

NO. 49928-2

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

M. GWYN MYLES, individually and as Personal Representative of the
Estate of WILLIAM LLOYD MYLES, deceased,

Respondents.

v.

STATE OF WASHINGTON, et al.,

Appellants,

APPELLANT STATE OF WASHINGTON'S OPENING BRIEF

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I. INTRODUCTION

Plaintiff Gwen Myers claims that the Washington State Department of Corrections (DOC) is liable for the death of her husband in a January 27, 2006, traffic accident caused by Carlos Villanueva-Villa, an individual who had previously been on DOC supervision. At the time of the accident Mr. Villanueva-Villa was no longer on DOC supervision, and DOC no longer had any authority to control his actions. Because of this, DOC owed no duty to plaintiff.

DOC owes a duty to persons harmed by an offender on DOC supervision under the special relationship exception to the public duty doctrine. *E.g. Taggart v. State*, 118 Wn.2d 195, 218-19, 822 P.2d 243 (1992). The special relationship from which the duty arises is the relationship between the community corrections officer and the offender, which allows the community corrections officer authority to “take charge” of the actions of the offender. *Taggart*, 118 Wn.2d at 219. This “take charge” relationship allows DOC to impose conditions of supervision and to enforce these conditions by sanctions. When DOC no longer has this authority and the “take charge” relationship ends, the duty imposed by *Taggart* also ends. *Taggart*, 118 Wn.2d at 220; *Husted v. State*, 187 Wn. App. 579, 587, 348 P.3d 776 (2015), *review denied*, 184 Wn.2d 1011 (2015).

To establish liability based on the *Taggart* duty a plaintiff must prove both that a “take charge” relationship existed to create the duty and that, but for DOC breaching the duty, the plaintiff’s injury would not have occurred because the supervised individual would have been in jail confinement on the date of injury and therefore unable to cause the harm. *Estate of Bordon ex rel. Anderson v. State Dep’t of Corr.*, 122 Wn. App. 227, 235, 95 P.3d 764 (2004), *review denied*, 154 Wn.2d 1003 (2005). However, where DOC no longer has a “take charge” relationship with the individual, there can be no *Taggart* duty and consequently there can be no liability. *E.g. Estate of Davis v. State Dep’t of Corr.*, 127 Wn. App. 833, 113 P.3d 487 (2005); *Husted*, 187 Wn. App. at 587-88.

DOC had no “take charge” relationship (or consequent duty to Plaintiff) in January 2006, based on Carlos Villanueva-Villa’s April 14, 2003, sentences of: (1) one year of DOC supervised “community custody” for felony bail jumping and, (2) one year of DOC supervised “probation” for misdemeanor vehicle prowl. The Legislature eliminated DOC’s felony “community custody” supervision authority for bail jumping by statutory changes later in 2003. And DOC’s misdemeanor “probation” supervision authority ended when the one year sentence to probation expired, based on the statutes then in force. Because DOC had no legal authority to supervise Mr. Villanueva-Villa after April 13, 2004, it had no duty to do so nearly two

years later on January 27, 2006, when his actions caused the death of Mr. Myles.

Nor did DOC have a duty because it erroneously continued to maintain an active supervision file on Mr. Villanueva-Villa until January 13, 2006. Even if a duty could be deemed to exist notwithstanding DOC's lack of any legal authority to "take charge" and control Mr. Villanueva-Villa, DOC correctly recognized its error and closed its supervision file on January 13, 2006. Therefore, DOC terminated any possible basis for a "take charge" relationship with Mr. Villanueva-Villa two weeks before the date of the fatal accident.

For these reasons, DOC owed no duty to Plaintiff on January 27, 2006. The superior court erred in failing to dismiss Plaintiff Myles' claim of negligent supervision against DOC as a matter of law. This Court should reverse the order of the superior court denying summary judgment to DOC and order that any claims based upon a duty on the part of DOC to Plaintiff be dismissed.

II. ASSIGNMENTS OF ERROR

1. The superior court erred in failing to dismiss Plaintiff's complaint of negligent supervision against DOC because DOC had no duty to Plaintiff;

2. The superior court erred in holding that a *Taggart* duty could exist on the part of DOC when DOC had no authority to supervise the offender who caused injury to Plaintiff's husband in January of 2006; and,

3. The superior court erred in failing to dismiss Plaintiff's complaint because Plaintiff presented no admissible evidence, as opposed to speculation, to support a jury's finding of proximate cause.

III. STATEMENT OF ISSUES

1. Washington law holds that DOC owes a duty to persons harmed by an offender on DOC supervision. Should Plaintiff Myles' negligent supervision claims against DOC be dismissed as a matter of law because DOC owed her no duty on January 27, 2006, where DOC's authority to supervise Carlos Villanueva-Villa on felony community custody was eliminated on July 1, 2003, by statutory changes, and DOC's authority to supervise him on misdemeanor "probation" ended on April 13, 2004, when the one year term expired? [Assignments of Error 1 and 2.]

2. DOC erroneously continued to maintain an active supervision file on Mr. Villanueva-Villa until January 13, 2006. Assuming arguendo that DOC assumed a duty based on that supervision, should Plaintiff Myles' negligent supervision claims against DOC be dismissed as a matter of law because DOC owed her no duty on January 27, 2006, where

DOC correctly recognized its error and closed its supervision file on January 13, 2006, two weeks earlier? [Assignments of Error 1 and 2.]

3. In order to present the issue of proximate cause to a jury, Plaintiff Myles must come forward with admissible evidence establishing that, but for negligence by DOC, Carlos Villanueva-Villa would have been in jail confinement on January 27, 2006. Should Plaintiff Myles' claims be dismissed because, even assuming a duty, she presented only speculation, but no admissible evidence, that Carlos Villanueva-Villa would have been in jail on January 27, 2006? [Assignment of Error 3.]

IV. STATEMENT OF THE CASE

A. Statutory Authority of DOC to Control the Offender

The authority of DOC to control the actions of offenders such as Carlos Villanueva-Villa is dependent upon statutes that grant DOC authority to supervise persons sentenced to: (1) "community custody" and, (2) DOC supervised "probation." During the period 2003 to 2006, "community custody" supervision applied only to persons convicted of adult felonies. The authority of DOC to supervise persons sentenced to "community custody" arises from the Offender Accountability Act (codified as RCW Title 9.94A) which became effective on July 1, 2000. Laws of 2000, ch. 28, § 1, *et seq.* In April 2003, when Carlos Villanueva-Villa was sentenced, the Offender Accountability Act defined "community

custody” as “that portion of an offender’s sentence of confinement . . . through RCW 9.94A.545 served in the community subject to controls placed on the offender’s movement and activities by the department.” Former RCW 9.94.030(5) (2002); Statutory Appendix (App.) at 3. The Offender Accountability Act required DOC to toll (or extend) the period of community custody under certain circumstances:

- While the offender was in confinement pursuant to a new felony conviction;
- While the offender was in confinement pursuant to sanctions imposed for violating the terms of the community custody supervision; or
- While the offender absented himself or herself from supervision without permission of DOC.

Former RCW 9.94A.545 (2002) (recodified as RCW 9.94A.171 by Laws of 2008, ch. 231, § 56); App. at 8, 124.

Notably, the statutes in effect at the time only allowed for tolling of community custody supervision for felony offenses. *See* Former RCW 9.94A.625(1) (2002) (Laws of 2000, ch. 226, § 5) (requiring tolling of sentences of “offenders” for the reasons listed above) (recodified as RCW 9.94A.171 by Laws of 2008, ch. 231, § 56). That is because the Offender Accountability Act limited the definition of “offender” to “a person who has committed a felony established by state law[.]” Former RCW 9.94A.030(30) (2002) (Laws of 2003, ch. 53, § 55); *see* App. at 5.

As for “probation” supervision, in 2003-2006 DOC’s authority to control persons sentenced to DOC supervised “probation” for misdemeanor offenses arose not from the Offender Accountability Act but from an entirely different group of statutes codified in RCW Title 9.95. During this period, the misdemeanor probation statutory scheme in effect did not provide for or mention tolling. *See* former RCW 9.95.200 (2004) (Laws of 1981, ch. 136, § 41); former RCW 9.95.204 (2004) (Laws of 1996, ch. 298, § 1); former RCW 9.95.206 (2004) (Laws of 1996, ch. 298, § 3); former RCW 9.95.212 (2004) (Laws of 1998, ch. 245, § 2); former RCW 9.95.214 (2004) (Laws of 1996, ch. 298, § 4); former RCW 9.95.220 (2004) (Laws of 1957, ch. 227, § 5) and former RCW 9.95.230 (2004) (Laws of 1982, 1st Ex. Sess., ch. 47, § 11). Thus, in contrast to “community custody” which could be extended past the end of the sentence by tolling, sentences to DOC supervised “probation” by the superior court could not exceed the maximum term of the sentence and ended when the sentence to probation expired. Former RCW 9.95.210 (2004) (Laws of 1996, ch. 298, § 3). *See* App. at 133.

Tolling remained inapplicable to misdemeanor probation supervision until 2009, when former RCW 9.94A.501 (2005) was amended by the passage of ESSB 5288. Laws of 2009, ch. 375, §§ 1, 4; App. at 71-106. This legislation expanded the definition of “community custody” to

include persons convicted of adult misdemeanors as well as adult felonies. Former RCW 9.94A.030(33) (2010) (defining “offender” for purposes of the Offender Accountability Act to include persons convicted of adult felonies and adult misdemeanors); App. at 74, 91, 121. After 2009, tolling applied to persons under supervision for both adult felonies and adult misdemeanors. Former RCW 9.94A.171 (2010); App. at 124.

Over time, the Legislature made other changes to the statutes governing DOC’s authority to supervise, which consequently changed DOC’s ability to supervise offenders. Of relevance in this case, in July 2003, the Legislature amended the Offender Accountability Act by passing Engrossed Substitute Senate Bill (ESSB) 5990. Laws of 2003, ch 379; App. at 11-53. The legislation restricted DOC’s authority to supervise felony offenders and limited DOC’s supervision of offenders sentenced to community custody to persons convicted of violent offenses, sexual offenses, domestic violence, residential burglary or certain drug offenses. Laws of 2003, ch 379, § 3, codified at former RCW 9.94A.501(2) (2003); App. at 19, 55. Section 3 of ESSB 5990 expressly stated that “the department is *not authorized to and may not, supervise* any offender sentenced to a term of community custody . . . unless the offender is one for whom supervision is required under subsection (2) of this section.” Former RCW 9.94A.501(3) (2003) (emphasis added); App. at 19, 55. This statute

became effective on July 1, 2003, and expressly limited DOC's supervision authority to the crimes specifically enumerated in the statute. Laws of 2003, ch 379. The former RCW 9.94A.501(4) (2003) provided that these limitations expired on July 1, 2010. *See* App. at 55. Thus, from July 1, 2003, until July 1, 2010, when the limitations imposed in former RCW 9.94A.501(2)(b) (2003) expired, DOC did not have authority to supervise offenders convicted of felony bail jumping.

In 2005, the Legislature applied similar limitations to supervision for misdemeanors by the passage of SSB 5256, which amended former RCW 9.94A.501(2)(b) (2003); Laws of 2005, ch. 362, § 1; App. at 58; 70. Much like the former RCW 9.94A.501 (2003), the new statute specifically prohibited DOC from supervising any misdemeanor probationers whose crimes were not specifically enumerated in the statute. Former RCW 9.94A.501(3) (2005); App. at 59, 67, 70. After the effective date of the 2005 amendment to the former RCW 9.94A.501(2)(b), DOC had no authority to supervise any offender for vehicle prowl.

In summary, during the period relevant to this case, which followed the date of Mr. Villanueva-Villa's April 2003 sentence to one year of community custody and one year of probation to be served concurrently, DOC's authority to control him was subject to the following limitations imposed by the Legislature:

- DOC had no authority to supervise for felony bail jumping after July 1, 2003, the effective date of ESSB 5990.
- DOC's authority to supervise under probation statutes for misdemeanor vehicle prowl ended when the one year sentence to probation expired on April 13, 2014; and
- DOC could not toll the period of misdemeanor probation when the offender was not in compliance with the conditions of probation.

B. Factual Background

1. Carlos Villanueva-Villa is sentenced and comes under DOC's supervision

On April 14, 2003, Carlos Villanueva-Villa entered pleas of guilty to charges of bail jumping (a Class C felony) and vehicle prowl (a misdemeanor) in Clark County Superior Court. CP at 115-32. The court ordered the sentences on the felony and the misdemeanor convictions to be served concurrently. CP at 129.

On the felony bail jumping conviction Mr. Villanueva-Villa was sentenced to 61 days in custody and 12 months of community custody under the supervision of DOC. CP at 120. In April 2003, former RCW 9.94A.545 (2002) authorized the sentencing court to impose up to one year of community custody. App. at 8. Community custody was the portion of the sentence "served in the community subject to the controls of the offender's movement and activities by the department." Former RCW 9.94A.030(5) (2002); App. at 3.

On the misdemeanor vehicle prowling conviction, Mr. Villanueva-Villa was sentenced to 365 days in jail with 304 days suspended and 12 months of probation to be monitored by DOC. CP at 128-33.

After serving his jail sentence, Mr. Villanueva-Villa reported to DOC for intake. DOC classified him as an “RM-D” offender, the lowest risk classification. CP at 46. Unlike offenders classified at a higher risk level, RM-D offenders were not required to report regularly to a community corrections officer. CP at 46. Officers did not make field or home visits to RM-D offenders. CP at 46, 432-33. In contrast to offenders classified at higher risk, in 2003-2006 DOC did not receive automatic reports for encounters that a RM-D offender had with law enforcement but instead relied upon the offender to self-report any new arrests or convictions. CP at 46. At that time, supervision of RM-D offenders was essentially administrative. They were monitored primarily so that DOC would be kept informed of a current address and to determine whether the offender had paid legal financial obligations (LFOs) imposed by the judgment and sentence. CP at 46.

The only conditions of supervision imposed by DOC upon Mr. Villanueva-Villa were requirements that he keep DOC informed of his current address, not leave Clark County without permission of DOC, and obey all laws. CP at 46. No alcohol related conditions of supervision were

imposed by the court or by DOC because Mr. Villanueva-Villa did not have a history of alcohol related offenses. CP at 49, 433.

In November 2003, it came to DOC's attention that Mr. Villanueva-Villa had failed to keep DOC informed of his current address when mail sent to him regarding his LFOs was returned by the post office. CP at 47. In December 2003, DOC issued a notice of violation. The violations included: (1) failure to report a change in his address; (2) failure to pay his LFOs; and (3) failure to pay the costs of supervision. CP at 337-39, 352-54. According to statutes then in force, the violation notice was sent to the sentencing court regarding the misdemeanor. CP at 47, 352. *See* former RCW 9.95.220 (2004); App. at 138.¹ The violation notice sent to the court also stated that the misdemeanor cause number would expire on April 13, 2004, after which "[t]he Department will no longer have an interest in this cause." CP at 354.

Mr. Villanueva-Villa failed to appear for a court hearing scheduled for the misdemeanor probation violation in March 2004. The sentencing court issued a bench warrant. CP at 355-56.

¹ In 2003-2004, notices of probation violations were referred back to the sentencing court. Former RCW 9.95.220, .230 (2004); App. at 134. Violations of the conditions of community custody were addressed administratively by DOC. Former RCW 9.94A.634(3) (2002); App. at 9; CP at 47-48.

2. DOC closes supervision on Mr. Villanueva-Villa

On April 14, 2004, DOC closed its supervision of Mr. Villanueva-Villa on both the sentence to probation for the misdemeanor vehicle prowling and the sentence to community custody supervision for the felony bail jumping. CP at 47, 346; *see* former RCW 9.95.210 (2004). DOC closed supervision on the misdemeanor probation because the one-year period of probation contained in Mr. Villanueva-Villa's judgment and sentence expired on April 13, 2004. CP at 47. Although Mr. Villanueva-Villa was in violation of the terms of his probation, DOC did not toll the period of probation because at that time the statutes did not provide authority to toll for misdemeanor offenses. CP at 44-45. *See supra* at 25-28.

DOC closed supervision for the felony because it no longer had authority to supervise Mr. Villanueva-Villa for felony bail jumping after the Legislature passed ESSB 5990 in the 2003 Legislature session. CP at 47; *see supra* at 23-24.

On May 6, 2004, DOC filed a notice in the court that it had closed its interest in the misdemeanor vehicle prowling probation portion of Mr. Villanueva-Villa's case. The notice stated that the termination date for DOC's probation supervision was April 13, 2004, one year after the sentence to DOC supervised probation for the misdemeanor. CP at 47, 346. The notice stated that Mr. Villanueva-Villa was in violation of the terms of

his probation as he had not paid LFOs owed and had not provided DOC with a correct address. CP at 346. The Clark County Prosecuting Attorney subsequently filed a motion and obtained an order directing issuance of a bench warrant to secure Mr. Villanueva-Villa's presence for a hearing to modify and/or revoke the felony and misdemeanor sentences. CP at 355-56.

Also on May 6, 2004, DOC filed a "5990 supervision closure" form in Clark County Superior Court on Mr. Villanueva-Villa's felony bail jumping sentence. CP at 47, 342-45. The form stated that "per RCW 9.94A" Mr. Villanueva-Villa did not meet the criteria for continued supervision by DOC and that DOC had closed its supervision interest in the case. CP at 342.

However, on August 12, 2004, DOC reversed the closure of supervision for the felony and returned Mr. Villanueva-Villa's file to active status related to the felony. CP at 47-48. In its report to the court, DOC requested that the "5990 form" previously submitted be cancelled. CP at 357. Supervision for the misdemeanor remained closed after April 13, 2004, when the one-year sentence to probation ended, and was never reopened. CP at 47.

3. Mr. Villanueva-Villa's 2005 and 2006 arrests

On October 10, 2005, Mr. Villanueva-Villa was arrested following a routine traffic stop based on the sentencing court's bench warrant and the

DOC Secretary's warrant, which had been outstanding since 2004. CP at 48. Both warrants were cleared following this arrest. CP at 48. While in custody on the warrants, Mr. Villanueva-Villa entered into an agreement with DOC to a 30-day jail sanction for failing to notify DOC of his change of address, failing to pay his LFOs, and for leaving the county without permission. CP at 363-64. With credit for time served since the date of the October 10 arrest and good time credits, he was released from jail on October 21, 2005, after serving 11 days confinement, with direction to report daily to DOC for 30 business days. CP at 48, 365.

Following his release from jail and unbeknownst to DOC, Mr. Villanueva-Villa was cited for two DUIs by the Washington State Patrol in November and December 2005. CP at 366, 371. Neither DUI citation was reported to DOC, and Mr. Villanueva-Villa did not self-report these new offenses to DOC. CP at 49, 433-34. Since there was no automatic reporting of new arrests for RM-D offenders at that time and Mr. Villanueva-Villa failed to self-report, DOC was unaware of the DUI arrests. CP at 46, 433.

Mr. Villanueva-Villa complied with the direction to report daily every business day to DOC until late December, when he abruptly stopped reporting. CP at 48. Based on his failure to daily report, in early January 2006, DOC requested and obtained a Secretary's warrant. CP at 49. This led

to a file review by Robert Story, then supervisor of the RM-D offender unit for the West Vancouver DOC office. CP at 49. The file review determined that DOC's supervision of Mr. Villanueva-Villa for the felony should have been closed on July 1, 2003, the effective date of ESSB 5990, because—as DOC had originally concluded—it had no authority to supervise Mr. Villanueva-Villa for felony bail jumping after that date due to the passage of ESSB 5990. The January 2006 Secretary's warrant was cancelled, and Mr. Villanueva-Villa's file was closed on January 13, 2006. CP at 48-49, 377-81.

On January 27, 2006, nearly two weeks after the final closure of DOC's supervision file on Mr. Villanueva-Villa, and nearly two years after DOC's authority to supervise Mr. Villanueva-Villa ended on April 13, 2004, William Myles died as the result of a traffic accident caused by Carlos Villanueva-Villa. CP at 15. Mr. Villanueva-Villa was cited for DUI and vehicular homicide following the January 27, 2006, accident. CP at 15.

C. Procedural History

Plaintiff filed a wrongful death lawsuit against the State of Washington in Clark County Superior Court alleging negligence by DOC and the Washington State Patrol. CP at 19-24. Plaintiff also named Clark County as a defendant. CP at 16-18. By orders dated December 30, 2016, the superior court granted the motions for summary judgment brought by

the State Patrol and by Clark County. On the same date, the superior court denied the motion for summary judgment brought by DOC, after stating that DOC could argue to the jury that DOC lacked statutory authority to supervise Mr. Villanueva-Villa at the time of the accident. CP at 679-81.

DOC brought a timely motion for discretionary review pursuant to RAP 2.3(b)(1) and RAP 2.3(b)(2). Plaintiff sought discretionary review of the order of the superior court dismissing the State Patrol and Clark County. CP at 682-83. By order dated June 20, 2017, Commissioner Bearnse granted DOC's motion for discretionary review. In the order granting discretionary review, the Commissioner held that review should be granted because DOC lost statutory authority to supervise Mr. Villanueva-Villa after April 13, 2004. Order Granting Discretionary Review at 20. In the same order, the Commissioner stayed review of the superior court's dismissal of the State Patrol and Clark County until resolution of DOC's appeal. Order Granting Discretionary Review at 21.

V. ARGUMENT

A. Standards and Burdens on Review

1. Summary Judgment Standard

Summary judgment is appropriate when “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Walston v. Boeing Co.*, 181 Wn.2d 391, 395, 334 P.3d 519

(2014); CR 56(c). “The appellate court engages in the same inquiry as the trial court, with questions of law reviewed de novo and the facts and all reasonable inferences from the facts viewed in the light most favorable to the nonmoving party.” *Christensen v. Grant Cty. Hosp. Dist. No. 1*, 152 Wn.2d 299, 305, 96 P.3d 957 (2004).

The moving party bears the burden of showing that there is no genuine issue of material fact. If this burden is satisfied, the nonmoving party must present evidence demonstrating material fact. Summary judgment is appropriate if the nonmoving party fails to do so. *Walston*, 181 Wn.2d at 395-96. “A genuine issue is one upon which reasonable people may disagree; a material fact is one controlling the litigation’s outcome.” *Youker v. Douglas Cty.*, 178 Wn. App. 793, 327 P.3d 1243, *review denied*, 180 Wn.2d 1011 (2014).

2. Plaintiff’s Burden of Proof for Negligent Supervision

The elements of a negligence cause of action are the existence of a duty to the plaintiff, breach of the duty, and injury to the plaintiff proximately caused by the breach. *Estate of Bordon*, 122 Wn. App. at 235. The existence of a duty is a question of law. *Hertog, ex rel. S.A.H. v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). Breach and proximate cause are generally fact questions for the trier of fact. However, if reasonable minds

could not differ, these factual questions may be determined as a matter of law. *Hertog*, 138 Wn.2d at 275.

In a lawsuit alleging negligent supervision of an offender by DOC, the plaintiff had the burden to come forward with admissible evidence establishing: (1) the existence of a duty to the plaintiff on the date of injury; and (2) admissible evidence, as opposed to speculation, that the negligence of DOC was a proximate cause of plaintiff's injury. To meet this standard, the plaintiff must come forward with admissible evidence, not speculation, sufficient to prove that Mr. Villanueva-Villa would have been in jail confinement on January 27, 2006, had DOC not been negligent. *Estate of Bordon*, 122 Wn. App. at 771; *Hungerford v. State Dep't of Corr.*, 135 Wn. App. 240, 139 P.3d 1131 (2006), *review denied*, 160 Wn.2d 1013 (2007).

B. Since DOC Had No Authority to Supervise Carlos Villanueva-Villa in January 2006, It Owed No Actionable Duty to Plaintiff

The superior court erred when it failed to dismiss Plaintiff's claims of negligence. First, DOC's legal authority to supervise the offender ended on April 13, 2004. Second, although DOC continued to maintain an active supervision file for the felony until January 13, 2006, that does not mean that DOC had continuing authority to supervise and the "take charge relationship" continued. DOC maintained an active supervision file after rescinding the "5990 closure" of supervision for the felony in August 2003

under the mistaken belief that the period of community custody was tolled beyond the effective date of ESSB 5990 because of Mr. Villanueva-Villa's non-compliance with the terms of his community custody supervision. Regardless, however, DOC closed its community custody supervision file on January 13, 2006, two weeks before Mr. Myles' fatal accident. This finally and completely ended any special relationship between DOC and Mr. Villanueva-Villa.

Because DOC had no authority to control the actions of the offender on January 27, 2006, it therefore had no enforceable duty to Plaintiff.

1. The source—and limits—of DOC's duty to supervise offenders are its statutory authority

In general, an actor "has no duty to prevent a third person from causing physical injury to another." *Estate of Bordon*, 122 Wn. App. at 235-36. However, when an actor has a definite, established, and continuing relationship with a third party, that relationship imposes a duty on the actor to control the third person's conduct. *Hungerford*, 135 Wn. App. at 256-57. When an offender is under DOC supervision, the community corrections officer has a "take charge" relationship with the offender. *Taggart*, 118 Wn.2d at 218-19. During the time that such a relationship exists, the officer "is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." *Hungerford*, 135 Wn. App. at 257

(quoting *Couch v. Dep't of Corr.*, 113 Wn. App. 556, 565, 54 P.3d 197 (2002), *review denied*, 149 Wn.2d 1012 (2003)).

An individual duty to persons foreseeably harmed by an offender on DOC supervision exists only when the community corrections officer has the authority (i.e., the “take charge relationship”) to control the actions of the offender. *Taggart*, 118 Wn.2d at 218. The “take charge relationship” and the duty based upon this relationship, end when the community corrections officer no longer has the legal authority to control the actions of the offender. *E.g. Hungerford*, 135 Wn. App. at 240; *Couch*, 113 Wn. App. at 568-69 (duty ends when offender is only being supervised for payment of financial obligations since DOC no longer has the authority to impose a sanction of confinement); *Husted*, 187 Wn. App. at 590 (duty ends when offender absconds and a warrant issues); *Smith v. State Dep't of Corr.*, 189 Wn. App. 839, 359 P.3d 867 (2015), *review denied*, 185 Wn.2d 1004, 366 P.3d 1244 (2016); *see also Estate of Linnik v. State ex rel. Dep't of Corr.*, 174 Wn. App. 1027 (2013) (unpublished) (no duty exists after the period of supervision set forth in applicable court order ends) (cited as nonbinding, persuasive authority in accord with GR 14.1(a)); *Estate of Davis*, 127 Wn. App. at 842 (no duty when there is no legal authority to enforce the conditions of supervision); *see also Hungerford*, 135 Wn. App. at 255.

