sec. 219.** A new section is added to chapter 71.09
20 RCW to read as follows:

21 (1) Whenever the department operates, or the secretary enters into
22 a contract to operate, a secure community transition facility except
23 the secure community transition facility established pursuant to
24 section 201(1) of this act, the secure community transition facility
25 may be operated only after the public notification and opportunities
26 for review and comment as required by this section.

27 (2) The secretary shall establish a process for early and
28 continuous public participation in establishing or relocating secure
29 community transition facilities. The process shall include, at a
30 minimum, public meetings in the local communities affected, as well as
31 opportunities for written and oral comments, in the following manner:

32 (a) If there are more than three sites initially selected as
33 potential locations and the selection process by the secretary or a
34 service provider reduces the number of possible sites for a secure
35 community transition facility to no fewer than three, the secretary or
36 the chief operating officer of the service provider shall notify the
37 public of the possible siting and hold at least two public hearings in

1 each community where a secure community transition facility may be
2 sited.

3 (b) When the secretary or service provider has determined the
4 secure community transition facility's location, the secretary or the
5 chief operating officer of the service provider shall hold at least one
6 additional public hearing in the community where the secure community
7 transition facility will be sited.

8 (c) When the secretary has entered negotiations with a service
9 provider and only one site is under consideration, then at least two
10 public hearings shall be held.

11 (d) To provide adequate notice of, and opportunity for interested
12 persons to comment on, a proposed location, the secretary or the chief
13 operating officer of the service provider shall provide at least
14 fourteen days' advance notice of the meeting to all newspapers of
15 general circulation in the community, all radio and television stations
16 generally available to persons in the community, any school district in
17 which the secure community transition facility would be sited or whose
18 boundary is within two miles of a proposed secure community transition
19 facility, any library district in which the secure community transition
20 facility would be sited, local business or fraternal organizations that
21 request notification from the secretary or agency, and any person or
22 property owner within a one-half mile radius of the proposed secure
23 community transition facility. Before initiating this process, the
24 department of social and health services shall contact local government
25 planning agencies in the communities containing the proposed secure
26 community transition facility. The department of social and health
27 services shall coordinate with local government agencies to ensure that
28 opportunities are provided for effective citizen input and to reduce
29 the duplication of notice and meetings.

30 (3) If local government land use regulations require that a special
31 use or conditional use permit be submitted and approved before a secure
32 community transition facility can be sited, and the process for
33 obtaining such a permit includes public notice and hearing requirements
34 similar to those required under this section, the requirements of this
35 section shall not apply to the extent they would duplicate requirements
36 under the local land use regulations.

37 (4) This section applies only to secure community transition
38 facilities sited after the effective date of this section.

1 NEW SECTION. **Sec. 220.** A new section is added to chapter 71.09
2 RCW to read as follows:

3 (1) The secretary shall develop a process with local governments
4 that allows each community in which a secure community transition
5 facility is located to establish operational advisory boards of at
6 least seven persons for the secure community transition facilities.
7 The department may conduct community awareness activities to publicize
8 this opportunity. The operational advisory boards developed under this
9 section shall be implemented following the decision to locate a secure
10 community transition facility in a particular community.

11 (2) The operational advisory boards may review and make
12 recommendations regarding the security and operations of the secure
13 community transition facility and conditions or modifications necessary
14 with relation to any person who the secretary proposes to place in the
15 secure community transition facility.

16 (3) The facility management must consider the recommendations of
17 the community advisory boards. Where the facility management does not
18 implement an operational advisory board recommendation, the management
19 must provide a written response to the operational advisory board
20 stating its reasons for its decision not to implement the
21 recommendation.

22 (4) The operational advisory boards, their members, and any agency
23 represented by a member shall not be liable in any cause of action as
24 a result of its recommendations unless the advisory board acts with
25 gross negligence or bad faith in making a recommendation.

26 NEW SECTION. **Sec. 221.** A new section is added to chapter 71.09
27 RCW to read as follows:

28 (1) The secretary shall adopt a violation reporting policy for
29 persons conditionally released to less restrictive alternative
30 placements. The policy shall require written documentation by the
31 department and service providers of all violations of conditions set by
32 the department, the department of corrections, or the court and
33 establish criteria for returning a violator to the special commitment
34 center or a secure community transition facility with a higher degree
35 of security. Any conditionally released person who commits a serious
36 violation of conditions shall be returned to the special commitment
37 center, unless arrested by a law enforcement officer, and the court
38 shall be notified immediately and shall initiate proceedings under RCW

1 71.09.098 to revoke or modify the less restrictive alternative
2 placement. Nothing in this section limits the authority of the
3 department to return a person to the special commitment center based on
4 a violation that is not a serious violation as defined in this section.
5 For the purposes of this section, "serious violation" includes but is
6 not limited to:

7 (a) The commission of any criminal offense;

8 (b) Any unlawful use or possession of a controlled substance; and

9 (c) Any violation of conditions targeted to address the person's
10 documented pattern of offense that increases the risk to public safety.

11 (2) When a person is conditionally released to a less restrictive
12 alternative under this chapter and is under the supervision of the
13 department of corrections, notice of any violation of the person's
14 conditions of release must also be made to the department of
15 corrections.

16 (3) Whenever the secretary contracts with a service provider to
17 operate a secure community transition facility, the contract shall
18 include a requirement that the service provider must report to the
19 department of social and health services any known violation of
20 conditions committed by any resident of the secure community transition
21 facility.

22 (4) The secretary shall document in writing all violations,
23 penalties, actions by the department of social and health services to
24 remove persons from a secure community transition facility, and
25 contract terminations. The secretary shall compile this information
26 and submit it to the appropriate committees of the legislature on an
27 annual basis. The secretary shall give great weight to a service
28 provider's record of violations, penalties, actions by the department
29 of social and health services or the department of corrections to
30 remove persons from a secure community transition facility, and
31 contract terminations in determining whether to execute, renew, or
32 renegotiate a contract with a service provider.

33 NEW SECTION. **Sec. 222.** A new section is added to chapter 71.09
34 RCW to read as follows:

35 Whenever the secretary contracts with a provider to operate a
36 secure community transition facility, the secretary shall include in
37 the contract provisions establishing intermediate contract enforcement
38 remedies.

1 NEW SECTION. **Sec. 223.** A new section is added to chapter 71.09
2 RCW to read as follows:

3 A conditional release from a total confinement facility to a less
4 restrictive alternative is a release that subjects the conditionally
5 released person to the registration requirements specified in RCW
6 9A.44.130 and to community notification under RCW 4.24.550.

7 When a person is conditionally released to the secure community
8 transition facility established pursuant to section 201(1) of this act,
9 the sheriff must provide each household on McNeil Island with the
10 community notification information provided for under RCW 4.24.550.

11 NEW SECTION. **Sec. 224.** A new section is added to chapter 71.09
12 RCW to read as follows:

13 An employer who hires a person who has been conditionally released
14 to a less restrictive alternative must notify all other employees of
15 the conditionally released person's status. Notification for
16 conditionally released persons who enroll in an institution of higher
17 education shall be made pursuant to the provisions of RCW 9A.44.130
18 related to sex offenders enrolled in institutions of higher education
19 and RCW 4.24.550. This section applies only to conditionally released
20 persons whose court approved treatment plan includes permission or a
21 requirement for the person to obtain education or employment and to
22 employment positions or educational programs that meet the requirements
23 of the court-approved treatment plan.

24 NEW SECTION. **Sec. 225.** (1) A joint select committee on the
25 equitable distribution of secure community transition facilities is
26 established.

27 (2) The joint select committee shall consist of the following
28 persons:

29 (a) One member from each of the two largest caucuses of the senate,
30 appointed by the president of the senate, at least one member being a
31 member of the senate human services and corrections committee;

32 (b) One member from each of the two largest caucuses of the house
33 of representatives, appointed by the co-speakers of the house of
34 representatives, at least one member being a member of the house
35 criminal justice and corrections committee;

36 (c) One member from the department of social and health services;

37 (d) One member from the Washington state association of counties;

1 (e) One member from the association of Washington cities;

2 (f) One member representing crime victims, appointed jointly by the
3 president of the senate and the co-speakers of the house of
4 representatives;

5 (g) One person selected by the governor; and

6 (h) Two persons representing local law enforcement, one
7 representing cities and one representing counties.

8 (3) The chair of the joint select committee shall be a legislative
9 member chosen by the joint select committee members.

10 (4) The joint select committee shall review and make
11 recommendations regarding:

12 (a) Any necessary specifications or revisions to ensure equitable
13 distribution of secure community transition facilities throughout the
14 state;

15 (b) Any necessary revisions to the provisions related to siting and
16 operating secure community transition facilities in sections 213
17 through 218 and 222 of this act; and

18 (c) Except with respect to the facility established pursuant to
19 section 201(1) of this act, a method for determining possible
20 mitigation measures for compensating communities for any increased
21 risks to public safety brought about by the siting of a secure
22 community transition facility in a community.

23 (5) The joint select committee shall present a report of its
24 findings and recommendations to the governor and the appropriate
25 committees of the legislature, including any proposed legislation, not
26 later than November 15, 2001.

27 (6) The joint select committee may, where feasible, consult with
28 individuals from the public and private sector in carrying out its
29 duties under this section.

30 (7) Nonlegislative members of the joint select committee shall
31 serve without compensation, but shall be reimbursed for travel expenses
32 as provided in RCW 43.03.050 and 43.03.060. Legislative members of the
33 joint select committee shall be reimbursed for travel expenses as
34 provided in RCW 44.04.120.

35 (8) Staff of senate committee services and the office of program
36 research of the house of representatives shall provide support to the
37 joint select committee.

38 (9) This section expires March 1, 2002.

1 custody for crimes committed on or after July 1, 2000, the department
2 shall assess the offender's risk of reoffense and may establish and
3 modify conditions of community custody, in addition to those imposed by
4 the court, based upon the risk to community safety.

5 ~~((+5))~~ (6) "Community custody range" means the minimum and maximum
6 period of community custody included as part of a sentence under RCW
7 9.94A.715, as established by the commission or the legislature under
8 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

16 ~~((+7))~~ (8) "Community service" means compulsory service, without
17 compensation, performed for the benefit of the community by the
18 offender.

19 ~~((+8))~~ (9) "Community supervision" means a period of time during
20 which a convicted offender is subject to crime-related prohibitions and
21 other sentence conditions imposed by a court pursuant to this chapter
22 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any
23 offender has a chemical dependency that has contributed to his or her
24 offense, the conditions of supervision may, subject to available
25 resources, include treatment. For purposes of the interstate compact
26 for out-of-state supervision of parolees and probationers, RCW
27 9.95.270, community supervision is the functional equivalent of
28 probation and should be considered the same as probation by other
29 states.

30 ~~((+9))~~ (10) "Confinement" means total or partial confinement.

31 ~~((+10))~~ (11) "Conviction" means an adjudication of guilt pursuant
32 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
33 guilty, and acceptance of a plea of guilty.

34 ~~((+11))~~ (12) "Crime-related prohibition" means an order of a court
35 prohibiting conduct that directly relates to the circumstances of the
36 crime for which the offender has been convicted, and shall not be
37 construed to mean orders directing an offender affirmatively to
38 participate in rehabilitative programs or to otherwise perform

1 affirmative conduct. However, affirmative acts necessary to monitor
2 compliance with the order of a court may be required by the department.

3 ~~((12))~~ (13) "Criminal history" means the list of a defendant's
4 prior convictions and juvenile adjudications, whether in this state, in
5 federal court, or elsewhere. The history shall include, where known,
6 for each conviction (a) whether the defendant has been placed on
7 probation and the length and terms thereof; and (b) whether the
8 defendant has been incarcerated and the length of incarceration.

9 ~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing
10 court that equals the difference between the offender's net daily
11 income and the reasonable obligations that the offender has for the
12 support of the offender and any dependents.

13 ~~((14))~~ (15) "Day reporting" means a program of enhanced
14 supervision designed to monitor the offender's daily activities and
15 compliance with sentence conditions, and in which the offender is
16 required to report daily to a specific location designated by the
17 department or the sentencing court.

18 ~~((15))~~ (16) "Department" means the department of corrections.

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

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

1 (~~(18)~~) (19) "Drug offender sentencing alternative" is a
2 sentencing option available to persons convicted of a felony offense
3 other than a violent offense or a sex offense and who are eligible for
4 the option under RCW 9.94A.660.

5 (~~(19)~~) (20) "Drug offense" means:

6 (a) Any felony violation of chapter 69.50 RCW except possession of
7 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
8 controlled substance (RCW 69.50.403);

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

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

15 (~~(20)~~) (21) "Earned release" means earned release from
16 confinement as provided in RCW 9.94A.150.

