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COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF CORRECTIONS

Petitioner,

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

Respondent.

CLARK COUNTY CAUSE NO. 09-2-00347-9

RESPONDENT'S OPENING BRIEF

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I. INTRODUCTION

Respondent's husband, William "Lloyd" Myles was killed by a drunk driver in Clark County, Washington on January 27, 2006. The drunk driver, Carlos Villanueva-Villa, had two (2) prior DUI arrests during the two months immediately preceding Mr. Myles's death, one arrest on November 26, 2005 and the second arrest on December 23, 2005. Carlos Villanueva-Villa also had a prior criminal history and was under the supervision of the Department of Corrections for violations of his prior criminal convictions when he killed Mr. Myles.

DOC was negligent in their supervision of Carlos Villanueva-Villa by not enforcing the court ordered conditions of his misdemeanor and felony sentences and as a result of such negligent supervision, DOC released Carlos Villanueva-Villa at the risk of public safety. DOC had a special "take charge" relationship with Carlos Villanueva-Villa when Mr. Myles was killed. Carlos Villanueva-Villa was under the immediate custody and control of DOC under a DOC Negotiated Sanction and Confinement Agreement entered with the court on October 21, 2005 for violations of his conditions of probation and community custody.

While under DOC's supervision, Carlos Villanueva-Villa continued to violate the conditions of his felony sentence and the negotiated sanction agreement, he was arrested twice for DUI, and he failed to appear at both DUI arraignments which resulted in two (2) warrants for his arrest. From November 28, 2005 to December 30, 2005, which includes the period of time the second DUI arrest occurred and the two (2) arrest warrants were issued, Carlos Villanueva-Villa was reporting daily to DOC as required under the negotiated settlement agreement and had a total of 23 contacts with DOC and DOC officers during that time period. Despite having two (2) recently issued and pending warrants for his arrest, DOC officers did not at anytime during their 23 contacts with Carlos Villanueva-Villa review any arrest records, which are accessible by the general public, to confirm whether he was in compliance with the conditions of his prior sentences and the negotiated sanction agreement. In fact, a DOC officer prepared a report on December 6, 2005 stating that Carlos Villanueva-Villa was in full compliance with his conditions and that he had "no new arrests".

Carlos Villanueva-Villa was not in compliance with any of his conditions at that time and had completely stopped reporting altogether on December 30, 2005. Due to his failure to report the full 30 days as required and his failure to provide an address to DOC, the officer

requested that a warrant be issued for Carlos's arrest. That warrant request was then immediately canceled and DOC abruptly and prematurely moved to close Carlos Villanueva-Villa's supervision case. DOC then filed a closure of supervision report with the court on January 20, 2006, seven (7) days before Mr. Myles was killed, stating that he no longer met the criteria for continued supervision. DOC makes no mention of his new arrests, failures to appear, warrant status, or probation violations in their report to the court.

DOC was not only negligent in their supervision of Carlos Villanueva-Villa but they misled the court by filing a false report that he no longer required supervision. DOC had a duty to properly supervise Carlos Villanueva-Villa and to prevent harm to third parties due to the special take charge relationship that existed. It is highly likely, based on the evidence, that if DOC had properly supervised Carlos Villanueva-Villa, that he would have been incarcerated on January 27, 2006 for his numerous violations of his conditions, his two (2) new arrests and failures to respond.

For these reasons, Respondent, M. Gwyn Myles, individually and as Personal Representative of the Estate of William Lloyd Myles, asks this court to uphold the trial court's Order Denying the State of Washington

Department of Correction's Motion for Summary Judgment entered in Clark County Superior Court on December 30, 2016.

II. STATEMENT OF THE FACTS

Carlos Villanueva-Villa ("Carlos") has an extensive history of failing to appear for court and failure to follow the conditions of his release from prior criminal convictions. On August 14, 2001, Carlos was charged with Theft in the 2nd Degree and Vehicle Prowl in the 2nd Degree. (CP 312-313) He failed to appear at his trial and a warrant was issued on April 9, 2002. (CP 314) His failure to appear at trial led to an additional felony bail jump charge. (CP 315-316) A negotiated guilty plea agreement was reached and on April 14, 2003 Carlos was convicted of the misdemeanor charge of Vehicle Prowl in the 2nd degree and the felony bail jump charge. The Theft 2 charge was dropped. As part of his plea agreement under both the felony and misdemeanor charges, Carlos was ordered to 1 year of probation and 1 year community custody under the supervision of the Department of Corrections (DOC). (CP 317-324 and CP 325-336)

As was his usual pattern, Carlos failed to report to DOC following his conviction. On December 29, 2003, Sheri Mullins, a Community Corrections Officer with DOC, filed a Court Notice of Violation on the Misdemeanor Vehicle Prowl in the 2nd Degree. (CP 337-339) A hearing on

the State's Motion to Revoke Judgment and Sentence on both the Bail Jump (felony) and the Vehicle Prowl 2 (misdemeanor) cases was held in Clark County Superior Court on May 20, 2004 and a warrant for Carlos's arrest on both the felony and misdemeanor charges was issued for noncompliance with the conditions of his sentences. (CP 347-349, CP 355 and see also CP 350-351)

On May 6, 2004 (2 weeks before the State's Motion to Revoke Carlos's sentence for noncompliance) DOC filed a Court-Special Closure 5990 statement (dated April 29, 2004) with the court closing supervision on Carlos's felony case. (CP 342). Then three (3) months later on August 12, 2004, DOC files a Court-Special document advising the court that the 5990 Closure submitted on April 6, 2004 (which appears to be an incorrect date) should be canceled because DOC failed to toll Carlos's abscond status and he has approximately three (3) months left on supervision. (CP 357 and see also CP 267)

Carlos was not arrested on the May 24, 2004 warrant until October 10, 2005. Following his arrest on the warrant, he was sentenced by Clark County Superior Court to 30 days confinement in the Clark County jail. (CP 358, 359-361) In addition, Carlos entered into a negotiated sanction agreement with the Department of Corrections, which was entered into on October 14, 2005, approved by the hearings officer on October 20, 2005

and filed with Clark County Superior Court on October 21, 2005. (CP 362-366) As part of this sanction agreement, Mr. Villanueva-Villa was also sanctioned to 30 days of day reporting to DOC. Following his release from the Clark County Jail, Carlos Villanueva-Villa first reported to DOC on October 26, 2005. (CP 253)

The DOC negotiated sanction agreement subjected Carlos to active supervision by the Department of Corrections beginning October 26, 2005. As part of that agreement and due to Carlos's absconding from supervision, his felony supervision was tolled to end on March 5, 2006. (CP 363-365)

Within two (2) months of entering into the negotiated sanction agreement, Carlos had been arrested for not one (1), but two (2) DUI charges, the first on November 26, 2005 and the second on December 23, 2005. (CP 366 and CP 371) Carlos failed to appear at both of his DUI arraignment hearings on December 5, 2005 and December 29, 2005 and FTA warrants were issued for Carlos's arrest on both of those arraignment dates. The December 5, 2005 warrant ordered bail at \$10,000.00 (CP 369) and the December 29, 2005 was a no bail warrant. (CP 374) Carlos was under the direct and immediate control and supervision of DOC when these two (2) new arrests occurred and when the two (2) FTA warrants were issued for his arrest. (CP 244-250) In fact, Carlos reported to DOC

on December 5, 2005, the date the first FTA warrant was issued. (CP 248)
He also reported to DOC on December 23, 2005, the day of his second
DUI arrest (CP 243-245) , and also on December 29, 2005, the day the
second FTA warrant was issued. (CP 244)

Carlos was in continuous contact with DOC and in the direct
presence of DOC officers with 2 new arrests on his record and 2 pending
warrants out for his arrest. He had a total of 23 contacts with DOC from
the date of his first arrest on November 26, 2005 until December 30, 2005
when he completely stopped reporting, once again in violation of his
conditions. 17 of those contacts with DOC were made when Carlos had at
least one warrant out for his arrest. Had DOC properly supervised this
offender, they would have known he had two new arrests in violation of
his probation and two new warrants for his arrest had been issued and
were pending.

DOC has the authority to arrest a defendant for violations of
probation even without a warrant. RCW 9.95.220, laws of 2002, 2004 and
2017, App. 15, App. 45 and App. 60. See also 9.94A.631, laws of 2004
and 2017, App. 33 and App. 53. DOC failed to arrest Carlos on his two
new warrants while he was in their actual presence on numerous
occasions, they failed to properly supervise his actions, specifically with
his two new arrests, and they failed to report his new probation violations

to the court. They failed to impose additional sanctions for his new violations as well as the violations of his negotiated sanction agreement. Despite the numerous violations Carlos committed, DOC abruptly closed his supervision case and advised the court that Carlos was in compliance with his conditions and that he no longer required supervision.

III. PROCEDURAL HISTORY

On January 20, 2009, Plaintiff filed a Complaint against DOC for negligent supervision of Carlos. Clark County and the Washington State Patrol were also named as defendants in the action. (CP 3-28)

On October 7, 2016, the trial court denied the Motions for Summary Judgment filed by Defendant Clark County and Defendant, Washington State Patrol.

On December 30, 2016, on reconsideration, the trial court reversed its decision and granted Motions for Summary Judgment filed by Defendant Clark County and Defendant, Washington State Patrol. The Motions for Discretionary Review for both orders have been stayed by the Court pending outcome of this review.

On December 30, 2016, the trial court denied the Motion for Summary Judgment filed by Defendant Department of Corrections, which is the subject of this Review. (CP 679-681)

IV. STANDARD FOR REVIEW

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *Central Washington Bank vs. Mendelson-Zeller*, 113 Wn.2d 346, 351, 779 P.2d 697; *Hontz vs. State*, 105 Wn.2d 302, 714 P.2d 1176 (1986). The moving party bears this burden of proof. *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975). A material fact is one upon which the outcome of the litigation depends. *Barrie v. Hosts of Am, Inc.*, 94 Wn.2d 640, 642, 618 P.2d 96 (1980). In determining whether there are factual issues, the court must construe all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005) (citing *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990) and *Lamon v. McDonnell Douglas Corp.*, 91 Wash.2d 345, 349, 588 P.2d 1346 (1979)).

The facts of this case are more complex than DOC presents in its opening brief. DOC has completely absolved themselves from liability in this case by depending upon two (2) factors, specifically the passage of

Engrossed Substitute Senate Bill (ESSB) 5990 in July 2003, which DOC states halted any authority they had to supervise Carlos for his felony conviction, and a lack of statutory authority in 2003 and 2004 which would allow DOC to toll supervision of Carlos's misdemeanor conviction despite his numerous violations of the conditions of his sentencing. There are additional facts and evidence to consider in this case which are in direct conflict with DOC's position and certainly give rise to issues of material fact that only a jury or trier of fact can decide.