In determining whether a *Taggart* duty exists, the two most important considerations are the court order placing the corrections officer in charge of the offender and the statutes giving the officer the ability to control the actions of the offender through the power to impose sanctions. *Estate of Davis*, 127 Wn App. at 842. As the Court of Appeals noted in *Davis* “a corrections officer . . . can only enforce the [court] order according to its terms and controlling statutes.” *Id.* When a corrections officer has no statutory authority to enforce the conditions in the court order, the “take charge” relationship necessary to create a duty does not exist. *Id.* at 843.

As in *Davis*, the court’s judgment and sentence here placed Mr. Villanueva-Villa under the authority of DOC in April 2003. However, consistent with *Davis*, the DOC did not have statutory authority nearly three years later in January 2006 to impose jail sanctions to enforce the court’s conditions of supervision. DOC’s ability to supervise Carlos Villanueva-Villa for the felony ended on July 1, 2003, when ESSB 5990 became effective and DOC no longer had authority to supervise offenders for felony bail jumping. *See supra* at 23-24. Furthermore, DOC’s authority to supervise Mr. Villanueva-Villa while on probation for the misdemeanor ended on April 13, 2004, the date that his one year sentence by the superior court to probation ended. *See* former RCW 9.95.210 (2004); App. at 133. Even though Mr. Villanueva-Villa was not in compliance with the terms of

his probation when his one year sentence expired, DOC had no statutory authority to toll the period of supervision for misdemeanor offenders. *Supra* at 25-28.

2. DOC's authority to supervise Mr. Villanueva-Villa on his felony conviction ended in July 1, 2003, when ESSB 5990 amended the supervision statute and removed bail jumping from felonies subject to supervision

The authority of DOC to supervise Mr. Villanueva-Villa for the felony offense of bail jumping ended on July 1, 2003, the date that ESSB 5990 became effective. ESSB 5990 was passed by the Legislature in 2003. Laws of 2003, ch. 379, § 3. It limited DOC's authority to supervise persons sentenced to DOC supervised community custody to offenders convicted of certain felonies and crimes, including violent offenses, domestic violence, residential burglary, and certain drug offenses. Former RCW 9.94A.501(2) (2003); *see* App. at 55. Felony bail jumping was not one of the enumerated crimes.

ESSB 5990 went on to state that DOC did *not* have authority to supervise offenders for any other felonies:

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

Laws of 2003, ch. 379, § 3, *codified as former RCW 9.94A.501(3)* (2003) (emphasis added); App. at 19, 55.

Thus, as of July 1, 2003, the effective date of the new legislation, DOC had no statutory authority to supervise Mr. Villanueva-Villa on the felony bail jumping conviction. This was true irrespective of the fact that he was not in compliance with the terms of his supervision in July 2003.

DOC lacked authority to supervise Mr. Villanueva-Villa despite the fact that DOC had rescinded the closure of supervision for the felony in August 2004, an action that it later realized was done in error. The fact that DOC maintained an open supervision file beyond the effective date of ESSB 5990 (and beyond the April 13, 2004, date when the one year sentence to probation ended) did not empower DOC to control the actions of Mr. Villanueva-Villa. It did not authorize DOC to enforce the terms of supervision by imposing any sanction, much less a sanction of jail confinement which deprived him of his liberty. Regardless, DOC recognized its error and closed its file on January 13, 2006. This absolutely ended any relationship between DOC and Mr. Villanueva-Villa, and, therefore, ended DOC's tort duty, two weeks before Mr. Villanueva-Villa caused Mr. Myles' death.

3. DOC's authority to supervise Mr. Villanueva-Villa on his misdemeanor conviction ended on April 14, 2004, when his one-year sentence to probation supervision ended. DOC did not have authority to toll the period of supervision for non-compliance beyond April 13, 2004

In addition to felony community custody supervision, Mr. Villanueva-Villa was sentenced to one year of DOC-supervised probation on his misdemeanor conviction for vehicle prowl. When that one year period expired on April 13, 2004, DOC's authority to supervise Mr. Villanueva-Villa for the misdemeanor conviction ended. At that time, DOC did not have authority to toll a sentence of misdemeanor probation supervision, so it is irrelevant that Mr. Villanueva-Villa was not in compliance with the terms of his supervision for the misdemeanor as of that date. Moreover, statutory changes in 2005 eliminated DOC's authority to supervise offenders for misdemeanor vehicle prowl at all, so even if there had been authority to toll the probation after April 2004, DOC's authority to supervise ceased in 2005, prior to the January 27, 2006, accident.

Mr. Villanueva-Villa's misdemeanor vehicle prowling sentence to one year of probation expired on April 13, 2004. CP at 129-32. DOC properly ended its supervision of Mr. Villanueva-Villa for his misdemeanor conviction on that date and never re-opened it.

In 2003–2006, DOC did not have authority to toll the period of supervision for the misdemeanor and extend the period of probation because

of Mr. Villaneuva-Villa's non-compliance. During that period, the authority of DOC to supervise offenders sentenced by the superior court to a term of probation was governed by RCW Title 9.95. In contrast to community custody supervision under the Offender Accountability Act (RCW Title 9.94A), the RCW 9.95 statutes (governing DOC supervised probation of misdemeanor offenders sentenced by the superior court to DOC supervised probation) did not include authority to toll the probation sentence for non-compliance with the terms of probation. App. at 131-35; *supra* at 7-9.

Moreover, the RCW 9.94A community supervision statutes in effect at the time only allowed for tolling of *felony* offenses. DOC's then-lack of tolling authority regarding misdemeanor probation supervision, as opposed to tolling of community custody supervision, arose from the distinction between a sentence to "probation" supervision pursuant to RCW 9.95 and a sentence to "community custody pursuant to RCW 9.94A.545." The Offender Accountability Act (RCW 9.94A) expressly authorized tolling for "offenders" sentenced to DOC supervised "community custody." *See* former RCW 9.94A.545 (2002); *see* App. at 8; *see also* former RCW 9.94A.625(1) (2002) (Laws of 2000, ch. 226, § 5) (requiring tolling for sentences of "offenders" for various reasons) (recodified as RCW 9.94A.471 by Laws of 2008, ch. 231, § 56); App. at 9. At the time, "offender" was defined as a person convicted of an adult felony. Former

RCW 9.94A.030(30) (2003) (Laws of 2003, ch. 53, § 55); App. at 5. Because “offender” did not include a person convicted of a misdemeanor, even if RCW 9.94A tolling could have applied to RCW 9.95 supervision, it still did not apply to misdemeanors.

Not until 2009 was DOC vested with the statutory authority to toll the period of supervision for offenders sentenced to misdemeanor probation, with the passage of ESSB 5288 in 2009, more than three years after the death of Mr. Myles. This legislation made uniform the supervision of individuals convicted of felony and misdemeanor offenses. It expanded the definition of “offender” to include persons convicted both of adult felonies and adult misdemeanors. Former RCW 9.94A.030(33) (2010) (Laws of 2009, ch. 375); App. at 121. After the passage of ESSB 5288, DOC’s authority to supervise offenders convicted of misdemeanors became uniform with its authority to supervise offenders convicted of felonies because both now came under the definition of offenders subject to “community custody.” This included the requirement that the period of supervision be tolled during the time that the offenders was in confinement or absent without permission. Former RCW 9.94A.171 (2010) (Laws of 2008, ch. 231, § 28); App. at 124; *see also* H.B. Rep. on Engrossed Substitute S.B. 5288, 61st Leg., Reg. Sess. (Wash. 2009); App. at 107-13. In response, DOC changed its policies to provide for tolling of the period

of community custody for persons sentenced to DOC supervision for both felonies and misdemeanors. App. at 137, 144-145. Until the passage of this legislation DOC had no statutory authority to toll the period of probation for misdemeanor offenders.

Additionally, in 2005 the Legislature amended former RCW 9.94A.501(2)(b) to enumerate the specific offenses for which DOC could supervise misdemeanor probation sentences. Former RCW 9.94A.501(2)(b) (2005) (Laws of 2005, ch. 362, § 1). This statute, enacted as SSB 5256 in 2005, mirrored ESSB 5990 which was passed by the Legislature in 2003. *See* former RCW 9.94A.501(2)(b) (2005); App. at 57-63. Like ESSB 5990, SSB 5256 expressly stated that DOC *did not* have authority to supervise offenders convicted of adult misdemeanor offenses other than for crimes of violence, domestic violence, sexual offenses, residential burglary and certain drug offenses. Vehicle prowl was not included as an offense for which DOC had authority to supervise after July 1, 2005. Former RCW 9.94A.501(2)(b) (2005); App. at 59, 70. After the effective date of this legislation on May 10, 2005, seven months before Mr. Myles' fatal accident, DOC had no authority to supervise *any offender* for vehicle prowl. CP at 44-45, 432.

Even if DOC had authority to toll the period of Mr. Villanueva-Villa's probation beyond April 13, 2004, due to his non-compliance with

the conditions of his probation, which it did not, any possible “take charge” relationship between Mr. Villanueva-Villa and DOC ended in May of 2005 when DOC no longer had authority to supervise anyone for misdemeanor vehicle prowl.

C. DOC’s Alleged Acts of Omission Were Neither a Cause in Fact Nor a Legal Cause of Plaintiff’s Injury

Even if Plaintiff Myles could prove an actionable tort duty, which she cannot, her claim fails for lack of proximate cause. A cause is “proximate only if it is both a cause in fact and a legal cause.” *Gall v. McDonald Indus.*, 84 Wn. App 194, 207, 926 P.2d 934 (1996), *review denied*, 131 Wn.2d 1013 (1997).

Cause in fact refers to the “but for” consequences of an act—the physical connection between an act and an injury. There must be evidence that some act or omission of the defendant produced injury to the plaintiff in a direct, unbroken sequence under circumstances where the injury would not have occurred “but for” the defendant’s act or omission. *See WPI 5th Ed.* 15.01; *Hartley v. State*, 103 Wn.2d 768, 778, 698 P.2d 77 (1985). Cause in fact “does not exist if the connection between an act and the later injury is indirect and speculative.” *Est. of Bordon*, 122 Wn. App. at 240. It is reversible error to deny summary judgment where speculation is required

to find factual causation. *Id.*; *Rasmussen v. Bendotti*, 107 Wn. App. 947, 29 P.3d 56 (2001).

The second prong of proximate cause analysis, legal causation, “requires a determination of whether liability should attach as a matter of law given the existence of cause in fact.” *Braegelmann v. Cty. of Snohomish*, 53 Wn. App. 381, 384, 766 P.2d 1137 (1989). This determination involves “mixed considerations of logic, common sense, justice, policy and precedent.” *Id.* at 384-85. One of the policy considerations is how far should the consequences of a defendant’s acts extend. *Id.* at 385 (citing *Hartley*, 103 Wn.2d at 779).

1. Even if DOC was negligent, Plaintiff has no admissible evidence, just speculation, to establish that the offender would have been in jail confinement but for DOC’s negligence

To withstand summary judgment, it is not enough for a plaintiff simply to say that some event or series of events might have or could have caused an injury. *Miller v. Likins*, 109 Wn. App. 140, 146-47, 34 P.3d 835 (2001). When the connection between a defendant’s conduct and the plaintiff’s injury is too speculative and indirect, the cause in fact requirement is not met. *Taggart*, 118 Wn.2d at 227 (quoting *Walters v. Hampton*, 14 Wn. App. 548, 543 P.2d 648 (1975)). Cause-in-fact “does not

exist if the connection between an act and the later injury is indirect and speculative.” *Estate of Bordon*, 122 Wn. App at 240.

In cases where the plaintiff alleges injury caused by negligent supervision of an offender by DOC, the plaintiff must prove as part of its case in chief that the offender *would* have been in jail confinement on the date of the plaintiff’s injury but for the negligence of DOC. *Estate of Bordon*, 122 Wn. App. at 240. Cause in fact cannot be based on speculation that the offender *may* have been in confinement. *Id.* at 240. *See also Hungerford*, 135 Wn. App. at 254; *Smith*, 189 Wn. App. at 853 (cause-in-fact is not established when plaintiff presents no evidence to support a theory that the offender would have been sanctioned with sufficient jail time to keep him in jail confinement at the time of the injury to plaintiff because jurors required to engage in speculation).

In order to survive dismissal, Plaintiff Myles must offer admissible evidence from a qualified witness that establishes the offender would in fact have been in jail confinement on the date of Plaintiff’s injury but for the negligence of DOC. Without such admissible evidence, the Plaintiff’s claims of negligent supervision fail as a matter of law.

For example, in *Bordon*, *Hungerford* and *Smith*, plaintiffs offered an affidavit from a former community corrections officer who opined that, but for the negligent actions of the Department, the offender would have

been in jail confinement on the date of injury. Despite such “evidence,” each of the respective superior courts dismissed the claims based on proximate cause. The dismissals were affirmed on appeal because, even with such testimony, the plaintiffs had failed to affirmatively establish that the witness was qualified to testify concerning whether the offender was in violation of the terms of his supervision at the relevant times and, if so, whether a jail sanction would have been imposed that would have kept the offender in jail during the crucial time period when the plaintiff’s injury took place. *Bordon*, 122 Wn. App. at 246–47; *Hungerford*, 135 Wn. App. at 254; *Smith*, 189 Wn. App. at 851.

In the present case, Plaintiff Myles too failed to meet her burden of proof on this issue. To establish cause-in-fact, she must demonstrate a direct, unbroken sequence of events from which jurors can find *without resorting to speculation* that Mr. Villanueva-Villa would have been in confinement for a DOC violation on January 27, 2006. *Hungerford*, 135 Wn. App. at 253 (citing *Estate of Bordon*, 122 Wn. App. at 247). It is impossible for Plaintiff to make this causal link because DOC did not have authority to supervise—and thus did not have the authority to confine—Mr. Villanueva-Villa after April 13, 2004. In *Hungerford*, the court dismissed as “rank speculation” the plaintiff’s argument that the offender would have been in confinement on the date of injury despite the fact the

offender was entitled to good time credits because the offender had a liberty interest in good time credits if he were to be sanctioned for a violation. *Hungerford*, 135 Wn. App. at 253-54.

Here, the situation is even more clear-cut. Mr. Villanueva-Villa had a liberty interest to be free from confinement after April 13, 2004, because after that date DOC no longer had any legal authority to supervise him. After that date, DOC had no legal authority to deprive Mr. Villanueva-Villa of his liberty. The absolute final break in the chain of causation occurred on January 13, 2006, when DOC finally closed its supervision of Mr. Villanueva-Villa. This occurred two weeks prior to the death of Mr. Myles. *See Husted*, 187 Wn. App. at 590; *Smith*, 189 Wn. App. at 849.

Plaintiff came forward with *no evidence* from a qualified witness to raise an issue of fact from which jurors could conclude that Mr. Villanueva-Villa would have been in confinement for a DOC violation on January 27, 2006. Indeed, the only evidence in the record on this issue is set forth in the declaration of DOC supervisor Robert Story. Mr. Story opines that had DOC known of Mr. Villanueva-Villa's two 2005 DUIs and assuming DOC still had authority to sanction him, he most likely would *not* have received a DOC jail sanction and would not have been in jail confinement on January 27, 2006. Instead, Mr. Story opined that it was more likely that Mr. Villanueva-Villa would have received a lesser sanction, such as a

warning for violating the failure to obey all laws condition, assuming that he was actually adjudicated by the court to be guilty of either DUI before January 27, 2006, and then returned to DOC for sanctioning. CP at 433-34. As Mr. Story testified, DOC would have deferred to the criminal justice system to adjudicate Mr. Villanueva-Villa's guilt or innocence as to the new arrests. Guilt or innocence on the DUI charges would not have been determined in a DOC administrative sanction hearing. CP at 433-34.²

As a matter of law, Plaintiff failed to raise an issue of fact regarding cause in fact.

2. Even if DOC was negligent, any negligence by DOC was not the legal cause of Plaintiff's injury

Legal causation is grounded in policy determinations as to how far the consequences of a defendant's acts should extend. That determination depends on "mixed considerations of logic, common sense, justice, policy and precedent." *Braegelmann*, 53 Wn. App. at 384; *Binschus v. State*, 186 Wn.2d 573, 380 P.3d 468 (2016).

² It is also pure speculation that if the Secretary's warrant, obtained by CCO April Delaney in early January 2006, not been cancelled it would have resulted in Mr. Villanueva-Villa's arrest. By this time there were already two outstanding bench warrants issued by the court for failure to appear at hearings related to the two DUI citations. Despite the issuance of these warrants, something of which DOC was not aware, Mr. Villanueva-Villa remained out of confinement until the date of Mr. Myles' fatal accident on January 27, 2006.

DOC had no authority to issue a warrant and confine Mr. Villanueva-Villa in January 2006. This was recognized by Mr. Story who ordered cancellation of the DOC warrant and closure of the supervision file on January 13, 2006, nearly two weeks before the January 27, 2006, accident. Thus, any possible “take charge” relationship between DOC and Mr. Villanueva-Villa ended on January 13, 2006. The fact that such a relationship once existed (i.e. between April 14, 2003 and April 13, 2004) cannot be legally sufficient to hold DOC liable for crimes committed by the offender after the “take charge” relationship ends.

Imposing liability upon DOC nearly two years beyond the date that the “take charge” relationship legally ended is not consistent with matters of logic, common sense, justice and policy. To hold otherwise would mean that DOC is liable into the future for new crimes committed by anyone whom it once supervised on community custody or probation. The superior court committed obvious error when it held that proximate cause was a jury question in this case.

VI. CONCLUSION

The Washington State Department of Corrections had no legal authority to impose sanctions and control the conduct of Carlos Villanueva-Villa after April 13, 2004, nearly two years before the death of William Myles on January 27, 2006. DOC lost authority to supervise this offender

for the felony conviction on July 1, 2003. It lost authority to supervise him for the misdemeanor on April 13, 2004. Any duty of care that DOC had under *Taggart* ended on April 13, 2004, the last date that DOC had statutory authority to impose sanctions and thus had legal authority to control the offender's conduct. Any possible relationship between the offender and DOC ended when DOC closed its community custody supervision file on January 13, 2006, two weeks before the accident.

In its ruling, the superior court stated that DOC could argue its lack of legal authority to supervise to the jury when the case proceeded to trial. This is an error of law. The determination of whether a duty exists is for the court, not the jury. It was error to hold that a duty exists when DOC had no statutory authority to control the conduct of the offender on the date of injury.

The superior court erred in denying summary judgment to DOC.

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This court should reverse that order and direct that a summary judgment of dismissal be granted to the Department of Corrections.

RESPECTFULLY SUBMITTED this 16th day of October, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I caused service of the foregoing Appellant State of Washington’s Opening Brief, that has been electronically filed with the Court of Appeals Division II, and the Statutory Appendix, filed separately with the Court of Appeals Division II, on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 16th day of October, 2017.

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Court of Appeals, Division II, No. 49928-2

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

M. GWYN MYLES, individually and as Personal Representative of the Estate of WILLIAM
LLOYD MYLES, deceased,

Respondents.

v.

STATE OF WASHINGTON, et al.,

Appellants,

**STATUTORY APPENDIX TO
APPELLANT STATE OF WASHINGTON'S OPENING BRIEF**

STATUTORY APPENDIX

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**Excerpts from RCW Ch. 9.94A
(2002 Codification)**

REVISED CODE OF WASHINGTON
2002 Edition

• 2002 State of Washington

CERTIFICATE

The 2002 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.

JOHN G. SCHULTZ, Chair,
STATUTE LAW COMMITTEE

9.94A.020 Short title. This chapter may be known and cited as the sentencing reform act of 1981. [1981 c 137 § 2.]

9.94A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

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

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

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to *RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

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

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

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

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

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

(10) "Confinement" means total or partial confinement.

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

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

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

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

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

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

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

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

(16) "Department" means the department of corrections.

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

(18) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial

obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

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

(20) "Drug offense" means:

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

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

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

(21) "Earned release" means earned release from confinement as provided in *RCW 9.94A.728.

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (**RCW 72.66.060), willful failure to return from work release (**RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(23) "Felony traffic offense" means:

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

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

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

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

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

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

influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

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

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

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

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

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

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

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

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

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

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

(32) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under *RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

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

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

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

(34) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to

the court over a specified period of time as payment of damages. The sum may include both public and private costs.

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

(36) "Serious traffic offense" means:

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

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

(37) "Serious violent offense" is a subcategory of violent offense and means:

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

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

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

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

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

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

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

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

(c) A felony with a finding of sexual motivation under RCW *9.94A.835 or 13.40.135; or

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

(39) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(40) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(41) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined

as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

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

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

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

(45) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

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

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

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

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with *RCW 9.94A.725.

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

(48) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2002 c 175 § 5; 2002 c 107 § 2. Prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

Reviser's note: *(1) These RCW references have been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

** (2) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

*** (3) RCW 9A.88.100 was recodified as RCW 9A.44.100 pursuant to 1979 ex.s. c 244 § 17.

(4) This section was amended by 2002 c 107 § 2 and by 2002 c 175 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—2002 c 107: "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

Application—2002 c 107: "RCW 9.94A.030(13) (b) and (c) and 9.94A.525(18) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June 13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

Application—2001 2nd sp.s. c 12 §§ 301-363: "(1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after September 1, 2001.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after September 1, 2001." [2001 2nd sp.s. c 12 § 503.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Effective dates—2001 c 287: See note following RCW 9A.76.115.

Effective date—2001 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 95 § 3.]

Finding—Intent—2001 c 7: "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Severability—1999 c 197: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 197 § 14.]

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—1996 c 275: See note following RCW 9.94A.505.

Application—1996 c 275 §§ 1-5: See note following RCW 9.94A.505.

Purpose—1995 c 268: "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

Effective date—1995 c 108: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 19, 1995]." [1995 c 108 § 6.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Severability—Short title—Captions—1994 c 1: See notes following RCW 9.94A.555.

Severability—Effective date—1993 c 338: See notes following RCW 72.09.400.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Effective date—1991 c 348: See note following RCW 46.61.520.

Effective date—Application—1990 c 3 §§ 601-605: See note following RCW 9.94A.835.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Purpose—1989 c 252: "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

Prospective application—1989 c 252: "Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act." [1989 c 252 § 27.]

Effective dates—1989 c 252: "(1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 252 § 30.]

Severability—1989 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 252 § 31.]

Application—1988 c 157: "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

Effective date—1988 c 153: "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

Application of increased sanctions—1988 c 153: "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1983 c 163: See note following RCW 9.94A.505.

9.94A.031 "Offender" and "defendant." (Expires July 1, 2005.) For purposes of judicial and criminal justice forms promulgated under this chapter and related to corrections and sentencing, the terms "offender" and "defendant" may be used interchangeably without substantive effect.

This section expires July 1, 2005. [2000 c 28 § 3.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.035 Classification of felonies not in Title 9A RCW. For a felony defined by a statute of this state that is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this chapter;

(2) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this chapter;

(3) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this chapter. [1996 c 44 § 1.]

9.94A.190 Terms of more than one year or less than one year—Where served—Reimbursement of costs.

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

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse

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

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

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

(i) The operation of the multiple offense policy of *RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

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

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

(m) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production. [2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4. Prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

***Reviser's note:** These RCW references have been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1996 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 121 § 2.]

Effective date—Application—1990 c 3 §§ 601 through 605: See note following RCW 9.94A.835.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17 through 35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.540 Mandatory minimum terms. (1) The following minimum terms of total confinement are mandatory and shall not be varied or modified under *RCW 9.94A.535:

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

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or

intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

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

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

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under *RCW 9.94A.728, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under *RCW 9.94A.728(4). [2001 2nd sp.s. c 12 § 315; 2000 c 28 § 7. Formerly RCW 9.94A.590.]

***Reviser's note:** These RCW references have been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.545 Community custody. On all sentences of confinement for one year or less, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll. [2000 c 28 § 13; 1999 c 196 § 10; 1988 c 143 § 23; 1984 c 209 § 22. Formerly RCW 9.94A.383.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1999 c 196 § 10: "Section 10 of this act takes effect July 1, 2000, and applies only to offenses committed on or after July 1, 2000." [1999 c 196 § 19.]

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Applicability—1988 c 143 §§ 21-24: See note following RCW 9.94A.505.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.550 Fines. On all sentences under this chapter the court may impose fines according to the following ranges:

Class A felonies	\$0 - 50,000
Class B felonies	\$0 - 20,000
Class C felonies	\$0 - 10,000

[1984 c 209 § 23. Formerly RCW 9.94A.386.]

result from failure to provide notice required under RCW *9.94A.612 through 9.94A.618, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence. [1985 c 346 § 7. Formerly RCW 9.94A.159.]

***Reviser's note:** These RCW references have been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

9.94A.625 Tolling of term of confinement, supervision. (1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

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

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

(4) For terms of confinement or community custody, community placement, or community supervision, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision. [2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.170.]

***Reviser's note:** These RCW references have been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

Effective date—2000 c 226 § 5: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 226 § 7.]

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.628 Postrelease supervision—Violations—Expenses. If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in *RCW 9.94A.634. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the

violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction. [1988 c 153 § 8. Formerly RCW 9.94A.175.]

***Reviser's note:** This RCW reference has been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

9.94A.631 Violation of condition or requirement of sentence—Arrest by community corrections officer—Confinement in county jail. If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to submit to a search and seizure of the offender's person, residence, automobile, or other personal property. A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court, pursuant to a written order. [1984 c 209 § 11. Formerly RCW 9.94A.195.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.634 Noncompliance with condition or requirement of sentence—Procedure—Penalty. (1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

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

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

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

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment

procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

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

(6) Nothing in this section prohibits the filing of escape charges if appropriate. [2002 c 175 § 8; 1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20. Formerly RCW 9.94A.200.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—1998 c 260: See note following RCW 9.94A.500.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Obligations, counseling after discharge. (1) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2) The court shall send a copy of every signed certificate of discharge to the auditor for the county in which the court resides and to the department. The department shall create and maintain a data base containing the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(3) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(4) Except as provided in subsection (5) of this section, the discharge shall have the effect of restoring all civil rights

2003 Session Laws – ESSB 5990

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5990

58th Legislature
2003 Regular Session

Passed by the Senate April 25, 2003
YEAS 43 NAYS 4

President of the Senate

Passed by the House April 24, 2003
YEAS 84 NAYS 13

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
ENGROSSED SUBSTITUTE SENATE BILL
5990 as passed by the Senate and
the House of Representatives on
the dates hereon set forth.

Secretary

FILED

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5990

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Children & Family Services & Corrections
(originally sponsored by Senators Hargrove, Stevens, McAuliffe,
Carlson, Regala, Parlette, Rasmussen and Winsley)

READ FIRST TIME 03/03/03.