17 (~~(21)~~) (22) "Escape" means:

18 (a) (~~(Escape by a)~~) Sexually violent predator escape (RCW 9A.76.---
19 (section 1, chapter 287, Laws of 2001, as amended by section 360,
20 chapter ... (this act), Laws of 2001 2nd sp. sess.)), escape in the
21 first degree (RCW 9A.76.110), escape in the second degree (RCW
22 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
23 willful failure to return from work release (RCW 72.65.070), or willful
24 failure to be available for supervision by the department while in
25 community custody (RCW 72.09.310); or

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

29 (~~(22)~~) (23) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
31 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
32 and-run injury-accident (RCW 46.52.020(4)); or

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

36 (~~(23)~~) (24) "Fine" means a specific sum of money ordered by the
37 sentencing court to be paid by the offender to the court over a
38 specific period of time.

1 (~~(24)~~) (25) "First-time offender" means any person who has no
2 prior convictions for a felony and is eligible for the first-time
3 offender waiver under RCW 9.94A.650.

4 (~~(25)~~) (26) "Home detention" means a program of partial
5 confinement available to offenders wherein the offender is confined in
6 a private residence subject to electronic surveillance.

7 (~~(26)~~) (27) "Legal financial obligation" means a sum of money
8 that is ordered by a superior court of the state of Washington for
9 legal financial obligations which may include restitution to the
10 victim, statutorily imposed crime victims' compensation fees as
11 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
12 drug funds, court-appointed attorneys' fees, and costs of defense,
13 fines, and any other financial obligation that is assessed to the
14 offender as a result of a felony conviction. Upon conviction for
15 vehicular assault while under the influence of intoxicating liquor or
16 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
17 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
18 legal financial obligations may also include payment to a public agency
19 of the expense of an emergency response to the incident resulting in
20 the conviction, subject to RCW 38.52.430.

21 (~~(27)~~) (28) "Most serious offense" means any of the following
22 felonies or a felony attempt to commit any of the following felonies:

23 (a) Any felony defined under any law as a class A felony or
24 criminal solicitation of or criminal conspiracy to commit a class A
25 felony;

26 (b) Assault in the second degree;

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

28 (d) Child molestation in the second degree;

29 (e) Controlled substance homicide;

30 (f) Extortion in the first degree;

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

32 (h) Indecent liberties;

33 (i) Kidnapping in the second degree;

34 (j) Leading organized crime;

35 (k) Manslaughter in the first degree;

36 (l) Manslaughter in the second degree;

37 (m) Promoting prostitution in the first degree;

38 (n) Rape in the third degree;

39 (o) Robbery in the second degree;

1 (p) Sexual exploitation;

2 (q) Vehicular assault;

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

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

9 (t) Any other felony with a deadly weapon verdict under RCW
10 9.94A.125;

11 (u) Any felony offense in effect at any time prior to December 2,
12 1993, that is comparable to a most serious offense under this
13 subsection, or any federal or out-of-state conviction for an offense
14 that under the laws of this state would be a felony classified as a
15 most serious offense under this subsection;

16 (v)(i) A prior conviction for indecent liberties under RCW
17 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
18 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
19 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
20 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

21 (ii) A prior conviction for indecent liberties under RCW
22 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
23 if: (A) The crime was committed against a child under the age of
24 fourteen; or (B) the relationship between the victim and perpetrator is
25 included in the definition of indecent liberties under RCW
26 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
27 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
28 through July 27, 1997.

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

31 (~~(29)~~) (30) "Offender" means a person who has committed a felony
32 established by state law and is eighteen years of age or older or is
33 less than eighteen years of age but whose case is under superior court
34 jurisdiction under RCW 13.04.030 or has been transferred by the
35 appropriate juvenile court to a criminal court pursuant to RCW
36 13.40.110. Throughout this chapter, the terms "offender" and
37 "defendant" are used interchangeably.

38 (~~(30)~~) (31) "Partial confinement" means confinement for no more
39 than one year in a facility or institution operated or utilized under

1 contract by the state or any other unit of government, or, if home
2 detention or work crew has been ordered by the court, in an approved
3 residence, for a substantial portion of each day with the balance of
4 the day spent in the community. Partial confinement includes work
5 release, home detention, work crew, and a combination of work crew and
6 home detention.

7 ~~((31))~~ (32) "Persistent offender" is an offender who:

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

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

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

29 (ii) Has, before the commission of the offense under (b)(i) of this
30 subsection, been convicted as an offender on at least one occasion,
31 whether in this state or elsewhere, of an offense listed in (b)(i) of
32 this subsection. A conviction for rape of a child in the first degree
33 constitutes a conviction under (b)(i) of this subsection only when the
34 offender was sixteen years of age or older when the offender committed
35 the offense. A conviction for rape of a child in the second degree
36 constitutes a conviction under (b)(i) of this subsection only when the
37 offender was eighteen years of age or older when the offender committed
38 the offense.

1 (~~(32)~~) (33) "Postrelease supervision" is that portion of an
2 offender's community placement that is not community custody.

3 (~~(33)~~) (34) "Restitution" means a specific sum of money ordered
4 by the sentencing court to be paid by the offender to the court over a
5 specified period of time as payment of damages. The sum may include
6 both public and private costs.

7 (~~(34)~~) (35) "Risk assessment" means the application of an
8 objective instrument supported by research and adopted by the
9 department for the purpose of assessing an offender's risk of
10 reoffense, taking into consideration the nature of the harm done by the
11 offender, place and circumstances of the offender related to risk, the
12 offender's relationship to any victim, and any information provided to
13 the department by victims. The results of a risk assessment shall not
14 be based on unconfirmed or unconfirmable allegations.

15 (~~(35)~~) (36) "Serious traffic offense" means:

16 (a) Driving while under the influence of intoxicating liquor or any
17 drug (RCW 46.61.502), actual physical control while under the influence
18 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
19 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
20 or

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

24 (~~(36)~~) (37) "Serious violent offense" is a subcategory of violent
25 offense and means:

26 (a)(i) Murder in the first degree;
27 (ii) Homicide by abuse;
28 (iii) Murder in the second degree;
29 (iv) Manslaughter in the first degree;
30 (v) Assault in the first degree;
31 (vi) Kidnapping in the first degree;
32 (vii) Rape in the first degree;
33 (viii) Assault of a child in the first degree; or
34 (ix) An attempt, criminal solicitation, or criminal conspiracy to
35 commit one of these felonies; or

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

39 (~~(37)~~) (38) "Sex offense" means:

1 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
2 RCW 9A.44.130(11);
3 (ii) A violation of RCW 9A.64.020;
4 (iii) A felony that is a violation of chapter 9.68A RCW other than
5 RCW 9.68A.070 or 9.68A.080; or
6 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
7 criminal solicitation, or criminal conspiracy to commit such crimes;
8 (b) Any conviction for a felony offense in effect at any time prior
9 to July 1, 1976, that is comparable to a felony classified as a sex
10 offense in (a) of this subsection;
11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.127 or 13.40.135; or
13 (d) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a sex
15 offense under (a) of this subsection.
16 (~~(38)~~) (39) "Sexual motivation" means that one of the purposes
17 for which the defendant committed the crime was for the purpose of his
18 or her sexual gratification.
19 (~~(39)~~) (40) "Standard sentence range" means the sentencing
20 court's discretionary range in imposing a nonappealable sentence.
21 (~~(40)~~) (41) "Statutory maximum sentence" means the maximum length
22 of time for which an offender may be confined as punishment for a crime
23 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
24 the crime, or other statute defining the maximum penalty for a crime.
25 (~~(41)~~) (42) "Total confinement" means confinement inside the
26 physical boundaries of a facility or institution operated or utilized
27 under contract by the state or any other unit of government for twenty-
28 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
29 (~~(42)~~) (43) "Transition training" means written and verbal
30 instructions and assistance provided by the department to the offender
31 during the two weeks prior to the offender's successful completion of
32 the work ethic camp program. The transition training shall include
33 instructions in the offender's requirements and obligations during the
34 offender's period of community custody.
35 (~~(43)~~) (44) "Victim" means any person who has sustained
36 emotional, psychological, physical, or financial injury to person or
37 property as a direct result of the crime charged.
38 (~~(44)~~) (45) "Violent offense" means:
39 (a) Any of the following felonies:

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

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

5 (iii) Manslaughter in the first degree;

6 (iv) Manslaughter in the second degree;

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

8 (vi) Kidnapping in the second degree;

9 (vii) Arson in the second degree;

10 (viii) Assault in the second degree;

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

12 (x) Extortion in the first degree;

13 (xi) Robbery in the second degree;

14 (xii) Drive-by shooting;

15 (xiii) Vehicular assault; and

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

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

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

26 (~~(45)~~) (46) "Work crew" means a program of partial confinement
27 consisting of civic improvement tasks for the benefit of the community
28 that complies with RCW 9.94A.135.

29 (~~(46)~~) (47) "Work ethic camp" means an alternative incarceration
30 program as provided in RCW 9.94A.137 designed to reduce recidivism and
31 lower the cost of corrections by requiring offenders to complete a
32 comprehensive array of real-world job and vocational experiences,
33 character-building work ethics training, life management skills
34 development, substance abuse rehabilitation, counseling, literacy
35 training, and basic adult education.

36 (~~(47)~~) (48) "Work release" means a program of partial confinement
37 available to offenders who are employed or engaged as a student in a
38 regular course of study at school.

1 **Sec. 302.** RCW 9.94A.715 and 2001 c 10 s 5 are each amended to read
2 as follows:

3 (1) When a court sentences a person to the custody of the
4 department for a sex offense not sentenced under section 303 of this
5 act, a violent offense, any crime against persons under RCW
6 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW,
7 committed on or after July 1, 2000, the court shall in addition to the
8 other terms of the sentence, sentence the offender to community custody
9 for the community custody range established under RCW 9.94A.040 or up
10 to the period of earned release awarded pursuant to RCW 9.94A.150 (1)
11 and (2), whichever is longer. The community custody shall begin: (a)
12 Upon completion of the term of confinement; (b) at such time as the
13 offender is transferred to community custody in lieu of earned release
14 in accordance with RCW 9.94A.150 (1) and (2); or (c) with regard to
15 offenders sentenced under RCW 9.94A.660, upon failure to complete or
16 administrative termination from the special drug offender sentencing
17 alternative program.

18 (2)(a) Unless a condition is waived by the court, the conditions of
19 community custody shall include those provided for in RCW 9.94A.700(4).
20 The conditions may also include those provided for in RCW 9.94A.700(5).
21 The court may also order the offender to participate in rehabilitative
22 programs or otherwise perform affirmative conduct reasonably related to
23 the circumstances of the offense, the offender's risk of reoffending,
24 or the safety of the community, and the department shall enforce such
25 conditions pursuant to subsection (6) of this section.

26 (b) As part of any sentence that includes a term of community
27 custody imposed under this subsection, the court shall also require the
28 offender to comply with any conditions imposed by the department under
29 RCW 9.94A.720. The department shall assess the offender's risk of
30 reoffense and may establish and modify additional conditions of the
31 offender's community custody based upon the risk to community safety.
32 In addition, the department may require the offender to participate in
33 rehabilitative programs, or otherwise perform affirmative conduct, and
34 to obey all laws.

35 (c) The department may not impose conditions that are contrary to
36 those ordered by the court and may not contravene or decrease court
37 imposed conditions. The department shall notify the offender in
38 writing of any such conditions or modifications. In setting,

1 modifying, and enforcing conditions of community custody, the
2 department shall be deemed to be performing a quasi-judicial function.

3 (3) If an offender violates conditions imposed by the court or the
4 department pursuant to this section during community custody, the
5 department may transfer the offender to a more restrictive confinement
6 status and impose other available sanctions as provided in RCW
7 9.94A.205 and 9.94A.207.

8 (4) Except for terms of community custody under RCW 9.94A.670, the
9 department shall discharge the offender from community custody on a
10 date determined by the department, which the department may modify,
11 based on risk and performance of the offender, within the range or at
12 the end of the period of earned release, whichever is later.

13 (5) At any time prior to the completion or termination of a sex
14 offender's term of community custody, if the court finds that public
15 safety would be enhanced, the court may impose and enforce an order
16 extending any or all of the conditions imposed pursuant to this section
17 for a period up to the maximum allowable sentence for the crime as it
18 is classified in chapter 9A.20 RCW, regardless of the expiration of the
19 offender's term of community custody. If a violation of a condition
20 extended under this subsection occurs after the expiration of the
21 offender's term of community custody, it shall be deemed a violation of
22 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
23 contempt of court as provided for in RCW 7.21.040. If the court
24 extends a condition beyond the expiration of the term of community
25 custody, the department is not responsible for supervision of the
26 offender's compliance with the condition.

27 (6) Within the funds available for community custody, the
28 department shall determine conditions and duration of community custody
29 on the basis of risk to community safety, and shall supervise offenders
30 during community custody on the basis of risk to community safety and
31 conditions imposed by the court. The secretary shall adopt rules to
32 implement the provisions of this subsection.