**V. STATEMENT OF ISSUES PRESENTED BY
DOC FOR REVIEW**

A. Did DOC have statutory authority to supervise Carlos in January 2006 and did an actionable duty exist at that time?

DOC correctly states that Washington law holds that DOC owes a duty to persons harmed by an offender under DOC supervision and in order to impose a duty to prevent the offender from causing physical injury to another, a take charge relationship must exist between DOC and the offender (citing *Estate of Bordon ex rel. Anderson v. State, Dept. of Corrections*, 122 Wn. App. 277 at 235-36, 95 P.3 764 (2004)). DOC is also correct that such a relationship exists when an offender is under DOC supervision (citing *Taggart v. State*, 118 Wn.2d 195, 822 P.2d 243 (1992), 118 Wn.2d at 218-19) and that during the period that such relationship exists, DOC is under a duty to exercise reasonable care to control the

offender to prevent him from doing such harm (citing *Hungerford v. State Dept. of Corr.*, 135 Wn.App. 240 at 257, 139 P.3d 1131) See *Appellant's Opening Brief*, pages 20-21.

DOC denies that such a relationship existed with Carlos in January 2006. DOC argues that supervision of Carlos's misdemeanor conviction ended one year after his conviction date when his 12 month probation period expired on April 13, 2004 and that although despite Carlos's noncompliance with the conditions of his sentence, tolling was not authorized for misdemeanor convictions in 2004.

DOC further argues that they had no statutory authority to supervise Carlos for his felony conviction, that they mistakenly reopened his supervision file in 2005 but when they realized their error they immediately closed his supervision file on January 13, 2006, which is presumably when DOC realized they were negligent in supervising Carlos in the weeks prior to the death of Mr. Myles.

DOC uses the date of January 13, 2006 as the date that supervision of Carlos ended but for purposes of clarification, the Court – Special 5990/5256 Supervision Closure is dated 1/13/2006, signed by the corrections officer on 1/18/2006 and filed with Clark County Superior Court on January 20, 2006, seven (7) days before Mr. Myles was killed.

A. Did DOC's legal authority to supervise Carlos under his misdemeanor conviction end on April 13, 2004?

It is the position of DOC that supervision for Carlos's misdemeanor offense expired one (1) year following the date of his sentence despite the fact that he was noncompliant with the terms of probation and was on abscond warrant status. If this is true, then offenders who abscond from probation or community supervision will not face any penalties as long as they don't get caught within one (1) year of sentencing. DOC further contends that tolling supervision for misdemeanor offenses was not permitted under the statutes and policies "in force at the time".

RCW 9.95.204(1), in its current version and also under the laws of 2002 applicable to this case, charges DOC with the initial responsibility of supervising a defendant when the Superior Court places a defendant convicted of a misdemeanor or gross misdemeanor on probation and orders supervision under RCW 9.92.060 or RCW 9.95.210, which grant the court the authority to suspend sentences in lieu of jail time. Carlos's misdemeanor sentence for the Vehicle Prowl 2 charge was a suspended sentence. (CP 317-324) See RCW 9.95.204 laws of 2002 at App. 13 and laws of 2017 at App. 59.

If a statute does not specifically grant DOC the authority to toll a misdemeanor's probation due to abscond status, the courts will apply common law to supplement the statute. RCW 9A.04.060 (2002) App. 17. See also laws of 2004 (App. 46) and laws of 2017 (App. 61).

Washington courts addressed tolling of misdemeanor probation in *City of Spokane v. Marquette*, 146 Wn.2d 124, 43 P.3d 502 (2002). Marquette plead guilty to DUI and was sentence by the Spokane Municipal Court to 365 days in jail, with 364 days suspended for 24 months probation. Marquette failed to comply with the conditions of his sentence, a warrant was issued and he was subsequently arrested. At issue in *Marquette* was whether a municipal court's jurisdiction tolled while a probation is on warrant status. The Court found that the probation period was tolled while the probationer was sought on a warrant and tolled his probationary jurisdiction citing *State v. Haugen*, 22 Wash.App. 785, 591 P.2d 1218 (1979), *Gillespie v. State*, 17 Wash.App. 363, 563 P.2d 1272 (1977) and *State v. Frasier*, 20 Wn.App. 332, 579 P.2d 1357 (1978) and stating that these cases deal with superior courts but the principle is the same in municipal court, so the Court found them persuasive. The purpose of probation is to rehabilitate the defendant and that purpose is frustrated when the defendant eludes the court's supervision. *Marquette* at 131. The court stated that whether the defendant left the state or hid from authorities

is not a determinate factor, tolling is triggered by the defendant's default. A probationer has a duty to cooperate in his rehabilitation in exchange for the privilege of being relieved from jail time. *Marquette* at 131 and 132.

The court also relied on *Marquette* in a 2006 juvenile case with the same issue. *State v. V.J.*, 132 Wn.App. 380, 132 P.3d 763 (2006). In *V.J.* the issue before the court was whether the juvenile court had the authority to impose detention after the juvenile's term of community supervision had expired and when the Juvenile Court and Juvenile Justice Acts (JJA) contained no specific provisions authorizing tolling. The court in *V.J.* said *Marquette* was "instructive" and cited the "general principal opinion that the probation period is tolled while the probation is not subject to jurisdiction of the court" and noted the judicial construction has permitted tolling in some cases even absent an explicit tolling provision. *V.J.* at 384. The court further noted that just as the misdemeanor suspended statute at issue in *Marquette*, the juvenile statute at issue in *V.J.* confers upon the juvenile court a set period of supervision. Just as with misdemeanants, juveniles who absent themselves from court supervision frustrate the court's rehabilitative efforts. The court ruled that if a juvenile is on warrant status, and is thus not subject to the court's supervision, tolling applies to the supervision period. *V.J.* at 385.

DOC had the legal authority and the opportunity to toll Carlos's misdemeanor probation due to his noncompliance with the conditions of his misdemeanor sentence. DOC filed a Notice of Violation on December 29, 2003 and recommended 10 days jail for each violation, for a total of 30 days to be served consecutively (CP 352-354). A hearing was held on the March 4, 2004 Violation Docket and because Carlos failed to appear a warrant was authorized. Then two months later for reasons unknown, DOC washes their hands of Carlos and filed a Court-Special Report on May 6, 2004 stating DOC had closed its interest in the misdemeanor portion of the case. (CP 342-345)

Interestingly, after Carlos killed Mr. Myles on January 27, 2006, the Clark County Prosecutor moved to revoke both his misdemeanor and felony sentences and requested another warrant be issued for Carlos' arrest on February 15, 2006, while Carlos was in jail for the death of Mr. Myles. (CP 398-401) The Clark County Prosecutor apparently thought the Court still maintained jurisdiction to impose sanctions for Carlos's violations well after the probationary periods for both charges had ended, but more specifically for his misdemeanor conviction. On February 16, 2006, the Court entered an order modifying Carlos's sentence and ordered an additional 30 days jail time for his probation violation. (CP 403, CP 404-405).

Both the courts and DOC maintained jurisdiction over of the conditions of Carlos's probation in both his felony and misdemeanor sentences. The conditions for both of these sentences should have been tolled due to Carlos's abscond status. The negotiated sanction order entered on October 21, 2005 specifically states that Carlos's DOC supervision was tolled until **March 5, 2006**. (CP 362-365) This date should apply to both the misdemeanor and felony cases as they were a combined sentence entered on the same date and the violations of his sentencing conditions applied to both convictions.

B. Did DOC have authority to supervise Carlos after the effective date of ESSB 5990?

DOC states that as of July 1, 2003, when ESSB 5990, Laws of 2003, Ch 379, became effective, DOC no longer had authority to supervise Carlos for his felony conviction citing former RCW 9.94A.501(3) (2003). App. 20. See also *Appellant's App. 011-053 for ESSB 5990 and App. 054-055 for RCW 9.94A.501 (2003)*. Yet in DOC's opening brief, the agency admits that DOC "maintained an active supervision file for the felony until January 13, 2006..." *Appellant State of Washington's Opening Brief, Page 19*.

On April 14, 2003, as part of his sentence on the felony charge, Carlos was sentenced to 1 year of community supervision. (CP 325-336)

This sentence was imposed approximately three (3) months before ESSB 5990 became effective on July 1, 2003. By the terms of his sentence, Carlos was under the supervision of DOC. DOC subsequently performed a risk assessment on May 5, 2003 and assessed Carlos as a Level D offender, which is considered a “low risk” offender. (CP 46 and see also CP 266) DOC states that pursuant to the statutory changes in July 2003, their authority to supervise Carlos ended immediately upon their completion of the risk assessment deeming Carlos as a low risk offender. If DOC’s interpretation of the supervision statutes is correct, then sentencing conditions ordered by a court are essentially useless. DOC interprets the statute to mean that all court ordered sentence conditions are immediately terminated upon DOC’s determination that an offender is “low risk”. If it was the intent of the legislature to make conditions of an offender’s sentence contingent upon DOC’s risk assessment findings, the statute would specifically state such contingency -- but it does not. If it was the sentencing court’s intent that its order for conditions be contingent upon DOC’s risk assessment, the court order would also specifically state such contingency – but it does not. In fact, DOC actually attempted to pass legislation that specified this exact contingency in 2002 and the bill failed. House Bill 2712 was presented at the request of the Department of Corrections at the 2002 Regular Session. App. 62 (at App. 63-64) The bill

sponsored by DOC specifically attempted to authorize DOC to eliminate or terminate sentence conditions upon finding an offender as “low risk”.

Specifically, DOC attempted to add an additional section to RCW

9.94A.545 with language that read as follows:

(2) The department may eliminate or terminate any term of community custody imposed by the court under this section, or any term of community supervision imposed by the court under prior law, for an offender who is classified at the lowest risk level pursuant to a risk assessment by the department. No liability may attach to the state, the department, or any department employee based on the determination to classify an offender at the lowest risk level, or to eliminate or terminate a term of community custody or community supervision, in the absence of intentional misconduct. The decision to eliminate or terminate community custody or community supervision shall not affect the superior court’s jurisdiction over the offender.

House Bill 2712 failed. The legislature did not accept DOC’s proposed change to the statute. If the legislature did not grant DOC’s request for authority to eliminate or terminate terms of community custody in 2002, then DOC certainly did not have the authority to do so in 2003 when Carlos was sentenced to probation and community custody, nor did they have the authority to do so when the negotiated sanction agreement was entered into in 2005.

The legislature did not intend for DOC to completely absolve themselves from jurisdiction or from supervision of a low-risk offender when they passed ESSB 5990. In fact, the Final Bill Report for ESSB

5990 specifically states that offenders like Carlos who are “classified as “D” are actively supervised only if a violation of a release condition is brought the attention of the department”. See Page 2, *Final Bill Report ESSB 5990*. App. 101 (at App. 102-103) The Final Bill Report for ESSB 5990 clearly states the legislature’s intent that DOC did not have authority to wash their hands of Carlos due to his low risk offender status.