1 AN ACT Relating to times and supervision standards for release of
2 offenders; amending RCW 9.94A.700, 9.94A.705, 9.94A.715, 9.94A.720,
3 9.94A.545, 70.96A.350, 9.94A.760, 9.94A.750, 9.94A.780, 9.94A.637,
4 4.56.100, 72.09.111, and 51.32.040; amending 2002 c 290 s 30
5 (uncodified); amending 2002 c 290 s 31 (uncodified); reenacting and
6 amending RCW 9.94A.728 and 9.94A.753; adding new sections to chapter
7 9.94A RCW; adding a new section to chapter 36.23 RCW; adding a new
8 section to chapter 2.56 RCW; adding a new section to chapter 51.32 RCW;
9 creating new sections; prescribing penalties; providing effective
10 dates; providing an expiration date; and declaring an emergency.

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

12 Sec. 1. RCW 9.94A.728 and 2002 c 290 s 21 and 2002 c 50 s 2 are
13 each reenacted and amended to read as follows:

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

18 (1) Except as otherwise provided for in subsection (2) of this
19 section, the term of the sentence of an offender committed to a

1 correctional facility operated by the department may be reduced by
2 earned release time in accordance with procedures that shall be
3 developed and promulgated by the correctional agency having
4 jurisdiction in which the offender is confined. The earned release
5 time shall be for good behavior and good performance, as determined by
6 the correctional agency having jurisdiction. The correctional agency
7 shall not credit the offender with earned release credits in advance of
8 the offender actually earning the credits. Any program established
9 pursuant to this section shall allow an offender to earn early release
10 credits for presentence incarceration. If an offender is transferred
11 from a county jail to the department, the administrator of a county
12 jail facility shall certify to the department the amount of time spent
13 in custody at the facility and the amount of earned release time. An
14 offender who has been convicted of a felony committed after July 23,
15 1985, that involves any applicable deadly weapon enhancements under RCW
16 9.94A.533 (3) or (4), or both, shall not receive any good time credits
17 or earned release time for that portion of his or her sentence that
18 results from any deadly weapon enhancements.

19 (a) In the case of an offender convicted of a serious violent
20 offense, or a sex offense that is a class A felony, committed on or
21 after July 1, 1990, and before July 1, 2003, the aggregate earned
22 release time may not exceed fifteen percent of the sentence. In the
23 case of an offender convicted of a serious violent offense, or a sex
24 offense that is a class A felony, committed on or after July 1, 2003,
25 the aggregate earned release time may not exceed ten percent of the
26 sentence.

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

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

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

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

36 (I) A sex offense;

37 (II) A violent offense;

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

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

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

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

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

10 (C) Has no prior conviction for:

11 (I) A sex offense;

12 (II) A violent offense;

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

14 (IV) A felony that is domestic violence as defined in RCW
15 10.99.020;

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

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

20 (VII) A violation of, or an attempt, solicitation, or conspiracy to
21 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

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

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

1 (v) This subsection (1)(b) applies retroactively to eligible
2 offenders serving terms of total confinement in a state correctional
3 facility as of the effective date of this section.

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

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

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

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

24 (c) The department shall, as a part of its program for release to
25 the community in lieu of earned release, require the offender to
26 propose a release plan that includes an approved residence and living
27 arrangement. All offenders with community placement or community
28 custody terms eligible for release to community custody status in lieu
29 of earned release shall provide an approved residence and living
30 arrangement prior to release to the community;

31 (d) The department may deny transfer to community custody status in
32 lieu of earned release time pursuant to subsection (1) of this section
33 if the department determines an offender's release plan, including
34 proposed residence location and living arrangements, may violate the
35 conditions of the sentence or conditions of supervision, place the
36 offender at risk to violate the conditions of the sentence, place the
37 offender at risk to reoffend, or present a risk to victim safety or
38 community safety. The department's authority under this section is

1 independent of any court-ordered condition of sentence or statutory
2 provision regarding conditions for community custody or community
3 placement;

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

8 (4)(a) The secretary may authorize an extraordinary medical
9 placement for an offender when all of the following conditions exist;

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

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

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

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

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

27 (d) The secretary may revoke an extraordinary medical placement
28 under this subsection at any time((-))

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

33 (6) No more than the final six months of the sentence may be served
34 in partial confinement designed to aid the offender in finding work and
35 reestablishing himself or herself in the community;

36 (7) The governor may pardon any offender;

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

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

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

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

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

15 The legislature declares that the changes to the maximum
16 percentages of earned release time in this act do not create any
17 expectation that the percentage of earned release time cannot be
18 revised and offenders have no reason to conclude that the maximum
19 percentage of earned release time is an entitlement or creates any
20 liberty interest. The legislature retains full control over the right
21 to revise the percentages of earned release time available to offenders
22 at any time. This section applies to persons convicted on or after the
23 effective date of this section.

24 NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW
25 to read as follows:

26 (1) When the department performs a risk assessment pursuant to RCW
27 9.94A.500, or to determine a person's conditions of supervision, the
28 risk assessment shall classify the offender into one of at least four
29 risk categories.

30 (2) The department shall supervise every offender sentenced to a
31 term of community custody, community placement, or community
32 supervision:

33 (a) Whose risk assessment places that offender in one of the two
34 highest risk categories; or

35 (b) Regardless of the offender's risk category if:

36 (i) The offender's current conviction is for:

- 1 (A) A sex offense;
2 (B) A violent offense;
3 (C) A crime against persons as defined in RCW 9.94A.411;
4 (D) A felony that is domestic violence as defined in RCW 10.99.020;
5 (E) A violation of RCW 9A.52.025 (residential burglary);
6 (F) A violation of, or an attempt, solicitation, or conspiracy to
7 violate, RCW 69.50.401 by manufacture or delivery or possession with
8 intent to deliver methamphetamine; or
9 (G) A violation of, or an attempt, solicitation, or conspiracy to
10 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
11 (ii) The offender has a prior conviction for:
12 (A) A sex offense;
13 (B) A violent offense;
14 (C) A crime against persons as defined in RCW 9.94A.411;
15 (D) A felony that is domestic violence as defined in RCW 10.99.020;
16 (E) A violation of RCW 9A.52.025 (residential burglary);
17 (F) A violation of, or an attempt, solicitation, or conspiracy to
18 violate, RCW 69.50.401 by manufacture or delivery or possession with
19 intent to deliver methamphetamine; or
20 (G) A violation of, or an attempt, solicitation, or conspiracy to
21 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
22 (iii) The conditions of the offender's community custody, community
23 placement, or community supervision include chemical dependency
24 treatment;
25 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;
26 or
27 (v) The offender is subject to supervision pursuant to RCW
28 9.94A.745.
29 (3) The department is not authorized to, and may not, supervise any
30 offender sentenced to a term of community custody, community placement,
31 or community supervision unless the offender is one for whom
32 supervision is required under subsection (2) of this section.
33 (4) This section expires July 1, 2010.

34 Sec. 4. RCW 9.94A.700 and 2002 c 175 s 13 are each amended to read
35 as follows:

36 When a court sentences an offender to a term of total confinement
37 in the custody of the department for any of the offenses specified in

1 this section, the court shall also sentence the offender to a term of
2 community placement as provided in this section. Except as provided in
3 section 3 of this act, the department shall supervise any sentence of
4 community placement imposed under this section.

5 (1) The court shall order a one-year term of community placement
6 for the following:

7 (a) A sex offense or a serious violent offense committed after July
8 1, 1988, but before July 1, 1990; or

9 (b) An offense committed on or after July 1, 1988, but before July
10 25, 1999, that is:

11 (i) Assault in the second degree;

12 (ii) Assault of a child in the second degree;

13 (iii) A crime against persons where it is determined in accordance
14 with RCW 9.94A.602 that the offender or an accomplice was armed with a
15 deadly weapon at the time of commission; or

16 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
17 sentenced under RCW 9.94A.660.

18 (2) The court shall sentence the offender to a term of community
19 placement of two years or up to the period of earned release awarded
20 pursuant to RCW 9.94A.728, whichever is longer, for:

21 (a) An offense categorized as a sex offense committed on or after
22 July 1, 1990, but before June 6, 1996, including those sex offenses
23 also included in other offense categories;

24 (b) A serious violent offense other than a sex offense committed on
25 or after July 1, 1990, but before July 1, 2000; or

26 (c) A vehicular homicide or vehicular assault committed on or after
27 July 1, 1990, but before July 1, 2000.

28 (3) The community placement ordered under this section shall begin
29 either upon completion of the term of confinement or at such time as
30 the offender is transferred to community custody in lieu of earned
31 release. When the court sentences an offender to the statutory maximum
32 sentence then the community placement portion of the sentence shall
33 consist entirely of the community custody to which the offender may
34 become eligible. Any period of community custody actually served shall
35 be credited against the community placement portion of the sentence.

36 (4) Unless a condition is waived by the court, the terms of any
37 community placement imposed under this section shall include the
38 following conditions:

1 (a) The offender shall report to and be available for contact with
2 the assigned community corrections officer as directed;

3 (b) The offender shall work at department-approved education,
4 employment, or community restitution, or any combination thereof;

5 (c) The offender shall not possess or consume controlled substances
6 except pursuant to lawfully issued prescriptions;

7 (d) The offender shall pay supervision fees as determined by the
8 department; and

9 (e) The residence location and living arrangements shall be subject
10 to the prior approval of the department during the period of community
11 placement.

12 (5) As a part of any terms of community placement imposed under
13 this section, the court may also order one or more of the following
14 special conditions:

15 (a) The offender shall remain within, or outside of, a specified
16 geographical boundary;

17 (b) The offender shall not have direct or indirect contact with the
18 victim of the crime or a specified class of individuals;

19 (c) The offender shall participate in crime-related treatment or
20 counseling services;

21 (d) The offender shall not consume alcohol; or

22 (e) The offender shall comply with any crime-related prohibitions.

23 (6) An offender convicted of a felony sex offense against a minor
24 victim after June 6, 1996, shall comply with any terms and conditions
25 of community placement imposed by the department relating to contact
26 between the sex offender and a minor victim or a child of similar age
27 or circumstance as a previous victim.

28 (7) Prior to or during community placement, upon recommendation of
29 the department, the sentencing court may remove or modify any
30 conditions of community placement so as not to be more restrictive.

31 Sec. 5. RCW 9.94A.705 and 2000 c 28 s 23 are each amended to read
32 as follows:

33 Except for persons sentenced under RCW 9.94A.700(2) or 9.94A.710,
34 when a court sentences a person to a term of total confinement to the
35 custody of the department for a violent offense, any crime against
36 persons under RCW 9.94A.411(2), or any felony offense under chapter
37 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or

1 after July 25, 1999, but before July 1, 2000, the court shall in
2 addition to the other terms of the sentence, sentence the offender to
3 a one-year term of community placement beginning either upon completion
4 of the term of confinement or at such time as the offender is
5 transferred to community custody in lieu of earned release in
6 accordance with RCW 9.94A.728 (1) and (2). When the court sentences
7 the offender under this section to the statutory maximum period of
8 confinement, then the community placement portion of the sentence shall
9 consist entirely of such community custody to which the offender may
10 become eligible, in accordance with RCW 9.94A.728 (1) and (2). Any
11 period of community custody actually served shall be credited against
12 the community placement portion of the sentence. Except as provided in
13 section 3 of this act, the department shall supervise any sentence of
14 community placement or community custody imposed under this section.

15 Sec. 6. RCW 9.94A.715 and 2001 2nd sp.s. c 12 s 302 are each
16 amended to read as follows:

17 (1) When a court sentences a person to the custody of the
18 department for a sex offense not sentenced under RCW 9.94A.712, a
19 violent offense, any crime against persons under RCW 9.94A.411(2), or
20 a felony offense under chapter 69.50 or 69.52 RCW, committed on or
21 after July 1, 2000, the court shall in addition to the other terms of
22 the sentence, sentence the offender to community custody for the
23 community custody range established under RCW 9.94A.850 or up to the
24 period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2),
25 whichever is longer. The community custody shall begin: (a) Upon
26 completion of the term of confinement; (b) at such time as the offender
27 is transferred to community custody in lieu of earned release in
28 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
29 offenders sentenced under RCW 9.94A.660, upon failure to complete or
30 administrative termination from the special drug offender sentencing
31 alternative program. Except as provided in section 3 of this act, the
32 department shall supervise any sentence of community custody imposed
33 under this section.

34 (2)(a) Unless a condition is waived by the court, the conditions of
35 community custody shall include those provided for in RCW 9.94A.700(4).
36 The conditions may also include those provided for in RCW 9.94A.700(5).
37 The court may also order the offender to participate in rehabilitative

1 programs or otherwise perform affirmative conduct reasonably related to
2 the circumstances of the offense, the offender's risk of reoffending,
3 or the safety of the community, and the department shall enforce such
4 conditions pursuant to subsection (6) of this section.

5 (b) As part of any sentence that includes a term of community
6 custody imposed under this subsection, the court shall also require the
7 offender to comply with any conditions imposed by the department under
8 RCW 9.94A.720. The department shall assess the offender's risk of
9 reoffense and may establish and modify additional conditions of the
10 offender's community custody based upon the risk to community safety.
11 In addition, the department may require the offender to participate in
12 rehabilitative programs, or otherwise perform affirmative conduct, and
13 to obey all laws.

14 (c) The department may not impose conditions that are contrary to
15 those ordered by the court and may not contravene or decrease court
16 imposed conditions. The department shall notify the offender in
17 writing of any such conditions or modifications. In setting,
18 modifying, and enforcing conditions of community custody, the
19 department shall be deemed to be performing a quasi-judicial function.

20 (3) If an offender violates conditions imposed by the court or the
21 department pursuant to this section during community custody, the
22 department may transfer the offender to a more restrictive confinement
23 status and impose other available sanctions as provided in RCW
24 9.94A.737 and 9.94A.740.

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

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

1 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
2 contempt of court as provided for in RCW 7.21.040. If the court
3 extends a condition beyond the expiration of the term of community
4 custody, the department is not responsible for supervision of the
5 offender's compliance with the condition.

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

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

19 Sec. 7. RCW 9.94A.720 and 2002 c 175 s 14 are each amended to read
20 as follows:

21 (1)(a) Except as provided in section 3 of this act, all offenders
22 sentenced to terms involving community supervision, community
23 restitution, community placement, or community custody (~~or legal~~
24 financial obligation)) shall be under the supervision of the department
25 and shall follow explicitly the instructions and conditions of the
26 department. The department may require an offender to perform
27 affirmative acts it deems appropriate to monitor compliance with the
28 conditions of the sentence imposed. The department may only supervise
29 the offender's compliance with payment of legal financial obligations
30 during any period in which the department is authorized to supervise
31 the offender in the community under section 3 of this act.

32 (b) The instructions shall include, at a minimum, reporting as
33 directed to a community corrections officer, remaining within
34 prescribed geographical boundaries, notifying the community corrections
35 officer of any change in the offender's address or employment, and
36 paying the supervision fee assessment.

1 (c) For offenders sentenced to terms involving community custody
2 for crimes committed on or after June 6, 1996, the department may
3 include, in addition to the instructions in (b) of this subsection, any
4 appropriate conditions of supervision, including but not limited to,
5 prohibiting the offender from having contact with any other specified
6 individuals or specific class of individuals.

7 (d) For offenders sentenced to terms of community custody for
8 crimes committed on or after July 1, 2000, the department may impose
9 conditions as specified in RCW 9.94A.715.

10 The conditions authorized under (c) of this subsection may be
11 imposed by the department prior to or during an offender's community
12 custody term. If a violation of conditions imposed by the court or the
13 department pursuant to RCW 9.94A.710 occurs during community custody,
14 it shall be deemed a violation of community placement for the purposes
15 of RCW 9.94A.740 and shall authorize the department to transfer an
16 offender to a more restrictive confinement status as provided in RCW
17 9.94A.737. At any time prior to the completion of an offender's term
18 of community custody, the department may recommend to the court that
19 any or all of the conditions imposed by the court or the department
20 pursuant to RCW 9.94A.710 or 9.94A.715 be continued beyond the
21 expiration of the offender's term of community custody as authorized in
22 RCW 9.94A.715 (3) or (5).

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

28 (2) No offender sentenced to terms involving community supervision,
29 community restitution, community custody, or community placement under
30 the supervision of the department may own, use, or possess firearms or
31 ammunition. Offenders who own, use, or are found to be in actual or
32 constructive possession of firearms or ammunition shall be subject to
33 the violation process and sanctions under RCW 9.94A.634, 9.94A.737, and
34 9.94A.740. "Constructive possession" as used in this subsection means
35 the power and intent to control the firearm or ammunition. "Firearm"
36 as used in this subsection has the same definition as in RCW 9.41.010.

1 Sec. 8. RCW 9.94A.545 and 2000 c 28 s 13 are each amended to read
2 as follows:

3 Except as provided in RCW 9.94A.650, on all sentences of
4 confinement for one year or less, in which the offender is convicted of
5 a sex offense, a violent offense, a crime against a person under RCW
6 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an
7 attempt, conspiracy, or solicitation to commit such a crime, the court
8 may impose up to one year of community custody, subject to conditions
9 and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An
10 offender shall be on community custody as of the date of sentencing.
11 However, during the time for which the offender is in total or partial
12 confinement pursuant to the sentence or a violation of the sentence,
13 the period of community custody shall toll.

14 Sec. 9. 2002 c 290 s 30 (uncodified) is amended to read as
15 follows:

16 Section 2 of this act expires ~~((July 1, 2004))~~ on the effective
17 date of section 9, chapter Laws of 2003 (section 9 of this act).

18 Sec. 10. 2002 c 290 s 31 (uncodified) is amended to read as
19 follows:

20 Sections 7 through 11 and 14 through 23 of this act take effect
21 ~~((July 1, 2004, and apply to crimes committed on or after July 1,~~
22 ~~2004)) on the effective date of section 9, chapter Laws of 2003~~
23 ~~(section 9 of this act).~~

24 Sec. 11. RCW 70.96A.350 and 2002 c 290 s 4 are each amended to
25 read as follows:

26 (1) The criminal justice treatment account is created in the state
27 treasury. Moneys in the account may be expended solely for: (a)
28 Substance abuse treatment and treatment support services for offenders
29 with an addiction or a substance abuse problem that, if not treated,
30 would result in addiction, against whom charges are filed by a
31 prosecuting attorney in Washington state; and (b) the provision of drug
32 and alcohol treatment services and treatment support services for
33 nonviolent offenders within a drug court program. Moneys in the
34 account may be spent only after appropriation.

35 (2) For purposes of this section:

1 (a) "Treatment" means services that are critical to a participant's
2 successful completion of his or her substance abuse treatment program,
3 but does not include the following services: Housing other than that
4 provided as part of an inpatient substance abuse treatment program,
5 vocational training, and mental health counseling; and

6 (b) "Treatment support" means transportation to or from inpatient
7 or outpatient treatment services when no viable alternative exists, and
8 child care services that are necessary to ensure a participant's
9 ability to attend outpatient treatment sessions.

10 (3) Revenues to the criminal justice treatment account consist of:

11 (a) ~~((Savings to the state general fund resulting from implementation~~
12 ~~of chapter 290, Laws of 2002, as calculated))~~ Funds transferred to the
13 account pursuant to this section; and (b) any other revenues
14 appropriated to or deposited in the account.

15 (4) (a) ~~((The department of corrections, the sentencing guidelines~~
16 ~~commission, the office of financial management, and the caseload~~
17 ~~forecast council shall develop a methodology for calculating the~~
18 ~~projected biennial savings under this section. Savings shall be~~
19 ~~projected for the fiscal biennium beginning on July 1, 2003, and for~~
20 ~~each biennium thereafter. By September 1, 2002, the proposed~~
21 ~~methodology shall be submitted to the governor and the appropriate~~
22 ~~committees of the legislature. The methodology is deemed approved~~
23 ~~unless the legislature enacts legislation to modify or reject the~~
24 ~~methodology.~~

25 (b) ~~When the department of corrections submits its biennial budget~~
26 ~~request to the governor in 2002 and in each even numbered year~~
27 ~~thereafter, the department of corrections shall use the methodology~~
28 ~~approved in (a) of this subsection to calculate savings to the state~~
29 ~~general fund for the ensuing fiscal biennium resulting from reductions~~
30 ~~in drug offender sentencing as a result of sections 2 and 3, chapter~~
31 ~~290, Laws of 2002 and sections 7, 8, and 9, chapter 290, Laws of 2002.~~
32 ~~The department shall report the dollar amount of the savings to the~~
33 ~~state treasurer, the office of financial management, and the fiscal~~
34 ~~committees of the legislature.~~

35 (c) ~~((For the fiscal biennium beginning July 1, 2003, ((and each~~
36 ~~fiscal biennium thereafter,)) the state treasurer shall transfer~~
37 ~~((seventy five percent of the amount reported in (b) of this~~
38 ~~subsection))~~ eight million nine hundred fifty thousand dollars from the

1 general fund into the criminal justice treatment account, divided into
2 eight equal quarterly payments. ~~((However, the amount transferred to~~
3 ~~the criminal justice treatment account shall not exceed the limit of~~
4 ~~eight million two hundred fifty thousand dollars per fiscal year.~~
5 ~~After the first fiscal year in which the amount to be transferred~~
6 ~~equals or exceeds eight million two hundred fifty thousand dollars,~~
7 ~~this limit)) For the fiscal year beginning July 1, 2005, and each
8 subsequent fiscal year, the state treasurer shall transfer eight
9 million two hundred fifty thousand dollars from the general fund to the
10 criminal justice treatment account, divided into four equal quarterly
11 payments. For the fiscal year beginning July 1, 2006, and each
12 subsequent fiscal year, the amount transferred shall be increased on an
13 annual basis by the implicit price deflator as published by the federal
14 bureau of labor statistics.~~

15 ~~((~~(d)~~)) (b) For the fiscal biennium beginning July 1, 2003, and~~
16 ~~each biennium thereafter, the state treasurer shall transfer ((twenty-~~
17 ~~five percent of the amount reported in (b) of this subsection)) two~~
18 ~~million nine hundred eighty-four thousand dollars from the general fund~~
19 ~~into the violence reduction and drug enforcement account, divided into~~
20 ~~eight quarterly payments. The amounts transferred pursuant to this~~
21 ~~subsection (4) ((~~(d)~~)) (b) shall be used solely for providing drug and~~
22 ~~alcohol treatment services to offenders confined in a state~~
23 ~~correctional facility ((receiving a reduced sentence as a result of~~
24 ~~implementation of chapter 290, Laws of 2002 and)) who are assessed with~~
25 ~~an addiction or a substance abuse problem that if not treated would~~
26 ~~result in addiction. ((Any excess funds remaining after providing drug~~
27 ~~and alcohol treatment services to offenders receiving a reduced~~
28 ~~sentence as a result of implementation of chapter 290, Laws of 2002 may~~
29 ~~be expended to provide treatment for offenders confined in a state~~
30 ~~correctional facility and who are assessed with an addiction or a~~
31 ~~substance abuse problem that contributed to the crime.~~

32 ~~(e)) (c) In each odd-numbered year, the legislature shall~~
33 ~~appropriate the amount transferred to the criminal justice treatment~~
34 ~~account in ((~~(e)~~)) (a) of this subsection to the division of alcohol~~
35 ~~and substance abuse for the purposes of subsection (5) of this section.~~

36 (5) Moneys appropriated to the division of alcohol and substance
37 abuse from the criminal justice treatment account shall be distributed
38 as specified in this subsection. The department shall serve as the

1 fiscal agent for purposes of distribution. Until July 1, 2004, the
2 department may not use moneys appropriated from the criminal justice
3 treatment account for administrative expenses and shall distribute all
4 amounts appropriated under subsection (4)~~((e))~~ (c) of this section in
5 accordance with this subsection. Beginning in July 1, 2004, the
6 department may retain up to three percent of the amount appropriated
7 under subsection (4)~~((e))~~ (c) of this section for its administrative
8 costs.

9 (a) Seventy percent of amounts appropriated to the division from
10 the account shall be distributed to counties pursuant to the
11 distribution formula adopted under this section. The division of
12 alcohol and substance abuse, in consultation with the department of
13 corrections, the sentencing guidelines commission, the Washington state
14 association of counties, the Washington state association of drug court
15 professionals, the superior court judges' association, the Washington
16 association of prosecuting attorneys, representatives of the criminal
17 defense bar, representatives of substance abuse treatment providers,
18 and any other person deemed by the division to be necessary, shall
19 establish a fair and reasonable methodology for distribution to
20 counties of moneys in the criminal justice treatment account. County
21 or regional plans submitted for the expenditure of formula funds must
22 be approved by the panel established in (b) of this subsection.

23 (b) Thirty percent of the amounts appropriated to the division from
24 the account shall be distributed as grants for purposes of treating
25 offenders against whom charges are filed by a county prosecuting
26 attorney. The division shall appoint a panel of representatives from
27 the Washington association of prosecuting attorneys, the Washington
28 association of sheriffs and police chiefs, the superior court judges'
29 association, the Washington state association of counties, the
30 Washington defender's association or the Washington association of
31 criminal defense lawyers, the department of corrections, the Washington
32 state association of drug court professionals, substance abuse
33 treatment providers, and the division. The panel shall review county
34 or regional plans for funding under (a) of this subsection and grants
35 approved under this subsection. The panel shall attempt to ensure that
36 treatment as funded by the grants is available to offenders statewide:

37 (6) The county alcohol and drug coordinator, county prosecutor,
38 county sheriff, county superior court, a substance abuse treatment

1 provider appointed by the county legislative authority, a member of the
2 criminal defense bar appointed by the county legislative authority,
3 and, in counties with a drug court, a representative of the drug court
4 shall jointly submit a plan, approved by the county legislative
5 authority or authorities, to the panel established in subsection (5) (b)
6 of this section, for disposition of all the funds provided from the
7 criminal justice treatment account within that county. The funds shall
8 be used solely to provide approved alcohol and substance abuse
9 treatment pursuant to RCW 70.96A.090 and treatment support services.
10 No more than ten percent of the total moneys received under subsections
11 (4) and (5) of this section by a county or group of counties
12 participating in a regional agreement shall be spent for treatment
13 support services.

14 (7) Counties are encouraged to consider regional agreements and
15 submit regional plans for the efficient delivery of treatment under
16 this section.

17 (8) Moneys allocated under this section shall be used to
18 supplement, not supplant, other federal, state, and local funds used
19 for substance abuse treatment.

20 (9) Counties must meet the criteria established in RCW
21 2.28.170 (3) (b).

22 NEW SECTION. Sec. 12. The Washington state institute for public
23 policy shall study the results of the changes in earned release under
24 section 1 of this act. The study shall determine whether the changes
25 in earned release affect the rate of recidivism or the type of offenses
26 committed by persons whose release dates were affected by the changes
27 in this act. The Washington state institute for public policy shall
28 report its findings to the governor and the appropriate committees of
29 the legislature no later than December 1, 2008.