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

1 NEW SECTION. **Sec. 303.** A new section is added to chapter 9.94A
2 RCW to read as follows:

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

5 (a) Is convicted of:

6 (i) Rape in the first degree, rape in the second degree, rape of a
7 child in the first degree, child molestation in the first degree, rape
8 of a child in the second degree, or indecent liberties by forcible
9 compulsion;

10 (ii) Any of the following offenses with a finding of sexual
11 motivation: Murder in the first degree, murder in the second degree,
12 homicide by abuse, kidnapping in the first degree, kidnapping in the
13 second degree, assault in the first degree, assault in the second
14 degree, assault of a child in the first degree, or burglary in the
15 first degree; or

16 (iii) An attempt to commit any crime listed in this subsection
17 (1)(a);
18 committed on or after the effective date of this section; or

19 (b) Has a prior conviction for an offense listed in RCW
20 9.94A.030(32)(b), and is convicted of any sex offense which was
21 committed after the effective date of this section.

22 For purposes of this subsection (1)(b), failure to register is not
23 a sex offense.

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

28 (3) Upon a finding that the offender is subject to sentencing under
29 this section, the court shall impose a sentence to a maximum term
30 consisting of the statutory maximum sentence for the offense and a
31 minimum term either within the standard sentence range for the offense,
32 or outside the standard sentence range pursuant to RCW 9.94A.390, if
33 the offender is otherwise eligible for such a sentence.

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

37 (5) When a court sentences a person to the custody of the
38 department under this section, the court shall, in addition to the
39 other terms of the sentence, sentence the offender to community custody

1 under the supervision of the department and the authority of the board
2 for any period of time the person is released from total confinement
3 before the expiration of the maximum sentence.

4 (6)(a) Unless a condition is waived by the court, the conditions of
5 community custody shall include those provided for in RCW 9.94A.700(4).
6 The conditions may also include those provided for in RCW 9.94A.700(5).
7 The court may also order the offender to participate in rehabilitative
8 programs or otherwise perform affirmative conduct reasonably related to
9 the circumstances of the offense, the offender's risk of reoffending,
10 or the safety of the community, and the department and the board shall
11 enforce such conditions pursuant to sections 304, 307, and 308 of this
12 act.

13 (b) As part of any sentence under this section, the court shall
14 also require the offender to comply with any conditions imposed by the
15 board under sections 304 and 306 through 309 of this act.

16 NEW SECTION. **Sec. 304.** A new section is added to chapter 9.94A
17 RCW to read as follows:

18 (1) When an offender is sentenced under section 303 of this act,
19 the department shall assess the offender's risk of recidivism and shall
20 recommend to the board any additional or modified conditions of the
21 offender's community custody based upon the risk to community safety.
22 In addition, the department shall make a recommendation with regard to,
23 and the board may require the offender to participate in,
24 rehabilitative programs, or otherwise perform affirmative conduct, and
25 obey all laws. The board must consider and may impose department-
26 recommended conditions.

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

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

34 (4) If an offender violates conditions imposed by the court, the
35 department, or the board during community custody, the board or the
36 department may transfer the offender to a more restrictive confinement
37 status and impose other available sanctions as provided in section 309
38 of this act.

1 (5) By the close of the next business day, after receiving notice
2 of a condition imposed by the board or the department, an offender may
3 request an administrative hearing under rules adopted by the board.
4 The condition shall remain in effect unless the hearing examiner finds
5 that it is not reasonably related to any of the following:

- 6 (a) The crime of conviction;
- 7 (b) The offender's risk of reoffending; or
- 8 (c) The safety of the community.

9 (6) An offender released by the board under section 306 of this act
10 shall be subject to the supervision of the department until the
11 expiration of the maximum term of the sentence. The department shall
12 monitor the offender's compliance with conditions of community custody
13 imposed by the court, department, or board, and promptly report any
14 violations to the board. Any violation of conditions of community
15 custody established or modified by the board shall be subject to the
16 provisions of sections 307 through 310 of this act.

17 (7) If the department finds that an emergency exists requiring the
18 immediate imposition of conditions of release in addition to those set
19 by the board under section 306 of this act and subsection (1) of this
20 section in order to prevent the offender from committing a crime, the
21 department may impose additional conditions. The department may not
22 impose conditions that are contrary to those set by the board or the
23 court and may not contravene or decrease court-imposed or board-imposed
24 conditions. Conditions imposed under this subsection shall take effect
25 immediately after notice to the offender by personal service, but shall
26 not remain in effect longer than seven working days unless approved by
27 the board under subsection (1) of this section within seven working
28 days.

29 NEW SECTION. **Sec. 305.** A new section is added to chapter 72.09
30 RCW to read as follows:

31 The department shall provide offenders sentenced under section 303
32 of this act with the opportunity for sex offender treatment during
33 incarceration.

34 NEW SECTION. **Sec. 306.** A new section is added to chapter 9.95 RCW
35 to read as follows:

36 (1)(a) Before the expiration of the minimum term, as part of the
37 end of sentence review process under RCW 72.09.340, 72.09.345, and

1 where appropriate, 72.09.370, the department shall conduct, and the
2 offender shall participate in, an examination of the offender,
3 incorporating methodologies that are recognized by experts in the
4 prediction of sexual dangerousness, and including a prediction of the
5 probability that the offender will engage in sex offenses if released.

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

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

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

28 NEW SECTION. Sec. 307. A new section is added to chapter 9.95 RCW
29 to read as follows:

30 (1) Whenever the board or a community corrections officer of this
31 state has reason to believe an offender released under section 306 of
32 this act has violated a condition of community custody or the laws of
33 this state, any community corrections officer may arrest or cause the
34 arrest and detention of the offender pending a determination by the
35 board whether sanctions should be imposed or the offender's community
36 custody should be revoked. The community corrections officer shall
37 report all facts and circumstances surrounding the alleged violation to
38 the board, with recommendations.

1 (2) If the board or the department causes the arrest or detention
2 of an offender for a violation that does not amount to a new crime and
3 the offender is arrested or detained by local law enforcement or in a
4 local jail, the board or department, whichever caused the arrest or
5 detention, shall be financially responsible for local costs. Jail bed
6 costs shall be allocated at the rate established under RCW
7 9.94A.207(3).

8 NEW SECTION. **Sec. 308.** A new section is added to chapter 9.95 RCW
9 to read as follows:

10 Any offender released under section 306 of this act who is arrested
11 and detained in physical custody by the authority of a community
12 corrections officer, or upon the written order of the board, shall not
13 be released from custody on bail or personal recognizance, except upon
14 approval of the board and the issuance by the board of an order
15 reinstating the offender's release on the same or modified conditions.
16 All chiefs of police, marshals of cities and towns, sheriffs of
17 counties, and all police, prison, and peace officers and constables
18 shall execute any such order in the same manner as any ordinary
19 criminal process.

20 NEW SECTION. **Sec. 309.** A new section is added to chapter 9.95 RCW
21 to read as follows:

22 (1) If an offender released by the board under section 306 of this
23 act violates any condition or requirement of community custody, the
24 board may transfer the offender to a more restrictive confinement
25 status to serve up to the remaining portion of the sentence, less
26 credit for any period actually spent in community custody or in
27 detention awaiting disposition of an alleged violation and subject to
28 the limitations of subsection (2) of this section.

29 (2) Following the hearing specified in subsection (3) of this
30 section, the board may impose sanctions such as work release, home
31 detention with electronic monitoring, work crew, community service,
32 inpatient treatment, daily reporting, curfew, educational or counseling
33 sessions, supervision enhanced through electronic monitoring, or any
34 other sanctions available in the community, or may suspend or revoke
35 the release to community custody whenever an offender released by the
36 board under section 306 of this act violates any condition or
37 requirement of community custody.

1 (3) If an offender released by the board under section 306 of this
2 act is accused of violating any condition or requirement of community
3 custody, he or she is entitled to a hearing before the board prior to
4 the imposition of sanctions. The hearing shall be considered as
5 offender disciplinary proceedings and shall not be subject to chapter
6 34.05 RCW. The board shall develop hearing procedures and a structure
7 of graduated sanctions consistent with the hearing procedures and
8 graduated sanctions developed pursuant to RCW 9.94A.205. The board may
9 suspend the offender's release to community custody and confine the
10 offender in a correctional institution owned, operated by, or operated
11 under contract with the state prior to the hearing unless the offender
12 has been arrested and confined for a new criminal offense.

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

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

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

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

31 (d) The offender shall have the right to: (i) Be present at the
32 hearing; (ii) have the assistance of a person qualified to assist the
33 offender in the hearing, appointed by the hearing examiner if the
34 offender has a language or communications barrier; (iii) testify or
35 remain silent; (iv) call witnesses and present documentary evidence;
36 (v) question witnesses who appear and testify; and (vi) be represented
37 by counsel if revocation of the release to community custody is a
38 possible sanction for the violation; and

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

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

12 NEW SECTION. Sec. 310. A new section is added to chapter 9.95 RCW
13 to read as follows:

14 In the event the board suspends release status of an offender
15 released under section 306 of this act by reason of an alleged
16 violation of a condition of release, or pending disposition of a new
17 criminal charge, the board may nullify the suspension order and
18 reinstate release under previous conditions or any new conditions the
19 board determines advisable. Before the board may nullify a suspension
20 order and reinstate release, it shall determine that the best interests
21 of society and the offender shall be served by such reinstatement
22 rather than return to confinement.

23 **Sec. 311.** RCW 9.94A.060 and 1996 c 232 s 3 are each amended to
24 read as follows:

25 (1) The commission consists of twenty voting members, one of whom
26 the governor shall designate as chairperson. With the exception of ex
27 officio voting members, the voting members of the commission shall be
28 appointed by the governor, subject to confirmation by the senate.

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

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

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

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

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

4 (e) Two prosecuting attorneys;

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

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

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

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

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

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

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

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

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

37 (b) The governor shall stagger the terms of the members appointed
38 under subsection (2)(j), (k), and (l) of this section by appointing one

1 of them for a term of one year, one for a term of two years, and one
2 for a term of three years.

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

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

14 **Sec. 312.** RCW 9.94A.120 and 2001 c 10 s 2 are each amended to read
15 as follows:

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

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

20 (i) Unless another term of confinement applies, the court shall
21 impose a sentence within the standard sentence range established in RCW
22 9.94A.310;

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

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

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

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

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

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

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

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

34 (x) Section 303 of this act, relating to certain sex offenses;

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

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

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

11 (3) If the court imposes a sentence requiring confinement of thirty
12 days or less, the court may, in its discretion, specify that the
13 sentence be served on consecutive or intermittent days. A sentence
14 requiring more than thirty days of confinement shall be served on
15 consecutive days. Local jail administrators may schedule court-ordered
16 intermittent sentences as space permits.

17 (4) If a sentence imposed includes payment of a legal financial
18 obligation, it shall be imposed as provided in RCW 9.94A.140,
19 9.94A.142, and 9.94A.145.

20 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a
21 court may not impose a sentence providing for a term of confinement or
22 community supervision, community placement, or community custody which
23 exceeds the statutory maximum for the crime as provided in chapter
24 9A.20 RCW.

25 (6) The sentencing court shall give the offender credit for all
26 confinement time served before the sentencing if that confinement was
27 solely in regard to the offense for which the offender is being
28 sentenced.

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

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

34 (9) The court may order an offender whose sentence includes
35 community placement or community supervision to undergo a mental status
36 evaluation and to participate in available outpatient mental health
37 treatment, if the court finds that reasonable grounds exist to believe
38 that the offender is a mentally ill person as defined in RCW 71.24.025,
39 and that this condition is likely to have influenced the offense. An

1 order requiring mental status evaluation or treatment must be based on
2 a presentence report and, if applicable, mental status evaluations that
3 have been filed with the court to determine the offender's competency
4 or eligibility for a defense of insanity. The court may order
5 additional evaluations at a later date if deemed appropriate.

6 (10) In any sentence of partial confinement, the court may require
7 the offender to serve the partial confinement in work release, in a
8 program of home detention, on work crew, or in a combined program of
9 work crew and home detention.

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

17 **Sec. 313.** RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read
18 as follows:

19 (1) A sentence that includes a term or terms of confinement
20 totaling more than one year shall be served in a facility or
21 institution operated, or utilized under contract, by the state. Except
22 as provided in subsection (3) or (5) of this section, a sentence of not
23 more than one year of confinement shall be served in a facility
24 operated, licensed, or utilized under contract, by the county, or if
25 home detention or work crew has been ordered by the court, in the
26 residence of either the offender or a member of the offender's
27 immediate family.

28 (2) If a county uses a state partial confinement facility for the
29 partial confinement of a person sentenced to confinement for not more
30 than one year, the county shall reimburse the state for the use of the
31 facility as provided in this subsection. The office of financial
32 management shall set the rate of reimbursement based upon the average
33 per diem cost per offender in the facility. The office of financial
34 management shall determine to what extent, if any, reimbursement shall
35 be reduced or eliminated because of funds provided by the legislature
36 to the department for the purpose of covering the cost of county use of
37 state partial confinement facilities. The office of financial

1 management shall reestablish reimbursement rates each even-numbered
2 year.

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

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

15 (5) Sentences imposed pursuant to section 303 of this act shall be
16 served in a facility or institution operated, or utilized under
17 contract, by the state.