The intent of the legislature in passing ESSB 5990 was to preserve DOC resources for higher risk offenders. Even if ESSB 5990 applied in this case and DOC may not have had the authority to “actively” supervise Carlos under the statutory changes, DOC still continued to supervise Carlos and maintained jurisdiction over him for the purpose of reporting violations of the conditions of his sentence and for imposing sanctions for such violations.

1. Did a take charge relationship exist between DOC and Carlos under the Negotiated Sanction Agreement?

DOC completely dismisses the fact that they were actively supervising Carlos for his felony violations pursuant to a negotiated sanction agreement entered with the court on October 21, 2005. (CP 362-365). Again, even if the July 2003 statutory changes of ESSB 5990 applied in this case (which case law clearly states it does not because Carlos was sentenced in April 2003 before the effective date of ESSB

5990), DOC was actively supervising Carlos for violations of the conditions of his sentence when Mr. Myles was killed, which is exactly what the legislatures intended when they passed ESSB 5990. See *Final Report for ESSB 5990*. App. 101 (at App. 102-103)

Upon learning of Carlos's violations, DOC issued a warrant for his arrest in May 2004. (CP 355) From that date forward, Carlos was on abscond (warrant) status until he was arrested on October 10, 2005. Following his arrest on October 10, 2005, DOC imposed sanctions (as authorized by RCW 9.94A.720 (laws of 2002, App. 10 and laws of 2004, App. 34), RCW 9.94A.737 (laws of 2002, App. 12, Laws of 2004, App. 40, Laws of 2005, App. 49 and laws of 2017, App. 54) and RCW 9.94A.631 (laws of 2002, App. 8, laws of 2004, App. 33 and laws of 2017, App. 53) and RCW 9.94A.634 (laws of 2002, App. 8, laws of 2004, App. 33) now codified as RCW 9.94B.040), as set forth in the negotiated sanction agreement of October 21, 2005. (CP 362-365) DOC was "actively" supervising Carlos under this agreed sanction order and was charged with such supervision over Carlos until March 5, 2006, which is the date to which his conditions were tolled. (CP 362-365)

DOC is attempting to absolve itself from liability under the July 2003 version of RCW 9.94A.501 yet the July 2003 version of the Sentence Reform Act (SRA) does not apply. Carlos was sentenced on April 14,

2003. (CP 325-336) It is the sentencing laws that were in effect on April 14, 2003 that apply in this case not the sentencing laws of July 1, 2003. *State v. McClinton*, 186 Wn.App 826, 347 P.3d 889 (2015). In *McClinton*, the court said that the terms of a defendant's sentence are governed by the version of the Sentencing Reform Act in effect when the crime was committed, citing *State v. Medina*, 180 Wash.2d 282, 287, 324 P.3d 682 (2014). The *Medina* Court said that under the Sentencing Reform Act of 1981 (SRA), a defendant must be sentenced in accordance with the law in effect at the time of his or her offense. See also RCW 9.94A.345 (laws of 2002, App. 5, laws of 2004, App. 28, and laws of 2015, App. 52), which states:

RCW 9.94A.345, Timing.

Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.

This statute remained in effect in 2005 when the negotiated sanction agreement between Carlos and DOC was entered into and still remains in effect today.

Carlos was sentenced in April 2003 under the laws in effect at that time. The SRA was not revised until two months later in July 2003 which is the date that ESSB 5990 became effective. It is the SRA in effect in

April 2003 that applies to this case, not the changes made to the statute two months later.

State v. McClinton, 186 Wn.App 826, 347 P.3d 889 (2015) and *State v. Medina*, 180 Wash.2d 282, 287, 324 P.3d 682 (2014).

DOC further argues that even if they had an actionable duty to supervise Carlos under the felony conviction, his supervision ended on January 13, 2006, when DOC prepared their supervision closure report (which was not filed with the court until January 20, 2006), two weeks prior to the death of Lloyd Myles. (CP 377-381)

The DOC sanction order subjected Carlos to supervision by DOC from October 21, 2005 through March 5, 2006, which was the “tolling end date” set by DOC and clearly set forth on the order. (CP 362-365) Closing his supervision case in January 2006 was not only premature but not warranted. Within two (2) months of the entry of the negotiated sanction order, Carlos was arrested on two (2) separate DUI charges (within a month of each other) and failed to appear at both arraignment hearings. Carlos was under the immediate control of DOC at the time of both new arrests. In fact, as stated earlier, Carlos reported to DOC on November 26, 2005, the same day as his first DUI arrest. He reported again to DOC on December 5, 2005, the day the first warrant was issued. He reported again to DOC on December 23, 2005, the day of his second DUI arrest. He

reported again to DOC on December 29, 2005 when the second warrant was issued. When these new violations occurred, Carlos was in direct and consistent contact with DOC. He had a total of 23 contacts with DOC from November 26, 2005 to December 30, 2005, which is when he completely stopped reporting. (CP 244) DOC not only failed to arrest Carlos on all of these occasions, but it failed to report his probation violations for the two (2) new arrests which were in violation of his sentencing condition requiring him to obey all laws. CP 331. DOC attempts to absolve themselves of liability for not knowing about the two DUI charges by blaming Carlos for not self-reporting his two new arrests. This is not a valid defense. It is DOC's duty to monitor an offender's criminal status and their compliance with court ordered conditions. To rely on an offender to "self-report" their own violations is negligent in itself. A DOC officer prepared a closure report on December 6, 2005 stating that Carlos was in compliance with his conditions and that he had "no new arrests", when in fact DOC knew that was not the truth. (CP 259) The checklist completed by the DOC officer clearly states that DOC is to do a records check for new arrests. Had the officer actually check the records as required, she would have noted the first DUI of November 26, 2005 and the warrant issued for failure to appear for the first DUI entered on December 5, 2005. DOC made these false statements about Carlos's

compliance with his conditions and then prematurely closed supervision. DOC's own file notes indicate they had knowledge that Carlos was not in compliance with his conditions and that he had failed to complete his 30 days of day reporting as required by the negotiated sanction agreement. (CP 243-244 and CP 260-262) In fact, DOC ordered a warrant for Carlos's arrest because of his failure to day report but then abruptly canceled the warrant and moved to close his supervision. DOC claims they canceled the warrant and closed the case because they realized they were mistakenly supervising Carlos without statutory authority citing ESSB 5990. Again, ESSB 5990 does not apply in this case and even if it did, DOC maintained the authority to supervise Carlos for violations of his probation.

DOC had Carlos arrested under the 2004 warrant for probation violations and then sanctioned him for those violations under the DOC Negotiated Sanction and Confinement Order entered on October 21, 2005. (CP 262-265) The requirement that Carlos report daily to DOC for a period of 30 days under this sanction agreement is considered "supervision" by DOC. DOC took charge of Carlos in October 2005 under this sanction agreement and during this "take charge" relationship DOC was supervising Carlos for conditions that they themselves imposed.

DOC then states that even if they had a duty to supervise Carlos, the supervision case was closed two (2) weeks before the death of Mr. Myles so they have no liability. DOC cannot use this defense when the closure was premature, unwarranted and made upon false statements to the court. According to the sanction order, Carlos's sentence for the 2003 felony had been tolled to March 5, 2006. (CP 362-365) This date of tolling was determined by DOC. According to the sanction order, Carlos had almost a little under (2) months of supervision remaining on his sentence when the closure report was filed on January 20, 2006. DOC had a duty to supervise Carlos for any violations under the negotiated sanction agreement until that time and they had a duty to report any additional violations of his original sentencing conditions, specifically the two (2) new DUI arrests. DOC not only had a duty to supervise Carlos until March 5, 2006 but they should have tolled his misdemeanor conviction to this date as well.

2. Did the statutory changes in July 2003 prevent tolling of the conditions of Carlos's felony sentence?

Any term of community custody, community placement or community supervision "**shall**" be tolled by any period of time during which an offender has absented himself from supervision. RCW 9.94A.625(2) (2003 and 2004). This statute was still in force in 2005

when Carlos was arrested on the probation violation warrant and he entered into a negotiated sanction agreement with DOC. It is DOC's position that tolling does not apply to Carlos's felony probation because his case was automatically closed when RCW 9.94A.501 was amended in July 2003. As stated earlier, it is the version of the Sentencing Reform Act (SRA) in effect at the time of sentencing that applies in this case. *State v. McClinton*, 186 Wn.App 826, 347 P.3d 889 (2015) and *State v. Medina*, 180 Wash.2d 282, 287, 324 P.3d 682 (2014) and also RCW 9.94A.345, laws of 2002. The SRA statutes in effect on the date the court ordered Carlos sentence conditions of April 14, 2003 required those conditions to be tolled due to his abscond status, and his conditions were **tolled by DOC** until March 5, 2006 as set forth in the negotiated sanction agreement. (CP 362-365) DOC then back tracks, closes supervision of Carlos early in January 2006 and misleads the court by implying Carlos was in compliance with his conditions and required no further supervision. (CP 377). In reality, Carlos's conditions should have been tolled to a date much later than March 2006 given his new violations of the negotiated sanction agreement and his abscond status (per DOC's own records) in December 2005. (CP 243-244) Carlos was in violation of the terms of the negotiated sanction agreement in addition to his two new violations for DUI, which according to DOC they were unaware of because Carlos failed

to “self report” his two new arrests to them even though these arrests were available to DOC and, in fact, to the general public. *See Appellant’s Opening Brief Page 15.*

C. Is there sufficient evidence to bring the issue of proximate cause before a jury?

After his arrest on the 2004 warrant and upon the recommendation of DOC, Carlos was sanctioned to 10 days jail for each violation for a total of 30 days. (CP 358) Carlos was released on bail October 21, 2005 with 19 days left of his 30-day sanctioned jail time. His release was contingent upon making a payment on his LFO’s and 30 days of day reporting to DOC. Carlos was also ordered to appear in court on January 12, 2006 for review of his probation violations. (CP 358) Of course, Carlos did not appear at this hearing either. (CP 398-401) Despite his failure to appear at this hearing, DOC prepared a closure of supervision dated the following day (January 13, 2006) and filed it with the court January 20, 2006 without any mention of his failure to comply, his failures to appear or his new arrests. (CP 377-381) By filing this report, DOC implied to the court that Carlos was in complete compliance with his conditions and no further supervision was needed. Just seven (7) days later, on January 27, 2006, Carlos was charged with his third DUI charge, which included charges for Vehicular Manslaughter, Hit and Run for the death of Plaintiff’s husband.