30 NEW SECTION. Sec. 13. The legislature intends to revise and
31 improve the processes for billing and collecting legal financial
32 obligations. The purpose of sections 13 through 27 of this act is to
33 respond to suggestions and requests made by county government
34 officials, and in particular county clerks, to assume the collection of
35 such obligations in cooperation and coordination with the department of
36 corrections and the administrative office for the courts. The

1 legislature undertakes this effort following a collaboration between
2 local officials, the department of corrections, and the administrative
3 office for the courts. The intent of sections 13 through 27 of this
4 act is to promote an increased and more efficient collection of legal
5 financial obligations and, as a result, improve the likelihood that the
6 affected agencies will increase the collections which will provide
7 additional benefits to all parties and, in particular, crime victims
8 whose restitution is dependent upon the collections.

9 Sec. 14. RCW 9.94A.760 and 2001 c 10 s 3 are each amended to read
10 as follows:

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

26 (2) If the court determines that the offender, at the time of
27 sentencing, has the means to pay for the cost of incarceration, the
28 court may require the offender to pay for the cost of incarceration at
29 a rate of fifty dollars per day of incarceration. Payment of other
30 court-ordered financial obligations, including all legal financial
31 obligations and costs of supervision shall take precedence over the
32 payment of the cost of incarceration ordered by the court. All funds
33 recovered from offenders for the cost of incarceration in the county
34 jail shall be remitted to the county and the costs of incarceration in
35 a prison shall be remitted to the department.

36 (3) The court may add to the judgment and sentence or subsequent
37 order to pay a statement that a notice of payroll deduction is to be

1 issued immediately. If the court chooses not to order the immediate
2 issuance of a notice of payroll deduction at sentencing, the court
3 shall add to the judgment and sentence or subsequent order to pay a
4 statement that a notice of payroll deduction may be issued or other
5 income-withholding action may be taken, without further notice to the
6 offender if a monthly court-ordered legal financial obligation payment
7 is not paid when due, and an amount equal to or greater than the amount
8 payable for one month is owed.

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

16 (4) Independent of the department or the county clerk, the party or
17 entity to whom the legal financial obligation is owed shall have the
18 authority to use any other remedies available to the party or entity to
19 collect the legal financial obligation. These remedies include
20 enforcement in the same manner as a judgment in a civil action by the
21 party or entity to whom the legal financial obligation is owed.
22 Restitution collected through civil enforcement must be paid through
23 the registry of the court and must be distributed proportionately
24 according to each victim's loss when there is more than one victim.
25 The judgment and sentence shall identify the party or entity to whom
26 restitution is owed so that the state, party, or entity may enforce the
27 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or
28 9.94A.753(6) to a victim of rape of a child or a victim's child born
29 from the rape, the Washington state child support registry shall be
30 identified as the party to whom payments must be made. Restitution
31 obligations arising from the rape of a child in the first, second, or
32 third degree that result in the pregnancy of the victim may be enforced
33 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).
34 All other legal financial obligations for an offense committed prior to
35 July 1, 2000, may be enforced at any time during the ten-year period
36 following the offender's release from total confinement or within ten
37 years of entry of the judgment and sentence, whichever period ends
38 later. Prior to the expiration of the initial ten-year period, the

1 superior court may extend the criminal judgment an additional ten years
2 for payment of legal financial obligations including crime victims'
3 assessments. All other legal financial obligations for an offense
4 committed on or after July 1, 2000, may be enforced at any time the
5 offender remains under the court's jurisdiction. For an offense
6 committed on or after July 1, 2000, the court shall retain jurisdiction
7 over the offender, for purposes of the offender's compliance with
8 payment of the legal financial obligations, until the obligation is
9 completely satisfied, regardless of the statutory maximum for the
10 crime. The department (~~of corrections shall~~) may only supervise the
11 offender's compliance with payment of the legal financial obligations
12 ((for ten years following the entry of the judgment and sentence, or
13 ten years following the offender's release from total confinement,
14 whichever period ends later)) during any period in which the department
15 is authorized to supervise the offender in the community under RCW
16 9.94A.728, section 3 of this act, or in which the offender is confined
17 in a state correctional institution or a correctional facility pursuant
18 to a transfer agreement with the department, and the department shall
19 supervise the offender's compliance during any such period. The
20 department is not responsible for supervision of the offender during
21 any subsequent period of time the offender remains under the court's
22 jurisdiction. The county clerk is authorized to collect unpaid legal
23 financial obligations at any time the offender remains under the
24 jurisdiction of the court for purposes of his or her legal financial
25 obligations.

26 (5) In order to assist the court in setting a monthly sum that the
27 offender must pay during the period of supervision, the offender is
28 required to report to the department for purposes of preparing a
29 recommendation to the court. When reporting, the offender is required;
30 under oath, to respond truthfully and honestly to all questions
31 concerning present, past, and future earning capabilities and the
32 location and nature of all property or financial assets. The offender
33 is further required to bring all documents requested by the department.

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

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

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

30 (8) After the judgment and sentence or payment order is entered,
31 the department is authorized, for any period of supervision, to collect
32 the legal financial obligation from the offender. Subsequent to any
33 period of supervision or, if the department is not authorized to
34 supervise the offender in the community, the county clerk is authorized
35 to collect unpaid legal financial obligations from the offender. Any
36 amount collected by the department shall be remitted daily to the
37 county clerk for the purpose of disbursements. The department ((#))
38 and the county clerks are authorized, but not required, to accept

1 credit cards as payment for a legal financial obligation, and any costs
2 incurred related to accepting credit card payments shall be the
3 responsibility of the offender.

4 (9) The department or any obligee of the legal financial obligation
5 may seek a mandatory wage assignment for the purposes of obtaining
6 satisfaction for the legal financial obligation pursuant to RCW
7 9.94A.7701. Any party obtaining a wage assignment shall notify the
8 county clerk. The county clerks shall notify the department, or the
9 administrative office of the courts, whichever is providing the monthly
10 billing for the offender.

11 (10) The requirement that the offender pay a monthly sum towards a
12 legal financial obligation constitutes a condition or requirement of a
13 sentence and the offender is subject to the penalties for noncompliance
14 as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

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

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

22 (c) The billing shall direct payments, other than outstanding cost
23 of supervision assessments under RCW 9.94A.780, parole assessments
24 under RCW 72.04A.120, and cost of probation assessments under RCW
25 9.95.214, to the county clerk, and cost of supervision, parole, or
26 probation assessments to the department.

27 (d) The county clerk shall provide the ((department with
28 individualized monthly billings for each offender with an unsatisfied
29 legal financial obligation and shall provide the department))
30 administrative office of the courts with notice of payments by such
31 offenders no less frequently than weekly.

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

34 (12) The department ((may)) shall arrange for the collection of
35 unpaid legal financial obligations during any period of supervision in
36 the community through the county clerk((or)). The department shall
37 either collect unpaid legal financial obligations or arrange for
38 collections through another entity if the clerk does not assume

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1 responsibility for collection pursuant to subsection (4) of this
2 section. The costs for collection services shall be paid by the
3 offender.

4 (13) Nothing in this chapter makes the department, the state, the
5 counties, or any ~~((of its))~~ state or county employees, agents, or other
6 persons acting on their behalf liable under any circumstances for the
7 payment of these legal financial obligations or for the acts of any
8 offender who is no longer, or was not, subject to supervision by the
9 department for a term of community custody, community placement, or
10 community supervision, and who remains under the jurisdiction of the
11 court for payment of legal financial obligations.

12 Sec. 15. RCW 9.94A.750 and 2000 c 28 s 32 are each amended to read
13 as follows:

14 This section applies to offenses committed on or before July 1,
15 1985.

16 (1) If restitution is ordered, the court shall determine the amount
17 of restitution due at the sentencing hearing or within one hundred
18 eighty days. The court may continue the hearing beyond the one hundred
19 eighty days for good cause. The court shall then set a minimum monthly
20 payment that the offender is required to make towards the restitution
21 that is ordered. The court should take into consideration the total
22 amount of the restitution owed, the offender's present, past, and
23 future ability to pay, as well as any assets that the offender may
24 have.

25 (2) During the period of supervision, the community corrections
26 officer may examine the offender to determine if there has been a
27 change in circumstances that warrants an amendment of the monthly
28 payment schedule. The community corrections officer may recommend a
29 change to the schedule of payment and shall inform the court of the
30 recommended change and the reasons for the change. The sentencing
31 court may then reset the monthly minimum payments based on the report
32 from the community corrections officer of the change in circumstances.

33 (3) Except as provided in subsection (6) of this section,
34 restitution ordered by a court pursuant to a criminal conviction shall
35 be based on easily ascertainable damages for injury to or loss of
36 property, actual expenses incurred for treatment for injury to persons,
37 and lost wages resulting from injury. Restitution shall not include

1 reimbursement for damages for mental anguish, pain and suffering, or
2 other intangible losses, but may include the costs of counseling
3 reasonably related to the offense. The amount of restitution shall not
4 exceed double the amount of the offender's gain or the victim's loss
5 from the commission of the offense.

6 (4) For the purposes of this section, the offender shall remain
7 under the court's jurisdiction for a term of ten years following the
8 offender's release from total confinement or ten years subsequent to
9 the entry of the judgment and sentence, whichever period is longer.
10 Prior to the expiration of the initial ten-year period, the superior
11 court may extend jurisdiction under the criminal judgment an additional
12 ten years for payment of restitution. ~~((If jurisdiction under the~~
13 ~~criminal judgment is extended, the department is not responsible for~~
14 ~~supervision of the offender during the subsequent period.))~~ The
15 portion of the sentence concerning restitution may be modified as to
16 amount, terms and conditions during either the initial ten-year period
17 or subsequent ten-year period if the criminal judgment is extended,
18 regardless of the expiration of the offender's term of community
19 supervision and regardless of the statutory maximum sentence for the
20 crime. The court may not reduce the total amount of restitution
21 ordered because the offender may lack the ability to pay the total
22 amount. The offender's compliance with the restitution shall be
23 supervised by the department only during any period which the
24 department is authorized to supervise the offender in the community
25 under RCW 9.94A.728, section 3 of this act, or in which the offender is
26 in confinement in a state correctional institution or a correctional
27 facility pursuant to a transfer agreement with the department, and the
28 department shall supervise the offender's compliance during any such
29 period. The department is responsible for supervision of the offender
30 only during confinement and authorized supervision and not during any
31 subsequent period in which the offender remains under the court's
32 jurisdiction. The county clerk is authorized to collect unpaid
33 restitution at any time the offender remains under the jurisdiction of
34 the court for purposes of his or her legal financial obligations.

35 (5) Restitution may be ordered whenever the offender is convicted
36 of an offense which results in injury to any person or damage to or
37 loss of property or as provided in subsection (6) of this section. In
38 addition, restitution may be ordered to pay for an injury, loss, or

1 damage if the offender pleads guilty to a lesser offense or fewer
2 offenses and agrees with the prosecutor's recommendation that the
3 offender be required to pay restitution to a victim of an offense or
4 offenses which are not prosecuted pursuant to a plea agreement.

5 (6) Restitution for the crime of rape of a child in the first,
6 second, or third degree, in which the victim becomes pregnant, shall
7 include: (a) All of the victim's medical expenses that are associated
8 with the rape and resulting pregnancy; and (b) child support for any
9 child born as a result of the rape if child support is ordered pursuant
10 to a proceeding in superior court or administrative order for support
11 for that child. The clerk must forward any restitution payments made
12 on behalf of the victim's child to the Washington state child support
13 registry under chapter 26.23 RCW. Identifying information about the
14 victim and child shall not be included in the order. The offender
15 shall receive a credit against any obligation owing under the
16 administrative or superior court order for support of the victim's
17 child. For the purposes of this subsection, the offender shall remain
18 under the court's jurisdiction until the offender has satisfied support
19 obligations under the superior court or administrative order but not
20 longer than a maximum term of twenty-five years following the
21 offender's release from total confinement or twenty-five years
22 subsequent to the entry of the judgment and sentence, whichever period
23 is longer. The court may not reduce the total amount of restitution
24 ordered because the offender may lack the ability to pay the total
25 amount. The department shall supervise the offender's compliance with
26 the restitution ordered under this subsection.

27 (7) In addition to any sentence that may be imposed, an offender
28 who has been found guilty of an offense involving fraud or other
29 deceptive practice or an organization which has been found guilty of
30 any such offense may be ordered by the sentencing court to give notice
31 of the conviction to the class of persons or to the sector of the
32 public affected by the conviction or financially interested in the
33 subject matter of the offense by mail, by advertising in designated
34 areas or through designated media, or by other appropriate means.

35 (8) This section does not limit civil remedies or defenses
36 available to the victim or offender including support enforcement
37 remedies for support ordered under subsection (6) of this section for
38 a child born as a result of a rape of a child victim. The court shall

1 identify in the judgment and sentence the victim or victims entitled to
2 restitution and what amount is due each victim. The state or victim
3 may enforce the court-ordered restitution in the same manner as a
4 judgment in a civil action. Restitution collected through civil
5 enforcement must be paid through the registry of the court and must be
6 distributed proportionately according to each victim's loss when there
7 is more than one victim.

8 Sec. 16. RCW 9.94A.753 and 2000 c 226 s 3 and 2000 c 28 s 33 are
9 each reenacted and amended to read as follows:

10 This section applies to offenses committed after July 1, 1985.

11 (1) When restitution is ordered, the court shall determine the
12 amount of restitution due at the sentencing hearing or within one
13 hundred eighty days except as provided in subsection (7) of this
14 section. The court may continue the hearing beyond the one hundred
15 eighty days for good cause. The court shall then set a minimum monthly
16 payment that the offender is required to make towards the restitution
17 that is ordered. The court should take into consideration the total
18 amount of the restitution owed, the offender's present, past, and
19 future ability to pay, as well as any assets that the offender may
20 have.

21 (2) During the period of supervision, the community corrections
22 officer may examine the offender to determine if there has been a
23 change in circumstances that warrants an amendment of the monthly
24 payment schedule. The community corrections officer may recommend a
25 change to the schedule of payment and shall inform the court of the
26 recommended change and the reasons for the change. The sentencing
27 court may then reset the monthly minimum payments based on the report
28 from the community corrections officer of the change in circumstances.

29 (3) Except as provided in subsection (6) of this section,
30 restitution ordered by a court pursuant to a criminal conviction shall
31 be based on easily ascertainable damages for injury to or loss of
32 property, actual expenses incurred for treatment for injury to persons,
33 and lost wages resulting from injury. Restitution shall not include
34 reimbursement for damages for mental anguish, pain and suffering, or
35 other intangible losses, but may include the costs of counseling
36 reasonably related to the offense. The amount of restitution shall not

1 exceed double the amount of the offender's gain or the victim's loss
2 from the commission of the crime.

3 (4) For the purposes of this section, for an offense committed
4 prior to July 1, 2000, the offender shall remain under the court's
5 jurisdiction for a term of ten years following the offender's release
6 from total confinement or ten years subsequent to the entry of the
7 judgment and sentence, whichever period ends later. Prior to the
8 expiration of the initial ten-year period, the superior court may
9 extend jurisdiction under the criminal judgment an additional ten years
10 for payment of restitution. For an offense committed on or after July
11 1, 2000, the offender shall remain under the court's jurisdiction until
12 the obligation is completely satisfied, regardless of the statutory
13 maximum for the crime. The portion of the sentence concerning
14 restitution may be modified as to amount, terms, and conditions during
15 any period of time the offender remains under the court's jurisdiction,
16 regardless of the expiration of the offender's term of community
17 supervision and regardless of the statutory maximum sentence for the
18 crime. The court may not reduce the total amount of restitution
19 ordered because the offender may lack the ability to pay the total
20 amount. The offender's compliance with the restitution shall be
21 supervised by the department (~~for ten years following the entry of the~~
22 ~~judgment and sentence or ten years following the offender's release~~
23 ~~from total confinement. The department is not responsible for~~
24 ~~supervision of the offender during any subsequent period of time the~~
25 ~~offender remains under the court's jurisdiction)~~ only during any
26 period which the department is authorized to supervise the offender in
27 the community under RCW 9.94A.728, section 3 of this act, or in which
28 the offender is in confinement in a state correctional institution or
29 a correctional facility pursuant to a transfer agreement with the
30 department, and the department shall supervise the offender's
31 compliance during any such period. The department is responsible for
32 supervision of the offender only during confinement and authorized
33 supervision and not during any subsequent period in which the offender
34 remains under the court's jurisdiction. The county clerk is authorized
35 to collect unpaid restitution at any time the offender remains under
36 the jurisdiction of the court for purposes of his or her legal
37 financial obligations.

1 (5) Restitution shall be ordered whenever the offender is convicted
2 of an offense which results in injury to any person or damage to or
3 loss of property or as provided in subsection (6) of this section
4 unless extraordinary circumstances exist which make restitution
5 inappropriate in the court's judgment and the court sets forth such
6 circumstances in the record. In addition, restitution shall be ordered
7 to pay for an injury, loss, or damage if the offender pleads guilty to
8 a lesser offense or fewer offenses and agrees with the prosecutor's
9 recommendation that the offender be required to pay restitution to a
10 victim of an offense or offenses which are not prosecuted pursuant to
11 a plea agreement.

12 (6) Restitution for the crime of rape of a child in the first,
13 second, or third degree, in which the victim becomes pregnant, shall
14 include: (a) All of the victim's medical expenses that are associated
15 with the rape and resulting pregnancy; and (b) child support for any
16 child born as a result of the rape if child support is ordered pursuant
17 to a civil superior court or administrative order for support for that
18 child. The clerk must forward any restitution payments made on behalf
19 of the victim's child to the Washington state child support registry
20 under chapter 26.23 RCW. Identifying information about the victim and
21 child shall not be included in the order. The offender shall receive
22 a credit against any obligation owing under the administrative or
23 superior court order for support of the victim's child. For the
24 purposes of this subsection, the offender shall remain under the
25 court's jurisdiction until the offender has satisfied support
26 obligations under the superior court or administrative order for the
27 period provided in RCW 4.16.020 or a maximum term of twenty-five years
28 following the offender's release from total confinement or twenty-five
29 years subsequent to the entry of the judgment and sentence, whichever
30 period is longer. The court may not reduce the total amount of
31 restitution ordered because the offender may lack the ability to pay
32 the total amount. The department shall supervise the offender's
33 compliance with the restitution ordered under this subsection.

34 (7) Regardless of the provisions of subsections (1) through (6) of
35 this section, the court shall order restitution in all cases where the
36 victim is entitled to benefits under the crime victims' compensation
37 act, chapter 7.68 RCW. If the court does not order restitution and the
38 victim of the crime has been determined to be entitled to benefits

1 under the crime victims' compensation act, the department of labor and
2 industries, as administrator of the crime victims' compensation
3 program, may petition the court within one year of entry of the
4 judgment and sentence for entry of a restitution order. Upon receipt
5 of a petition from the department of labor and industries, the court
6 shall hold a restitution hearing and shall enter a restitution order.

7 (8) In addition to any sentence that may be imposed, an offender
8 who has been found guilty of an offense involving fraud or other
9 deceptive practice or an organization which has been found guilty of
10 any such offense may be ordered by the sentencing court to give notice
11 of the conviction to the class of persons or to the sector of the
12 public affected by the conviction or financially interested in the
13 subject matter of the offense by mail, by advertising in designated
14 areas or through designated media, or by other appropriate means.

15 (9) This section does not limit civil remedies or defenses
16 available to the victim, survivors of the victim, or offender including
17 support enforcement remedies for support ordered under subsection (6)
18 of this section for a child born as a result of a rape of a child
19 victim. The court shall identify in the judgment and sentence the
20 victim or victims entitled to restitution and what amount is due each
21 victim. The state or victim may enforce the court-ordered restitution
22 in the same manner as a judgment in a civil action. Restitution
23 collected through civil enforcement must be paid through the registry
24 of the court and must be distributed proportionately according to each
25 victim's loss when there is more than one victim.

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

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

1 authorized to monitor payment after such notification. The secretary
2 of corrections and the administrator for the courts shall enter into an
3 interagency agreement to facilitate the electronic transfer of
4 information about offenders, unpaid obligations, and payees to carry
5 out the purposes of this section.

6 Sec. 18. RCW 9.94A.780 and 1991 c 104 s 1 are each amended to read
7 as follows:

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

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

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

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

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

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

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

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

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

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

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

20 Sec. 19. RCW 9.94A.637 and 2002 c 16 s 2 are each amended to read
21 as follows:

22 (1)(a) When an offender has completed all requirements of the
23 sentence, including any and all legal financial obligations, and while
24 under the custody and supervision of the department, the secretary or
25 the secretary's designee shall notify the sentencing court, which shall
26 discharge the offender and provide the offender with a certificate of
27 discharge by issuing the certificate to the offender in person or by
28 mailing the certificate to the offender's last known address.

29 (b)(i) When an offender has reached the end of his or her
30 supervision with the department and has completed all the requirements
31 of the sentence except his or her legal financial obligations, the
32 secretary's designee shall provide the county clerk with a notice that
33 the offender has completed all nonfinancial requirements of the
34 sentence.

35 (ii) When the department has provided the county clerk with notice
36 that an offender has completed all the requirements of the sentence and
37 the offender subsequently satisfies all legal financial obligations

1 under the sentence, the county clerk shall notify the sentencing court,
2 including the notice from the department, which shall discharge the
3 offender and provide the offender with a certificate of discharge by
4 issuing the certificate to the offender in person or by mailing the
5 certificate to the offender's last known address.

6 (2) The court shall send a copy of every signed certificate of
7 discharge to the auditor for the county in which the court resides and
8 to the department. The department shall create and maintain a data
9 base containing the names of all felons who have been issued
10 certificates of discharge, the date of discharge, and the date of
11 conviction and offense.

12 (3) An offender who is not convicted of a violent offense or a sex
13 offense and is sentenced to a term involving community supervision may
14 be considered for a discharge of sentence by the sentencing court prior
15 to the completion of community supervision, provided that the offender
16 has completed at least one-half of the term of community supervision
17 and has met all other sentence requirements.

18 (4) Except as provided in subsection (5) of this section, the
19 discharge shall have the effect of restoring all civil rights lost by
20 operation of law upon conviction, and the certificate of discharge
21 shall so state. Nothing in this section prohibits the use of an
22 offender's prior record for purposes of determining sentences for later
23 offenses as provided in this chapter. Nothing in this section affects
24 or prevents use of the offender's prior conviction in a later criminal
25 prosecution either as an element of an offense or for impeachment
26 purposes. A certificate of discharge is not based on a finding of
27 rehabilitation.

28 (5) Unless otherwise ordered by the sentencing court, a certificate
29 of discharge shall not terminate the offender's obligation to comply
30 with an order issued under chapter 10.99 RCW that excludes or prohibits
31 the offender from having contact with a specified person or coming
32 within a set distance of any specified location that was contained in
33 the judgment and sentence. An offender who violates such an order
34 after a certificate of discharge has been issued shall be subject to
35 prosecution according to the chapter under which the order was
36 originally issued.

37 (6) Upon release from custody, the offender may apply to the

1 department for counseling and help in adjusting to the community. This
2 voluntary help may be provided for up to one year following the release
3 from custody.

4 NEW SECTION. Sec. 20. A new section is added to chapter 36.23 RCW
5 to read as follows:

6 The Washington association of county officials, in consultation
7 with county clerks, shall determine a funding formula for allocation of
8 moneys to counties for purposes of collecting legal financial
9 obligations, and report this formula to the legislature and the
10 administrative office of the courts by September 1, 2003. The
11 Washington association of county officials shall report on the amounts
12 of legal financial obligations collected by the county clerks to the
13 appropriate committees of the legislature no later than December 1,
14 2004, and annually thereafter.

15 NEW SECTION. Sec. 21. A new section is added to chapter 2.56 RCW
16 to read as follows:

17 By October 1, 2003, and annually thereafter, the administrative
18 office of the courts shall distribute such funds to counties for county
19 clerk collection budgets as are appropriated by the legislature for
20 this purpose, using the funding formula recommended by the Washington
21 association of county officials. The administrative office of the
22 courts shall not deduct any amount for indirect or direct costs, and
23 shall distribute the entire amount appropriated by the legislature to
24 the counties for county clerk collection budgets. The administrative
25 office of the courts shall report on the amounts distributed to
26 counties to the appropriate committees of the legislature no later than
27 December 1, 2003, and annually thereafter.

28 The administrative office of the courts may expend for the purposes
29 of billing for legal financial obligations, such funds as are
30 appropriated for the legislature for this purpose.

31 NEW SECTION. Sec. 22. A new section is added to chapter 9.94A RCW
32 to read as follows:

33 Notwithstanding any other provision of state law, monthly payment
34 or starting dates set by the court or the department before or after
35 the effective date of this section shall not be construed as a

1 limitation on the due date or amount of legal financial obligations,
2 which may be immediately collected by civil means. Monthly payments
3 and commencement dates are to be construed to be applicable solely as
4 a limitation upon the deprivation of an offender's liberty for
5 nonpayment.

6 Sec. 23. RCW 4.56.100 and 1997 c 358 s 4 are each amended to read
7 as follows:

8 (1) When any judgment for the payment of money only shall have been
9 paid or satisfied, the clerk of the court in which such judgment was
10 rendered shall note upon the record in the execution docket
11 satisfaction thereof giving the date of such satisfaction upon either
12 the payment to such clerk of the amount of such judgment, costs and
13 interest and any accrued costs by reason of the issuance of any
14 execution, or the filing with such clerk of a satisfaction entitled in
15 such action and identifying the same executed by the judgment creditor
16 or his or her attorney of record in such action or his or her assignee
17 acknowledged as deeds are acknowledged. The clerk has the authority to
18 note the satisfaction of judgments for criminal and juvenile legal
19 financial obligations when the clerk's record indicates payment in full
20 or as directed by the court. Every satisfaction of judgment and every
21 partial satisfaction of judgment which provides for the payment of
22 money shall clearly designate the judgment creditor and his or her
23 attorney if any, the judgment debtor, the amount or type of
24 satisfaction, whether the satisfaction is full or partial, the cause
25 number, and the date of entry of the judgment. A certificate by such
26 clerk of the entry of such satisfaction by him or her may be filed in
27 the office of the clerk of any county in which an abstract of such
28 judgment has been filed. When so satisfied by the clerk or the filing
29 of such certificate the lien of such judgment shall be discharged.

30 (2) The department of social and health services shall file a
31 satisfaction of judgment for welfare fraud conviction if a person does
32 not pay money through the clerk as required under subsection (1) of
33 this section.

34 ~~((3) The department of corrections shall file a satisfaction of~~
35 ~~judgment if a person does not pay money through the clerk's office as~~
36 ~~required under subsection (1) of this section.))~~

1 NEW SECTION. Sec. 24. A new section is added to chapter 9.94A RCW
2 to read as follows:

3 The provisions of sections 13 through 27 of this act apply to all
4 offenders currently, or in the future, subject to sentences with
5 unsatisfied legal financial obligations. The provisions of sections 13
6 through 27 of this act do not change the amount of any legal financial
7 obligation or the maximum term for which any offender is, or may be,
8 under the jurisdiction of the court for collection of legal financial
9 obligations.