18 **Sec. 314.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read
19 as follows:

20 The court may impose a sentence outside the standard sentence range
21 for an offense if it finds, considering the purpose of this chapter,
22 that there are substantial and compelling reasons justifying an
23 exceptional sentence. Whenever a sentence outside the standard
24 sentence range is imposed, the court shall set forth the reasons for
25 its decision in written findings of fact and conclusions of law. A
26 sentence outside the standard sentence range shall be a determinate
27 sentence unless it is imposed on an offender sentenced under section
28 303 of this act. An exceptional sentence imposed on an offender
29 sentenced under section 303 of this act shall be to a minimum term set
30 by the court and a maximum term equal to the statutory maximum sentence
31 for the offense of conviction under chapter 9A.20 RCW.

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

35 A departure from the standards in RCW 9.94A.400 (1) and (2)
36 governing whether sentences are to be served consecutively or
37 concurrently is an exceptional sentence subject to the limitations in

1 this section, and may be appealed by the offender or the state as set
2 forth in RCW 9.94A.210 (2) through (6).

3 The following are illustrative factors which the court may consider
4 in the exercise of its discretion to impose an exceptional sentence.
5 The following are illustrative only and are not intended to be
6 exclusive reasons for exceptional sentences.

7 (1) Mitigating Circumstances

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

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

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

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

18 (e) The defendant's capacity to appreciate the wrongfulness of his
19 or her conduct, or to conform his or her conduct to the requirements of
20 the law, was significantly impaired. Voluntary use of drugs or alcohol
21 is excluded.

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

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

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

31 (2) Aggravating Circumstances

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

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

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

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

4 (i) The current offense involved multiple victims or multiple
5 incidents per victim;

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

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

10 (iv) The defendant used his or her position of trust, confidence,
11 or fiduciary responsibility to facilitate the commission of the current
12 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (k) The offense resulted in the pregnancy of a child victim of
18 rape.

19 (l) The defendant knew that the victim of the current offense was
20 a youth who was not residing with a legal custodian and the defendant
21 established or promoted the relationship for the primary purpose of
22 victimization.

23 **Sec. 315.** RCW 9.94A.590 and 2000 c 28 s 7 are each amended to read
24 as follows:

25 (1) The following minimum terms of total confinement are mandatory
26 and shall not be varied or modified under RCW 9.94A.390:

27 (a) An offender convicted of the crime of murder in the first
28 degree shall be sentenced to a term of total confinement not less than
29 twenty years.

30 (b) An offender convicted of the crime of assault in the first
31 degree or assault of a child in the first degree where the offender
32 used force or means likely to result in death or intended to kill the
33 victim shall be sentenced to a term of total confinement not less than
34 five years.

35 (c) An offender convicted of the crime of rape in the first degree
36 shall be sentenced to a term of total confinement not less than five
37 years.

1 (d) An offender convicted of the crime of sexually violent predator
2 escape shall be sentenced to a minimum term of total confinement not
3 less than sixty months.

4 (2) During such minimum terms of total confinement, no offender
5 subject to the provisions of this section is eligible for community
6 custody, earned release time, furlough, home detention, partial
7 confinement, work crew, work release, or any other form of early
8 release authorized under RCW 9.94A.150, or any other form of authorized
9 leave of absence from the correctional facility while not in the direct
10 custody of a corrections officer. The provisions of this subsection
11 shall not apply: (a) In the case of an offender in need of emergency
12 medical treatment; (b) for the purpose of commitment to an inpatient
13 treatment facility in the case of an offender convicted of the crime of
14 rape in the first degree; or (c) for an extraordinary medical placement
15 when authorized under RCW 9.94A.150(4).

16 **Sec. 316.** RCW 9.94A.670 and 2000 c 28 s 20 are each amended to
17 read as follows:

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

20 (a) "Sex offender treatment provider" or "treatment provider" means
21 a certified sex offender treatment provider as defined in RCW
22 18.155.020.

23 (b) "Victim" means any person who has sustained emotional,
24 psychological, physical, or financial injury to person or property as
25 a result of the crime charged. "Victim" also means a parent or
26 guardian of a victim who is a minor child unless the parent or guardian
27 is the perpetrator of the offense.

28 (2) An offender is eligible for the special sex offender sentencing
29 alternative if:

30 (a) The offender has been convicted of a sex offense other than a
31 violation of RCW 9A.44.050 or a sex offense that is also a serious
32 violent offense;

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

36 (c) The offender's standard sentence range for the offense includes
37 the possibility of confinement for less than eleven years.

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

5 (a) The report of the examination shall include at a minimum the
6 following:

7 (i) The offender's version of the facts and the official version of
8 the facts;

9 (ii) The offender's offense history;

10 (iii) An assessment of problems in addition to alleged deviant
11 behaviors;

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

13 (v) Other evaluation measures used.

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

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

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

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

22 (iii) Monitoring plans, including any requirements regarding living
23 conditions, lifestyle requirements, and monitoring by family members
24 and others;

25 (iv) Anticipated length of treatment; and

26 (v) Recommended crime-related prohibitions.

27 (c) The court on its own motion may order, or on a motion by the
28 state shall order, a second examination regarding the offender's
29 amenability to treatment. The examiner shall be selected by the party
30 making the motion. The offender shall pay the cost of any second
31 examination ordered unless the court finds the defendant to be indigent
32 in which case the state shall pay the cost.

33 (4) After receipt of the reports, the court shall consider whether
34 the offender and the community will benefit from use of this
35 alternative and consider the victim's opinion whether the offender
36 should receive a treatment disposition under this section. If the
37 court determines that this alternative is appropriate, the court shall
38 then impose a sentence or, pursuant to section 303 of this act, a
39 minimum term of sentence, within the standard sentence range. If the

1 sentence imposed is less (~~then~~[than]) than eleven years of
2 confinement, the court may suspend the execution of the sentence and
3 impose the following conditions of suspension:

4 (a) The court shall place the offender on community custody for the
5 length of the suspended sentence, the length of the maximum term
6 imposed pursuant to section 303 of this act, or three years, whichever
7 is greater, and require the offender to comply with any conditions
8 imposed by the department under RCW 9.94A.720.

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

19 (5) As conditions of the suspended sentence, the court may impose
20 one or more of the following:

21 (a) Up to six months of confinement, not to exceed the sentence
22 range of confinement for that offense;

23 (b) Crime-related prohibitions;

24 (c) Require the offender to devote time to a specific employment or
25 occupation;

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

29 (e) Report as directed to the court and a community corrections
30 officer;

31 (f) Pay all court-ordered legal financial obligations as provided
32 in RCW 9.94A.030;

33 (g) Perform community service work; or

34 (h) Reimburse the victim for the cost of any counseling required as
35 a result of the offender's crime.

36 (6) At the time of sentencing, the court shall set a treatment
37 termination hearing for three months prior to the anticipated date for
38 completion of treatment.

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

8 (8) Prior to the treatment termination hearing, the treatment
9 provider and community corrections officer 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, including proposed community custody
13 conditions. Either party may request, and the court may order, another
14 evaluation regarding the advisability of termination from treatment.
15 The offender shall pay the cost of any additional evaluation ordered
16 unless the court finds the offender to be indigent in which case the
17 state shall pay the cost. At the treatment termination hearing the
18 court may: (a) Modify conditions of community custody, and either (b)
19 terminate treatment, or (c) extend treatment for up to the remaining
20 period of community custody.

21 (9) If a violation of conditions occurs during community custody,
22 the department shall either impose sanctions as provided for in RCW
23 9.94A.205(2)(a) or refer the violation to the court and recommend
24 revocation of the suspended sentence as provided for in subsections (6)
25 and (8) of this section.

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

33 (11) Examinations and treatment ordered pursuant to this subsection
34 shall only be conducted by sex offender treatment providers certified
35 by the department of health pursuant to chapter 18.155 RCW unless the
36 court finds that:

37 (a) The offender has already moved to another state or plans to
38 move to another state for reasons other than circumventing the
39 certification requirements; or

1 (b)(i) No certified providers are available for treatment within a
2 reasonable geographical distance of the offender's home; and

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

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

8 NEW SECTION. **Sec. 317.** A new section is added to chapter 9.95 RCW
9 to read as follows:

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

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

17 (3) "Crime-related prohibition" has the meaning defined in RCW
18 9.94A.030.

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

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

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

26 **Sec. 318.** RCW 9.95.005 and 1986 c 224 s 4 are each amended to read
27 as follows:

28 The board shall meet at ~~((the penitentiary and the reformatory))~~
29 major state correctional institutions at such times as may be necessary
30 for a full and complete study of the cases of all convicted persons
31 whose durations of confinement are to be determined by it ~~((or))~~i whose
32 community custody supervision is under the board's authorityi or whose
33 applications for parole come before it. Other times and places of
34 meetings may also be fixed by the board.

35 The superintendents of the different institutions shall provide
36 suitable quarters for the board and assistants while in the discharge
37 of their duties.

1 **Sec. 319.** RCW 9.95.010 and 1955 c 133 s 2 are each amended to read
2 as follows:

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

10 The maximum term to be fixed by the court shall be the maximum
11 provided by law for the crime of which such person was convicted, if
12 the law provides for a maximum term. If the law does not provide a
13 maximum term for the crime of which such person was convicted the court
14 shall fix such maximum term, which may be for any number of years up to
15 and including life imprisonment but in any case where the maximum term
16 is fixed by the court it shall be fixed at not less than twenty years.

17 **Sec. 320.** RCW 9.95.011 and 1993 c 144 s 3 are each amended to read
18 as follows:

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

25 The court shall attempt to set the minimum term reasonably
26 consistent with the purposes, standards, and sentencing ranges adopted
27 under RCW 9.94A.040, but the court is subject to the same limitations
28 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through
29 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The
30 court's minimum term decision is subject to review to the same extent
31 as a minimum term decision by the parole board before July 1, 1986.

32 Thereafter, the expiration of the minimum term set by the court
33 minus any time credits earned under RCW 9.95.070 and 9.95.110
34 constitutes the parole eligibility review date, at which time the board
35 may consider the convicted person for parole under RCW 9.95.100 and
36 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
37 board's authority to reduce or increase the minimum term, once set by

1 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
2 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

3 (2) Not less than ninety days prior to the expiration of the
4 minimum term of a person sentenced under section 303 of this act, for
5 a sex offense committed on or after July 1, 2001, less any time credits
6 permitted by statute, the board shall review the person for conditional
7 release to community custody as provided in section 306 of this act.
8 If the board does not release the person, it shall set a new minimum
9 term not to exceed an additional two years. The board shall review the
10 person again not less than ninety days prior to the expiration of the
11 new minimum term.

12 **Sec. 321.** RCW 9.95.017 and 1986 c 224 s 11 are each amended to
13 read as follows:

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

17 The proposed criteria should take into consideration RCW
18 9.95.009(2). Before submission to the governor, the board shall
19 solicit comments and review on their proposed criteria for parole
20 release. These proposed criteria shall be submitted for consideration
21 by the 1987 legislature.

22 (2) Persons committed to the department of corrections and who are
23 under the authority of the board for crimes committed on or after July
24 1, 2001, are subject to the provisions for duration of confinement,
25 release to community custody, and length of community custody
26 established in sections 303 through 310 of this act.

27 **Sec. 322.** RCW 9.95.020 and 1955 c 133 s 3 are each amended to read
28 as follows:

29 If the sentence of a person so convicted is not suspended by the
30 court, the superintendent of ~~((the penitentiary or the superintendent~~
31 ~~of the reformatory))~~ a major state correctional institution shall
32 receive such person, if committed to his or her institution, and
33 imprison ~~((him))~~ the person until released under the provisions of this
34 chapter, under section 306 of this act, upon the completion of the
35 statutory maximum sentence, or through the action of the governor.

1 **Sec. 323.** RCW 9.95.032 and 1984 c 114 s 3 are each amended to read
2 as follows:

3 Such statement shall be signed by the prosecuting attorney and
4 approved by the judge by whom the judgment was rendered and shall be
5 delivered to the sheriff, traveling guard, department of corrections
6 personnel, or other officer executing the sentence, and a copy of such
7 statement shall be furnished to the defendant or his or her attorney.
8 Such officer shall deliver the statement, at the time of the prisoner's
9 commitment, to the superintendent of the institution to which such
10 prisoner has been (~~sentenced and~~) committed. The superintendent
11 shall make such statement available for use by the board (~~of prison~~
12 ~~terms and paroles~~)).

13 **Sec. 324.** RCW 9.95.052 and 1986 c 224 s 10 are each amended to
14 read as follows:

15 At any time after the board (or the court after July 1, 1986) has
16 determined the minimum term of confinement of any person subject to
17 confinement in a state correctional institution for a crime committed
18 before July 1, 1984, the board may request the superintendent of such
19 correctional institution to conduct a full review of such person's
20 prospects for rehabilitation and report to the board the facts of such
21 review and the resulting findings. Upon the basis of such report and
22 such other information and investigation that the board deems
23 appropriate, the board may redetermine and refix such convicted
24 person's minimum term of confinement whether the term was set by the
25 board or the court.