The records themselves are sufficient evidence that Carlos would have either been in jail on January 27, 2006 or that he would have at least had alcohol restrictions in place on that date. Had DOC arrested Carlos on the two (2) warrants while he was in the continued presence and control of DOC officers, Carlos would have been sentenced to the remaining days of confinement for his original probation violation sanction (19 days). He would have also had at least two (2) additional probation violations under the negotiated sanction agreement for not obeying the law for the two (2) DUI charges, which based on the negotiated sanction agreement of October 21, 2005, DOC would have likely imposed the same recommended jail time of 10 days for each violation, for at least an additional 20 days. In addition, on February 16, 2016, Clark County Superior Court imposed an additional 30 days jail time for Carlos's original probation violations and on June 8, 2006. On June 8, 2006, Clark County District Court ultimately sentenced Carlos to 365 days each on the two (2) DUI charges, to be served consecutively. (CP 420 and CP 425) With his probation violations, his two (2) new arrests (which were also probation violations), and his history of failing to appear in court and overall lack of respect for court orders, it is reasonable for a jury to believe that Carlos would have been incarcerated on January 27, 2006 and that he would have been prevented from drinking alcohol. The above numbers do

not account for the balance remaining on Carlos's suspended sentence for the misdemeanor charge (304 days) had DOC properly tolled his misdemeanor conviction (CP 317-324) or that the violations of the sanctions administratively imposed in October 2005 could be considered additional violations as well. RCW 9.94A.634(1) and (2)(iii) (laws of 2002, App. 8, and laws of 2004, App. 33) The fact that the second DUI warrant was a no bail warrant issued on December 30, 2005 (CP 374 and CP 423) and the limitations on his alcohol consumption ordered by the court at his arraignment on 2/21/2006 for the two (2) DUI charges are also factors to consider. (CP 418 and CP 423)

For DOC to state that Carlos would have not received jail sanctions is clearly not probable given the prior sanctions DOC imposed for even lesser violations, and the additional jail time imposed by the court once Carlos was arrested and brought before the court to face all of his charges and is in itself pure speculation. RCW 9.94A.633 and RCW 9.94B.030 grant the court authority to sanction an offender for violations up to 60 days jail per violation.

Even if Carlos had been released, which is not likely, at his February 21, 2006 arraignment on the 2 DUI's charges, the court imposed significant restrictions on his alcohol use, which included antabuse monitoring and breath/urine testing. (CP 418-422 and CP 423-427). Had

Carlos been arrested by DOC at least one month earlier, these alcohol restrictions would have been in place.

The court also has the authority to impose the maximum penalty for Carlos's underlying felony offense following his failure to comply with the negotiated sanction agreement and the court may find the failure to comply as an additional violation. RCW 9.94A.634 (1) and (2)(a)(iii), Laws of 2002, provide in relevant part:

RCW 9.94A.634 Noncompliance with conditions 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)(a)(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 may be considered an additional violation.

This statute remained in effect when the negotiated sanction order was entered in October 2005 and when Carlos violated the terms of that agreement in November and December 2005. RCW 9.94A.634(1) and (2)(iii) (laws of 2004, App. 33)

DOC defends this issue by stating that even if they were "supervising" Carlos, they had no knowledge of his new arrests and that they depended upon the defendant himself to report his new arrests. See

Appellant's Opening Brief, Page 15. DOC claims there is no automatic reporting of new arrests yet the Vancouver Police Department advised DOC when Carlos was picked up on the warrant in October 2015. See *DOC chronological records dated 10/13/2005* wherein the corrections officer states DOC received VPD incident report that Carlos was driving a car with no insurance and expired tags and was arrested on warrants. (CP 254) In addition, the "M3 Review Checklist" that DOC used to determine whether Carlos was in compliance specifically asks:

6. If the offender has an "obey all laws" requirement, does record check reveal no new arrests?

Under the "Action taken" section on the checklist the DOC officer writes "No new". (CP 259) No where on this checklist does it ask if the offender has "self-reported" any new arrests or violations.

There is factual evidence that DOC's negligent supervision led to the release of Carlos. There is factual evidence that Carlos would have been in jail on January 27, 2006 based upon DOC's own imposition of 10 days jail time for each violation of his probation, for a total of 30 days under the sanction agreement entered October 2005 and the fact that he had 19 days left to serve under that agreement. There is factual evidence found in the District Court's order of a no bail warrant on December 30, 2005 for Carlos's second DUI and the conditions the Court imposed for

both of Carlos's DUI charges that he would have been in jail on January 27, 2006 or that there would have been at least significant alcohol restrictions in place preventing him from drinking and driving on January 27, 2006. There is also factual evidence found in the Superior Court's Order of February 16, 2006 (entered 2 weeks after Carlos killed Lloyd Myles) wherein the Court ordered another 30 days of jail time for probation violations of his original felony conviction. The above time does not include the impositions of additional jail time for his failure to appear on both DUI charges or for the two new arrests as violations of his conditions of probation. This evidence is sufficient to allow a jury to determine causation without resorting to speculation. "Causation evidence could include statistical evidence about what judges do in similar cases." *Estate of Bordon ex rel. Anderson v. State, Dept. of Corrections*, 122 Wash.App. 277, 95 P.3d 764 (2004). In *Bordon*, the court agreed that expert testimony is not always required. There is no better evidence than the actual conditions and sanctions the DUI Judge and the Department of Corrections actually imposed upon Carlos.

Proximate cause, including the apportionment of responsibility as to of each defendant's liability in this matter, including the liability of DOC should be decided by a jury. The issue of whether Carlos would have been in jail or what sanctions and conditions may or may not have

been imposed is a question of fact not a matter of law. “Existence of a duty is a question of law. Breach and proximate cause are generally... questions for the trier of fact.” *Hertog v. City of Seattle*, 138 Wn.2d at 275, 979 P.2d 400 (1999). Once it has been determined that a legal duty exists, it is generally the jury’s function to decide the foreseeable range of danger, thus limiting the scope of that duty. In other words, given the existence of a duty, the scope of that duty under the particular circumstances of the case is for the jury. *Briggs v. Pacific Corp*, 120 Wn.App. 319, 322-23, 85 P.3d 369 (2003).

Proximate cause involves legal cause and cause in fact. *Hertog v. City of Seattle*, 138 Wn.2d 265, 282-83, 979 P.2d 44 (1999). Cause in fact being defined as events the act produced in a direct unbroken sequence which would not have resulted had the act not occurred and legal cause as a question of how far the defendant’s responsibility should extend. The court has held that if a special relationship exists by means of “taking charge” of a third party, the ability and duty to control that third party indicates that the defendant’s action in failing to meet that duty are not too remote to impose liability upon that defendant, thus establishing legal cause. *Joyce v. Dept. of Corrections*, 116 Wn. App. 569, 592, 75 P. 3d 548 (2003) review granted 105 Wash.2d 1032, 84 P.3d 1229 (2004),

quoting Hertog, 138 Wn.2d at 284. However, the court generally reserves cause in fact questions for the jury. *Joyce*, 116 Wn. App. At 592-93.

A special “take charge” relationship did exist between Carlos and DOC under the negotiated sanction agreement until March 5, 2006 and a reasonable jury could find that legal cause existed based on the evidence offered by Myles in this matter.

The relationship between DOC and Carlos was continuing and in existence on January 27, 2006 when Mr. Myles was killed. Carlos was under the direct supervision and control of DOC until at least March 5, 2006. Carlos was not on warrant status for the violations of his felony or misdemeanor conditions nor for the negotiated sanction order when he killed Mr. Myles. In fact, DOC canceled the warrant request and erroneously closed supervision. Had DOC actually issued the warrant, there would be no duty as a result of Carlos’s abscond status. *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). DOC knew they messed up after missing Carlos’s two DUI arrests and preparing a report stating he was in compliance with this conditions on December 6, 2005. (CP 248 and CP 259) DOC then quickly closed the case claiming they never had authority to supervise Carlos in the first place. (CP 377-381 and see also CP 243)

DOC arrested and incarcerated Carlos on October 10, 2005, entered into a negotiated sanction agreement with him on October 14, 2005, ordered 30 days of day reporting which he did not comply with, and then requested a warrant be issued for his noncompliance on January 13, 2006, yet that same day they retracted the request and closed his file stating he was in compliance, had no new arrests, and was no longer subject to supervision.

VI. CONCLUSION

DOC would like the court believe that it does not matter whether they negligently supervised Carlos Villanueva-Villa because they had no statutory authority to supervise him under RCW 9.94A.501 and even if they did have such authority, they ended supervision of Carlos two weeks before Lloyd Myles was killed. The sentencing statutes do not grant DOC the authority to terminate terms of community custody imposed by the court or to ignore probation violations of offenders. DOC was supervising Carlos for violations of his 2003 misdemeanor and felony convictions under the negotiated sanction agreement filed in October 2005. When DOC learned of their negligent supervision, they abruptly closed Carlos's supervision file and mislead the court into believing Carlos was in compliance and no longer required supervision.

Summary judgment should only be granted when there are no issues of material fact. It is the trial court's discretion to determine whether disputed issues of material fact exist or whether summary judgment is appropriate as a matter of law. The trial court found that issues of material fact existed in this case, as well as evidence of negligent supervision. The trial court has not made a ruling as to DOC's liability in this matter. Whether DOC is liable to Plaintiff in this matter is ultimately up to the trial judge or jury.

Based on the above, the Court should uphold the trial court's Order Denying the State of Washington Department of Correction's Motion for Summary Judgment entered in Clark County Superior Court on December 30, 2016.

RESPECTFULLY SUBMITTED this 14th day of December, 2017.

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I hereby certify that on December 14, 2017, I served the foregoing
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by electronic mail and also by mailing a copy thereof certified by me as such, contained in a sealed envelope, with postage paid, addressed to said court/attorneys at their regular office addresses as noted above and deposited in the post office at Vancouver, Washington. Between said post office and the addresses to which said copies were mailed, there is a regular communication by US. Mail.

Dated this 14th day of December, 2017.


KAREN M. MANKER

No 49928-2-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF CORRECTIONS

Petitioner,

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

Respondent.

CLARK COUNTY CAUSE NO. 09-2-00347-9

**STATUTORY APPENDIX
TO
RESPONDENT'S OPENING BRIEF**

STATUTORY APPENDIX

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**EXCERPTS FROM
2002
REVISED CODE OF WASHINGTON**

VOLUME 1
Titles 1 through 17

2002
REVISED CODE OF WASHINGTON

Published under the authority of chapter 1.08 RCW.

Containing all laws of a general and permanent nature through the 2002 regular session, which adjourned sine die March 14, 2002.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

Juvenile offenders—Commitment: Chapter 13.04 RCW.

9.92.005 Penalty assessments in addition to fine or bail forfeiture—Crime victims compensation account. See RCW 7.68.035.