10 Sec. 25. RCW 72.09.111 and 2002 c 126 s 2 are each amended to read
11 as follows:

12 (1) The secretary shall deduct taxes and legal financial
13 obligations from the gross wages ~~((or))~~, gratuities, or workers'
14 compensation benefits payable directly to the inmate under chapter
15 51.32 RCW, of each inmate working in correctional industries work
16 programs, ~~((taxes and legal financial obligations))~~ or otherwise
17 receiving such wages, gratuities, or benefits. The secretary shall
18 develop a formula for the distribution of offender wages ~~((and))~~,
19 gratuities, and benefits. The formula shall not reduce the inmate
20 account below the indigency level, as defined in RCW 72.09.015.

21 (a) The formula shall include the following minimum deductions from
22 class I gross wages and from all others earning at least minimum wage:

23 (i) Five percent to the public safety and education account for the
24 purpose of crime victims' compensation;

25 (ii) Ten percent to a department personal inmate savings account;

26 (iii) Twenty percent to the department to contribute to the cost of
27 incarceration; and

28 (iv) Twenty percent for payment of legal financial obligations for
29 all inmates who have legal financial obligations owing in any
30 Washington state superior court.

31 (b) The formula shall include the following minimum deductions from
32 class II gross gratuities:

33 (i) Five percent to the public safety and education account for the
34 purpose of crime victims' compensation;

35 (ii) Ten percent to a department personal inmate savings account;

36 (iii) Fifteen percent to the department to contribute to the cost
37 of incarceration; and

1 (iv) Twenty percent for payment of legal financial obligations for
2 all inmates who have legal financial obligations owing in any
3 Washington state superior court.

4 (c) The formula shall include the following minimum deductions from
5 any workers' compensation benefits paid pursuant to RCW 51.32.080:

6 (i) Five percent to the public safety and education account for the
7 purpose of crime victims' compensation;

8 (ii) Ten percent to a department personal inmate savings account;

9 (iii) Twenty percent to the department to contribute to the cost of
10 incarceration; and

11 (iv) An amount equal to any legal financial obligations owed by the
12 inmate established by an order of any Washington state superior court
13 up to the total amount of the award.

14 (d) The formula shall include the following minimum deduction from
15 class IV gross gratuities: Five percent to the department to
16 contribute to the cost of incarceration.

17 ~~((a))~~ (a) The formula shall include the following minimum
18 deductions from class III gratuities: Five percent for the purpose of
19 crime victims' compensation.

20 (2) Any person sentenced to life imprisonment without possibility
21 of release or parole under chapter 10.95 RCW or sentenced to death
22 shall be exempt from the requirement under subsection (1)(a)(ii)
23 ~~((a))~~, (b)(ii) ((of this subsection)), or (c)(ii).

24 (3) The department personal inmate savings account, together with
25 any accrued interest, shall only be available to an inmate at the time
26 of his or her release from confinement, unless the secretary determines
27 that an emergency exists for the inmate, at which time the funds can be
28 made available to the inmate in an amount determined by the secretary.
29 The management of classes I, II, and IV correctional industries may
30 establish an incentive payment for offender workers based on
31 productivity criteria. This incentive shall be paid separately from
32 the hourly wage/gratuity rate and shall not be subject to the specified
33 deduction for cost of incarceration.

34 (4) In the event that the offender worker's wages ~~((a))~~ gratuity,
35 or workers' compensation benefit is subject to garnishment for support
36 enforcement, the crime victims' compensation, savings, and cost of
37 incarceration deductions shall be calculated on the net wages after
38 taxes, legal financial obligations, and garnishment.

1 ~~((42))~~ (5) The department shall explore other methods of
2 recovering a portion of the cost of the inmate's incarceration and for
3 encouraging participation in work programs, including development of
4 incentive programs that offer inmates benefits and amenities paid for
5 only from wages earned while working in a correctional industries work
6 program.

7 ~~((43))~~ (6) The department shall develop the necessary
8 administrative structure to recover inmates' wages and keep records of
9 the amount inmates pay for the costs of incarceration and amenities.
10 All funds deducted from inmate wages under subsection (1) of this
11 section for the purpose of contributions to the cost of incarceration
12 shall be deposited in a dedicated fund with the department and shall be
13 used only for the purpose of enhancing and maintaining correctional
14 industries work programs.

15 ~~((44))~~ (7) The expansion of inmate employment in class I and class
16 II correctional industries shall be implemented according to the
17 following schedule:

18 (a) Not later than June 30, 1995, the secretary shall achieve a net
19 increase of at least two hundred in the number of inmates employed in
20 class I or class II correctional industries work programs above the
21 number so employed on June 30, 1994;

22 (b) Not later than June 30, 1996, the secretary shall achieve a net
23 increase of at least four hundred in the number of inmates employed in
24 class I or class II correctional industries work programs above the
25 number so employed on June 30, 1994;

26 (c) Not later than June 30, 1997, the secretary shall achieve a net
27 increase of at least six hundred in the number of inmates employed in
28 class I or class II correctional industries work programs above the
29 number so employed on June 30, 1994;

30 (d) Not later than June 30, 1998, the secretary shall achieve a net
31 increase of at least nine hundred in the number of inmates employed in
32 class I or class II correctional industries work programs above the
33 number so employed on June 30, 1994;

34 (e) Not later than June 30, 1999, the secretary shall achieve a net
35 increase of at least one thousand two hundred in the number of inmates
36 employed in class I or class II correctional industries work programs
37 above the number so employed on June 30, 1994;

1 (f) Not later than June 30, 2000, the secretary shall achieve a net
2 increase of at least one thousand five hundred in the number of inmates
3 employed in class I or class II correctional industries work programs
4 above the number so employed on June 30, 1994.

5 ~~((+5))~~ (B) It shall be in the discretion of the secretary to
6 apportion the inmates between class I and class II depending on
7 available contracts and resources.

8 NEW SECTION. Sec. 26. A new section is added to chapter 51.32 RCW
9 to read as follows:

10 If the department of labor and industries has received notice that
11 an injured worker entitled to benefits payable under this chapter is in
12 the custody of the department of corrections pursuant to a conviction
13 and sentence, the department shall send all such benefits to the worker
14 in care of the department of corrections, except those benefits payable
15 to a beneficiary as provided in RCW 51.32.040 (3)(c) and (4). Failure
16 of the department to send such benefits to the department of
17 corrections shall not result in liability to any party for either
18 department.

19 Sec. 27. RCW 51.32.040 and 1999 c 185 s 1 are each amended to read
20 as follows:

21 (1) Except as provided in RCW 43.20B.720 ~~((and))~~, 72.09.111,
22 74.20A.260, and section 26 of this act, no money paid or payable under
23 this title shall, before the issuance and delivery of the check or
24 warrant, be assigned, charged, or taken in execution, attached,
25 garnished, or pass or be paid to any other person by operation of law,
26 any form of voluntary assignment, or power of attorney. Any such
27 assignment or charge is void unless the transfer is to a financial
28 institution at the request of a worker or other beneficiary and made in
29 accordance with RCW 51.32.045.

30 (2)(a) If any worker suffers (i) a permanent partial injury and
31 dies from some other cause than the accident which produced the injury
32 before he or she receives payment of the award for the permanent
33 partial injury or (ii) any other injury before he or she receives
34 payment of any monthly installment covering any period of time before
35 his or her death, the amount of the permanent partial disability award
36 or the monthly payment, or both, shall be paid to the surviving spouse

1 or the child or children if there is no surviving spouse. If there is
2 no surviving spouse and no child or children, the award or the amount
3 of the monthly payment shall be paid by the department or self-insurer
4 and distributed consistent with the terms of the decedent's will or, if
5 the decedent dies intestate, consistent with the terms of RCW
6 11.04.015.

7 (b) If any worker suffers an injury and dies from it before he or
8 she receives payment of any monthly installment covering time loss for
9 any period of time before his or her death, the amount of the monthly
10 payment shall be paid to the surviving spouse or the child or children
11 if there is no surviving spouse. If there is no surviving spouse and
12 no child or children, the amount of the monthly payment shall be paid
13 by the department or self-insurer and distributed consistent with the
14 terms of the decedent's will or, if the decedent dies intestate,
15 consistent with the terms of RCW 11.04.015.

16 (c) Any application for compensation under this subsection (2)
17 shall be filed with the department or self-insuring employer within one
18 year of the date of death. The department or self-insurer may satisfy
19 its responsibilities under this subsection (2) by sending any payment
20 due in the name of the decedent and to the last known address of the
21 decedent.

22 (3) (a) Any worker or beneficiary receiving benefits under this
23 title who is subsequently confined in, or who subsequently becomes
24 eligible for benefits under this title while confined in, any
25 institution under conviction and sentence shall have all payments of
26 the compensation canceled during the period of confinement. After
27 discharge from the institution, payment of benefits due afterward shall
28 be paid if the worker or beneficiary would, except for the provisions
29 of this subsection (3), otherwise be entitled to them.

30 (b) If any prisoner is injured in the course of his or her
31 employment while participating in a work or training release program
32 authorized by chapter 72.65 RCW and is subject to the provisions of
33 this title, he or she is entitled to payments under this title, subject
34 to the requirements of chapter 72.65 RCW, unless his or her
35 participation in the program has been canceled, or unless he or she is
36 returned to a state correctional institution, as defined in RCW
37 72.65.010(3), as a result of revocation of parole or new sentence.

1 (c) If the confined worker has any beneficiaries during the
2 confinement period during which benefits are canceled under (a) or (b)
3 of this subsection, they shall be paid directly the monthly benefits
4 which would have been paid to the worker for himself or herself and the
5 worker's beneficiaries had the worker not been confined.

6 (4) Any lump sum benefits to which a worker would otherwise be
7 entitled but for the provisions of this section shall be paid on a
8 monthly basis to his or her beneficiaries.

9 NEW SECTION. Sec. 28. If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. Sec. 29. (1) Sections 1 through 12, 20, and 28 of
14 this act are necessary for the immediate preservation of the public
15 peace, health, or safety, or support of the state government and its
16 existing public institutions, and take effect July 1, 2003.

17 (2) Sections 13 through 19 and 21 through 27 of this act take
18 effect October 1, 2003.

--- END ---

RCW 9.94A.501 (2003 Supp. Codification)

After Passage of ESSB 5990

Severability—1989 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 252 § 31.]

Application—1988 c 157: "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

Effective date—1988 c 153: "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

Application of increased sanctions—1988 c 153: "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1983 c 163: See note following RCW 9.94A.505.

9.94A.501 Risk assessment—Risk categories—Department must supervise specified offenders. (Expires July 1, 2010.) (1) When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender into one of at least four risk categories.

(2) The department shall supervise every offender sentenced to a term of community custody, community placement, or community supervision:

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

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

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

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

(ii) The offender has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

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

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

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

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

(4) This section expires July 1, 2010. [2003 c 379 § 3.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

9.94A.515 Table 2—Crimes included within each seriousness level. (Expires July 1, 2004.)

TABLE 2 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083)
	Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
	Kidnapping 1 (RCW 9A.40.020)
	Leading Organized Crime (RCW 9A.82.060(1)(a))
	Malicious explosion 3 (RCW 70.74.280(3))
	Manufacture of methamphetamine (RCW 69.50.401(a)(i)(ii))

[2003 RCW Supp—page 49]

2005 Session Laws – SSB 5256

2005
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-NINTH LEGISLATURE
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instrument that, if used, could produce serious bodily injury to the person of another, is guilty of a class (B) C felony.

(3) The sentence imposed under this section shall be in addition to any sentence being served.

Passed by the Senate March 9, 2005.

Passed by the House April 13, 2005.

Approved by the Governor May 10, 2005.

Filed in Office of Secretary of State May 10, 2005.

CHAPTER 362

[Substitute Senate Bill 5256]

SENTENCING—PROBATIONER RISK ASSESSMENT

AN ACT Relating to misdemeanors and gross misdemeanors; amending RCW 9.94A.501, 9.92.060, 9.95.204, and 9.95.210; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.501 and 2003 c 379 s 3 are each amended to read as follows:

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

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

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

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

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

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

(ii) The offender or probationer has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

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

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

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

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

(4) This section expires July 1, 2010.

Sec. 2. RCW 9.92.060 and 1996 c 298 s 5 are each amended to read as follows:

(1) Whenever any person is convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, rape of a child, or rape, the superior court may, in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by the superior court, and that the sentenced person be placed under the charge of a community corrections officer employed by the department of corrections, or if the county elects to assume responsibility for the supervision of all superior court misdemeanor probationers a probation officer employed or contracted for by the county, upon such terms as the superior court may determine.

(2) As a condition to suspension of sentence, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. In addition, the superior court may require the convicted person to make such monetary payments, on such terms as the superior court deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required; and (d) to contribute to a county or interlocal drug fund.

(3) As a condition of the suspended sentence, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In

cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(4) If restitution to the victim has been ordered under subsection (2)(b) of this section and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If the superior court has ordered supervision and restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence.

(5) The provisions of RCW 9.94A.501 apply to sentences imposed under this section.

Sec. 3. RCW 9.95.204 and 1996 c 298 s 1 are each amended to read as follows:

(1) When a superior court places a defendant convicted of a misdemeanor or gross misdemeanor on probation and orders supervision under RCW 9.92.060 or 9.95.210, the department of corrections has initial responsibility for supervision of that defendant.

(2) A county legislative authority may assume responsibility for the supervision of all defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and sentenced to probation by a superior court. The assumption of responsibility shall be made by contract with the department of corrections on a biennial basis.

(3) If a county assumes supervision responsibility, the county shall supervise all superior court misdemeanor probationers within that county for the duration of the biennium, as set forth in the contract with the department of corrections.

(4) A contract between a county legislative authority and the department of corrections for the transfer of supervision responsibility must include, at a minimum, the following provisions:

(a) The county's agreement to supervise all misdemeanor probationers who are sentenced by a superior court within that county and who reside within that county;

(b) A reciprocal agreement regarding the supervision of superior court misdemeanor probationers sentenced in one county but who reside in another county;

(c) The county's agreement to comply with the minimum standards for classification and supervision of offenders as required under RCW 9.95.206;

(d) The amount of funds available from the department of corrections to the county for supervision of superior court misdemeanor probationers, calculated according to a formula established by the department of corrections;

(e) A method for the payment of funds by the department of corrections to the county;

(f) The county's agreement that any funds received by the county under the contract will be expended only to cover costs of supervision of superior court misdemeanor probationers;

(g) The county's agreement to account to the department of corrections for the expenditure of all funds received under the contract and to submit to audits

for compliance with the supervision standards and financial requirements of this section;

(h) Provisions regarding rights and remedies in the event of a possible breach of contract or default by either party; and

(i) Provisions allowing for voluntary termination of the contract by either party, with good cause, after sixty days' written notice.

(5) If the contract between the county and the department of corrections is terminated for any reason, the department of corrections shall reassume responsibility for supervision of superior court misdemeanor probationers within that county. In such an event, the department of corrections retains any and all rights and remedies available by law and under the contract.

(6) The state of Washington, the department of corrections and its employees, community corrections officers, and volunteers who assist community corrections officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of a county. A county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of the department of corrections. This subsection applies regardless of whether the supervising entity is in compliance with the standards of supervision at the time of the misdemeanor probationer's actions.

(7) The state of Washington, the department of corrections and its employees, community corrections officers, any county under contract with the department of corrections pursuant to this section and its employees, probation officers, and volunteers who assist community corrections officers and probation officers in the superior court misdemeanor probation program are not liable for civil damages resulting from any act or omission in the rendering of superior court misdemeanor probation activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035.

(8) The provisions of RCW 9.94A.501 apply to sentences imposed under this section.

Sec. 4. RCW 9.95.210 and 1996 c 298 s 3 are each amended to read as follows:

(1) In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

(2) In the order granting probation and as a condition thereof, the superior court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or

fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required; (d) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation; (e) to contribute to a county or interlocal drug fund; and (f) to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

(3) The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

(4) In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(5) If the probationer has been ordered to make restitution and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If the superior court has ordered supervision and restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

(6) The provisions of RCW 9.94A.501 apply to sentences imposed under this section.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 9, 2005.
 Passed by the House April 19, 2005.
 Approved by the Governor May 10, 2005.
 Filed in Office of Secretary of State May 10, 2005.

CHAPTER 363

[Senate Bill 5522]

PUBLIC EMPLOYEES' RETIREMENT—SERVICE CREDITS

AN ACT Relating to purchasing service credit lost due to injury; and amending RCW 41.40.038.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.40.038 and 1987 c 118 s 1 are each amended to read as follows:

Those members subject to this chapter who became disabled in the line of duty on or after March 27, 1984, and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed ~~((twelve))~~ twenty-four consecutive months.

(7) Nothing in this section shall abridge service credit rights granted in RCW 41.40.220(2) and 41.40.320.

(8) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

Passed by the Senate April 19, 2005.
 Passed by the House April 5, 2005.
 Approved by the Governor May 10, 2005.
 Filed in Office of Secretary of State May 10, 2005.

CHAPTER 364

[Engrossed Substitute Senate Bill 5577]

LANDLORD-TENANT—RELOCATION ASSISTANCE

AN ACT Relating to relocation assistance payments to tenants; amending RCW 59.18.085 and 35.80.030; creating new sections; and prescribing penalties.

[1541]

House Bill Report SSB 6162/5256

HOUSE BILL REPORT

SSB 6162

As of Second Reading

Title: An act relating to criminal justice: Providing for the supervision of offenders sentenced to community custody regardless of risk classification if the offender has a current conviction for a serious violent offense as defined in RCW 9.94A.030

Brief Description: Providing for the supervision of offenders sentenced to community custody regardless of risk classification if the offender has a current conviction for a serious violent offense.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Prentice).

Brief History:

Committee Activity:

None.

Brief Summary of Substitute Bill

- Requires the Department of Corrections to supervise offenders convicted of a serious violent offense regardless of their risk assessment.

Staff: Linda Merelle (786-7092)

Background:

Offender Accountability Act

In 1999, the Legislature passed the Offender Accountability Act (Engrossed Second Substitute Senate Bill 5421). The Offender Accountability Act (OAA) extended community custody to all sex offenses, all crimes against persons, and all felony drug offenses. It required the Department of Corrections (DOC) to use a validated risk assessment and to supervise offenders according to their risk level. In 2003 the Legislature restricted the types of offenders that the DOC could supervise and increased the earned release time for certain offenders from one-third to 50 percent of their sentences.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Risk Assessment.

One purpose of the OAA is to reduce the risk of reoffense in the community. Under the OAA, the DOC is required to classify and supervise offenders according to their risk for future offending. As a part of the OAA, the Washington State Institute for Public Policy (Institute) was directed to study the impact of the OAA on recidivism. In 2003, the Institute analyzed the validity of the DOC's risk assessment tool, the Level of Service Inventory-- Revised (LSI-R). The LSI-R is a 54 question survey which includes "static" and "dynamic" risk factors. A static risk factor is a factor that cannot decrease, such as an offender's criminal history. A "dynamic" risk factor can decrease through intervention, such as an offender's drug dependency. In its analysis of the LSI-R, the Institute determined how the predictive accuracy of the LSI-R could be strengthened by including more static risk information about an offender's prior record of offenses. The Institute developed a new tool for risk assessment which would have increased accuracy for predicting reoffense.

In approximately August 2008, the DOC began using the new static risk assessment tool to assign a probability of a subsequent conviction based upon the criminal history, age, and gender of Washington offenders. Instead of the risk categories of the LSI-R (A, B, C, and D, with A being the highest risk), the new tool identified the risk categories of: (1) high risk/violent; (2) high risk/non-violent; (3) moderate risk; and (4) low risk.

Supervision by the DOC.

Felony Offenders: The DOC must supervise all felony offenders sentenced to community custody who are classified as a high risk to offend (high risk/violent and high risk/nonviolent) under the new tool developed by the Institute and other felony offenders for the offenses described in the table below. The DOC must supervise all sex offenders, including those whose sole offense is failure to register, regardless of risk. The DOC must also supervise offenders classified as dangerous mentally ill offenders, those with indeterminate sentences, those required to be supervised under the Interstate Compact for Adult Offender Supervision, and offenders sentenced to special sentencing alternatives.

Misdemeanor Offenders: The DOC must supervise misdemeanor and gross misdemeanor offenders sentenced in Superior Court for Fourth Degree Assault or Domestic Violence Violation of a No Contact Order if they have a prior conviction for a sex offense, a violent offense, a crime against a person as defined in statute, Assault in the fourth Degree, or Domestic Violence Violation of a No Contact Order. The DOC must also supervise misdemeanor and gross misdemeanor offenders convicted of certain sex-related offenses for which registration is required and for the gross misdemeanor offense of Failure to Register.

<i>Two Highest Risk Categories</i>	<i>Felony Offenders Regardless of Risk</i>	<i>Offenders sentenced in Superior Court to Probation for Misdemeanor/Gross Misdemeanor Offenses</i>
All offenders sentenced to community custody whose risk assessment places them in the either	Felony sex offenders	Offenders convicted of: Assault 4th Degree or

the high risk/violent or high risk/nonviolent category regardless of offense.		DV Violation of No Contact order; <i>and</i> a prior conviction for: (i) violent offense; (ii) sex offense; (iii) crime against person; (iv) assault 4th degree; <i>or</i> (v) DV violation of no contact order.
	All dangerous mentally ill offenders	Offenders convicted of: (i) Sexual misconduct with a minor second degree; (ii) Custodial sexual misconduct second degree; (iii) Communication with a minor for immoral purposes; <i>or</i> Failure to Register.
	All offenders with an indeterminate sentence	
	All offenders sentenced to Drug Offender Sentencing Alternative, Special Sex Offender Sentencing Alternative, and the First Time Offender Waiver	
	All Offenders required to be supervised under the Interstate Compact	

The DOC is prohibited from supervising any offender who does not fall within one of the above categories.

Summary of Bill:

In addition to the offenders currently required to be supervised by the Department of Corrections (DOC), the DOC must supervise all offenders convicted of a serious violent offense regardless of their risk assessment.

If Engrossed Substitute Senate Bill 5288, as amended by the House, is not enacted into law by August 1, 2009, this act is null and void.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 1 which has a contingent date, and section 2, regarding the supervision of felony offenders convicted of serious violent offenders, which takes effect August 1, 2009.

Staff Summary of Public Testimony:

None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.

RCW 9.94A.501 (2005 Codification)

ual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

Prospective application—1989 c 252: "Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act." [1989 c 252 § 27.]

Effective dates—1989 c 252: "(1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 252 § 30.]

Severability—1989 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 252 § 31.]

Application—1988 c 157: "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

Effective date—1988 c 153: "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

Application of increased sanctions—1988 c 153: "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1983 c 163: See note following RCW 9.94A.505.

9.94A.501 Risk assessment—Risk categories—Department must supervise specified offenders. (Expires July 1, 2010.) (1) When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender or a probationer sentenced in superior court into one of at least four risk categories.

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

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

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

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

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

(ii) The offender or probationer has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

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

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

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

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

(4) This section expires July 1, 2010. [2005 c 362 § 1; 2003 c 379 § 3.]

Effective date—2005 c 362: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 362 § 5.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Conditions of probation: RCW 9.95.210.

Misdemeanant probation services—County supervision: RCW 9.95.204.

Suspending sentences: RCW 9.92.060.

9.94A.515 Table 2—Crimes included within each seriousness level.

TABLE 2 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))

2009 Session Laws – ESSB 5288

2009
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STATE OF WASHINGTON

REGULAR SESSION
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K. KYLE THIESSEN
Code Reviser

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NEW SECTION. Sec. 2. (1) Any person who offers a consumer rebate shall allow a minimum of fourteen days from the date the consumer purchases the product, or becomes eligible for the rebate upon satisfying the terms and conditions of the offer, for the submission of a request for redemption by the customer.

(2) Upon receipt of a request for redemption meeting the terms and conditions of the rebate offer, the person offering the rebate shall transmit the rebate funds to the consumer within ninety days.

(3) If a rebate is sent to a consumer as a check, the check must be mailed in a manner that identifies the piece of mail as the expected rebate check.

(4) This section applies only to the person offering the rebate, which is the person who provides the cash, credit, or credit towards future purchases to the consumer. This section does not apply to a person who processes a rebate or who provides consumers with instructions or materials related to a rebate.

NEW SECTION. Sec. 3. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act constitute a new chapter in Title 19 RCW.

Passed by the Senate April 21, 2009.

Passed by the House April 7, 2009.

Approved by the Governor May 6, 2009.

Filed in Office of Secretary of State May 8, 2009.

CHAPTER 375

[Engrossed Substitute Senate Bill 5288]

SUPERVISION OF OFFENDERS

AN ACT Relating to the supervision of offenders; amending RCW 9.94A.501, 9.94A.501, 9.94A.030, 9.94A.701, 9.94A.704, 9.94A.707, 9.94A.850, 9.95.220, 9.94A.633, 9.94A.737, and 9.94A.6332; amending 2008 c 231 s 6 (uncodified); reenacting and amending RCW 9.94A.030; creating new sections; repealing RCW 9.95.206 and 9.95.212; repealing 2008 c 231 s 60 (uncodified); providing an effective date; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

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

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

~~(2) The department shall supervise every offender sentenced to a term of community custody, community placement, or community supervision and every misdemeanor and gross misdemeanor probationer ordered by a superior~~

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court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

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

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

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

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

(ii) The offender or probationer has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

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

(iv) The offender.) The department shall supervise every offender convicted of a misdemeanor or gross misdemeanor offense who is sentenced to probation in superior court pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this subsection. The superior court shall order probation for:

(a) Offenders convicted of fourth degree assault, violation of a domestic violence court order pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, and who also have a prior conviction for one or more of the following:

(i) A violent offense;

(ii) A sex offense;

(iii) A crime against a person as provided in RCW 9.94A.411;

(iv) Fourth degree assault; or

(v) Violation of a domestic violence court order; and

(b) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

(iii) Communication with a minor for immoral purposes; and

(iv) Failure to register pursuant to RCW 9A.44.130.

[1905]

(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody whose risk assessment, conducted pursuant to subsection (6) of this section, places the offender in one of the two highest risk categories.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

((v) The offender)) (e) Is subject to supervision pursuant to RCW 9.94A.745.

((3)) (5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody, community placement, or community supervision or any probationer unless the offender or probationer is one for whom supervision is required under subsection (1), (2), (3), or (4) of this section.

((4) This section expires July 1, 2010)) (6) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody, community placement, or community supervision who may be subject to supervision under this section.