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

29 **Sec. 325.** RCW 9.95.055 and 1992 c 7 s 25 are each amended to read
30 as follows:

31 The indeterminate sentence review board is hereby granted
32 authority, in the event of a declaration by the governor that a war
33 emergency exists, including a general mobilization, and for the
34 duration thereof only, to reduce downward the minimum term, as set by
35 the board, of any inmate under the jurisdiction of the board confined
36 in a state correctional facility, who will be accepted by and inducted
37 into the armed services: PROVIDED, That a reduction downward shall not

1 be made under this section for those inmates who are confined for
2 treason, murder in the first degree or carnal knowledge of a female
3 child under ten years: AND PROVIDED FURTHER, That no such inmate shall
4 be released under this section who is (~~found to be a sexual psychopath~~
5 ~~under the provisions of and as defined by chapter 71.12 RCW~~) being
6 considered for civil commitment as a sexually violent predator under
7 chapter 71.09 RCW or was sentenced under section 303 of this act for a
8 crime committed on or after July 1, 2001.

9 **Sec. 326.** RCW 9.95.064 and 1989 c 276 s 4 are each amended to read
10 as follows:

11 (1) In order to minimize the trauma to the victim, the court may
12 attach conditions on release of (~~a defendant~~) an offender under RCW
13 9.95.062, convicted of a crime committed before July 1, 1984, regarding
14 the whereabouts of the defendant, contact with the victim, or other
15 conditions.

16 (2) Offenders released under section 306 of this act are subject to
17 crime-related prohibitions and affirmative conditions established by
18 the court, the department of corrections, or the board pursuant to RCW
19 9.94A.715 and sections 303 through 310 of this act.

20 **Sec. 327.** RCW 9.95.070 and 1999 c 143 s 19 are each amended to
21 read as follows:

22 (1) Every prisoner, convicted of a crime committed before July 1,
23 1984, who has a favorable record of conduct at the penitentiary or the
24 reformatory, and who performs in a faithful, diligent, industrious,
25 orderly and peaceable manner the work, duties, and tasks assigned to
26 him or her to the satisfaction of the superintendent of the
27 penitentiary or reformatory, and in whose behalf the superintendent of
28 the penitentiary or reformatory files a report certifying that his or
29 her conduct and work have been meritorious and recommending allowance
30 of time credits to him or her, shall upon, but not until, the adoption
31 of such recommendation by the indeterminate sentence review board, be
32 allowed time credit reductions from the term of imprisonment fixed by
33 the board.

34 (2) Offenders sentenced under section 303 of this act for a crime
35 committed on or after July 1, 2001, are subject to the earned release
36 provisions for sex offenders established in RCW 9.94A.150.

1 **Sec. 328.** RCW 9.95.080 and 1992 c 7 s 26 are each amended to read
2 as follows:

3 In case any (~~convicted~~) person convicted of a crime committed
4 before July 1, 1984, and under the jurisdiction of the indeterminate
5 sentence review board undergoing sentence in a state correctional
6 (~~facility~~) institution commits any infractions of the rules and
7 regulations of the institution, the board may revoke any order
8 theretofore made determining the length of time such convicted person
9 shall be imprisoned, including the forfeiture of all or a portion of
10 credits earned or to be earned, pursuant to the provisions of RCW
11 9.95.110, and make a new order determining the length of time the
12 person shall serve, not exceeding the maximum penalty provided by law
13 for the crime for which the person was convicted, or the maximum fixed
14 by the court. Such revocation and redetermination shall not be had
15 except upon a hearing before the indeterminate sentence review board.
16 At such hearing the convicted person shall be present and entitled to
17 be heard and may present evidence and witnesses in his or her behalf.

18 **Sec. 329.** RCW 9.95.090 and 1999 c 143 s 20 are each amended to
19 read as follows:

20 (1) The board shall require of every able bodied (~~convicted person~~
21 ~~imprisoned in the penitentiary or the reformatory~~) offender confined
22 in a state correctional institution for a crime committed before July
23 1, 1984, as many hours of faithful labor in each and every day during
24 his or her term of imprisonment as shall be prescribed by the rules and
25 regulations of the institution in which he or she is confined.

26 (2) Offenders sentenced under section 303 of this act for crimes
27 committed on or after July 1, 2001, shall perform work or other
28 programming as required by the department of corrections during their
29 term of confinement.

30 **Sec. 330.** RCW 9.95.100 and 1955 c 133 s 11 are each amended to
31 read as follows:

32 Any (~~convicted~~) person convicted of a felony committed before
33 July 1, 1984, and undergoing sentence in (~~the penitentiary or the~~
34 ~~reformatory~~) a state correctional institution, not sooner released
35 under the provisions of this chapter, shall, in accordance with the
36 provisions of law, be discharged from custody on serving the maximum
37 punishment provided by law for the offense of which such person was

1 convicted, or the maximum term fixed by the court where the law does
2 not provide for a maximum term. The board shall not, however, until
3 his or her maximum term expires, release a prisoner, unless in its
4 opinion his or her rehabilitation has been complete and he or she is a
5 fit subject for release.

6 **Sec. 331.** RCW 9.95.110 and 1999 c 143 s 21 are each amended to
7 read as follows:

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

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

21 (2) The board may permit an offender convicted of a crime committed
22 on or after July 1, 2001, and sentenced under section 303 of this act,
23 to leave a state correctional institution on community custody
24 according to the provisions of sections 303 through 310 of this act.
25 The person may be returned to the institution following a violation of
26 his or her conditions of release to community custody pursuant to the
27 hearing provisions of section 309 of this act.

28 **Sec. 332.** RCW 9.95.115 and 1989 c 259 s 3 are each amended to read
29 as follows:

30 The indeterminate sentence review board is hereby granted authority
31 to parole any person sentenced to the custody of the department of
32 corrections, under a mandatory life sentence for a crime committed
33 ((prior to)) before July 1, 1984, except those persons sentenced to
34 life without the possibility of parole. No such person shall be
35 granted parole unless the person has been continuously confined therein
36 for a period of twenty consecutive years less earned good time:
37 PROVIDED, That no such person shall be released under parole who is

1 (~~found to be a sexual psychopath under the provisions of and as~~
2 ~~defined by chapter 71.06 RCW~~) subject to civil commitment as a
3 sexually violent predator under chapter 71.09 RCW.

4 **Sec. 333.** RCW 9.95.120 and 1999 c 143 s 22 are each amended to
5 read as follows:

6 Whenever the board or a (~~probation and parole~~) community
7 corrections officer of this state has reason to believe a (~~convicted~~)
8 person convicted of a crime committed before July 1, 1984, has breached
9 a condition of his or her parole or violated the law of any state where
10 he or she may then be or the rules and regulations of the board, any
11 (~~probation and parole~~) community corrections officer of this state
12 may arrest or cause the arrest and detention and suspension of parole
13 of such convicted person pending a determination by the board whether
14 the parole of such convicted person shall be revoked. All facts and
15 circumstances surrounding the violation by such convicted person shall
16 be reported to the board by the (~~probation and parole~~) community
17 corrections officer, with recommendations. The board, after
18 consultation with the secretary of corrections, shall make all rules
19 and regulations concerning procedural matters, which shall include the
20 time when state (~~probation and parole~~) community corrections officers
21 shall file with the board reports required by this section, procedures
22 pertaining thereto and the filing of such information as may be
23 necessary to enable the board to perform its functions under this
24 section. On the basis of the report by the (~~probation and parole~~)
25 community corrections officer, or at any time upon its own discretion,
26 the board may revise or modify the conditions of parole or order the
27 suspension of parole by the issuance of a written order bearing its
28 seal, which order shall be sufficient warrant for all peace officers to
29 take into custody any convicted person who may be on parole and retain
30 such person in their custody until arrangements can be made by the
31 board for his or her return to a state correctional institution for
32 convicted felons. Any such revision or modification of the conditions
33 of parole or the order suspending parole shall be personally served
34 upon the parolee.

35 Any parolee arrested and detained in physical custody by the
36 authority of a state (~~probation and parole~~) community corrections
37 officer, or upon the written order of the board, shall not be released
38 from custody on bail or personal recognizance, except upon approval of

1 the board and the issuance by the board of an order of reinstatement on
2 parole on the same or modified conditions of parole.

3 All chiefs of police, marshals of cities and towns, sheriffs of
4 counties, and all police, prison, and peace officers and constables
5 shall execute any such order in the same manner as any ordinary
6 criminal process.

7 Whenever a paroled prisoner is accused of a violation of his or her
8 parole, other than the commission of, and conviction for, a felony or
9 misdemeanor under the laws of this state or the laws of any state where
10 he or she may then be, he or she shall be entitled to a fair and
11 impartial hearing of such charges within thirty days from the time that
12 he or she is served with charges of the violation of conditions of
13 ((his)) parole after his or her arrest and detention. The hearing
14 shall be held before one or more members of the board at a place or
15 places, within this state, reasonably near the site of the alleged
16 violation or violations of parole.

17 In the event that the board suspends a parole by reason of an
18 alleged parole violation or in the event that a parole is suspended
19 pending the disposition of a new criminal charge, the board shall have
20 the power to nullify the order of suspension and reinstate the
21 individual to parole under previous conditions or any new conditions
22 that the board may determine advisable. Before the board shall nullify
23 an order of suspension and reinstate a parole they shall have
24 determined that the best interests of society and the individual shall
25 best be served by such reinstatement rather than a return to a penal
26 institution.

27 **Sec. 334.** RCW 9.95.121 and 1981 c 136 s 38 are each amended to
28 read as follows:

29 (1) For offenders convicted of crimes committed before July 1,
30 1984, within fifteen days from the date of notice to the department of
31 corrections of the arrest and detention of the alleged parole violator,
32 he or she shall be personally served by a state ((probation and
33 parole)) community corrections officer with a copy of the factual
34 allegations of the violation of the conditions of parole, and, at the
35 same time shall be advised of his or her right to an on-site parole
36 revocation hearing and of his or her rights and privileges as provided
37 in RCW 9.95.120 through 9.95.126. The alleged parole violator, after
38 service of the allegations of violations of the conditions of parole

1 and the advice of rights may waive the on-site parole revocation
2 hearing as provided in RCW 9.95.120, and admit one or more of the
3 alleged violations of the conditions of parole. If the board accepts
4 the waiver it shall either, (1) reinstate the parolee on parole under
5 the same or modified conditions, or (2) revoke the parole of the
6 parolee and enter an order of parole revocation and return to state
7 custody. A determination of a new minimum sentence shall be made
8 within thirty days of return to state custody which shall not exceed
9 the maximum sentence as provided by law for the crime of which the
10 parolee was originally convicted or the maximum fixed by the court.

11 If the waiver made by the parolee is rejected by the board it shall
12 hold an on-site parole revocation hearing under the provisions of RCW
13 9.95.120 through 9.95.126.

14 (2) Offenders sentenced under section 303 of this act are subject
15 to the violation hearing process established in section 309 of this
16 act.

17 **Sec. 335.** RCW 9.95.122 and 1999 c 143 s 23 are each amended to
18 read as follows:

19 (1) At any on-site parole revocation hearing for a person convicted
20 of a crime committed before July 1, 1984, the alleged parole violator
21 shall be entitled to be represented by an attorney of his or her own
22 choosing and at his or her own expense, except, upon the presentation
23 of satisfactory evidence of indigency and the request for the
24 appointment of an attorney by the alleged parole violator, the board
25 may cause the appointment of an attorney to represent the alleged
26 parole violator to be paid for at state expense, and, in addition, the
27 board may assume all or such other expenses in the presentation of
28 evidence on behalf of the alleged parole violator as it may have
29 authorized: PROVIDED, That funds are available for the payment of
30 attorneys' fees and expenses. Attorneys for the representation of
31 alleged parole violators in on-site hearings shall be appointed by the
32 superior courts for the counties wherein the on-site parole revocation
33 hearing is to be held and such attorneys shall be compensated in such
34 manner and in such amount as shall be fixed in a schedule of fees
35 adopted by rule of the board.

36 (2) The rights of offenders sentenced under section 303 of this act
37 are defined in section 309 of this act.

1 **Sec. 336.** RCW 9.95.123 and 1999 c 143 s 24 are each amended to
2 read as follows:

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

34 **Sec. 337.** RCW 9.95.124 and 1999 c 143 s 25 are each amended to
35 read as follows:

36 At all on-site parole revocation hearings for offenders convicted
37 of crimes committed before July 1, 1984, the (~~probation and parole~~)
38 community corrections officers of the department of corrections, having

1 made the allegations of the violations of the conditions of parole, may
2 be represented by the attorney general. The attorney general may make
3 independent recommendations to the board about whether the violations
4 constitute sufficient cause for the revocation of the parole and the
5 return of the parolee to a state correctional institution for convicted
6 felons. The hearings shall be open to the public unless the board for
7 specifically stated reasons closes the hearing in whole or in part.
8 The hearings shall be recorded either manually or by a mechanical
9 recording device. An alleged parole violator may be requested to
10 testify and any such testimony shall not be used against him or her in
11 any criminal prosecution. The board shall adopt rules governing the
12 formal and informal procedures authorized by this chapter and make
13 rules of practice before the board in on-site parole revocation
14 hearings, together with forms and instructions.