9.92.010 Punishment of felony when not fixed by statute. Every person convicted of a felony for which no maximum punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such confinement and fine and the offense shall be classified as a class B felony. [1996 c 44 § 2; 1982 1st ex.s. c 47 § 5; 1909 c 249 § 13; RRS § 2265.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Classification of crimes: Chapter 9A.20 RCW.

9.92.020 Punishment of gross misdemeanor when not fixed by statute. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine. [1982 1st ex.s. c 47 § 6; 1909 c 249 § 15; RRS § 2267.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.030 Punishment of misdemeanor when not fixed by statute. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine. [1982 1st ex.s. c 47 § 7; 1909 c 249 § 14; Code 1881 § 785; RRS § 2266.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.040 Punishment for contempt. A criminal act which at the same time constitutes contempt of court, and has been punished as such, may also be punished as a crime, but in such case the punishment for contempt may be considered in mitigation. [1909 c 249 § 21; RRS § 2273.]
Contempt: Chapter 7.21 RCW.

9.92.060 Suspending sentences. (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. [1996 c 298 § 5; 1995 1st sp.s. c 19 § 30; 1987 c 202 § 142; 1982 1st ex.s. c 47 § 8; 1982 1st ex.s. c 8 § 4; 1979 c 29 § 1; 1967 c 200 § 7; 1957 c 227 § 1; 1949 c 76 § 1; 1921 c 69 § 1; 1909 c 249 § 28; 1905 c 24 § 1; Rem. Supp. 1949 § 2280.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Intent—1987 c 202: See note following RCW 2.04.190.

Applicability—1984 c 209: See RCW 9.92.900.

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.

Severability—1967 c 200: See note following RCW 9.45.122.

Probation: RCW 9.95.200 through 9.95.250.

Probation and parole services, provision by counties: RCW 36.01.070.

Resignation

alternative to fine: RCW 9A.20.030.

condition of probation: RCW 9.95.210.

disposition when victim not found or dead: RCW 7.68.290.

9.92.062 Suspended sentence—Termination date—Application. In all cases prior to August 9, 1971 wherein the execution of sentence has been suspended pursuant to RCW 9.92.060, such person may apply to the court by which he was convicted and sentenced to establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. [1971 ex.s. c 188 § 1.]

Applicability—1984 c 209: See RCW 9.92.900.

9.92.064 Suspended sentence—Termination date, establishment—Modification of terms. In the case of a person granted a suspended sentence under the provisions of RCW 9.92.060, the court shall establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. Prior to the entry of an order formally terminating a suspended sentence the court may modify the terms and conditions of the suspension or extend the period of the suspended sentence. [1982 1st ex.s. c 47 § 9; 1971 ex.s. c 188 § 2.]

Applicability—1984 c 209: See RCW 9.92.900.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.066 Termination of suspended sentence—Restoration of civil rights. Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his civil rights. Thereupon the court may in its discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. [1971 ex.s. c 188 § 3.]

Applicability—1984 c 209: See RCW 9.92.900.

9.92.070 Payment of fine and costs in installments. Hereafter whenever any judge of any superior court or a district or municipal judge shall sentence any person to pay any fine and costs, the judge may, in the judge's discretion, provide that such fine and costs may be paid in certain designated installments, or within certain designated period or periods; and if such fine and costs shall be paid by the defendant in accordance with such order no commitment or imprisonment of the defendant shall be made for failure to pay such fine or costs. PROVIDED, that the provisions of this section shall not apply to any sentence given for the violation of any of the liquor laws of this state. [1987 c 3 § 4; 1923 c 15 § 1; RRS § 2280-1.]

Severability—1987 c 3: See note following RCW 3.46.020.

Applicability—1984 c 209: See RCW 9.92.900.

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Payment of fine and costs in installments: RCW 10.01.170

9.92.080 Sentence on two or more convictions or counts. (1) Whenever a person while under sentence of felony shall commit another felony and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms: PROVIDED, That any person granted probation pursuant to the provisions of RCW 9.95.210 and/or 9.92.060 shall not be considered to be under sentence of a felony for the purposes of this subsection.

(2) Whenever a person is convicted of two or more offenses which arise from a single act or omission, the sentences imposed therefor shall run concurrently, unless the court, in pronouncing sentence, expressly orders the service of said sentences to be consecutive.

(3) In all other cases, whenever a person is convicted of two or more offenses arising from separate and distinct acts or omissions, and not otherwise governed by the provisions of subsections (1) and (2) of this section, the sentences imposed therefor shall run consecutively, unless the court, in pronouncing the second or other subsequent sentences, expressly orders concurrent service thereof.

(4) The sentencing court may require the secretary of corrections, or his designee, to provide information to the court concerning the existence of all prior judgments against the defendant, the terms of imprisonment imposed, and the status thereof. [1981 c 136 § 35; 1971 ex.s. c 295 § 1; 1925 ex.s. c 109 § 2; 1909 c 249 § 33; RRS § 2285.]

Applicability—1984 c 209: See RCW 9.92.900.

Effective date—1981 c 136: See RCW 72.09.900.

9.92.090 Habitual criminals. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been twice convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in a state correctional facility for not less than ten years.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in a state correctional facility for life. [1992 c 7 § 18; 1909 c 249 § 34; 1903 c 86 §§ 1, 2; RRS § 2286.]

Applicability—1984 c 209: See RCW 9.92.900.

the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of *RCW 9.94A.589.

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

(5) Sentences imposed pursuant to RCW 9.94A.712 shall be served in a facility or institution operated, or utilized under contract, by the state. [2001 2nd sp.s. c 12 § 313; 2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

*Reviser's note: This RCW reference has 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—1995 c 108: See note following RCW 9.94A.030.

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

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

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

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

9.94A.340 Equal application. The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant. [1983 c 115 § 5.]

9.94A.345 Timing. Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed. [2000 c 26 § 2.]

Intent—2000 c 26: "RCW 9.94A.345 is intended to cure any ambiguity that might have led to the Washington supreme court's decision in *State v. Cruz*, Cause No. 67147-8 (October 7, 1999). A decision as to whether a prior conviction shall be included in an individual's offender score should be determined by the law in effect on the day the current offense was committed. RCW 9.94A.345 is also intended to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives." [2000 c 26 § 1.]

9.94A.401 Introduction. These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state. [1983 c 115 § 14. Formerly RCW 9.94A.430.]

9.94A.411 Evidentiary sufficiency. (1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years; and

(ii) Most members of society act as if it were no longer in existence; and

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimis Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is

(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.]

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

9.94A.555 Findings and intent—1994 c 1. (1) The people of the state of Washington find and declare that:

(a) Community protection from persistent offenders is a priority for any civilized society.

(b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.

(c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.

(d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

(a) Improve public safety by placing the most dangerous criminals in prison.

(b) Reduce the number of serious, repeat offenders by tougher sentencing.

(c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.

(d) Restore public trust in our criminal justice system by directly involving the people in the process. [1994 c 1 § 1 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.392.]

Severability—1994 c 1: "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." [1994 c 1 § 6 (Initiative Measure No. 593, approved November 2, 1993).]

Short title—1994 c 1: "This act shall be known and may be cited as the persistent offender accountability act." [1994 c 1 § 7 (Initiative Measure No. 593, approved November 2, 1993).]

Captions—1994 c 1: "Captions as used in this act do not constitute any part of the law." [1994 c 1 § 8 (Initiative Measure No. 593, approved November 2, 1993).]

9.94A.561 Offender notification and warning. A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties. [1994 c 1 § 4 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.393.]

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

9.94A.565 Governor's powers. (1) Nothing in chapter 1, Laws of 1994 shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the

offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender. [1994 c 1 § 5 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.394.]

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

9.94A.570 Persistent offenders. Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under *RCW 9.94A.728 (1), (2), (3), (4), (6), (8), or (9), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) in the case of an offender in need of emergency medical treatment; or (2) 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. [2000 c 28 § 6. Formerly RCW 9.94A.560.]

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

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

9.94A.575 Power to defer or suspend sentences abolished—Exceptions. The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.670, the special sex offender sentencing alternative, whose sentence may be suspended. [2000 c 28 § 9; 1999 c 143 § 12; 1984 c 209 § 7; 1981 c 137 § 13. Formerly RCW 9.94A.130.]

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

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

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

9.94A.580 Specialized training. The department is authorized to determine whether any person subject to the confines of a correctional facility would substantially benefit from successful participation in: (1) Literacy training, (2) employment skills training, or (3) educational efforts to identify and control sources of anger and, upon a deter-

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

sentence, sentence the offender to 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. The community custody shall begin: (a) Upon completion of the term of confinement; (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) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

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

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

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

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

(4) Except for terms of community custody under RCW 9.94A.670, 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.

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

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

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk 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.

(7) 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 any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community. [2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.]

*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.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

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

9.94A.720 Supervision of offenders. (1)(a) All offenders sentenced to terms involving community supervision, community restitution, community placement, community custody, or legal financial obligation shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

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

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

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

The conditions authorized under (c) of this subsection may be imposed by the department prior to or during an offender's community custody term. If a violation of

conditions imposed by the court or the department pursuant to RCW 9.94A.710 occurs during community custody, it shall be deemed a violation of community placement for the purposes of *RCW 9.94A.740 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in *RCW 9.94A.737. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to RCW 9.94A.710 or 9.94A.715 be continued beyond the expiration of the offender's term of community custody as authorized in RCW 9.94A.715 (3) or (5).

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

(2) No offender sentenced to terms involving community supervision, community restitution, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under *RCW 9.94A.634, 9.94A.737, and 9.94A.740. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010. [2002 c 175 § 14; 2000 c 28 § 26.]

*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—2002 c 175: See note following RCW 7.80.130.

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

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 employ-

ment 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 existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the agency administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payment.

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

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court. [2000 c 28 § 27; 1991 c 181 § 2. Formerly RCW 9.94A.135.]

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

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

9.94A.728 Earned release time. (Effective until July 1, 2004.) No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

9.94A.734 Home detention—Conditions. (1) Home detention may not be imposed for offenders convicted of:

- (a) A violent offense;
- (b) Any sex offense;
- (c) Any drug offense;
- (d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;
- (e) Assault in the third degree as defined in RCW 9A.36.031;
- (f) Assault of a child in the third degree;
- (g) Unlawful imprisonment as defined in RCW 9A.40.040; or
- (h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.401(d) or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:

- (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) 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. [2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

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

Effective date—1995 c 108: See note following RCW 9.94A.036.

9.94A.737 Community custody—Violations. (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 (2) of this section.

(2)(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.

(3) 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.

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 parolee—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.

(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. [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 prohibitions 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 perceived 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. [1998 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.

(4) The hearing procedures required under subsection (3) 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.

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations. [2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

***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—2002 c 175: See note following RCW 7.80.130.

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.

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

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

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

9.94A.740 Community placement, custody violators—Arrest, detention, financial responsibility. (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or 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. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or 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 placement or community custody status. A violation of a condition of community placement or 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.