Sec. 2. RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read as follows:

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

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

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

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

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

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

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- ~~(ii) The offender or probationer has a prior conviction for:~~
- ~~(A) A sex offense;~~
- ~~(B) A violent offense;~~
- ~~(C) A crime against persons as defined in RCW 9.94A.411;~~
- ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~
- ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~
- ~~(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or~~
- ~~(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~
- ~~(iii) The conditions of the offender's community custody or the probationer's supervision include chemical dependency treatment;~~
- ~~(iv) The offender))~~ The department shall supervise every offender convicted of a misdemeanor or gross misdemeanor offense who is sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this subsection. The superior court shall order probation for:
- (a) Offenders convicted of fourth degree assault, violation of a domestic violence court order pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, and who also have a prior conviction for one or more of the following:
- (i) A violent offense;
- (ii) A sex offense;
- (iii) A crime against a person as provided in RCW 9.94A.411;
- (iv) Fourth degree assault; or
- (v) Violation of a domestic violence court order; and
- (b) Offenders convicted of:
- (i) Sexual misconduct with a minor second degree;
- (ii) Custodial sexual misconduct second degree;
- (iii) Communication with a minor for immoral purposes; and
- (iv) Failure to register pursuant to RCW 9A.44.130.
- (2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.
- (3) The department shall supervise every felony offender sentenced to community custody whose risk assessment, conducted pursuant to subsection (6) of this section, classifies the offender as one who is at a high risk to reoffend.
- (4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:
- (a) Has a current conviction for a sex offense;
- (b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;
- (c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;
- (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or
- ~~((iv) The offender))~~ (e) Is subject to supervision pursuant to RCW 9.94A.745.

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~~((2))~~ (5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under subsection (1), (2), (3), or (4) of this section.

~~((4) This section expires July 1, 2010))~~ (6) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section.

Sec. 3. RCW 9.94A.030 and 2008 c 276 s 309 and 2008 c 7 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed ~~((pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,))~~ as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

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

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

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

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

[1908]

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

(11) "Confinement" means total or partial confinement.

(12) "Conviction" means an adjudication of guilt pursuant to Title((s)) 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

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

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

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

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

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

(15) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(16) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(17) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

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(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

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

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

(20) "Department" means the department of corrections.

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

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

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

(24) "Drug offense" means:

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

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

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

(25) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(26) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.65.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(27) "Felony traffic offense" means:

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

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

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

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

(30) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

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

(32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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- (a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
- (b) Assault in the second degree;
- (c) Assault of a child in the second degree;
- (d) Child molestation in the second degree;
- (e) Controlled substance homicide;
- (f) Extortion in the first degree;
- (g) Incest when committed against a child under age fourteen;
- (h) Indecent liberties;
- (i) Kidnapping in the second degree;
- (j) Leading organized crime;
- (k) Manslaughter in the first degree;
- (l) Manslaughter in the second degree;
- (m) Promoting prostitution in the first degree;
- (n) Rape in the third degree;
- (o) Robbery in the second degree;
- (p) Sexual exploitation;
- (q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- (r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
- (s) Any other class B felony offense with a finding of sexual motivation;
- (t) Any other felony with a deadly weapon verdict under RCW 9A.44.602;
- (u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
- (v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- (ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;
- (w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.
- (33) "Nonviolent offense" means an offense which is not a violent offense.

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

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

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in ~~((RCW 9.94A.030))~~ this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by ~~((RCW 9.94A.030))~~ this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and

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

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

(39) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in

RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

(40) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(41) "Public school" has the same meaning as in RCW 28A.150.010.

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

(43) "Risk assessment" means the application of ~~((an objective))~~ the risk instrument ((supported by research and adopted by)) recommended to the department ((for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations)) by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(44) "Serious traffic offense" means:

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

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

(45) "Serious violent offense" is a subcategory of violent offense and means:

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

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

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

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

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

(46) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(ii) A violation of RCW 9A.64.020;

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(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

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

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

(47) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(48) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

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

(50) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

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

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

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

(54) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

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- (xi) Robbery in the second degree;
- (xii) Drive-by shooting;
- (xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and
- (xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

(55) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

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

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

Sec. 4. RCW 9.94A.030 and 2009 c 28 s 4 are each amended to read as follows:

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

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

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

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

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

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

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~~(6)~~ ("Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.701, as established by the commission or the legislature under RCW 9.94A.850.

~~(7)~~ "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

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

~~((9))~~ (8) "Confinement" means total or partial confinement.

~~((10))~~ (9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

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

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

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

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

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

~~((13))~~ (12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

~~((14))~~ (13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

~~((15))~~ (14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang,

or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

- (a) To gain admission, prestige, or promotion within the gang;
- (b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;
- (c) To exact revenge or retribution for the gang or any member of the gang;
- (d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;
- (e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or
- (f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

~~((16))~~ (15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

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

~~((18))~~ (17) "Department" means the department of corrections.

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

~~((20))~~ (19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

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

~~((22))~~ (21) "Drug offense" means:

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

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

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

~~((23))~~ (22) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

~~((24))~~ (23) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

~~((25))~~ (24) "Felony traffic offense" means:

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

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

~~((26))~~ (25) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

~~((27))~~ (26) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

~~((28))~~ (27) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

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

include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

((30)) (29) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

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

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

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

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

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

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

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

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under

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Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

~~((24))~~ (30) "Nonviolent offense" means an offense which is not a violent offense.

~~((32))~~ (31) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

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

~~((34))~~ (33) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in ~~((RCW 9.94A.030))~~ this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by ~~((RCW 9.94A.030))~~ this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

- (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
- (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
- (xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);
- (xix) Extortion 1 (RCW 9A.56.120);
- (xx) Extortion 2 (RCW 9A.56.130);
- (xxi) Intimidating a Witness (RCW 9A.72.110);
- (xxii) Tampering with a Witness (RCW 9A.72.120);
- (xxiii) Reckless Endangerment (RCW 9A.36.050);
- (xxiv) Coercion (RCW 9A.36.070);
- (xxv) Harassment (RCW 9A.46.020); or
- (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

~~((35))~~ (34) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection ~~((35))~~ (34)(b)(i); and

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

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~~((36))~~ (35) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

~~((37))~~ (36) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((38))~~ (37) "Public school" has the same meaning as in RCW 28A.150.010.

~~((39))~~ (38) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

~~((40))~~ (39) "Risk assessment" means the application of ~~((an objective))~~ the risk instrument ~~((supported by research and adopted by))~~ recommended to the department ~~((for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations))~~ by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

~~((41))~~ (40) "Serious traffic offense" means:

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

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

~~((42))~~ (41) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;
- (viii) Assault of a child in the first degree; or

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

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

((43)) (42) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

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

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

((44)) (43) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

((45)) (44) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

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

((47)) (46) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

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

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

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

((51)) (50) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

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

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

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

~~((52))~~ (51) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((53))~~ (52) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((54))~~ (53) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 5. RCW 9.94A.701 and 2009 c 28 s 10 are each amended to read as follows:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall ~~((impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer)), in addition to the other terms of the sentence, sentence the offender to community custody for three years:~~

(a) A sex offense not sentenced under RCW 9.94A.507;

(b) A serious violent offense; or

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

~~(d) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;~~

~~(e) A felony offender under chapter 69.50 or 69.52 RCW)) A violation of RCW 9A.44.130(1)(a) committed on or after June 7, 2006, when a court sentences the person to a term of confinement of one year or less.~~

~~(2) ((If an offender is sentenced to a term of confinement of one year or less for a violation of RCW 9A.44.130(1)(a), the court shall impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer)) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.~~

~~(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:~~

~~(a) Any crime against persons under RCW 9.94A.411(2);~~

~~(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate; or~~

~~(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000.~~

~~((3)) (4) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.~~

~~((4)) (5) If an offender is sentenced under the special sexual offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.~~

~~((5)) (6) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.~~

~~((6)) (7) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.~~

~~((7) If the offender is a criminal street gang associate or member and is found guilty of unlawful possession of a firearm under RCW 9.41.040, the court shall impose a term of community custody under subsection (1)(d) of this section)) (8) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.~~

~~(8) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.~~

Sec. 6. RCW 9.94A.704 and 2009 c 28 s 12 are each amended to read as follows:

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

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

(b) Within the funds available for community custody, the department shall determine conditions ~~((and duration of community custody))~~ on the basis of risk

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to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

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

- (a) Report as directed to a community corrections officer;
- (b) Remain within prescribed geographical boundaries;
- (c) Notify the community corrections officer of any change in the offender's address or employment;
- (d) Pay the supervision fee assessment; and
- (e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

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

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

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

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

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

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

(9)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.507, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall

remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

- (i) The crime of conviction;
- (ii) The offender's risk of reoffending;
- (iii) The safety of the community.

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

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

Sec. 7. RCW 9.94A.707 and 2008 c 231 s 12 are each amended to read as follows:

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

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

~~((3) When an offender is sentenced to a community custody range pursuant to RCW 9.94A.701 (1) or (2), the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.))~~

Sec. 8. RCW 9.94A.850 and 2009 c 28 s 17 are each amended to read as follows:

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

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

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

- (i) The purposes of this chapter as defined in RCW 9.94A.010; and
- (ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

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

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall

accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

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

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

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

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

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The administrative office of the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

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

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

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

(iii) Recidivism information on adult and juvenile offenders.

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

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

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

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

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

~~(5)((a) Not later than December 31 of each year, the commission may propose modifications to the community custody ranges to be included in sentences under RCW 9.94A.701. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.~~

~~(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.~~

~~(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.~~

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

NEW SECTION. Sec. 9. The department of corrections shall recalculate the term of community custody and reset the date that community custody will end for each offender currently in confinement or serving a term of community custody for a crime specified in RCW 9.94A.701. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject.

Sec. 10. 2008 c 231 s 6 (uncodified) is amended to read as follows:

The existing sentencing reform act contains numerous provisions for supervision of different types of offenders. This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences. The clarifications in this act are intended to support continued discussions by the sentencing guidelines commission with the courts and the criminal justice community to identify and propose policy changes that will further simplify and improve the sentencing reform act relating to the supervision of offenders. The sentencing guidelines commission shall submit policy change proposals to the legislature on or before December 1, 2008.

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

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

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

Sec. 11. RCW 9.95.220 and 1957 c 227 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, whenever the state parole officer or other officer under whose supervision the probationer has been placed shall have reason to believe such probationer is violating the terms of his or her probation, or engaging in criminal practices, or is abandoned to improper associates, or living a vicious life, he or she shall cause the probationer to be brought before the court wherein the probation was granted. For this purpose any peace officer or state parole officer may rearrest any such person without warrant or other process. The court may thereupon in its discretion without notice revoke and terminate such probation. In the event the judgment has been pronounced by the court and the execution thereof suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory as the case may be. If the judgment has not been pronounced, the court shall pronounce judgment after such revocation of probation and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory, in accordance with the sentence imposed.

(2) If a probationer is being supervised by the department of corrections pursuant to RCW 9.95.204, the department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

Sec. 12: RCW 9.94A.633 and 2009 c 28 s 7 are each amended to read as follows:

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

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

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

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

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

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

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

(e) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

Sec. 13. RCW 9.94A.737 and 2007 c 483 s 305 are each amended to read as follows:

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

(2) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is

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determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

(3)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

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

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

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

(e) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned by the department pursuant to (c) of this subsection. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.740. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

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

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

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

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

(7) The hearing procedures required under subsection (6) of this section shall be developed by rule and include the following:

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

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

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

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

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

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

(9) The department shall work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody. Between January 1, 2006, and December 31, 2006, the department shall endeavor to place

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at least one hundred low-risk community custody violators on the electronic monitoring program per day if there are at least that many low-risk offenders who qualify for the electronic monitoring program.

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

Sec. 14. RCW 9.94A.6332 and 2009 c 28 s 8 are each amended to read as follows:

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

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

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

(3) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(4) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

(5) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

NEW SECTION, Sec. 15. The legislature directs the sentencing guidelines commission to include in its biennial report to the legislature, as required by RCW 9.94A.850(2)(h)(iii), and due no later than December 1, 2011, an analysis of the impact on recidivism of the following:

(1) The supervision of offenders pursuant to sections 1 and 2 of this act;

(2) The department's authority to issue warrants for offenders under its supervision who are sentenced for misdemeanor and gross misdemeanor offenses in superior court; and

(3) The community custody terms of supervision pursuant to section 5 of this act.

NEW SECTION, Sec. 16. The following acts or parts of acts are each repealed:

(1) RCW 9.95.206 (Misdemeanant probation services—Offender classification system—Supervision standards) and 1996 c 298 s 2; and

(2) RCW 9.95.212 (Standards for supervision of misdemeanor probationers) and 1998 c 245 s 2 & 1995 1st sp.s. c 19 s 31.

NEW SECTION, Sec. 17. 2008 c 231 s 60 (uncodified) is repealed.

***NEW SECTION, Sec. 18.** (1) Sections 1, 3, 11, 13, 16, 17, and 20 of this act are necessary for the immediate preservation of the public peace, health, or

safety, or support of the state government and its existing public institutions, and take effect immediately.

(2) Sections 2, 4 through 10, 12, and 14 of this act take effect August 1, 2009.

*Sec. 18 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 19. Sections 1, 3, and 13 of this act expire August 1, 2009.

NEW SECTION. Sec. 20. This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after the effective date of this section.

Passed by the Senate April 25, 2009.

Passed by the House April 21, 2009.

Approved by the Governor May 6, 2009, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 8, 2009.

Note: Governor's explanation of partial veto is as follows:

"I have approved, except for Section 18, Engrossed Substitute Senate Bill 5288 entitled:

"AN ACT Relating to the supervision of offenders."

I am vetoing the emergency clause in Section 18. I have spoken with the Department of Corrections, and have been informed that they need time to implement the changes of the bill. They have begun preparing and will be ready to implement the changes August 1, 2009, but are not able to make these changes immediately. The elimination of the emergency clause will not affect the fiscal assumptions of the bill.

For this reason, I have vetoed Section 18 of Engrossed Substitute Senate Bill 5288. With the exception of Section 18, Engrossed Substitute Senate Bill 5288 is approved."

CHAPTER 376

[Substitute Senate Bill 6162]

COMMUNITY CUSTODY—SERIOUS VIOLENT OFFENSES

AN ACT Relating to criminal justice; Providing for the supervision of offenders sentenced to community custody regardless of risk classification if the offender has a current conviction for a serious violent offense as defined in RCW 9.94A.030; amending RCW 9.94A.501 and 9.94A.501; creating a new section; providing effective dates; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.501 and 2009 c ... (ESSB 5288) s.1 are each amended to read as follows:

(1) The department shall supervise every offender convicted of a misdemeanor or gross misdemeanor offense who is sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this subsection. The superior court shall order probation for:

(a) Offenders convicted of fourth degree assault, violation of a domestic violence court order pursuant to RCW 10.99.040, 10.99.050, 26.09.300,

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House Bill Report ESSB 5288

HOUSE BILL REPORT ESSB 5288

As Passed House - Amended:
April 21, 2009

Title: An act relating to the supervision of offenders.

Brief Description: Changing provisions regarding supervision of offenders.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Regala and Shin).

Brief History:

Committee Activity:

Human Services: 3/4/09, 3/26/09 [DPA];

Ways & Means: 4/4/09, 4/18/09 [DPA(WAYS w/o HS)].

Floor Activity

Passed House - Amended: 4/21/09, 51-45.

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Revises the scheme under which the Department of Corrections (DOC) supervises offenders.
- Requires the DOC to supervise certain offenders convicted in superior court of fourth degree Assault or Domestic Violence Violation of a No Contact Order and offenders convicted of certain nonfelony sex-related offenses, including Failure to Register.
- Removes the requirement that the DOC supervise felony offenders whose risk assessments place them in a category of low or moderate risk.
- Requires the DOC, to supervise felony sex offenders whose sole offense is failure to register, in addition to supervising other sex offenders.
- Requires the DOC to assess the risk of an offender by using a "static" risk assessment tool developed by the Washington State Institute for Public Policy.
- Authorizes the DOC to issue warrants for the arrest of offenders under its supervision who are convicted of gross misdemeanor offenses and allows the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

DOC to impose sanctions on those offenders for violation of conditions of supervision.

- Replaces community custody ranges with fixed terms of 36 months for sex offenders and those convicted of a serious violent offense, 18 months for offenders convicted of a violent offense that is not a serious violent offense, and 12 months for other offenses; periods of community custody for certain special offender sentencing alternatives remain unchanged.
- Requires the Sentencing Guidelines Commission to assess the effect of this act on adult recidivism and include the report in its biennial report due no later than December 1, 2011.
- Repeals 9.95.206 RCW and 9.95.212 RCW, and 2008 c 231 s 60 (uncodified).

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 5 members: Representatives Dickerson, Chair; Dammeier, Ranking Minority Member; Green, Morrell and O'Brien.

Minority Report: Do not pass. Signed by 3 members: Representatives Orwall, Vice Chair; Klippert and Walsh.

Staff: Linda Merelle (786-7092)

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Ways & Means and without amendment by Committee on Human Services. Signed by 13 members: Representatives Linville, Chair; Eriks, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Sullivan.

Minority Report: Do not pass. Signed by 9 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross, Schmick and Seaquist.

Staff: Alex MacBain (786-7288)

Background:

Offender Accountability Act

In 1999 the Legislature passed the Offender Accountability Act (Engrossed Second Substitute Senate Bill 5421). The Offender Accountability Act (OAA) extended community custody to all sex offenses, all crimes against persons, and all felony drug offenses. It required the Department of Corrections (DOC) to use a validated risk assessment and to supervise offenders according to their risk level. In 2003 the Legislature restricted the types

of offenders that the DOC could supervise and increased the earned release time for certain offenders from one-third to 50 percent of their sentences.

Risk Assessment

One purpose of the OAA is to reduce the risk of reoffense in the community. Under the OAA, the DOC is required to classify and supervise offenders according to their risk for recidivism. As a part of the OAA, the Washington State Institute for Public Policy (WSIPP) was directed to study the impact of the OAA on recidivism. In 2003 the WSIPP analyzed the validity of the DOC's risk assessment tool, the Level of Service Inventory-Revised (LSI-R). The LSI-R is a 54 question survey which includes "static" and "dynamic" risk factors. A static risk factor is a factor that cannot decrease, such as an offender's criminal history. A "dynamic" risk factor can decrease through intervention, such as an offender's drug dependency. In its analysis of the LSI-R, the WSIPP determined how the predictive accuracy of the LSI-R could be strengthened by including more static risk information about an offender's prior record of offenses. The WSIPP developed a new tool for risk assessment which would have increased accuracy for predicting reoffense.

In approximately August 2008, the DOC began using the new static risk assessment tool to assign a probability of a subsequent conviction based upon the criminal history, age, and gender of Washington offenders. Instead of the risk categories of the LSI-R (A, B, C, and D, with A being the highest risk), the new tool identified the risk categories of: (1) high risk/violent; (2) high risk/nonviolent; (3) moderate risk; and (4) low risk.

Currently, the DOC must supervise any offender who has been sentenced to community custody if (1) the risk assessment tool places the offender in one of the two highest risk categories or (2) if the offender meets one of the following conviction criteria for either a current offense, a prior offense, or a special sentencing condition or status.

<i>Current Offense</i>	<i>Prior Conviction</i>	<i>Special Sentencing Conditions or Status</i>
Sex Offense	Sex Offense	Condition of offender's supervision includes chemical dependency treatment, including the Drug Offender Sentencing Alternative (DOSA).
Violent Offense	Violent Offense	Offender was sentenced pursuant to a First Time Offender Waiver (FTOW).
Crime against persons (does not include fourth degree Assault)	Crime against persons (does not include fourth degree Assault)	Offender was sentenced to a Special Sex Offender Sentencing Alternative (SSOSA).
Residential Burglary	Residential Burglary	Supervision is required by the Interstate Compact for

		Adult Offender Supervision.
Manufacture, Delivery, or Possession of Methamphetamine	Manufacture, Delivery, or Possession of Methamphetamine	
Delivery of a Controlled Substance to a Minor	Delivery of a Controlled Substance to a Minor	

The DOC must supervise every offender sentenced by a superior court to probation for a misdemeanor or gross misdemeanor. The DOC is prohibited from supervising any offender who does not fall within one of the above categories.

Warrant Authority.

The DOC has the authority to issue arrest warrants for felony offenders under its supervision and to impose sanctions on those offenders. The DOC does not have any authority to issue warrants for the arrest of misdemeanor offenders under its supervision nor to sanction them.

Community Custody Ranges.

When a court sentences a felony offender to community custody, the following ranges may be imposed:

Type of Offense	Community Custody Range
Sex Offense	36 - 48 Months
Serious Violent Offense	24 - 48 Months
Violent Offenses	18 - 36 Months
Crimes Against Persons	9 - 18 Months
Drug Offenses (Except DOSA)	9 - 12 Months

Summary of Amended Bill:

The DOC must supervise all offenders sentenced to community custody who are classified as a high risk to offend (high risk/violent and high risk/nonviolent) under the new tool developed by the WSIPP and offenders who meet other criteria as described below:

<i>Two Highest Risk Categories</i>	<i>Regardless of Risk</i>	<i>Offenders sentenced to Probation for Misdemeanor/Gross Misdemeanor Offenses</i>
All offenders sentenced to community custody whose risk assessment places them in either the high risk/violent or high risk/	Felony sex offenders	Offenders convicted of fourth degree Assault or Domestic Violence Violation of No Contact Order; and a prior

nonviolent category regardless of offense.		conviction for: (i) violent offense; (ii) sex offense; (iii) crime against person; (iv) fourth degree Assault; or (v) Domestic Violence Violation of No Contact Order.
	All dangerous mentally ill offenders.	Offenders convicted of: (i) second degree Sexual Misconduct with a Minor; (ii) second degree Custodial Sexual Misconduct; (iii) Communication with a Minor for Immoral Purposes or Failure to Register.
	All offenders with an indeterminate sentence.	
	All offenders sentenced to DOSA, SSOSA, and FTOW.	
	All offenders required to be supervised under the Interstate Compact for Adult Offender Supervision.	

With the exception of the categories of exception of the offenders who are supervised regardless of risk, the DOC will not supervise offenders assessed as a low or moderate risk.

Supervision by the DOC.

Felony Offenders: The DOC must supervise all felony offenders sentenced to community custody who are classified as a high risk to offend (high risk/violent and high risk/nonviolent) under the new tool developed by the WSIPP and other felony offenders for the offenses described in the table above. The DOC must supervise all sex offenders, including those whose sole offense is failure to register, regardless of risk. The DOC must also supervise offenders classified as dangerous mentally ill offenders, those with indeterminate sentences, those required to be supervised under the Interstate Compact for Adult Offender Supervision, and offenders sentenced to special sentencing alternatives.

Misdemeanor Offenders: The DOC must supervise misdemeanor and gross misdemeanor offenders sentenced in superior court for Fourth Degree Assault or Domestic Violence Violation of a No Contact Order if they have a prior conviction for a sex offense, a violent offense, a crime against a person as defined in statute, Assault 4th Degree, or Domestic Violence Violation of a No Contact Order. The DOC must also supervise misdemeanor and

gross misdemeanor offenders convicted of certain sex-related offenses for which registration is required and for the gross misdemeanor offense of Failure to Register.

Warrant Authority.

The DOC has authority to issue warrants for the arrest of and to sanction misdemeanor offenders under its supervision, in addition to its authority to arrest and sanction felony offenders.

Community Custody.

Community custody ranges are eliminated and replaced with fixed terms of 36 months, 18 months, and 12 months. Offenders convicted of a sex offense or a serious violent offense will have a 36-month term of community custody. An offender convicted of a violent offense that is not a serious violent offense will be placed on community custody for a period of 18 months. Offenders convicted of a crime against a person as defined in statute, an offense allowing the unlawful possession of a firearm, where the offender is a criminal street gang member, or certain felony drug offenses, the term will be 12 months. The community custody terms for offenders sentenced under the Special Sex Offender Sentencing Alternative, the Drug Offender Sentencing Alternative, Work Ethic Camp remain the same.

Retroactive Application.

This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the DOC, currently incarcerated, or sentenced after the effective date of the act.

Report.

In the biennial report required by RCW 9.94A.850(2)(h)(iii), the Sentencing Guidelines Commission must report to the Governor and the Legislature regarding the effect of this act on adult recidivism. The report is due no later than December 1, 2011.

Repealed Statutes.

RCW 9.95.206, regarding an offender misdemeanor classification system is repealed. RCW 9.95.212 regarding standards for supervision of misdemeanor offenders is repealed. Under this bill, 2008 c 231 s 60 (uncodified) (Section 60 of House Bill 2719 passed by the 2008 Legislature) which stated that certain amendments to RCW 9.94A.501 expired on July 1, 2010, is repealed. Thus, the amendments to that section do not expire.

Emergency Clause.

Sections 1, 3, 11, 13, 16, 17, and 20 are subject to an emergency clause.

Expiration Dates.

Sections 1, 3, and 13 of this act expire on August 1, 2009.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1, 3, 11, 13, 16, 17, and 20, relating to categories of offenders for Department of Corrections supervision, supervision of misdemeanants, repealed sections, and retroactivity, which contain an emergency clause and take effect immediately; and sections 2, 4 - 10, 12, and 14, relating to categories of offenders for Department of Corrections supervision, risk assessment, and the expiration of provisions passed in 2003, which take effect August 1, 2009.

Staff Summary of Public Testimony (Human Services):

(In support) Public safety is a big issue, and there is a very large budget issue to deal with. Regarding the new assessment tool, when the researchers looked at the supervision scheme, they looked at over 70,000 cases. It took a couple of years to determine a likelihood of supervision. For the level of supervision, we were not getting anything out of it. Initially, we started with a bill that had no supervision for offenders whose risk level was determined to be low or moderate. Having six months of supervision would give those offenders an opportunity to violate. Multiple violations would increase the risk offense level. In the Governor's budget, the suggestion was to reduce the supervision of misdemeanors and some low risk offenders and a reduction of an overall length of supervision. The reduction of the length of supervision is not in the bill. Money is primarily saved by laying off staff. No one with a current conviction for a sex offense will escape supervision.

(In support with concerns) This measure will have some level of an adverse impact on community safety. This bill is not going to get us where we want to go. If we make further cuts, the supervision of low and moderate offenders would be the place to make those cuts. It is not clear whether the level of supervision of misdemeanors has had a marked impact. The question is "which cuts are going to do the least damage?" The supervision of low and moderate risk offenders does not ever involve a face-to-face contact and is not effective. It should be eliminated. The supervision of misdemeanor offenders out of superior court is a big chunk of the savings in the bill. We may want to look at the length of community custody, but not at increased earned release time or to remove incentives to do treatment programs.

(With concerns) Under the provisions of this bill, the courts will leverage supervision by requiring chemical treatment as a condition which would displace those who really need treatment.