15 **Sec. 338.** RCW 9.95.125 and 1993 c 140 s 2 are each amended to read
16 as follows:

17 After the on-site parole revocation hearing for a person convicted
18 of a crime committed before July 1, 1984, has been concluded, the
19 members of the board having heard the matter shall enter their decision
20 of record within ten days, and make findings and conclusions upon the
21 allegations of the violations of the conditions of parole. If the
22 member, or members having heard the matter, should conclude that the
23 allegations of violation of the conditions of parole have not been
24 proven by a preponderance of the evidence, or, those which have been
25 proven by a preponderance of the evidence are not sufficient cause for
26 the revocation of parole, then the parolee shall be reinstated on
27 parole on the same or modified conditions of parole. For parole
28 violations not resulting in new convictions, modified conditions of
29 parole may include sanctions according to an administrative sanction
30 grid. If the member or members having heard the matter should conclude
31 that the allegations of violation of the conditions of parole have been
32 proven by a preponderance of the evidence and constitute sufficient
33 cause for the revocation of parole, then such member or members shall
34 enter an order of parole revocation and return the parole violator to
35 state custody. Within thirty days of the return of such parole
36 violator to a state correctional institution (~~for convicted felons~~)
37 the board shall enter an order determining a new minimum term not
38 exceeding the maximum penalty provided by law for the crime for which

1 the parole violator was originally convicted or the maximum fixed by
2 the court.

3 **Sec. 339.** RCW 9.95.126 and 1969 c 98 s 8 are each amended to read
4 as follows:

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

9 **Sec. 340.** RCW 9.95.130 and 1993 c 140 s 3 are each amended to read
10 as follows:

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

18 **Sec. 341.** RCW 9.95.140 and 1992 c 7 s 27 are each amended to read
19 as follows:

20 (1) The ~~((indeterminate sentence review))~~ board shall cause a
21 complete record to be kept of every prisoner under the jurisdiction of
22 the board released on parole or community custody. Such records shall
23 be organized in accordance with the most modern methods of filing and
24 indexing so that there will be always immediately available complete
25 information about each such prisoner. Subject to information sharing
26 provisions related to mentally ill offenders, the end of sentence
27 review committee, and the department of corrections, the board may make
28 rules as to the privacy of such records and their use by others than
29 the board and its staff. ~~((In determining the rules regarding~~
30 dissemination of information regarding convicted)) Sex offenders
31 convicted of crimes committed before July 1, 1984, who are under the
32 board's jurisdiction(~~(7)~~) shall be subject to the determinations of the
33 end of sentence review committee regarding risk level and subject to
34 sex offender registration and community notification. The board
35 ~~((shall consider the provisions of section 116, chapter 3, Laws of 1990~~

1 ~~and RCW 4.24.550 and~~) shall be immune from liability for the release
2 of information concerning sex offenders as provided in RCW 4.24.550.

3 The superintendents of state correctional facilities and all
4 officers and employees thereof and all other public officials shall at
5 all times cooperate with the board and furnish to the board, its
6 officers, and employees such information as may be necessary to enable
7 it to perform its functions, and such superintendents and other
8 employees shall at all times give the members of the board, its
9 officers, and employees free access to all prisoners confined in the
10 state correctional facilities.

11 (2) Offenders sentenced under section 303 of this act shall be
12 subject to the determinations of the end of sentence review committee
13 regarding risk level and subject to sex offender registration and
14 community notification.

15 (3) The end of sentence review committee shall make law enforcement
16 notifications for offenders under board jurisdiction on the same basis
17 that it notifies law enforcement regarding offenders sentenced under
18 chapter 9.94A RCW for crimes committed after July 1, 1984.

19 **Sec. 342.** RCW 9.95.190 and 1992 c 7 s 28 are each amended to read
20 as follows:

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

26 **Sec. 343.** RCW 9.95.250 and 1981 c 136 s 43 are each amended to
27 read as follows:

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

32 **Sec. 344.** RCW 9.95.280 and 1999 c 143 s 31 are each amended to
33 read as follows:

34 The board may deputize any person (regularly employed by another
35 state) to act as an officer and agent of this state in effecting the
36 return of any person convicted of a crime committed before July 1,

1 1984, who has violated the terms and conditions of parole or probation
2 as granted by this state. In any matter relating to the return of such
3 a person, any agent so deputized shall have all the powers of a police
4 officer of this state.

5 **Sec. 345.** RCW 9.95.290 and 1955 c 183 s 2 are each amended to read
6 as follows:

7 Any deputization pursuant to this statute with regard to an
8 offender convicted of a crime committed before July 1, 1984, shall be
9 in writing and any person authorized to act as an agent of this state
10 pursuant hereto shall carry formal evidence of his or her deputization
11 and shall produce the same upon demand.

12 **Sec. 346.** RCW 9.95.300 and 1999 c 143 s 32 are each amended to
13 read as follows:

14 The board may enter into contracts with similar officials of any
15 other state or states for the purpose of sharing an equitable portion
16 of the cost of effecting the return of any person who has violated the
17 terms and conditions of parole (~~(or)~~), probation, or community custody
18 as granted by this state.

19 **Sec. 347.** RCW 9.95.310 and 1986 c 125 s 1 are each amended to read
20 as follows:

21 The purpose of RCW 9.95.310 through 9.95.370 is to provide
22 necessary assistance, other than assistance which is authorized to be
23 provided under the vocational rehabilitation laws, Title 28A RCW, under
24 the public assistance laws, Title 74 RCW or the (~~department of~~)
25 employment security department or other state agency, for parolees,
26 inmates assigned to work/training release facilities, discharged
27 prisoners and persons convicted of a felony committed before July 1,
28 1984, and granted probation in need and whose capacity to earn a living
29 under these circumstances is impaired; and to help such persons attain
30 self-care and/or self-support for rehabilitation and restoration to
31 independence as useful citizens as rapidly as possible thereby reducing
32 the number of returnees to the institutions of this state to the
33 benefit of such person and society as a whole.

34 **Sec. 348.** RCW 9.95.320 and 1986 c 125 s 2 are each amended to read
35 as follows:

1 The secretary of corrections or his or her designee may provide to
2 any parolee, inmate assigned to a work/training release facility,
3 discharged prisoner and persons convicted of a felony committed before
4 July 1, 1984, and granted probation in need and without necessary
5 means, from any funds legally available therefor, such reasonable sums
6 as he or she deems necessary for the subsistence of such person and his
7 or her family until such person has become gainfully employed. Such
8 aid may be made under such terms and conditions, and through local
9 parole or probation officers if necessary, as the secretary of
10 corrections or his or her designee may require and shall be
11 supplementary to any moneys which may be provided under public
12 assistance or from any other source.

13 **Sec. 349.** RCW 9.95.340 and 1986 c 125 s 3 are each amended to read
14 as follows:

15 Any funds in the hands of the department of corrections, or which
16 may come into its hands, which belong to discharged prisoners, inmates
17 assigned to work/training release facilities, parolees or persons
18 convicted of a felony and granted probation who absconded, or whose
19 whereabouts are unknown, shall be deposited in the community services
20 revolving fund. Said funds shall be used to defray the expenses of
21 clothing and other necessities and for transporting discharged
22 prisoners, inmates assigned to work/training release facilities,
23 parolees and persons convicted of a felony and granted probation who
24 are without means to secure the same. All payments disbursed from
25 these funds shall be repaid, whenever possible, by discharged
26 prisoners, inmates assigned to work/training release facilities,
27 parolees and persons convicted of a felony and granted probation for
28 whose benefit they are made. Whenever any money belonging to such
29 persons is so paid into the revolving fund, it shall be repaid to them
30 in accordance with law if a claim therefor is filed with the department
31 of corrections within five years of deposit into said fund and upon a
32 clear showing of a legal right of such claimant to such money. This
33 section applies to persons convicted of a felony committed before July
34 1, 1984.

35 **Sec. 350.** RCW 9.95.350 and 1986 c 125 s 4 are each amended to read
36 as follows:

1 All money or other property paid or delivered to a (~~probation or~~
2 ~~parole~~) community corrections officer or employee of the department of
3 corrections by or for the benefit of any discharged prisoner, inmate
4 assigned to a work/training release facility, parolee or persons
5 convicted of a felony and granted probation shall be immediately
6 transmitted to the department of corrections and it shall enter the
7 same upon its books to his or her credit. Such money or other property
8 shall be used only under the direction of the department of
9 corrections.

10 If such person absconds, the money shall be deposited in the
11 revolving fund created by RCW 9.95.360, and any other property, if not
12 called for within one year, shall be sold by the department of
13 corrections and the proceeds credited to the revolving fund.

14 If any person, files a claim within five years after the deposit or
15 crediting of such funds, and satisfies the department of corrections
16 that he or she is entitled thereto, the department may make a finding
17 to that effect and may make payment to the claimant in the amount to
18 which he or she is entitled.

19 This section applies to persons convicted of a felony committed
20 before July 1, 1984.

21 **Sec. 351.** RCW 9.95.360 and 1986 c 125 s 5 are each amended to read
22 as follows:

23 The department of corrections shall create, maintain, and
24 administer outside the state treasury a permanent revolving fund to be
25 known as the "community services revolving fund" into which shall be
26 deposited all moneys received by it under RCW 9.95.310 through 9.95.370
27 and any appropriation made for the purposes of RCW 9.95.310 through
28 9.95.370. All expenditures from this revolving fund shall be made by
29 check or voucher signed by the secretary of corrections or his or her
30 designee. The community services revolving fund shall be deposited by
31 the department of corrections in such banks or financial institutions
32 as it may select which shall give to the department a surety bond
33 executed by a surety company authorized to do business in this state,
34 or collateral eligible as security for deposit of state funds in at
35 least the full amount of deposit.

36 This section applies to persons convicted of a felony committed
37 before July 1, 1984.

1 **Sec. 352.** RCW 9.95.370 and 1981 c 136 s 50 are each amended to
2 read as follows:

3 The secretary of corrections or his or her designee shall enter
4 into a written agreement with every person receiving funds under RCW
5 9.95.310 through 9.95.370 that such person will repay such funds under
6 the terms and conditions in said agreement. No person shall receive
7 funds until such an agreement is validly made. This section applies to
8 persons convicted of a felony committed before July 1, 1984.

9 **Sec. 353.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to
10 read as follows:

11 (1) Except as provided in subsection (2) of this section, the
12 following sections of law do not apply to any felony offense committed
13 on or after July 1, 1984: RCW ((9.95.003, 9.95.005, 9.95.007,))
14 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, ((9.95.020, 9.95.030,
15 9.95.031, 9.95.032,)) 9.95.040, 9.95.045, 9.95.047, 9.95.052,
16 ((9.95.070,)) 9.95.080, ((9.95.090,)) 9.95.100, ((9.95.110,)) 9.95.115,
17 9.95.116, 9.95.120, ((9.95.121, 9.95.122, 9.95.123,)) 9.95.124,
18 9.95.125, ((9.95.126,)) 9.95.130, ((9.95.140, 9.95.150, 9.95.160,
19 9.95.170,)) 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212,
20 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265,
21 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350,
22 ((and)) 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

23 (2) The following sections apply to any felony offense committed
24 before July 1, 1984, and to any offense sentenced under section 303 of
25 this act and committed on or after July 1, 2001: RCW 9.95.003,
26 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055,
27 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110,
28 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160,
29 9.95.170, 9.95.300, and 9.96.050.

30 **Sec. 354.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to
31 read as follows:

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

35 (2) If the conduct in which a person engages otherwise constitutes
36 an attempt to commit a crime, it is no defense to a prosecution of such

1 attempt that the crime charged to have been attempted was, under the
2 attendant circumstances, factually or legally impossible of commission.

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

4 (a) Class A felony when the crime attempted is murder in the first
5 degree, murder in the second degree, (~~or~~) arson in the first degree,
6 child molestation in the first degree, indecent liberties by forcible
7 compulsion, rape in the first degree, rape in the second degree, rape
8 of a child in the first degree, or rape of a child in the second
9 degree;

10 (b) Class B felony when the crime attempted is a class A felony
11 other than (~~murder in the first degree, murder in the second degree,~~
12 ~~or arson in the first degree~~) an offense listed in (a) of this
13 subsection;

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

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

16 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
17 misdemeanor.

18 **Sec. 355.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to
19 read as follows:

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

22 (a) Intentionally assaults another and thereby recklessly inflicts
23 substantial bodily harm; or

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

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

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

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

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

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

1 **Sec. 356.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are
2 each amended to read as follows:

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

6 (2) In any prosecution for kidnapping in the second degree, it is
7 a defense if established by the defendant by a preponderance of the
8 evidence that (a) the abduction does not include the use of or intent
9 to use or threat to use deadly force, and (b) the actor is a relative
10 of the person abducted, and (c) the actor's sole intent is to assume
11 custody of that person. Nothing contained in this paragraph shall
12 constitute a defense to a prosecution for, or preclude a conviction of,
13 any other crime.