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

(3) The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under *RCW 9.94A.737(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction. For confinement sanctions imposed under *RCW 9.94A.737(2)(a), the local correctional facility shall be financially responsible. For confinement sanctions imposed under *RCW 9.94A.737(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned release, and the local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned release. The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody, community placement, or community supervision. For confinement sanctions imposed under *RCW 9.94A.737(2) (c) or (d), the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate. If the department's use of bed space in local correctional facilities of any county for confinement sanctions imposed on offenders sentenced to a term of community custody under *RCW 9.94A.737(2) (c) or (d) exceeds the

(2) A person who commits out of the state any act which, if committed within it, would be theft and is afterward found in the state with any of the stolen property.

(3) A person who being out of the state, counsels, causes, procures, aids, or abets another to commit a crime in this state.

(4) A person who, being out of the state, abducts or kidnaps by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends, or conveys such person into this state.

(5) A person who commits an act without the state which affects persons or property within the state, which, if committed within the state, would be a crime.

(6) A person who, being out of the state, makes a statement, declaration, verification, or certificate under RCW 9A.72.085 which, if made within the state, would be perjury.

(7) A person who commits an act onboard a conveyance within the state of Washington, including the airspace over the state of Washington, that subsequently lands, docks, or stops within the state which, if committed within the state, would be a crime. [1999 c 349 § 1; 1981 c 187 § 2; 1975 1st ex.s. c 260 § 9A.04.030.]

9A.04.040 Classes of crimes. (1) An offense defined by this title or by any other statute of this state, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, gross misdemeanors, or misdemeanors.

(2) A crime is a felony if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for a term in excess of one year. A crime is a misdemeanor if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for no more than ninety days. Every other crime is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.04.040.]

9A.04.050 People capable of committing crimes—Capability of children. Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians, whose opinion shall be competent evidence upon the question of his age. [1975 1st ex.s. c 260 § 9A.04.050.]

9A.04.060 Common law to supplement statute. The provisions of the common law relating to the commission of crime and the punishment thereof, insofar as not inconsistent with the Constitution and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the courts of this state having jurisdiction of the offense. [1975 1st ex.s. c 260 § 9A.04.060.]

9A.04.070 Who amenable to criminal statutes.

Every person, regardless of whether or not he is an inhabitant of this state, may be tried and punished under the laws of this state for an offense committed by him therein, except when such offense is cognizable exclusively in the courts of the United States. [1975 1st ex.s. c 260 § 9A.04.070.]

9A.04.080 Limitation of actions. (1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

- (i) Murder;
- (ii) Homicide by abuse;
- (iii) Arson if a death results;
- (iv) Vehicular homicide;
- (v) Vehicular assault if a death results;
- (vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to three years after the victim's eighteenth birthday or up to ten years after the rape's commission, whichever is later. If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (A) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (B) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes shall not be prosecuted more than three years after the victim's eighteenth birthday or more than seven years after their commission, whichever is later: RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, *9A.44.070, 9A.44.080, 9A.44.100(1)(b), or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission: Violations of RCW 9A.82.060 or 9A.82.080.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

EXCERPTS FROM
2003 Supplement
REVISED CODE OF WASHINGTON

VOLUME 9
2003 RCW SUPPLEMENT

2002
REVISED CODE OF WASHINGTON

Published under the authority of chapter 1.08 RCW.

I. SCOPE OF SUPPLEMENT

This volume supplements the 2002 edition of The Revised Code of Washington by adding the following materials:

1. All laws of a general and permanent nature enacted in the 2003 regular session (adjourned sine die April 27, 2003), 2003 first special session (adjourned sine die June 10, 2003), and the 2003 second special session (adjourned June 11, 2003) of the fifty-eighth legislature.
2. All constitutional amendments adopted in November 2002.
3. Appropriate supplementation of the various tables and the general index.

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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 notes 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)(1)(ii))

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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.545 Community custody. Except as provided in RCW 9.94A.650, on all sentences of confinement for one year or less, in which the offender is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation to commit such a crime, 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. [2003 c 379 § 8; 2000 c 28 § 13; 1999 c 196 § 10; 1988 c 143 § 23; 1984 c 209 § 22. Formerly RCW 9.94A.383.]

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

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.]

Constraction—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. (Effective July 1, 2004.) Unless otherwise provided by a statute of this state, 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

[2003 c 53 § 59; 1984 c 209 § 23. Formerly RCW 9.94A.386.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

9.94A.605 Methamphetamine—Manufacturing with child on premises—Special allegation. (Effective July 1, 2004.) In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401 relating to manufacture of methamphetamine; or (b) possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant com-

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mitted the crime when a person under the age of eighteen was present in or upon the premises of manufacture; the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2003 c 53 § 60; 2002 c 134 § 3; 2000 c 132 § 1. Formerly RCW 9.94A.128.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 134: See note following RCW 69.50.440.

9.94A.610 Drug offenders—Notice of release or escape. (Effective July 1, 2004.) (1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community placement, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

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

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

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

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

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(2) (a) or (b) or 69.50.4011(2) (a) or (b). [2003 c 53 § 61; 1996 c 205 § 4; 1991 c 147 § 1. Formerly RCW 9.94A.154.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Obligations, counseling after discharge. (1)(a) 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 des-

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

(4) Except for terms of community custody under RCW 9.94A.670, 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.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk 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.

(7) 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 any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community. [2003 c 379 § 6; 2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.]

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

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.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

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

9.94A.720 Supervision of offenders. (1)(a) Except as provided in RCW 9.94A.501, all offenders sentenced to terms involving community supervision, community restitution, community placement, or community custody shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department.

The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed. The department may only supervise the offender's compliance with payment of legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.501.

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

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

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

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

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

(2) No offender sentenced to terms involving community supervision, community restitution, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under RCW 9.94A.634, 9.94A.737, and 9.94A.740. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010. [2003 c 379 § 7; 2002 c 175 § 14; 2000 c 28 § 26.]

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

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

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

9.94A.728 Earned release time. No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

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

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

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

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

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

(I) A sex offense;

(II) A violent offense;

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

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

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

(VI) 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

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

(C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

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

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

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

(VI) 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

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

(ii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), 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 a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

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

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

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

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

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

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu

of earned release time pursuant to subsection (1) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

(7) The governor may pardon any offender;

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

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

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement. [2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

Severability—2003 c 379: "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." [2003 c 379 § 28.]

Effective dates—2003 c 379: "(1) Sections 1 through 12, 20, and 28 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 July 1, 2003.

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Application—2002 c 50: "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

Severability—2002 c 50: "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." [2002 c 50 § 4.]

Effective date—2002 c 50: "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 14, 2002]." [2002 c 50 § 5.]

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

Severability—1996 c 199: See note following RCW 9.94A.505.

Findings and intent—**Short title**—**Severability**—**Captions not law**—1995 c 129: See notes following RCW 9.94A.510.

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

Application—1989 c 248: See note following RCW 9.92.151.

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 9.94A.030.

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

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tion. [2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Effective date—1995 c 108: See note following RCW 9.94A.030.

9.94A.750 Restitution. This section applies to offenses committed on or before July 1, 1985.

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

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

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

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confine-

ment in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

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

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

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

(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a

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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 the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

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

(5) Sentences imposed pursuant to RCW 9.94A.712 shall be served in a facility or institution operated, or utilized under contract, by the state. [2001 2nd sp.s. c 12 § 313; 2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

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—1995 c 108: See note following RCW 9.94A.030.

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

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

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

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

(2004 Ed.)

9.94A.340 Equal application. The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant. [1983 c 115 § 5.]

9.94A.345 Timing. Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed. [2000 c 26 § 2.]

Intent—2000 c 26: "RCW 9.94A.345 is intended to cure any ambiguity that might have led to the Washington supreme court's decision in *State v. Cruz*, Cause No. 67147-8 (October 7, 1999). A decision as to whether a prior conviction shall be included in an individual's offender score should be determined by the law in effect on the day the current offense was committed. RCW 9.94A.345 is also intended to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives." [2000 c 26 § 1.]

9.94A.401 Introduction. These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state. [1983 c 115 § 14. Formerly RCW 9.94A.430.]

9.94A.411 Evidentiary sufficiency. (1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) **Contrary to Legislative Intent** - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) **Antiquated Statute** - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years; and

(ii) Most members of society act as if it were no longer in existence; and

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) **De Minimis Violation** - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) **Confinement on Other Charges** - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

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screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information related to mental health services, as defined in RCW 71.05.445 and 71.34.225, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information related to mental health services as authorized by RCW 71.05.445, 71.34.225, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services. [2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 § 2; 1988

c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11. Formerly RCW 9.94A.110.]

Intent—2000 c 75: See note following RCW 71.05.445.

Severability—1999 c 197: See note following RCW 9.94A.030.

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.610.

Intent—1998 c 260: "It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing:

(1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and

(2) Community corrections officers to work with community mental health providers to support participation in treatment by mentally ill offenders on community placement or community supervision." [1998 c 260 § 1.]

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

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

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xii) RCW 9.94A.589, relating to consecutive and concurrent sentences.

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

(2004 Ed.)

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

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

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

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

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

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

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

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

(11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or community custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150. [2002 c 290 § 17; 2002 c 289 § 6; 2002 c 175 § 6; 2001 2nd sp.s. c 12 § 312; 2001 c 10 § 2; Prior: 2000 c 226 § 2; 2000 c 43 § 1; 2000 c 28 § 5; prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21;

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at the time of the offense. [2003 c 267 § 4; 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.]

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.]

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.

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

9.94A.545 Community custody. Except as provided in RCW 9.94A.650, on all sentences of confinement for one year or less, in which the offender is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation to commit such a crime, 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. [2003 c 379 § 8; 2000 c 28 § 13; 1999 c 196 § 10; 1988 c 143 § 23; 1984 c 209 § 22. Formerly RCW 9.94A.383.]

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

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. Unless otherwise provided by a statute of this state, 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

[2003 c 53 § 59; 1984 c 209 § 23. Formerly RCW 9.94A.386.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

9.94A.555 Findings and intent—1994 c 1. (1) The people of the state of Washington find and declare that:

(a) Community protection from persistent offenders is a priority for any civilized society.

(b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.

(c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.

(d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

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

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

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

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

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

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

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

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

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [1996 c 215 § 4. Prior: 1994 c 129 § 3; 1994 c 77 § 1; prior: 1992 c 186 § 7; 1992 c 45 § 2; 1990 c 3 § 121; 1989 c 30 § 1; 1985 c 346 § 1. Formerly RCW 9.94A.155.]

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Severability—1992 c 186: See note following RCW 9A.46.110.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

Index, part headings not law—Severability—Effective dates—Application—1996 c 3: See RCW 18.155.900 through 18.155.902.