(Opposed) Prosecutors are concerned about the lack of the accountability under this bill. This bill would not recognize the nature of sex offenders. We should take time to look at the new assessment tool to see how it works. Let's not lose all of the ground gained regarding community safety and sex offenders. The static risk assessment tool is not accurate in assessing all offenders. It contradicts what we know about sex offenders. Sex offenders and domestic violence offenders affect victims more strongly than other kinds of offenders. This bill could harm community safety. We are making legislation of a tool that is only 50

percent accurate. It has only been used since August of 2008. It is scoring on an automated system. This is not smart legislation. Good supervision of low or moderate offenders is effective. We have no faith that the assessment tool is scoring properly. Maybe hand scoring would make a difference.

(Information only) There is not a problem with the scoring on the new assessment tool. This tool was rolled out after a long development. It is an aggregate tool. There is nothing out there that is any better.

Staff Summary of Public Testimony (Ways & Means):

(In support) Last December counties were adopting budgets for 2009. Making those reductions wasn't pleasant, much like what the state is facing in this budget. Working on that process made us look at this upcoming legislative session and decide that there needed to be some options for you in how to make cuts in the DOC budget, because it wasn't going to be realistic for us to stand in front of you and say there will be no cuts for public safety.

And this bill is a big piece of how you do the least amount of harm to public safety while making cuts in the DOC budget. Essentially it eliminates low risk supervision, which runs the gamut from kiosk reporting to banked cases, and which we believe has not been successful in reducing recidivism.

This bill has been negotiated with stakeholders and the Governor to lessen the devastation that's already going on in other parts of the safety net that people in the state rely on. The money saved in this part of the budget can do more good in other parts of the budget in this difficult year.

The amendments made in the Human Services Committee did a good job of trying to carve out the assaultive misdemeanants for supervision, and remove supervision for low risk felons that was added in the Senate. We think that those were good decisions that will have the least damage on public safety.

In this situation, where the Legislature has to make cuts, this bill makes the right cut that does the least amount of damage and the elected prosecutors are in support of this bill.

(Opposed) There are two poor policy decisions included in this bill. First, the safety of the community is put at risk due to the reliance on a static risk assessment tool which may not accurately measure risk because it does not take into account behavior factors. Second, community supervision does work, and this bill reduces the number of community corrections officers and the number of offenders that will be supervised.

It takes human intervention, the ability to be able to sit down with an offender and make the cognitive thought processes and changes happen in order to make that person change.

Prison doesn't change offenders. The House budget takes close to 300 community corrections officers off the street and this bill is going to be responsible for half of those. The Governor's budget takes up to 500 of them off the street. That is half the public safety component workforce of community corrections. When you start cutting half of the forces

that are protecting the public with offenders getting out of prison, you're flirting with disaster. So if it comes down to it and you're going to have to look for cuts, look at evidence based practices and realize that you are better off keeping the community supervision and getting offenders out of prison. It costs anywhere from \$28,000 to \$33,000 a year to put somebody in prison. It costs \$1,300 a year to supervise them on community corrections. Keep those numbers in mind when you're thinking bang for the buck.

Persons Testifying (Human Services): (In support) Senator Hargrove, prime sponsor; Eldon Vail, Department of Corrections; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(In support with concerns) Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Tom McBride, Washington Association of Prosecuting Attorneys.

(With concerns) Victoria Roberts, Department of Social and Health Services, Division of Alcohol and Substance Abuse.

(Opposed) Megan Allen and Lindsay Palmer, King County Sexual Assault Resource Center; and Dana Hufford, Cindy McHie, Judith Lang, and Ginger Richardson, Washington Federation of State Employees.

(Information Only) Eldon Vail, Department of Corrections.

Persons Testifying (Ways & Means): (In support) Tom McBride, Washington Association of Prosecuting Attorneys; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(Opposed) Matt Zurich and Ginger Richardson, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying (Human Services): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.

**Excerpts from RCW Ch. 9.94A
(2010 Codification)**

SEX OFFENDERS

- 9.94A.840 Sex offenders—Release from total confinement—Notification of prosecutor.
 9.94A.843 Sex offenders—Release of information—Immunity.
 9.94A.844 Sex offenders—Discretionary decisions—Immunity.
 9.94A.8445 Community protection zones—Presumption of local regulations—Retrospective application.
 9.94A.846 Sex offenders—Release of information.

SENTENCING GUIDELINES COMMISSION

- 9.94A.850 Sentencing guidelines commission—Established—Powers and duties.
 9.94A.855 Sentencing guidelines commission—Research staff—Data, information, assistance—Bylaws—Salary of executive officer.
 9.94A.860 Sentencing guidelines commission—Membership—Appointments—Terms of office—Expenses and compensation.
 9.94A.863 Monetary threshold amounts of property crimes—Review—Report.
 9.94A.865 Standard sentence ranges—Revisions or modifications—Submission to legislature.
 9.94A.8671 Sex offender policy board—Findings—Intent.
 9.94A.8672 Sex offender policy board—Establishment.
 9.94A.8673 Sex offender policy board—Membership.
 9.94A.8674 Sex offender policy board—Terms—Vacancies.
 9.94A.8675 Sex offender policy board—Authority.
 9.94A.8676 Sex offender policy board—Duties.
 9.94A.8677 Sex offender policy board—Travel expenses.
 9.94A.8678 Sex offender policy board—Meeting attendance—Member replacement.

CLEMENCY, INMATE POPULATION

- 9.94A.870 Emergency due to inmate population exceeding correctional facility capacity.
 9.94A.875 Emergency in county jails population exceeding capacity.
 9.94A.880 Clemency and pardons board—Membership—Terms—Chairman—Bylaws—Travel expenses—Staff.
 9.94A.885 Clemency and pardons board—Petitions for review—Hearing.
 9.94A.890 Abused victim—Resentencing for murder of abuser.

MISCELLANEOUS

- 9.94A.905 Effective date of RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, 9.94A.250, 9.94A.260—Sentences apply to felonies committed after June 30, 1984.
 9.94A.910 Severability—1981 c 137.
 9.94A.920 Hearings and captions not law—2000 c 28.
 9.94A.921 Effective date—2000 c 28.
 9.94A.922 Severability—2000 c 28.
 9.94A.923 Nonmembership.
 9.94A.924 Severability—2002 c 290.
 9.94A.925 Application—2003 c 379 §§ 13-27.
 9.94A.926 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.
 9.94A.930 Recodification.

Juvenile disposition standards commission—Functions transferred to sentencing guidelines commission: RCW 13.40.005.

9.94A.010 Purpose. The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself;

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(6) Make frugal use of the state's and local governments' resources; and

(7) Reduce the risk of reoffending by offenders in the community. [1999 c 196 § 1; 1981 c 137 § 1.]

Report on Sentencing Reform Act of 1981: "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

Additional notes found at www.leg.wa.gov

9.94A.015 Finding—Intent—2000 c 28. The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to adopt clarifying amendments to make the act easier to use and understand.

The legislature does not intend chapter 28, Laws of 2000 to make, and no provision of chapter 28, Laws of 2000 shall be construed as making, a substantive change in the sentencing reform act.

The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement. [2000 c 28 § 1.]

Technical correction bill—2000 c 28: "If any amendments to RCW 9.94A.128, or any sections enacted or affected by chapter 28, Laws of 2000, are enacted in a 2000 legislative session that do not take cognizance of chapter 28, Laws of 2000, the code reviser shall prepare a bill for introduction in the 2001 legislative session that incorporates any such amendments into the reorganization adopted by chapter 28, Laws of 2000 and corrects any incorrect cross-references." [2000 c 28 § 45.]

9.94A.020 Short title. This chapter may be known and cited as the sentencing reform act of 1981. [1981 c 137 § 2.]

9.94A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

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

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

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and

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served in the community subject to controls placed on the offender's movement and activities by the department.

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

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

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

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

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

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

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

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

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

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

(17) "Department" means the department of corrections.

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

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

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

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

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or

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forged prescription for a controlled substance (RCW 69.50.403);

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

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

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (*RCW 72.66.060), willful failure to return from work release (*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(25) "Felony traffic offense" means:

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

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

(26) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

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

(28) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

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

(30) "Minor child" means a biological or adopted child of the offender who is under age eighteen at the time of the offender's current offense.

(31) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

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

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

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

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

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

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

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

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual

motivation must be comparable to the definition of sexual motivation contained in this section.

(32) "Nonviolent offense" means an offense which is not a violent offense.

(33) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

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

(35) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

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(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(36) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (36)(b)(i); and

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

(37) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or pro-

moted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(38) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(39) "Public school" has the same meaning as in RCW 28A.150.010.

(40) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

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

(42) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(43) "Serious traffic offense" means:

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

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

(44) "Serious violent offense" is a subcategory of violent offense and means:

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

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

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

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

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

(45) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

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

(v) A felony violation of RCW 9A.44.132(1) (failure to register) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register) on at least one prior occasion;

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

(46) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(47) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

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

(49) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

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

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

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

(53) "Violent offense" means:

- (a) Any of the following felonies:
 - (i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;
 - (ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;
 - (iii) Manslaughter in the first degree;
 - (iv) Manslaughter in the second degree;
 - (v) Indecent liberties if committed by forcible compulsion;
 - (vi) Kidnapping in the second degree;
 - (vii) Arson in the second degree;
 - (viii) Assault in the second degree;
 - (ix) Assault of a child in the second degree;
 - (x) Extortion in the first degree;
 - (xi) Robbery in the second degree;
 - (xii) Drive-by shooting;
 - (xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and
 - (xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

(54) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

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

(56) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2010 c 274 § 401; 2010 c 267 § 9; 2010 c 227 § 11; 2010 c 224 § 1; 2009 c 375 § 4; (2009 c 375 § 3 expired August 1, 2009); 2009 c 28 § 4. Prior: 2008 c 276 § 309; 2008 c 231 § 23; 2008 c 230 § 2; 2008 c 7 § 1; prior: 2006 c 139 § 5; (2006 c 139 § 4 expired July 1, 2006); 2006 c 124 § 1; 2006 c 122 § 7; (2006 c 122 § 6 expired July 1, 2006); 2006 c 73 § 5; 2005 c 436 § 1; 2003 c 53 § 55; prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 §

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5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. CE 2001 c 264 § 8.

** (2) RCW 9A.88.100 was recodified as RCW 9A.44.100 pursuant to 1979 ex.s. c 244 § 17.

(3) This section was amended by 2010 c 224 § 1, 2010 c 227 § 11, 2010 c 267 § 9, and by 2010 c 274 § 401, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2010 c 274: See note following RCW 10.31.100.

Application—2010 c 267: See note following RCW 9A.44.128.

Expiration date—2009 c 375 §§ 1, 3, and 13: See note following RCW 9.94A.501.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Intent—Application—Application of repeaters—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Delayed effective date—2008 c 230 §§ 1-3: See note following RCW 9A.44.130.

Short title—2008 c 7: "This act may be known and cited as the Chelsea Harrison act." [2008 c 7 § 2.]

Effective date—2006 c 139 § 5: "Section 5 of this act takes effect July 1, 2006." [2006 c 139 § 7.]

Expiration date—2006 c 139 § 4: "Section 4 of this act expires July 1, 2006." [2006 c 139 § 6.]

Effective date—2006 c 124: "Except for section 2 of this act, this act takes effect July 1, 2006." [2006 c 124 § 5.]

Effective date—2006 c 122 §§ 5 and 7: See note following RCW 9.94A.507.

Expiration date—2006 c 122 §§ 4 and 6: See note following RCW 9.94A.507.

Effective date—2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

Effective date—2006 c 73: See note following RCW 46.61.502.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—2002 c 107: "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex post facto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior con-

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victions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

Application—2002 c 107: "RCW 9.94A.030(1)(b) and (c) and 9.94A.525(1)(b) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June 13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

Application—2001 2nd sp.s. c 12 §§ 301-363: "(1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after September 1, 2001.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after September 1, 2001." [2001 2nd sp.s. c 12 § 303.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Effective dates—2001 c 287: See note following RCW 9A.76.115.

Effective date—2001 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 95 § 3.]

Finding—Intent—2001 c 7: "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Purpose—1989 c 252: "The purpose of this act is to create a system that: (1) assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

State preemption of criminal street gang definitions: Chapter 9.101 RCW.

Additional notes found at www.leg.wa.gov

9.94A.035 Classification of felonies not in Title 9A RCW. For a felony defined by a statute of this state that is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this chapter;

(2) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this chapter;

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(3) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this chapter. [1996 c 44 § 1.]

9.94A.171 Tolling of term of confinement, supervision. (1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

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

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

(4) For terms of confinement or community custody, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision. [2008 c 231 § 28; 2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.625, 9.94A.170.]

Reviser's note: This section was recodified pursuant to the direction found in section 56(4), chapter 231, Laws of 2008.

Intent—Application—Application of repealer—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2000 c 226 § 5: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 226 § 7.]

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.190 Terms of more than one year or less than one year—Where served—Reimbursement of costs. (1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state, or in home detention pursuant to RCW 9.94A.6551. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse

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Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Additional notes found at www.leg.wa.gov

9.94A.595 Anticipatory offenses. For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent. [2000 c 28 § 16; 1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12. Formerly RCW 9.94A.410.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Additional notes found at www.leg.wa.gov

9.94A.599 Presumptive ranges that exceed the statutory maximum. If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. If the addition of a firearm or deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. [1998 c 235 § 3; 1983 c 115 § 13. Formerly RCW 9.94A.420.]

9.94A.603 Felony alcohol violators—Treatment during incarceration—Conditions. (1) When sentencing an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the provisions of this chapter, shall order the offender to undergo alcohol or chemical dependency treatment services during incarceration. The offender shall be liable for the cost of treatment unless the court finds the offender indigent and no third-party insurance coverage is available.

(2) The provisions under *RCW 46.61.5055 (8) and (9) regarding the suspension, revocation, or denial of the offender's license, permit, or nonresident privilege to drive shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

(3) The provisions under RCW 46.20.720 and *46.61.5055(5) regarding ignition interlock devices shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6). [2006 c 73 § 4.]

*Reviser's note: RCW 46.61.5055 was amended by 2008 c 282 § 14, changing subsections (5), (8), and (9) to subsections (6), (9), and (10), respectively, effective January 1, 2009.

Effective date—2006 c 73: See note following RCW 46.61.502.

9.94A.607 Chemical dependency. (1) Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, (2010 Ed.)

including suspended sentences. [1999 c 197 § 2. Formerly RCW 9.94A.129.]

Additional notes found at www.leg.wa.gov

9.94A.631 Violation of condition or requirement of sentence—Security searches authorized—Arrest by community corrections officer—Confinement in county jail.

(1) If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court or a department of corrections hearing officer. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to submit to a search and seizure of the offender's person, residence, automobile, or other personal property.

(2) For the safety and security of department staff, an offender may be required to submit to pat searches, or other limited security searches, by community corrections officers, correctional officers, and other agency approved staff, without reasonable cause, when in or on department premises, grounds, or facilities, or while preparing to enter department premises, grounds, facilities, or vehicles. Pat searches of offenders shall be conducted only by staff who are the same gender as the offender, except in emergency situations.

(3) A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court or department of corrections hearing officer.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court or authorized department staff, pursuant to a written order. [2009 c 390 § 1; 1984 c 209 § 11. Formerly RCW 9.94A.195.]

Additional notes found at www.leg.wa.gov

9.94A.633 Violation of condition or requirement—Offender charged with new offense—Sanctions—Procedures. (1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned with up to sixty days' confinement for each violation.

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

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

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW

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9.94A.728, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

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

(c) If the offender was sentenced under the parenting sentencing alternative set out in RCW 9.94A.655, the offender may be sanctioned in accordance with that section.

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

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

(f) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) The parole or probation of an offender who is charged with a new felony offense may be suspended and the offender placed in total confinement pending disposition of the new criminal charges if:

(a) The offender is on parole pursuant to RCW 9.95.110(1); or

(b) The offender is being supervised pursuant to RCW 9.94A.745 and is on parole or probation pursuant to the laws of another state. [2010 c 258 § 1; 2010 c 224 § 12; 2009 c 375 § 12; 2009 c 28 § 7; 2008 c 231 § 15.]

Reviser's note: This section was amended by 2010 c 224 § 12 and by 2010 c 258 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*Application—*2010 c 258 § 1: "Section 1 of this act applies to all offenders who committed their crimes before, on, or after June 10, 2010." [2010 c 258 § 2.]

*Application—*2009 c 375: See note following RCW 9.94A.501.

*Effective date—*2009 c 28: See note following RCW 2.24.040.

*Intent—Application—Application of repealer—Effective date—*2008 c 231: See notes following RCW 9.94A.701.

*Severability—*2008 c 231: See note following RCW 9.94A.500.

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9.94A.6331 Sanctions—Where served. (1) If a sanction of confinement is imposed by the court, the following applies:

(a) If the sanction was imposed pursuant to RCW 9.94A.633(1), the sanction shall be served in a county facility.

(b) If the sanction was imposed pursuant to RCW 9.94A.633(2), the sanction shall be served in a state facility.

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

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

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

(5) As used in this section, "county facility" means a facility operated, licensed, or utilized under contract by the county, and "state facility" means a facility operated, licensed, or utilized under contract by the state. [2008 c 231 § 17.]

*Intent—Application—Application of repealer—Effective date—*2008 c 231: See notes following RCW 9.94A.701.

*Severability—*2008 c 231: See note following RCW 9.94A.500.

9.94A.6332 Sanctions—Which entity imposes. The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

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

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

(3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.

(4) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(5) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

(6) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333. [2010 c 224 § 11; 2009 c 375 § 14; 2009 c 28 § 8; 2008 c 231 § 18.]

*Application—*2009 c 375: See note following RCW 9.94A.501.

*Effective date—*2009 c 28: See note following RCW 2.24.040.

(2010 Ed.)

Intent—Application—Application of repealer—Effective date— 2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.6333 Sanctions—Modification of sentence—Noncompliance hearing. (1) If an offender violates any condition or requirement of a sentence, and the offender is not being supervised by the department, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

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

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

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

(c) If the court finds that a violation has been proved, it may impose the sanctions specified in RCW 9.94A.633(1). Alternatively, the court may:

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

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

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

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

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

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

(4) Nothing in this section prohibits the filing of escape charges if appropriate. [2008 c 231 § 19.]

Intent—Application—Application of repealer—Effective date— 2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Issuance, effect of no-contact order—Obligations, counseling after discharge. (1)(a)

(2010 Ed.)

When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all non-financial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notices from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2)(a) For purposes of this subsection (2), a no-contact order is not a requirement of the offender's sentence. An offender who has completed all requirements of the sentence, including any and all legal financial obligations, is eligible for a certificate of discharge even if the offender has an existing no-contact order that excludes or prohibits the offender from having contact with a specified person or business or coming within a set distance of any specified location.

(b) In the case of an eligible offender who has a no-contact order as part of the judgment and sentence, the offender may petition the court to issue a certificate of discharge and a separate no-contact order by filing a petition in the sentencing court and paying the appropriate filing fee associated with the petition for the separate no-contact order. This filing fee does not apply to an offender seeking a certificate of discharge when the offender has a no-contact order separate from the judgment and sentence.

(i)(A) The court shall issue a certificate of discharge and a separate no-contact order under this subsection (2) if the court determines that the offender has completed all requirements of the sentence, including all legal financial obliga-

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an electronic monitoring program for low-risk offenders who violate the terms of their community custody.

(3) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith. [2008 c 231 § 16.]

Intent—Application—Application of repealer—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.716 Community custody—Violations—

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

(2) A community corrections officer, if he or she has reasonable cause to believe an offender has violated a condition of community custody, may suspend the person's community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community custody status.

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

(4) A violation of a condition of community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631. [2008 c 231 § 21.]

Intent—Application—Application of repealer—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

9.94A.722 Court-ordered treatment—Required disclosures. When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the offender must provide the mental health or chemical dependency treatment

provider with a copy of the order granting the relief. [2004 c 166 § 9.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.723 Court-ordered treatment—Offender's failure to inform. An offender's failure to inform the department of court-ordered treatment upon request by the department is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions. [2004 c 166 § 7.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

9.94A.725 Offender work crews. Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules require the offender to work to the best of his or her abilities and provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.737, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crew projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on

(a) Successfully completing twenty-one days in a work release program;

(b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Home detention may be imposed for offenders convicted of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen motor vehicle as defined under RCW 9A.56.068 conditioned upon the offender:

(a) Having no convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle during the preceding five years and not more than two prior convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle;

(b) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(c) Having no prior charges of escape; and

(d) Fulfilling the other conditions of the home detention program.

(4) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution. [2010 c 224 § 9; 2007 c 199 § 9; 2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Technical correction bill—2006 c 28: See note following RCW 9.94A.015.

Additional notes found at www.leg.wa.gov

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9.94A.737 Community custody—Violations—Hearing—Sanctions. (1) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(2) The hearing procedures required under subsection (1) of this section shall be developed by rule and include the following:

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

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

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

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

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

(3) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations. [2008 c 231 § 20; (2009 c 375 § 13 expired August 1, 2009); 2007 c 483 § 305; 2005 c 435 § 3; 2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

Expiration date—2009 c 375 §§ 1, 3, and 13: See note following RCW 9.94A.501.

Application—2009 c 375: See note following RCW 9.94A.501.

Intent—Application—Application of repealer—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—Part headings no law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Finding—Intent—2005 c 435: "The legislature believes that electronic monitoring, as an alternative to incarceration, is a proper and cost-effective method of punishment and supervision for many criminal offenders. The legislature further finds that advancements in electronic monitoring technology have made the technology more common and acceptable to criminal justice system personnel, policymakers, and the general public.

(2010 Ed.)

Excerpts from RCW Ch. 9.95

9.95.0001

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- 9.95.110 Parole.
9.95.115 Parole of life term prisoners—Crimes committed before July 1, 1984.
9.95.116 Duration of confinement—Mandatory life sentences—Crimes committed before July 1, 1984.
9.95.117 Parolees subject to supervision of department of corrections—Progress reports.
9.95.118 Plans and recommendations for conditions of supervision of parolees.
9.95.120 Suspension, revocation of parole—Community corrections officer—Hearing—Retaking violator—Reinstatement.
9.95.121 On-site revocation hearing—Procedure when waived.
9.95.122 On-site revocation hearing—Representation for alleged violators—Compensation.
9.95.123 On-site revocation hearing—Conduct—Witnesses—Subpoenas, enforcement.
9.95.124 On-site revocation hearing—Attorney general's recommendations—Procedural rules.
9.95.125 On-site parole revocation hearing—Board's decision—Reinstatement or revocation of parole.
9.95.126 On-site revocation hearing—Cooperation in providing facilities.
9.95.130 Parolee—Revoked offender as escapee.
9.95.140 Record of parolees—Privacy—Sexual offender information release—Immunity from liability—Cooperation by officials and employees.
9.95.143 Court-ordered treatment—Required disclosures.
9.95.150 Rules and regulations.
9.95.155 Rule making regarding sex offenders.
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9.95.170 Board to inform itself as to each convict—Records from department of corrections.
9.95.190 Application of RCW 9.95.010 through 9.95.170 to inmates previously committed.
9.95.195 Final discharge of parole—Restoration of civil rights—Governor's pardoning power not affected.
9.95.200 Probation by court—Investigation by secretary of corrections.
9.95.204 Misdemeanant probation services—County supervision.
9.95.206 Misdemeanant probation services—Offender classification system—Supervision standards.
9.95.210 Conditions of probation.
9.95.212 Standards for supervision of misdemeanor probationers.
9.95.214 Assessment for supervision of misdemeanor probationers.
9.95.215 Counties may provide probation and parole services.
9.95.220 Violation of probation—Recarrest—Imprisonment.
9.95.230 Court revocation or termination of probation.
9.95.240 Dismissal of information or indictment after probation completed—Vacation of conviction.
9.95.250 Community corrections officers.
9.95.260 Indeterminate sentence review board—Supervision of conditionally pardoned persons—Hearing.
9.95.265 Report to governor and legislature.
9.95.267 Transfer of certain powers and duties of board to secretary of corrections.
9.95.270 Compacts for out-of-state supervision of parolees or probationers—Uniform act.
9.95.280 Return of parole violators from another state—Deputizing out-of-state officers.
9.95.290 Return of parole violators from another state—Deputization procedure.
9.95.300 Return of parole violators from another state—Contracts to share costs.
9.95.310 Assistance for parolees, work release, and discharged prisoners—Declaration of purpose.
9.95.320 Assistance for parolees, work release, and discharged prisoners—Subsistence payments—Terms and conditions.
9.95.330 Assistance for parolees, work release, and discharged prisoners—Department may accept gifts and make expenditures.
9.95.340 Assistance for parolees, work release, and discharged prisoners—Use and repayment of funds belonging to absconders.
9.95.350 Assistance for parolees, work release, and discharged prisoners—Use and accounting of funds or property.
9.95.360 Assistance for parolees, work release, and discharged prisoners—Community services revolving fund.
9.95.370 Assistance for parolees and discharged prisoners—Repayment agreement.
9.95.420 Sex offenders—End of sentence review.
9.95.425 Sex offenders—Postrelease violations.
9.95.430 Sex offenders—Postrelease arrest.
9.95.435 Sex offenders—Postrelease transfer to more restrictive confinement.
9.95.440 Sex offenders—Reinstatement of release.

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- 9.95.900 Application of certain laws to felonies committed before, on, or after certain dates.

Commitments: Chapter 10.70 RCW.

Counties may provide probation and parole services: RCW 36.01.070.

Form of sentence to penitentiary: RCW 10.64.060.

Leaves of absence for inmates: RCW 72.01.370, 72.01.380.

Probation and parole, transfer of certain powers, duties: Chapter 72.04A RCW.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

Western interstate corrections compact, board members may hold hearings: RCW 72.70.040.

9.95.0001 Definitions. (1) "Board" means the indeterminate sentence review board.

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

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

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

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

(6) "Secretary" means the secretary of the department of corrections or his or her designee. [2001 2nd sp.s. c 12 § 317.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 361-363: See note following RCW 9.94A.030.

9.95.001 Board of prison terms and paroles redesignated as indeterminate sentence review board. On July 1, 1986, the board of prison terms and paroles shall be redesignated the indeterminate sentence review board. The newly designated board shall retain the same membership and staff as the previously designated board of prison terms and paroles. References to "the board" or "board of prison terms and paroles" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the indeterminate sentence review board. [1986 c 224 § 2; (i) 1935 c 114 § 1; RRS § 10249-1, (ii) 1947 c 47 § 1; Rem. Supp. 1947 § 10249-1a. Formerly RCW 43.67.010.]

Effective date—1986 c 224: "Sections 1 through 13 of this act shall take effect July 1, 1986." [1986 c 224 § 16.]

Severability—1986 c 224: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 224 § 17.]

9.95.002 Board considered parole board. The indeterminate sentence review board, in fulfilling its duties under the provisions of chapter 12, Laws of 2001 2nd sp. sess., shall be considered a parole board as that concept was treated in

(2004 Ed.)