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

17 **Sec. 357.** RCW 9A.44.093 and 1994 c 271 s 306 are each amended to
18 read as follows:

19 (1) A person is guilty of sexual misconduct with a minor in the
20 first degree when: (a) The person has, or knowingly causes another
21 person under the age of eighteen to have, sexual intercourse with
22 another person who is at least sixteen years old but less than eighteen
23 years old and not married to the perpetrator, if the perpetrator is at
24 least sixty months older than the victim, is in a significant
25 relationship to the victim, and abuses a supervisory position within
26 that relationship in order to engage in or cause another person under
27 the age of eighteen to engage in sexual intercourse with the victim; or
28 (b) the person is a school employee who has, or knowingly causes
29 another person under the age of eighteen to have, sexual intercourse
30 with a registered student of the school who is at least sixteen years
31 old and not married to the employee, if the employee is at least sixty
32 months older than the student.

33 (2) Sexual misconduct with a minor in the first degree is a class
34 C felony.

35 (3) For the purposes of this section, "school employee" means an
36 employee of a common school defined in RCW 28A.150.020, or a grade
37 kindergarten through twelve employee of a private school under chapter

1 28A.195 RCW, who is not enrolled as a student of the common school or
2 private school.

3 **Sec. 358.** RCW 9A.44.096 and 1994 c 271 s 307 are each amended to
4 read as follows:

5 (1) A person is guilty of sexual misconduct with a minor in the
6 second degree when: (a) The person has, or knowingly causes another
7 person under the age of eighteen to have, sexual contact with another
8 person who is at least sixteen years old but less than eighteen years
9 old and not married to the perpetrator, if the perpetrator is at least
10 sixty months older than the victim, is in a significant relationship to
11 the victim, and abuses a supervisory position within that relationship
12 in order to engage in or cause another person under the age of eighteen
13 to engage in sexual contact with the victim; or (b) the person is a
14 school employee who has, or knowingly causes another person under the
15 age of eighteen to have, sexual contact with a registered student of
16 the school who is at least sixteen years old and not married to the
17 employee, if the employee is at least sixty months older than the
18 student.

19 (2) Sexual misconduct with a minor in the second degree is a gross
20 misdemeanor.

21 (3) For the purposes of this section, "school employee" means an
22 employee of a common school defined in RCW 28A.150.020, or a grade
23 kindergarten through twelve employee of a private school under chapter
24 28A.195 RCW, who is not enrolled as a student of the common school or
25 private school.

26 **Sec. 359.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
27 read as follows:

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

31 (a) By forcible compulsion;

32 (b) When the other person is incapable of consent by reason of
33 being mentally defective, mentally incapacitated, or physically
34 helpless;

35 (c) When the victim is developmentally disabled and the perpetrator
36 is a person who is not married to the victim and who has supervisory
37 authority over the victim;

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

8 (e) When the victim is a resident of a facility for mentally
9 disordered or chemically dependent persons and the perpetrator is a
10 person who is not married to the victim and has supervisory authority
11 over the victim; or

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

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

17 **Sec. 360.** RCW 9A.76.--- and 2001 c 287 s 1 are each amended to
18 read as follows:

19 (1) A person is guilty of ~~((escape by a))~~ sexually violent predator
20 escape if ~~((, having been committed to the department of social and~~
21 ~~health services as a sexually violent predator under chapter 71.09 RCW,~~
22 ~~he or she:~~

23 ~~(a) Escapes from custody;~~

24 ~~(b) Escapes from a commitment facility;~~

25 ~~(c) Escapes from a less restrictive alternative facility; or~~

26 ~~(d) While on conditional release and residing in a location other~~
27 ~~than at a commitment center or less restrictive alternative facility,~~
28 ~~leaves or remains absent from the state of Washington without prior~~
29 ~~court authorization)):~~

30 (a) Having been found to be a sexually violent predator and
31 confined to the special commitment center or another secure facility
32 under court order, the person escapes from the secure facility;

33 (b) Having been found to be a sexually violent predator and being
34 under an order of conditional release, the person leaves or remains
35 absent from the state of Washington without prior court authorization;
36 or

37 (c) Having been found to be a sexually violent predator and being
38 under an order of conditional release, the person: (i) Without

1 authorization, leaves or remains absent from his or her residence,
2 place of employment, educational institution, or authorized outing;
3 (ii) tampers with his or her electronic monitoring device or removes it
4 without authorization; or (iii) escapes from his or her escort.

5 (2) (~~Escape by a~~) Sexually violent predator escape is a class
6 ((B)) A felony with a minimum sentence of sixty months, and shall be
7 sentenced under section 303 of this act.

8 **Sec. 361.** RCW 9.94A.320 and 2001 c 310 s 4, 2001 c 287 s 3, 2001
9 c 224 s 3, 2001 c 222 s 24, and 2001 c 207 s 3 are each reenacted and
10 amended to read as follows:

11 TABLE 2

12 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

13	XVI	Aggravated Murder 1 (RCW 10.95.020)
14	XV	Homicide by abuse (RCW 9A.32.055)
15		Malicious explosion 1 (RCW 70.74.280(1))
16		Murder 1 (RCW 9A.32.030)
17	XIV	Murder 2 (RCW 9A.32.050)
18	XIII	Malicious explosion 2 (RCW 70.74.280(2))
19		Malicious placement of an explosive 1 (RCW
20		70.74.270(1))
21	XII	Assault 1 (RCW 9A.36.011)
22		Assault of a Child 1 (RCW 9A.36.120)
23		Malicious placement of an imitation device
24		1 (RCW 70.74.272(1)(a))
25		Rape 1 (RCW 9A.44.040)
26		Rape of a Child 1 (RCW 9A.44.073)
27	XI	Manslaughter 1 (RCW 9A.32.060)
28		Rape 2 (RCW 9A.44.050)
29		Rape of a Child 2 (RCW 9A.44.076)
30	X	Child Molestation 1 (RCW 9A.44.083)
31		(Escape by a) Sexually Violent Predator
32		<u>Escape</u> (RCW 9A.76.--- (section 1,
33		chapter 287, Laws of 2001, <u>as amended</u>

1 by section 360, chapter ... (this
2 act), Laws of 2001 2nd sp. sess.)
3 Indecent Liberties (with forcible
4 compulsion) (RCW 9A.44.100(1)(a))
5 Kidnapping 1 (RCW 9A.40.020)
6 Leading Organized Crime (RCW
7 9A.82.060(1)(a))
8 Malicious explosion 3 (RCW 70.74.280(3))
9 Manufacture of methamphetamine (RCW
10 69.50.401(a)(1)(ii))
11 Over 18 and deliver heroin,
12 methamphetamine, a narcotic from
13 Schedule I or II, or flunitrazepam
14 from Schedule IV to someone under 18
15 (RCW 69.50.406)

16 IX Assault of a Child 2 (RCW 9A.36.130)
17 Controlled Substance Homicide (RCW
18 69.50.415)
19 Explosive devices prohibited (RCW
20 70.74.180)
21 Homicide by Watercraft, by being under the
22 influence of intoxicating liquor or
23 any drug (RCW 79A.60.050)
24 Inciting Criminal Profiteering (RCW
25 9A.82.060(1)(b))
26 Malicious placement of an explosive 2 (RCW
27 70.74.270(2))
28 Over 18 and deliver narcotic from Schedule
29 III, IV, or V or a nonnarcotic, except
30 flunitrazepam or methamphetamine, from
31 Schedule I-V to someone under 18 and 3
32 years junior (RCW 69.50.406)
33 Robbery 1 (RCW 9A.56.200)
34 Sexual Exploitation (RCW 9.68A.040)
35 Vehicular Homicide, by being under the
36 influence of intoxicating liquor or
37 any drug (RCW 46.61.520)

38 VIII Arson 1 (RCW 9A.48.020)

1 Deliver or possess with intent to deliver
2 methamphetamine (RCW
3 69.50.401(a)(1)(ii))
4 Hit and Run--Death (RCW 46.52.020(4)(a))
5 Homicide by Watercraft, by the operation of
6 any vessel in a reckless manner (RCW
7 79A.60.050)
8 Manslaughter 2 (RCW 9A.32.070)
9 Manufacture, deliver, or possess with
10 intent to deliver amphetamine (RCW
11 69.50.401(a)(1)(ii))
12 Manufacture, deliver, or possess with
13 intent to deliver heroin or cocaine
14 (RCW 69.50.401(a)(1)(i))
15 Possession of Ephedrine, Pseudoephedrine,
16 or Anhydrous Ammonia with intent to
17 manufacture methamphetamine (RCW
18 69.50.440)
19 Promoting Prostitution 1 (RCW 9A.88.070)
20 Selling for profit (controlled or
21 counterfeit) any controlled substance
22 (RCW 69.50.410)
23 Theft of Anhydrous Ammonia (RCW 69.55.010)
24 Vehicular Homicide, by the operation of any
25 vehicle in a reckless manner (RCW
26 46.61.520)

27 VII Burglary 1 (RCW 9A.52.020)
28 Child Molestation 2 (RCW 9A.44.086)
29 Dealing in depictions of minor engaged in
30 sexually explicit conduct (RCW
31 9.68A.050)
32 Drive-by Shooting (RCW 9A.36.045)
33 Homicide by Watercraft, by disregard for
34 the safety of others (RCW 79A.60.050)
35 Indecent Liberties (without forcible
36 compulsion) (RCW 9A.44.100(1) (b) and
37 (c))
38 Introducing Contraband 1 (RCW 9A.76.140)

1 Involving a minor in drug dealing (RCW
2 69.50.401(f))
3 Malicious placement of an explosive 3 (RCW
4 70.74.270(3))
5 Sending, bringing into state depictions of
6 minor engaged in sexually explicit
7 conduct (RCW 9.68A.060)
8 Unlawful Possession of a Firearm in the
9 first degree (RCW 9.41.040(1)(a))
10 Use of a Machine Gun in Commission of a
11 Felony (RCW 9.41.225)
12 Vehicular Homicide, by disregard for the
13 safety of others (RCW 46.61.520)

14 VI Bail Jumping with Murder 1 (RCW
15 9A.76.170(~~((+2))~~) (3)(a))
16 Bribery (RCW 9A.68.010)
17 Incest 1 (RCW 9A.64.020(1))
18 Intimidating a Judge (RCW 9A.72.160)
19 Intimidating a Juror/Witness (RCW
20 9A.72.110, 9A.72.130)
21 Malicious placement of an imitation device
22 2 (RCW 70.74.272(1)(b))
23 Manufacture, deliver, or possess with
24 intent to deliver narcotics from
25 Schedule I or II (except heroin or
26 cocaine) or flunitrazepam from
27 Schedule IV (RCW 69.50.401(a)(1)(i))
28 Rape of a Child 3 (RCW 9A.44.079)
29 Theft of a Firearm (RCW 9A.56.300)
30 Unlawful Storage of Anhydrous Ammonia (RCW
31 69.55.020)

32 V Abandonment of dependent person 1 (RCW
33 9A.42.060)
34 Advancing money or property for
35 extortionate extension of credit (RCW
36 9A.82.030)
37 Bail Jumping with class A Felony (RCW
38 9A.76.170(~~((+2))~~) (3)(b))

1 Child Molestation 3 (RCW 9A.44.089)
2 Criminal Mistreatment 1 (RCW 9A.42.020)
3 Custodial Sexual Misconduct 1 (RCW
4 9A.44.160)
5 Delivery of imitation controlled substance
6 by person eighteen or over to person
7 under eighteen (RCW 69.52.030(2))
8 Domestic Violence Court Order Violation
9 (RCW 10.99.040, 10.99.050, 26.09.300,
10 26.10.220, 26.26.138, 26.50.110,
11 26.52.070, or 74.34.145)
12 Extortion 1 (RCW 9A.56.120)
13 Extortionate Extension of Credit (RCW
14 9A.82.020)
15 Extortionate Means to Collect Extensions of
16 Credit (RCW 9A.82.040)
17 Incest 2 (RCW 9A.64.020(2))
18 Kidnapping 2 (RCW 9A.40.030)
19 Perjury 1 (RCW 9A.72.020)
20 Persistent prison misbehavior (RCW
21 9.94.070)
22 Possession of a Stolen Firearm (RCW
23 9A.56.310)
24 Rape 3 (RCW 9A.44.060)
25 Rendering Criminal Assistance 1 (RCW
26 9A.76.070)
27 Sexual Misconduct with a Minor 1 (RCW
28 9A.44.093)
29 Sexually Violating Human Remains (RCW
30 9A.44.105)
31 Stalking (RCW 9A.46.110)
32 IV Arson 2 (RCW 9A.48.030)
33 Assault 2 (RCW 9A.36.021)
34 Assault by Watercraft (RCW 79A.60.060)
35 Bribing a Witness/Bribe Received by Witness
36 (RCW 9A.72.090, 9A.72.100)
37 Commercial Bribery (RCW 9A.68.060)
38 Counterfeiting (RCW 9.16.035(4))
39 Escape 1 (RCW 9A.76.110)