9.94A.614 Prisoner escape, release, or furlough—Homicide, violent, and sex offenses—Rights of victims and witnesses. The department of corrections shall provide the victims and next of kin in the case of a homicide and witnesses involved in violent offense cases or sex offenses as defined by RCW 9.94A.030 where a judgment and sentence was entered after October 1, 1983, a statement of the rights of victims and witnesses to request and receive notification under RCW 9.94A.612 and 9.94A.616. [1989 c 30 § 2; 1985 c 346 § 2. Formerly RCW 9.94A.156.]

9.94A.616 Prisoner escape, release, or furlough—Requests for notification. Requests for notification under RCW 9.94A.612 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections. [1985 c 346 § 3. Formerly RCW 9.94A.157.]

9.94A.618 Prisoner escape, release, or furlough—Notification as additional requirement. The notification

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requirements of RCW 9.94A.612 are in addition to any requirements in RCW 43.43.745 or other law. [1985 c 346 § 4. Formerly RCW 9.94A.158.]

9.94A.620 Prisoner escape, release, or furlough—Consequences of failure to notify. Civil liability shall not 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.]

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.]

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.565.

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 sen-

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tenced. 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.]

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:

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(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

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able sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, 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.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk 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.

(7) 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 any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community. [2003 c 379 § 6; 2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.]

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

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.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

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

9.94A.720 Supervision of offenders. (1)(a) Except as provided in RCW 9.94A.501, all offenders sentenced to terms involving community supervision, community restitution, community placement, or community custody shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed. The department may only supervise the offender's compliance with payment of

legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.501.

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

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

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

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

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

(2) No offender sentenced to terms involving community supervision, community restitution, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under RCW 9.94A.634, 9.94A.737, and 9.94A.740. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010. [2003 c 379 § 7; 2002 c 175 § 14; 2000 c 28 § 26.]

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

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

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

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

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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 existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the agency administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payment.

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

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court. [2000 c 28 § 27; 1991 c 181 § 2. Formerly RCW 9.94A.135.]

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

9.94A.728 Earned release time. (Effective until July 1, 2005.) No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

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

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

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

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

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

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

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

(I) A sex offense;

(II) A violent offense;

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

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

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

(VI) 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

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

(C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

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

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

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

(VI) 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

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

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that

is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), 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 a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

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

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

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

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

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

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

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

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

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition,

tion, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

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

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

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

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

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

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

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

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

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

(7) The governor may pardon any offender;

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

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

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement. [2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

Severability—2003 c 379: "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." [2003 c 379 § 28.]

Effective dates—2003 c 379: "(1) Sections 1 through 12, 20, and 28 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 July 1, 2003.

(2004 Ed.)

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Application—2002 c 50: "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

Severability—2002 c 50: "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." [2002 c 50 § 4.]

Effective date—2002 c 50: "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 14, 2002]." [2002 c 50 § 5.]

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

Severability—1996 c 199: See note following RCW 9.94A.505.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

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

Application—1989 c 248: See note following RCW 9.92.151.

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 9.94A.030.

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

9.94A.728 Earned release time. (Effective July 1, 2005.) No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements

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under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

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

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

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

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

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

(I) A sex offense;

(II) A violent offense;

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

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

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

(VI) 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

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

(C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

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

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

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

(VI) 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

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

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), 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 a violation of, or an

attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The governor may pardon any offender;

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

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

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement. [2004 c 176 § 6; 2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Severability—2003 c 379: "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." [2003 c 379 § 28.]

Effective dates—2003 c 379: "(1) Sections 1 through 12, 20, and 28 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 July 1, 2003.

(2004 Ed.)

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to release all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Application—2002 c 50: "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

Severability—2002 c 50: "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." [2002 c 50 § 4.]

Effective date—2002 c 50: "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 14, 2002]." [2002 c 50 § 5.]

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

Severability—1996 c 199: See note following RCW 9.94A.505.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

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

Application—1989 c 248: See note following RCW 9.92.151.

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 9.94A.030.

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

9.94A.7281 Legislative declaration—Earned release time not an entitlement. The legislature declares that the changes to the maximum percentages of earned release time in chapter 379, Laws of 2003 do not create any expectation that the percentage of earned release time cannot be revised and offenders have no reason to conclude that the maximum percentage of earned release time is an entitlement or creates any liberty interest. The legislature retains full control over the right to revise the percentages of earned release time available to offenders at any time. This section applies to persons convicted on or after July 1, 2003. [2003 c 379 § 2.]

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

9.94A.7282 Earned release study. The Washington state institute for public policy shall study the results of the changes in earned release under section 1, chapter 379, Laws of 2003. The study shall determine whether the changes in earned release affect the rate of recidivism or the type of offenses committed by persons whose release dates were affected by the changes in chapter 379, Laws of 2003. The Washington state institute for public policy shall report its findings to the governor and the appropriate committees of the legislature no later than December 1, 2008. [2003 c 379 § 12.]

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

9.94A.731 Term of partial confinement, work release, home detention. (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030(31) and 9.94A.725. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [2003 c 254 § 2; 2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18. Formerly RCW 9.94A.180.]

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

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

9.94A.734 Home detention—Conditions. (1) Home detention may not be imposed for offenders convicted of:

- (a) A violent offense;
- (b) Any sex offense;
- (c) Any drug offense;
- (d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;
- (e) Assault in the third degree as defined in RCW 9A.36.031;
- (f) Assault of a child in the third degree;
- (g) Unlawful imprisonment as defined in RCW 9A.40.040; or
- (h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW

9A.52.030 or residential burglary conditioned upon the offender:

- (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) 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. [2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Effective date—1995 c 108: See note following RCW 9.94A.030.

9.94A.737 Community custody—Violations. (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 (2) of this section.

(2)(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.

(3) 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.

(4) The hearing procedures required under subsection (3) 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

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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.

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations. [2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

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

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.

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

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

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

9.94A.740 Community placement, custody violators—Arrest, detention, financial responsibility. (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or 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. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or 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 placement or community custody status. A violation of a condition of community placement or 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.

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section. The community custody inmate shall be removed from the local correctional facility, except as provided in subsection (3) of this section, not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification

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that the inmate is available for movement to a state correctional institution.

(3) The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under RCW 9.94A.737(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction. For confinement sanctions imposed under RCW 9.94A.737(2)(a), the local correctional facility shall be financially responsible. For confinement sanctions imposed under RCW 9.94A.737(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned release, and the local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned release. The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody, community placement, or community supervision. For confinement sanctions imposed under RCW 9.94A.737(2) (c) or (d), the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate. If the department's use of bed space in local correctional facilities of any county for confinement sanctions imposed on offenders sentenced to a term of community custody under RCW 9.94A.737(2) (c) or (d) exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs. [1999 c 196 § 9; 1996 c 275 § 4; 1988 c 153 § 5. Formerly RCW 9.94A.207.]

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.

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

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

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

9.94A.745 Interstate compact for adult offender supervision. The interstate compact for adult offender supervision is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I PURPOSE

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and, when

necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

1981 c 136 § 40; 1979 c 141 § 5; 1967 c 134 § 13; 1935 c 114 § 2; 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 parolee—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.

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(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 282: 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-

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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. [1998 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

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(4) A person who, being out of the state, abducts or kidnaps by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends, or conveys such person into this state.

(5) A person who commits an act without the state which affects persons or property within the state, which, if committed within the state, would be a crime.

(6) A person who, being out of the state, makes a statement, declaration, verification, or certificate under RCW 9A.72.085 which, if made within the state, would be perjury.

(7) A person who commits an act onboard a conveyance within the state of Washington, including the airspace over the state of Washington, that subsequently lands, docks, or stops within the state which, if committed within the state, would be a crime. [1999 c 349 § 1; 1981 c 187 § 2; 1975 1st ex.s. c 260 § 9A.04.030.]

9A.04.040 Classes of crimes. (1) An offense defined by this title or by any other statute of this state, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, gross misdemeanors, or misdemeanors.

(2) A crime is a felony if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for a term in excess of one year. A crime is a misdemeanor if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for no more than ninety days. Every other crime is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.04.040.]

9A.04.050 People capable of committing crimes—Capability of children. Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians, whose opinion shall be competent evidence upon the question of his age. [1975 1st ex.s. c 260 § 9A.04.050.]

9A.04.060 Common law to supplement statute. The provisions of the common law relating to the commission of crime and the punishment thereof, insofar as not inconsistent with the Constitution and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the courts of this state having jurisdiction of the offense. [1975 1st ex.s. c 260 § 9A.04.060.]

9A.04.070 Who amenable to criminal statutes. Every person, regardless of whether or not he is an inhabitant of this state, may be tried and punished under the laws of this state for an offense committed by him therein, except when such offense is cognizable exclusively in the courts of the United States. [1975 1st ex.s. c 260 § 9A.04.070.]

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9A.04.080 Limitation of actions. (1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

- (i) Murder;
- (ii) Homicide by abuse;
- (iii) Arson if a death results;
- (iv) Vehicular homicide;
- (v) Vehicular assault if a death results;
- (vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to three years after the victim's eighteenth birthday or up to ten years after the rape's commission, whichever is later. If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (A) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (B) more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes shall not be prosecuted more than three years after the victim's eighteenth birthday or more than seven years after their commission, whichever is later: RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, *9A.44.070, 9A.44.080, 9A.44.100(1)(b), or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission: Violations of RCW 9A.82.060 or 9A.82.080.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(h) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

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**EXCERPTS FROM
2005 Supplement
REVISED CODE OF WASHINGTON**

VOLUME 9
2005 RCW SUPPLEMENT

2004
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I. SCOPE OF SUPPLEMENT

This volume supplements the 2004 edition of The Revised Code of Washington by adding the following materials:

1. All laws of a general and permanent nature enacted in the 2005 regular session (adjourned sine die April 24, 2005) of the fifty-ninth legislature.
2. Appropriate supplementation of the various tables and the general index.

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waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(10) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(11) Costs of examinations and preparing treatment plans under subsections (2) and (3) of this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350, [2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

Application—2005 c 460: "This act applies to sentences imposed on or after October 1, 2005." [2005 c 460 § 2.]

Effective date—2005 c 460: "This act takes effect October 1, 2005." [2005 c 460 § 3.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

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

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

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

9.94A.712 Sentencing of nonpersistent offenders. (Expires July 1, 2006.) (1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

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

(ii) 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

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

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(3)(b), and is convicted of any sex offense which was committed after September 1, 2001.

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

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

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

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

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

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

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

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435. [2005 c 436 § 2; 2004 c 176 § 3. Prior: 2001 2nd sp.s. c 12 § 303.]

Expiration date—2005 c 436: See note following RCW 9.94A.030.

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

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.