1981 c 136 § 40; 1979 c 141 § 5; 1967 c 134 § 13; 1935 c 114 § 3; RRS § 10249-3.]

Effective date—1981 c 136; See RCW 72.09.900.

9.95.190 Application of RCW 9.95.010 through 9.95.170 to inmates previously committed. The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall apply to all convicted persons serving time in a state correctional facility for crimes committed before July 1, 1984, to the end that at all times the same provisions relating to sentences, imprisonments, and paroles of prisoners shall apply to all inmates thereof. [2001 2nd sp.s. c 12 § 342; 1992 c 7 § 28; 1983 c 3 § 10; 1955 c 133 § 18. Prior: (i) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part. (ii) 1947 c 92 § 2, part; Rem. Supp. 1947 § 10249-2a, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12; See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363; See note following RCW 9.94A.030.

9.95.195 Final discharge of paroles—Restoration of civil rights—Governor's pardoning power not affected. See RCW 9.96.050.

9.95.200 Probation by court—Investigation by secretary of corrections. After conviction by plea or verdict of guilty of any crime, the court upon application or its own motion, may summarily grant or deny probation, or at a subsequent time fixed may hear and determine, in the presence of the defendant, the matter of probation of the defendant, and the conditions of such probation, if granted. The court may, in its discretion, prior to the hearing on the granting of probation, refer the matter to the secretary of corrections or such officers as the secretary may designate for investigation and report to the court at a specified time, upon the circumstances surrounding the crime and concerning the defendant, his prior record, and his family surroundings and environment. [1981 c 136 § 41; 1979 c 141 § 6; 1967 c 134 § 15; 1957 c 227 § 3. Prior: 1949 c 59 § 1; 1939 c 125 § 1, part; 1935 c 114 § 5; Rem. Supp. 1949 § 10249-5a.]

Rules of court: ER 410.

Effective date—1981 c 136; See RCW 72.09.900.

Severability—1939 c 125: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this act as a whole, or of any section, provision or part thereof not adjudged invalid or unconstitutional." [1939 c 125 § 3 p 356.]

Suspending sentences: RCW 9.92.060.

9.95.204 Misdemeanant probation services—County supervision. (1) When a superior court places a defendant convicted of a misdemeanor or gross misdemeanor on probation and orders supervision under RCW 9.92.060 or 9.95.210, the department of corrections has initial responsibility for supervision of that defendant.

(2) A county legislative authority may assume responsibility for the supervision of all defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and sentenced to probation by a superior court. The assumption of responsibility shall be made by contract with the department of corrections on a biennial basis.

(2004 Ed.)

(3) If a county assumes supervision responsibility, the county shall supervise all superior court misdemeanor probationers within that county for the duration of the biennium, as set forth in the contract with the department of corrections.

(4) A contract between a county legislative authority and the department of corrections for the transfer of supervision responsibility must include, at a minimum, the following provisions:

(a) The county's agreement to supervise all misdemeanor probationers who are sentenced by a superior court within that county and who reside within that county;

(b) A reciprocal agreement regarding the supervision of superior court misdemeanor probationers sentenced in one county but who reside in another county;

(c) The county's agreement to comply with the minimum standards for classification and supervision of offenders as required under RCW 9.95.206;

(d) The amount of funds available from the department of corrections to the county for supervision of superior court misdemeanor probationers, calculated according to a formula established by the department of corrections;

(e) A method for the payment of funds by the department of corrections to the county;

(f) The county's agreement that any funds received by the county under the contract will be expended only to cover costs of supervision of superior court misdemeanor probationers;

(g) The county's agreement to account to the department of corrections for the expenditure of all funds received under the contract and to submit to audits for compliance with the supervision standards and financial requirements of this section;

(h) Provisions regarding rights and remedies in the event of a possible breach of contract or default by either party; and

(i) Provisions allowing for voluntary termination of the contract by either party, with good cause, after sixty days' written notice.

(5) If the contract between the county and the department of corrections is terminated for any reason, the department of corrections shall reassume responsibility for supervision of superior court misdemeanor probationers within that county. In such an event, the department of corrections retains any and all rights and remedies available by law and under the contract.

(6) The state of Washington, the department of corrections and its employees, community corrections officers, and volunteers who assist community corrections officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of a county. A county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of the department of corrections. This subsection applies regardless of whether the supervising entity is in compliance with the standards of supervision at the time of the misdemeanor probationer's actions.

(7) The state of Washington, the department of corrections and its employees, community corrections officers, any county under contract with the department of corrections pursuant to this section and its employees, probation officers,

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and volunteers who assist community corrections officers and probation officers in the superior court misdemeanor probation program are not liable for civil damages resulting from any act or omission in the rendering of superior court misdemeanor probation activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035. [1996 c 298 § 1.]

9.95.206 Misdemeanant probation services—Offender classification system—Supervision standards. (1) Probation supervision of misdemeanor offenders sentenced in a superior court must be based upon an offender classification system and supervision standards.

(2) Any entity under contract with the department of corrections pursuant to RCW 9.95.204 shall establish and maintain a classification system that:

- (a) Provides for a standardized assessment of offender risk;
- (b) Differentiates between higher and lower risk offenders based on criminal history and current offense;
- (c) Assigns cases to a level of supervision based on assessed risk;
- (d) Provides, at a minimum, three levels of supervision;
- (e) Provides for periodic review of an offender's classification level during the term of supervision; and
- (f) Structures the discretion and decision making of supervising officers.

(3) Any entity under contract with the department of corrections pursuant to RCW 9.95.204 may establish and maintain supervision standards that:

- (a) Identify the frequency and nature of offender contact within each of at least three classification levels;
- (b) Provide for a minimum of one face-to-face contact each month with offenders classified at the highest level of risk;
- (c) Provide for a minimum of one personal contact per quarter for lower-risk offenders;
- (d) Provide for specific reporting requirements for offenders within each level of the classification system;
- (e) Assign higher-risk offenders to staff trained to deal with higher-risk offenders;
- (f) Verify compliance with sentence conditions imposed by the court; and
- (g) Report to the court violations of sentence conditions as appropriate.

(4) Under no circumstances may an entity under contract with the department of corrections pursuant to RCW 9.95.204 establish or maintain supervision that is less stringent than that offered by the department.

(5) The minimum supervision standards established and maintained by the department of corrections shall provide for no less than one contact per quarter for misdemeanor probationers under its jurisdiction. The contact shall be a personal interaction accomplished either face-to-face or by telephone, unless the department finds that the individual circumstances of the offender do not require personal interaction to meet the objectives of the supervision. The circumstances under which the department may find that an offender does not require personal interaction are limited to the following: (a) The offender has no special conditions or crime-related prohibi-

tions imposed by the court other than legal financial obligations; and (b) the offender poses minimal risk to public safety.

(6) The classification system and supervision standards must be established and met within the resources available as provided for by the legislature and the cost of supervision assessments collected, and may be enhanced by funds otherwise generated by the supervising entity. [1996 c 298 § 2.]

9.95.210 Conditions of probation. (1) In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

(2) In the order granting probation and as a condition thereof, the superior court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required; (d) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation; (e) to contribute to a county or interlocal drug fund; and (f) to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

(3) The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

(4) In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If

the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(5) If the probationer has been ordered to make restitution and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If the superior court has ordered supervision and restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located. [1996 c 298 § 3; 1995 1st sp.s. c 19 § 29; 1995 c 33 § 6; 1993 c 251 § 3; 1992 c 86 § 1; 1987 c 202 § 146; 1984 c 46 § 1; 1983 c 156 § 4; 1982 1st ex.s. c 47 § 10; 1982 1st ex.s. c 8 § 5; 1981 c 136 § 42; 1980 c 19 § 1. Prior: 1979 c 141 § 7; 1979 c 29 § 2; 1969 c 29 § 1; 1967 c 200 § 8; 1967 c 134 § 16; 1957 c 227 § 4; prior: 1949 c 77 § 1; 1939 c 125 § 1, part; Rem. Supp. 1949 § 10249-5b.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1939 c 125: See note following RCW 9.95.200.

Restitution

alternative to fine: RCW 9A.20.030.

condition to suspending sentence: RCW 9.92.060.

disposition when victim not found or dead: RCW 7.68.290.

Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.

Violations of probation conditions, rearrest, detention: RCW 72.04A.090.

9.95.212 Standards for supervision of misdemeanor probationers. The Washington state law and justice advisory council, appointed under RCW 72.09.300(7), shall by October 1, 1995, develop proposed standards for the supervision of misdemeanor probationers sentenced by superior courts under RCW 9.92.060 or 9.95.210. In developing the standards, the council shall consider realistic current funding levels or reasonable expansions thereof, the recommendations of the department of corrections, county probation departments, superior and district court judges, and the misdemeanor corrections association. The supervision standards shall establish classifications of misdemeanor probationers based upon the seriousness of the offense, the per-

ceived risks to the community, and other relevant factors. The standards may provide discretion to officials supervising misdemeanor probationers to adjust the supervision standards, for good cause, based upon individual circumstances surrounding the probationer. The supervision standards shall include provisions for reciprocal supervision of offenders who are sentenced in counties other than their counties of residence. [1996 c 245 § 2; 1995 1st sp.s. c 19 § 31.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

9.95.214 Assessment for supervision of misdemeanor probationers. Whenever a defendant convicted of a misdemeanor or gross misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and the defendant is supervised by the department of corrections or a county probation department, the department or county probation department may assess and collect from the defendant for the duration of the term of supervision a monthly assessment not to exceed one hundred dollars per month. This assessment shall be paid to the agency supervising the defendant and shall be applied, along with funds appropriated by the legislature, toward the payment or part payment of the cost of supervising the defendant. [1996 c 298 § 4; 1995 1st sp.s. c 19 § 32.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

9.95.215 Counties may provide probation and parole services. See RCW 36.01.070.

9.95.220 Violation of probation—Rearrest—Imprisonment. Whenever the state parole officer or other officer under whose supervision the probationer has been placed shall have reason to believe such probationer is violating the terms of his probation, or engaging in criminal practices, or is abandoned to improper associates, or living a vicious life, he shall cause the probationer to be brought before the court wherein the probation was granted. For this purpose any peace officer or state parole officer may rearrest any such person without warrant or other process. The court may thereupon in its discretion without notice revoke and terminate such probation. In the event the judgment has been pronounced by the court and the execution thereof suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory as the case may be. If the judgment has not been pronounced, the court shall pronounce judgment after such revocation of probation and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory, in accordance with the sentence imposed. [1957 c 227 § 5. Prior: 1939 c 125 § 1, part; RRS § 10249-5c.]

Severability—1939 c 125: See note following RCW 9.95.200.

9.95.230 Court revocation or termination of probation. The court shall have authority at any time prior to the entry of an order terminating probation to (1) revoke, modify, or change its order of suspension of imposition or execution of sentence; (2) it may at any time, when the ends of justice will be subserved thereby, and when the reformation of the

probationer shall warrant it, terminate the period of probation, and discharge the person so held. [1982 1st ex.s. c 47 § 11; 1957 c 227 § 6. Prior: 1939 c 125 § 1, part; RRS § 10249-5d.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Severability—1939 c 125: See note following RCW 9.95.200.

9.95.240 Dismissal of information or indictment after probation completed—Vacation of conviction. (1) Every defendant who has fulfilled the conditions of his or her probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he or she has been convicted be permitted in the discretion of the court to withdraw his or her plea of guilty and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted. The probationer shall be informed of this right in his or her probation papers; PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.

(2)(a) After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2003 c 66 § 1; 1957 c 227 § 7. Prior: 1939 c 125 § 1, part; RRS § 10249-5c.]

Severability—1939 c 125: See note following RCW 9.95.200.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

9.95.250 Community corrections officers. In order to carry out the provisions of this chapter 9.95 RCW the parole officers working under the supervision of the secretary of corrections shall be known as community corrections officers.

[Title 9 RCW—page 194]

ers. [2001 2nd sp.s. c 12 § 343; 1981 c 136 § 43; 1979 c 141 § 8; 1967 c 134 § 17; 1957 c 227 § 8. Prior: 1939 c 125 § 1, part; RRS § 10249-5f.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.08.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1939 c 125: See note following RCW 9.95.200.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

9.95.260 Indeterminate sentence review board—Supervision of conditionally pardoned persons—Hearing. (1) The indeterminate sentence review board shall, when requested by the governor, pass on the representations made in support of applications for pardons for convicted persons and make recommendations thereon to the governor.

(2) It will be the duty of the secretary of corrections to exercise supervision over such convicted persons as have been conditionally pardoned by the governor, to the end that such persons shall faithfully comply with the conditions of such pardons. The indeterminate sentence review board shall also pass on any representations made in support of applications for restoration of civil rights of convicted persons, and make recommendations to the governor. The department of corrections shall prepare materials and make investigations requested by the indeterminate sentence review board in order to assist the board in passing on the representations made in support of applications for pardon or for the restoration of civil rights.

(3) The board shall make no recommendations to the governor in support of an application for pardon until a public hearing has been held under this section or RCW 9.94A.885(3) upon the application. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that an application for pardon has been filed and the date and place at which the hearing on the application for pardon will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the application for pardon shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider written, oral, audio, or videotaped statements regarding the application for pardon received, personally or by representation, from the individuals who receive notice pursuant to this section. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person. [1999 c 323 § 4; 1999 c 143 § 29; 1981 c 136 § 44; 1979 c 141 § 9; 1967 c 134 § 14; 1935 c 114 § 7; RRS § 10249-7.]

Reviser's note: This section was amended by 1999 c 143 § 29 and by 1999 c 323 § 4, each without reference to the other. Both amendments are

(2004 Ed.)

DOC Policy 320.160
Tolling of Supervision in the Community
(before 2009)

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY DIRECTIVE</p> <p><input type="checkbox"/> Offender Manual <input type="checkbox"/> Specialty</p>	FIELD	NUMBER DOC 320.160
	SIGNATURE <i>Joseph D. Lehman</i>	DATE 1-22-04
	JOSEPH D. LEHMAN, SECRETARY	EFFECTIVE DATE 03/03/04
TITLE TOLLING OF SUPERVISION IN THE COMMUNITY		PAGE NUMBER 1 of 4

SUPERSESSON:

DOC 320.160 effective 7/27/01

REFERENCES:

DOC 100.100 is hereby incorporated into this Policy Directive; RCW 9A.625; DOC 280.530 Supervision Files for Community Offenders

POLICY:

- I. All offenders supervised on community placement, community supervision, community service, and community custody status from July 24, 1993, through July 24, 1999, will have supervision time in the community postponed or suspended (tolled) whenever the offender absconds from supervision or is placed in confinement for any reason. All offenders supervised on community placement, community supervision, and community custody status on or after March 30, 2000, will have supervision time in the community postponed or suspended (tolled) whenever the offender absconds from supervision or is placed in confinement for any reason.
- II. Community Corrections Officers (CCO) shall determine the time frame and supervision type. Action will depend on who has authority to toll as specified in Tolling Authority and Time Frames (attached).

DIRECTIVE:

I. Time Tolloed

A. Department staff shall not toll:

1. From Other State (FOS),
2. Parole,
3. Probation,
4. Misdemeanor supervision, unless specifically ordered by the Court,
5. Monetary supervision,
6. International Naturalization Service (INS) and deportation,
7. Community Service Supervision (SER) after July 25, 1999, and
8. Community Custody Board (CCB) Releases,
9. Mental Health commitments on LRA status including when the offender is in partial confinement at the state mental health facility,

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B. Department staff shall toll:

1. Supervision types Community Custody Maximum (CCM), Community Custody Jail (CCJ), Community Custody Prison (CCP), Post Release Supervision (PRS), and Community Supervision (SUP),
2. Supervision type Community Custody Inmate (CCI) only when the offender is on escape status,
3. Supervised appeal,
4. Electronic Monitoring, if ordered by the Court in lieu of jail time,
5. Inpatient Treatment, if ordered by the Court in lieu of jail time, and
6. Mental health commitments, both voluntary and involuntary.

C. Tolling shall occur as follows:

1. All periods of confinement during supervision, as specified in Tolling Authority and Time Frames (attached), toll beginning on the first day of confinement and ending on the day of release.
2. When an offender becomes unavailable for supervision, tolling will begin on the date of the last contact the CCO had with the offender and end on the date the offender again becomes available for supervision as specified in Tolling Authority and Time Frames (attached).
3. Community custody escape status begins tolling on the date the CCO requests/enters the Secretary's Warrant Request form and ends on the date the offender is apprehended and held on the Department warrant only.
 - a. CCI time when on escape status will extend the maximum expiration date. CCI offender beginning and ending dates for escape will be entered on OBTS DP14 as L60/G60 and L60/G60 codes. A B01 must follow the L60 to toll time.
 - b. All other community custody status offenders' beginning and ending date for escape will be entered on OBTS DP14 as L80/G60. A B01/E01 must be entered in conjunction with the L60/G60 to toll time.
4. Staff shall check OBTS to ensure the original jail time has been entered for any commitment with the Department for which jail time was ordered.
 - a. For commitments with a date of offense prior to July 24, 1993, the first County Confinement Time (CCT) on OBTS DP14 generates an entry on the OBTS DP15.

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- b. For a commitment with a date of offense on or after July 24, 1993, but prior to July 1, 2000, a manual "original jail" entry should be made on OBTS DP15 by the Correctional Records Manager (CRM)/Specialist (CRS).
- c. For commitments with a date of offense on or after July 1, 2000, an entry of "CJT" accompanied with B01/ED1 on OBTS DP14 will create an "original jail" entry on OBTS DP15.
- 5. All Court-ordered tolling will be entered on OBTS DP15 by the GRM/CRS.
- 6. CCOs shall enter the reason for tolling on OBTS DTS7 with a TL code.
- 7. CCOs shall ensure compliance with all requirements under this section before transferring or closing a file per DOC 280.530 Supervision Files for Community Offenders.

II. Tolling Authority and Time Frames

- A. Tolling will not occur unless ordered by the Court when the beginning and ending date of the abscond status or confinement time on a probation, PRS, or community supervision occur from July 1, 1998, through July 25, 1999.
 - 1. Community supervision starts on the date of sentence. Only the initial CCT entry will automatically toll supervision. Any additional tolling of supervision requires a Court Order.
- B. The Department shall determine tolling for time periods occurring from July 24, 1993, to July 25, 1999.
 - 1. The CCO shall toll time if:
 - a. The offender was absent prior to July 24, 1993, and apprehended after July 24, 1993, or
 - b. The offender was both absent and apprehended after July 24, 1993, and prior to July 25, 1999.
 - 2. Original jail time imposed at sentencing on or after July 24, 1993, will be entered on OBTS DP14 as CCT followed by a B01 on the same date. When the offender is subsequently released from CCT, an XD1 will be entered to change the supervision type. At that time an ED1 must be entered on the same date to end the confinement.
- C. Only the Court can toll time on PRS and community supervision cases during the period of July 25, 1999, through March 29, 2000, except:
 - 1. The Department can only toll time on CCI cases during the period of July 25, 1999, through March 29, 2000.

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D. On or after March 30, 2000, the Department has tolling authority over all eligible supervision types per Tolling Authority and Time Frames (attached).

III. Adjustment

A. When an offender is detained and is later found not to have violated a condition or requirement of supervision, any related tolling entries will be deleted.

1. The CCO shall review OBTS DP14 and DP15 for accuracy.

DEFINITIONS:

Words/terms appearing in this Policy Directive may be defined in the Glossary section of the Policy Directive Manual.

ATTACHMENTS:

Tolling Authority and Time Frames

DOC FORMS (See Appendix):

None

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TOLLING AUTHORITY AND TIME FRAMES

Time Periods	Authority	Supervision Type
7/1/1988 - 7/23/1993	<ul style="list-style-type: none"> • Court's jurisdiction to toll/extend supervision • DOC to make recommendation • Must be ordered by the court 	Probation (PRD) Post Release Supervision (PRS) Community Supervision (SUP)
7/24/1993 - 7/24/1999	<ul style="list-style-type: none"> • DOC's jurisdiction to toll/extend supervision 	Community Supervision (SUP) Post Release Supervision (PRS) Community Custody Intake (CCI) SBOSA Community Custody (BCC) Community Custody Maximum (CCM) Community Service (PST)
7/25/1999 - 3/30/2000	<ul style="list-style-type: none"> • DOC's jurisdiction to toll/extend supervision • Court's jurisdiction to toll/extend supervision 	Community Custody Intake (CCI) SBOSA Community Custody (BCC) Community Custody Maximum (CCM) Community Supervision (SUP) Post Release Supervision (PRS)
on or after 3/30/2000	<ul style="list-style-type: none"> • DOC's jurisdiction to toll/extend supervision 	Community Supervision (SUP) Post Release Supervision (PRS) Community Custody Intake (CCI) SBOSA Community Custody (BCC) Community Custody Maximum (CCM) Community Custody Jail (CCJ) Community Custody Prison (CCP)

Updated 2/04

DOC 320.160a1

DOC Policy 320.160
Tolling of Supervision in the Community
(after 2009)

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REVIEW/REVISION HISTORY:

Effective: 11/20/00
 Revised: 7/27/01
 Revised: 3/3/04
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 Revised: 5/7/08
 Revised: 5/29/09
 Revised: 2/22/11
 Revised: 4/16/12
 Revised: 3/10/14
 Revised: 8/1/15
 Revised: 1/13/16
 Revised: 3/29/16

SUMMARY OF REVISION/REVIEW:

I.A.1.b., and II.A.1.a. - Added language for clarification
 Removed II.A.3. on processes for tolling of CCE offenders

APPROVED:

Signature on file

RICHARD "DICK" MORGAN, Secretary
 Department of Corrections

3/29/16
 Date Signed

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POLICY			

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 9.94A.030; RCW 9.94A.171; RCW 10.77; RCW 71.05; RCW 71.09; DOC 280.530 Supervision Files for Community Offenders; DOC 460.130 Response to Violations and New Criminal Behavior; Violator Management Tolling Guide

POLICY:

- I. Offenders supervised on community placement, community supervision, and community custody status will have supervision time in the community postponed or suspended (i.e., tolled) whenever the offender escapes or absconds from supervision, is placed in confinement for any non-Department sanction matter, or is in civil commitment status.
- II. The Department will not toll sanction-only time in total confinement, except for causes/counts which are a felony sex offense as defined in RCW 9.94A.030, including felony offenses with a finding of sexual motivation not covered by RCW 71.09.
- III. Tolling rules are applied the same whether the offender is housed in a Department facility, violator unit, or county jail.

DIRECTIVE:

- I. Determining Tolling Authority and Timeframes
 - A. The Community Corrections Officer (CCO) will determine the timeframe and supervision type. Tolling action will depend on who has authority to toll as specified in Tolling Authority and Timeframes (Attachment 1).
 1. The Department will toll:
 - a. Time an offender has absconded from supervision.
 - b. Time in confinement for any non-Department sanction matter including any period an offender is held on a new criminal activity hold per DOC 460.130 Response to Violations and New Criminal Behavior.
 - c. Original jail time imposed at sentencing on or after July 24, 1993.
 - d. Work crew, if ordered by the court in lieu of original jail time imposed at sentencing on or after July 24, 1993.
 - e. Electronic monitoring, if ordered by the court in lieu of original jail time imposed at sentencing on or after July 24, 1993.

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POLICY

- f. Mental health commitments per RCW 71.05 or RCW 10.77 that are not on Less Restrictive Alternative (LRA) status.
 - 1) Mental health commitment not ordered as a condition of supervision on a Department cause will extend the scheduled end date and Statutory Maximum Expiration date.
 - g. Civil Commitment under RCW 71.09.
 - h. Misdemeanor Community Custody (MCC) on or after July 26, 2009, without a court order.
 - i. Time an offender is in partial confinement in lieu of original jail time.
2. On Post Release Supervision (PRS) and community supervision cases during the period of July 26, 1999, through March 29, 2000, only the court can toll time, except:
 - a. The Department can toll time on Community Custody Inmates (CCI) cases during that period.
 3. In order for the Department to toll court-ordered time, the Judge must specify the dates of tolling or delegate the authority to determine the tolling dates to the Department.
- B. The Department will not toll:
1. From out-of-state
 2. Parole
 3. Probation
 4. Supervised appeal
 5. Misdemeanor (MIS) supervision prior to July 26, 2009, unless specifically ordered by the court
 6. Monetary supervision
 7. Electronic monitoring, when it is used as a Department sanction alternative to confinement for community custody violators and is not eligible for good time
 8. Inpatient treatment
 9. Insanity acquittals (IAQ)
 10. Immigration and Customs Enforcement (ICE) custody and deportation
 11. Community Custody Board (CCB) releases
 12. LRA status, including when the offender is in partial confinement at the state mental health facility

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13. Offenders on active supervision who are on active military duty deployed outside the United States
14. Court-ordered community residential Drug Offender Sentencing Alternative (DOSA) treatment.

II. Tolling

A. Per the tolling timeframes specified in Attachment 1:

1. Non-Sanction Confinement

a. Tolling will begin on the first day of the non-sanction confinement and end the day of release.

2. Absconds (i.e., fails to make required contact and cannot be located or failed to return to Washington State when ordered)

a. Tolling will begin on the date the offender fails to report, unless the CCO becomes aware that the offender has absconded supervision before the scheduled report date, in which case tolling will begin on the date the CCO became aware that the offender absconded.

b. For sex offenses, tolling will end on the date the offender becomes available for supervision.

c. For all other offenses, tolling will end on the date of apprehension if the offender is arrested and confined for the Department sanction only. If the offender is arrested and confined for a Department sanction and a non-Department sanction matter, tolling will continue until the non-Department sanction matter is resolved.

B. When an offender has multiple causes, and time is tolled for confinement on a cause that is later vacated, the time tolled on the vacated cause will remain in effect for the other active causes.

C. Tolling operators will enter tolling dates, except court-ordered tolling or auto-generated tolling from Prison movements, on the Case Management Supervision Activity Record screen in the offender's electronic file.

D. Records employees will enter all court-ordered tolling on the Sentence Information screen in the offender's electronic file.

E. The CCO will:

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1. Ensure all tolling is entered in the offender's electronic file on the Case Management Supervision Activity Record and Sentence Information screens, as applicable, and in "Tolling Entry" event type Chronological Events (chronos).
2. Ensure all tolling is complete before transferring or closing a file per DOC 290.530 Supervision Files for Community Offenders.
3. Check the offender's electronic file to ensure the original jail time has been entered for any commitment for which jail time was ordered.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

Tolling Authority and Timeframes (Attachment 1)

DOC FORMS:

None

ATTORNEY GENERAL'S OFFICE, TORTS DIVISION

October 17, 2017 - 9:42 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49928-2
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Respondent
Superior Court Case Number: 09-2-00347-9

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