1 Hit and Run--Injury (RCW 46.52.020(4)(b))
2 Hit and Run with Vessel--Injury Accident
3 (RCW 79A.60.200(3))
4 Indecent Exposure to Person Under Age
5 Fourteen (subsequent sex offense) (RCW
6 9A.88.010)
7 Influencing Outcome of Sporting Event (RCW
8 9A.82.070)
9 Knowingly Trafficking in Stolen Property
10 (RCW 9A.82.050(2))
11 Malicious Harassment (RCW 9A.36.080)
12 Manufacture, deliver, or possess with
13 intent to deliver narcotics from
14 Schedule III, IV, or V or nonnarcotics
15 from Schedule I-V (except marijuana,
16 amphetamine, methamphetamines, or
17 flunitrazepam) (RCW 69.50.401(a)(1)
18 (iii) through (v))
19 Residential Burglary (RCW 9A.52.025)
20 Robbery 2 (RCW 9A.56.210)
21 Theft of Livestock 1 (RCW 9A.56.080)
22 Threats to Bomb (RCW 9.61.160)
23 Use of Proceeds of Criminal Profiteering
24 (RCW 9A.82.080 (1) and (2))
25 Vehicular Assault (RCW 46.61.522)
26 Willful Failure to Return from Furlough
27 (RCW 72.66.060)

28 III Abandonment of dependent person 2 (RCW
29 9A.42.070)
30 Assault 3 (RCW 9A.36.031)
31 Assault of a Child 3 (RCW 9A.36.140)
32 Bail Jumping with class B or C Felony (RCW
33 9A.76.170(~~(+2)~~)) (3)(c))
34 Burglary 2 (RCW 9A.52.030)
35 Communication with a Minor for Immoral
36 Purposes (RCW 9.68A.090)
37 Criminal Gang Intimidation (RCW 9A.46.120)
38 Criminal Mistreatment 2 (RCW 9A.42.030)
39 Custodial Assault (RCW 9A.36.100)

1 Delivery of a material in lieu of a
2 controlled substance (RCW
3 69.50.401(c))
4 Escape 2 (RCW 9A.76.120)
5 Extortion 2 (RCW 9A.56.130)
6 Harassment (RCW 9A.46.020)
7 Intimidating a Public Servant (RCW
8 9A.76.180)
9 Introducing Contraband 2 (RCW 9A.76.150)
10 Maintaining a Dwelling or Place for
11 Controlled Substances (RCW
12 69.50.402(a)(6))
13 Malicious Injury to Railroad Property (RCW
14 81.60.070)
15 Manufacture, deliver, or possess with
16 intent to deliver marijuana (RCW
17 69.50.401(a)(1)(iii))
18 Manufacture, distribute, or possess with
19 intent to distribute an imitation
20 controlled substance (RCW
21 69.52.030(1))
22 Patronizing a Juvenile Prostitute (RCW
23 9.68A.100)
24 Perjury 2 (RCW 9A.72.030)
25 Possession of Incendiary Device (RCW
26 9.40.120)
27 Possession of Machine Gun or Short-Barreled
28 Shotgun or Rifle (RCW 9.41.190)
29 Promoting Prostitution 2 (RCW 9A.88.080)
30 Recklessly Trafficking in Stolen Property
31 (RCW 9A.82.050(1))
32 Securities Act violation (RCW 21.20.400)
33 Tampering with a Witness (RCW 9A.72.120)
34 Telephone Harassment (subsequent conviction
35 or threat of death) (RCW 9.61.230)
36 Theft of Livestock 2 (RCW 9A.56.080)
37 Unlawful Imprisonment (RCW 9A.40.040)
38 Unlawful possession of firearm in the
39 second degree (RCW 9.41.040(1)(b))

1 Unlawful Use of Building for Drug Purposes
2 (RCW 69.53.010)
3 Willful Failure to Return from Work Release
4 (RCW 72.65.070)

5 II Computer Trespass 1 (RCW 9A.52.110)
6 Counterfeiting (RCW 9.16.035(3))
7 Create, deliver, or possess a counterfeit
8 controlled substance (RCW
9 69.50.401(b))

10 Escape from Community Custody (RCW
11 72.09.310)

12 Health Care False Claims (RCW 48.80.030)

13 Malicious Mischief 1 (RCW 9A.48.070)

14 Possession of controlled substance that is
15 either heroin or narcotics from
16 Schedule I or II or flunitrazepam from
17 Schedule IV (RCW 69.50.401(d))

18 Possession of phencyclidine (PCP) (RCW
19 69.50.401(d))

20 Possession of Stolen Property 1 (RCW
21 9A.56.150)

22 Theft 1 (RCW 9A.56.030)

23 Theft of Rental, Leased, or Lease-purchased
24 Property (valued at one thousand five
25 hundred dollars or more) (RCW
26 9A.56.096(4))

27 Trafficking in Insurance Claims (RCW
28 48.30A.015)

29 Unlawful Practice of Law (RCW 2.48.180)

30 Unlicensed Practice of a Profession or
31 Business (RCW 18.130.190(7))

32 I Attempting to Elude a Pursuing Police
33 Vehicle (RCW 46.61.024)

34 False Verification for Welfare (RCW
35 74.08.055)

36 Forged Prescription (RCW 69.41.020)

37 Forged Prescription for a Controlled
38 Substance (RCW 69.50.403)

1 Forgery (RCW 9A.60.020)
2 Malicious Mischief 2 (RCW 9A.48.080)
3 Possess Controlled Substance that is a
4 Narcotic from Schedule III, IV, or V
5 or Non-narcotic from Schedule I-V
6 (except phencyclidine or
7 flunitrazepam) (RCW 69.50.401(d))
8 Possession of Stolen Property 2 (RCW
9 9A.56.160)
10 Reckless Burning 1 (RCW 9A.48.040)
11 Taking Motor Vehicle Without Permission
12 (RCW 9A.56.070)
13 Theft 2 (RCW 9A.56.040)
14 Theft of Rental, Leased, or Lease-purchased
15 Property (valued at two hundred fifty
16 dollars or more but less than one
17 thousand five hundred dollars) (RCW
18 9A.56.096(4))
19 Unlawful Issuance of Checks or Drafts (RCW
20 9A.56.060)
21 Unlawful Use of Food Stamps (RCW 9.91.140
22 (2) and (3))
23 Vehicle Prowl 1 (RCW 9A.52.095)

24 **Sec. 362.** RCW 72.09.370 and 1999 c 214 s 2 are each amended to
25 read as follows:

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

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

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

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

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

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

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

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

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

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

12 NEW SECTION. **Sec. 363.** A new section is added to chapter 9.95 RCW
13 to read as follows:

14 The indeterminate sentence review board, in fulfilling its duties
15 under the provisions of this act, shall be considered a parole board as
16 that concept was treated in law under the state's indeterminate
17 sentencing statutes.

18 **PART IV**

19 **SEX OFFENDER TREATMENT PROVIDERS**

20 **Sec. 401.** RCW 18.155.020 and 2000 c 171 s 33 and 2000 c 28 s 38
21 are each reenacted and amended to read as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter:

24 (1) "Certified sex offender treatment provider" means a licensed,
25 certified, or registered health professional who is certified to
26 examine and treat sex offenders pursuant to chapters 9.94A and 13.40
27 RCW ((9.94A.670 and 13.40.160)) and sexually violent predators under
28 chapter 71.09 RCW.

29 (2) "Department" means the department of health.

30 (3) "Secretary" means the secretary of health.

31 (4) "Sex offender treatment provider" means a person who counsels
32 or treats sex offenders accused of or convicted of a sex offense as
33 defined by RCW 9.94A.030.

34 **Sec. 402.** RCW 18.155.030 and 2000 c 171 s 34 and 2000 c 28 s 39
35 are each reenacted and amended to read as follows:

1 (1) No person shall represent himself or herself as a certified sex
2 offender treatment provider without first applying for and receiving a
3 certificate pursuant to this chapter.

4 (2) Only a certified sex offender treatment provider may perform or
5 provide the following services:

6 (a) Evaluations conducted for the purposes of and pursuant to RCW
7 9.94A.670 and 13.40.160;

8 (b) Treatment of convicted sex offenders who are sentenced and
9 ordered into treatment pursuant to ((RCW 9.94A.670)) chapter 9.94A RCW
10 and adjudicated juvenile sex offenders who are ordered into treatment
11 pursuant to ((RCW 13.40.160)) chapter 13.40 RCW;

12 (c) Except as provided under subsection (3) of this section,
13 treatment of sexually violent predators who are conditionally released
14 to a less restrictive alternative pursuant to chapter 71.09 RCW.

15 (3) A certified sex offender treatment provider may not perform or
16 provide treatment of sexually violent predators under subsection (2)(c)
17 of this section if the certified sex offender treatment provider has
18 been:

19 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

20 (b) Convicted in any other jurisdiction of an offense that under
21 the laws of this state would be classified as a sex offense as defined
22 in RCW 9.94A.030; or

23 (c) Suspended or otherwise restricted from practicing any health
24 care profession by competent authority in any state, federal, or
25 foreign jurisdiction.

26 NEW SECTION. Sec. 403. A new section is added to chapter 4.24 RCW
27 to read as follows:

28 (1) A certified sex offender treatment provider, acting in the
29 course of his or her duties, providing treatment to a person who has
30 been released to a less restrictive alternative under chapter 71.09 RCW
31 or to a level III sex offender on community custody as a court or
32 department ordered condition of sentence is not negligent because he or
33 she treats a high risk offender; sex offenders are known to have a risk
34 of reoffense. The treatment provider is not liable for civil damages
35 resulting from the reoffense of a client unless the treatment
36 provider's acts or omissions constituted gross negligence or willful or
37 wanton misconduct. This limited liability provision does not eliminate
38 the treatment provider's duty to warn of and protect from a client's

1 threatened violent behavior if the client communicates a serious threat
2 of physical violence against a reasonably ascertainable victim or
3 victims. In addition to any other requirements to report violations,
4 the sex offender treatment provider is obligated to report an
5 offender's expressions of intent to harm or other predatory behavior,
6 whether or not there is an ascertainable victim, in progress reports
7 and other established processes that enable courts and supervising
8 entities to assess and address the progress and appropriateness of
9 treatment. This limited liability provision applies only to the
10 conduct of certified sex offender treatment providers and not the
11 conduct of the state.

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

17 NEW SECTION. **Sec. 404.** A new section is added to chapter 71.09
18 RCW to read as follows:

19 (1) Examinations and treatment of sexually violent predators who
20 are conditionally released to a less restrictive alternative under this
21 chapter shall be conducted only by sex offender treatment providers
22 certified by the department of health under chapter 18.155 RCW unless
23 the court or the department of social and health services finds that:

24 (a) The court-ordered less restrictive alternative placement is located
25 in another state; (b) the treatment provider is employed by the
26 department; or (c)(i) all certified treatment providers become
27 unavailable to provide treatment within a reasonable geographic
28 distance of the person's home, as determined in rules adopted by the
29 department of social and health services; and (ii) the evaluation and
30 treatment plan comply with the rules adopted by the department of
31 social and health services.

32 A treatment provider approved by the department of social and
33 health services under (c) of this subsection, who is not certified by
34 the department of health, shall consult with a certified provider
35 during the person's period of treatment to ensure compliance with the
36 rules adopted by the department of health. The frequency and content
37 of the consultation shall be based on the recommendation of the
38 certified provider.

1 (2) A treatment provider, whether or not he or she is employed or
2 approved by the department of social and health services under
3 subsection (1) of this section or otherwise certified, may not perform
4 or provide treatment of sexually violent predators under this section
5 if the treatment provider has been:

6 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

7 (b) Convicted in any other jurisdiction of an offense that under
8 the laws of this state would be classified as a sex offense as defined
9 in RCW 9.94A.030; or

10 (c) Suspended or otherwise restricted from practicing any health
11 care profession by competent authority in any state, federal, or
12 foreign jurisdiction.

13 (3) Nothing in this section prohibits a qualified expert from
14 examining or evaluating a sexually violent predator who has been
15 conditionally released for purposes of presenting an opinion in court
16 proceedings.

17 **PART V**

18 **TECHNICAL PROVISIONS**

19 NEW SECTION. **Sec. 501.** The following acts or parts of acts are
20 each repealed:

21 (1) RCW 9.95.0011 (Indeterminate sentence review board--Report--
22 Recommendation of governor) and 1997 c 350 s 1, 1989 c 259 s 4, & 1986
23 c 224 s 12; and

24 (2) RCW 9.95.145 (Sex offenders--Release of information--
25 Classification of offenders) and 1997 c 364 s 5 & 1990 c 3 s 127.

26 NEW SECTION. **Sec. 502.** The secretary of corrections, the
27 secretary of social and health services, and the indeterminate sentence
28 review board may adopt rules to implement this act.

29 NEW SECTION. **Sec. 503.** (1) Sections 301 through 363 of this act
30 shall not affect the validity of any sentence imposed under any other
31 law for any offense committed before, on, or after the effective date
32 of this section.

33 (2) Sections 301 through 363 of this act shall apply to offenses
34 committed on or after the effective date of this section.

1 NEW SECTION. **Sec. 504.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 505.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately, except for sections 301 through 363, 501, and 503 of this
9 act which take effect September 1, 2001.

 Passed the Senate June 21, 2001.

 Passed the House June 21, 2001.

 Approved by the Governor June 26, 2001.

 Filed in Office of Secretary of State June 26, 2001.