9.94A.737 Community custody—Violations. (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 (2) of this section.

(2)(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 depart-

[2005 RCW Supp.—page 61]

ment 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.

(3) 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.

(4) The hearing procedures required under subsection (3) 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.

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

(6) 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 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.

(7) 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. [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.]

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.

In an effort to reduce prison and jail populations, many states are increasing their utilization of electronic monitoring. However, Washington state's use of electronic monitoring has been relatively stagnant.

The intent of this act is to determine what electronic monitoring policies and programs have been implemented in the other forty-nine states, in order that Washington state can learn from the other states' experiences." [2005 c 435 § 1.]

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

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.

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

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

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

9.94A.74504 Supervision of transferred offenders—Processing transfer applications. (1) The department may supervise nonfelony offenders transferred to Washington pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and shall supervise these offenders according to the provisions of this chapter.

(2) The department shall process applications for interstate transfer of felony and nonfelony offenders pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and may charge offenders a reasonable fee for processing the application. [2005 c 400 § 1.]

**EXCERPTS FROM
2017
REVISED CODE OF WASHINGTON**

RCW 9.94A.345**Timing.**

Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.

[2000 c 26 § 2.]

NOTES:

Intent—2000 c 26: "RCW 9.94A.345 is intended to cure any ambiguity that might have led to the Washington supreme court's decision in *State v. Cruz*, Cause No. 67147-8 (October 7, 1999). A decision as to whether a prior conviction shall be included in an individual's offender score should be determined by the law in effect on the day the current offense was committed. RCW 9.94A.345 is also intended to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives." [2000 c 26 § 1.]

RCW 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 by the department. 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, local law enforcement, or local prosecution for consideration of new charges. The community corrections officer's report shall serve as the notice that the department will hold the offender for not more than three days from the time of such notice for the new crime, except if the offender's underlying offense is a felony offense listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest or until a prosecuting attorney charges the offender with a crime, whichever occurs first. This does not affect the department's authority under RCW 9.94A.737.

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.

[2012 1st sp.s. c 6 § 1; 2009 c 390 § 1; 1984 c 209 § 11. Formerly RCW 9.94A.195.]

NOTES:

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: "Sections 1, 3 through 9, and 11 through 14 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 June 1, 2012." [2012 1st sp.s. c 6 § 15.]

Application—2012 1st sp.s. c 6: "This act applies retroactively and prospectively regardless of the date of an offender's underlying offense." [2012 1st sp.s. c 6 § 12.]

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

RCW 9.94A.737**Community custody—Violations—Disciplinary proceedings—Structured violation process—Sanctions.**

(1) If an offender is accused of violating any condition or requirement of community custody, the department shall address the violation behavior. The department may hold offender disciplinary proceedings not subject to chapter 34.05 RCW. The department shall notify the offender in writing of the violation process.

(2)(a) The offender's violation behavior shall determine the sanction the department imposes. The department shall adopt rules creating a structured violation process that includes presumptive sanctions, aggravating and mitigating factors, and definitions for low level violations and high level violations.

(b) After an offender has committed and been sanctioned for five low level violations, all subsequent violations committed by that offender shall automatically be considered high level violations.

(c)(i) The department must define aggravating factors that indicate the offender may present a current and ongoing foreseeable risk and which therefore, elevate an offender's behavior to a high level violation process.

(ii) The state and its officers, agents, and employees may not be held criminally or civilly liable for a decision to elevate or not to elevate an offender's behavior to a high level violation process under this subsection unless the state or its officers, agents, and employees acted with reckless disregard.

(3) The department may intervene when an offender commits a low level violation as follows:

(a) For a first low level violation, the department may sanction the offender to one or more nonconfinement sanctions.

(b) For a second or subsequent low level violation, the department may sanction the offender to not more than three days in total confinement.

(i) The department shall develop rules to ensure that each offender subject to a short-term confinement sanction is provided the opportunity to respond to the alleged violation prior to imposition of total confinement.

(ii) The offender may appeal the short-term confinement sanction to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The offender's appeal must be in writing and hand-delivered to department staff, or postmarked, within seven days after the sanction is imposed.

(4) If an offender is accused of committing a high level violation, the department may sanction the offender to not more than thirty days in total confinement per hearing.

(a) The offender is entitled to a hearing prior to the imposition of sanctions; and

(b) The offender may be held in total confinement pending a sanction hearing. Prehearing time served must be credited to the offender's sanction time.

(5) If the offender's underlying offense is one of the following felonies and the violation behavior constitutes a new misdemeanor, gross misdemeanor or felony, the offender shall be held in total confinement pending a sanction hearing, and until the sanction expires or until if a prosecuting attorney files new charges against the offender, whichever occurs first:

(a) Assault in the first degree, as defined in RCW 9A.36.011;

(b) Assault of a child in the first degree, as defined in RCW 9A.36.120;

(c) Assault of a child in the second degree, as defined in RCW 9A.36.130;

(d) Burglary in the first degree, as defined in RCW 9A.52.020;

(e) Child molestation in the first degree, as defined in RCW 9A.44.083;

(f) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;

(g) Dealing in depictions of a minor engaged in sexually explicit conduct, as defined in RCW 9.68A.050;

(h) Homicide by abuse, as defined in RCW 9A.32.055;

(i) Indecent liberties with forcible compulsion, as defined in RCW 9A.44.100(1)(a);

(j) Indecent liberties with a person capable of consent, as defined in RCW 9A.44.100(1)(b);

- (k) Kidnapping in the first degree, as defined in RCW 9A.40.020;
- (l) Murder in the first degree, as defined in RCW 9A.32.030;
- (m) Murder in the second degree, as defined in RCW 9A.32.050;
- (n) Promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101;
- (o) Rape in the first degree, as defined in RCW 9A.44.040;
- (p) Rape in the second degree, as defined in RCW 9A.44.050;
- (q) Rape of a child in the first degree, as defined in RCW 9A.44.073;
- (r) Rape of a child in the second degree, as defined in RCW 9A.44.076;
- (s) Robbery in the first degree, as defined in RCW 9A.56.200;
- (t) Sexual exploitation of a minor, as defined in RCW 9.68A.040; or
- (u) Vehicular homicide while under the influence of intoxicating liquor or any drug, as defined in RCW 46.61.520(1)(a).

(6) The department shall adopt rules creating hearing procedures for high level violations. The hearings are offender disciplinary proceedings and are not subject to chapter 34.05 RCW. The procedures shall include the following:

(a) The department shall provide the offender with written notice of the alleged violation and the evidence supporting it. The notice must 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;

(b) Unless the offender waives the right to a hearing, the department shall hold a hearing, and shall record it electronically. For offenders not in total confinement, the department shall hold a hearing within fifteen business days, but not less than twenty-four hours, after written notice of the alleged violation. For offenders in total confinement, the department shall hold a hearing within five business days, but not less than twenty-four hours, after written notice of the alleged violation;

(c) 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; (v) question witnesses who appear and testify; and (vi) receive a written summary of the reasons for the hearing officer's decision; and

(d) The sanction shall take effect if affirmed by the hearing officer. The offender may appeal the sanction to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The offender's appeal must be in writing and hand-delivered to department staff, or postmarked, within seven days after the sanction was imposed. The appeals panel shall affirm, reverse, modify, vacate, or remand based on its findings. 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, then the panel will reverse, vacate, remand, or modify the sanction.

(7) For purposes of this section, the hearings officer may not rely on unconfirmed or unconfirmable allegations to find that the offender violated a condition.

(8) Hearing officers shall report through a chain of command separate from that of community corrections officers.

[2012 1st sp.s. c 6 § 7; 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.]

NOTES:

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

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 repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—2007 c 483: See RCW 72.78.005.

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.

In an effort to reduce prison and jail populations, many states are increasing their utilization of electronic monitoring. However, Washington state's use of electronic monitoring has been relatively stagnate.

The intent of this act is to determine what electronic monitoring policies and programs have been implemented in the other forty-nine states, in order that Washington state can learn from the other states' experiences." [2005 c 435 § 1.]

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

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.

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

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

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

RCW 9.94B.040**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.634, 9.94A.200.]

NOTES:

***Reviser's note:** RCW 71.05.630 was repealed by 2013 c 200 § 34, effective July 1, 2014.

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.

RCW 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 responsibility for supervision of defendants pursuant to RCW 9.94A.501 and * 9.94A.5011.

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

(3) 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.

(4) The state of Washington, the department of corrections and its employees, community corrections officers, any county providing supervision services 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.

(5)(a) If a misdemeanor probationer requests permission to travel or transfer to another state, the assigned probation officer employed or contracted for by the county shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the probation officer shall:

- (i) Notify the department of corrections of the probationer's request;
 - (ii) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;
 - (iii) Notify the probationer of the fee due to the department of corrections for processing an application under the compact;
 - (iv) Cease supervision of the probationer while another state supervises the probationer pursuant to the compact;
 - (v) Resume supervision if the probationer returns to this state before the term of probation expires.
- (b) The probationer shall receive credit for time served while being supervised by another state.

[2011 1st sp.s. c 40 § 6. Prior: 2005 c 400 § 2; 2005 c 362 § 3; 1996 c 298 § 1.]

NOTES:

***Reviser's note:** RCW 9.94A.5011 expired August 1, 2014.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Application—Effective date—2005 c 400: See notes following RCW 9.94A.74504.

Effective date—2005 c 362: See note following RCW 9.94A.501.

RCW 9.95.220**Violation of probation—Rearrest—Imprisonment.**

(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.

[2009 c 375 § 11; 1957 c 227 § 5. Prior: 1939 c 125 § 1, part; RRS § 10249-5c.]

NOTES:

Application—2009 c 375: See note following RCW 9.94A.501.

Severability—1939 c 125: See note following RCW 9.95.200.

RCW 9A.04.060**Common law to supplement statute.**

The provisions of the common law relating to the commission of crime and the punishment thereof, insofar as not inconsistent with the Constitution and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the courts of this state having jurisdiction of the offense.

[1975 1st ex.s. c 260 § 9A.04.060.]

HOUSE BILL 2712
2002 REGULAR SESSION

HOUSE BILL 2712

State of Washington 57th Legislature 2002 Regular Session

By Representative Sommers; by request of Department of Corrections

Read first time 01/24/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to supervision of offenders; amending RCW
2 9.94A.545, 9.94A.631, 9.94A.637, 9.94A.650, 9.94A.690, 9.94A.700,
3 9.94A.705, 9.94A.715, 9.94A.720, 9.94A.740, 9.94A.750, 9.94A.760,
4 9.92.060, 9.95.204, 9.95.210, 72.04A.090, 4.56.100, 72.65.080, and
5 41.06.380; reenacting and amending RCW 9.94A.753; and providing an
6 effective date.

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

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

10 (1) On all sentences of confinement for one year or less, the court
11 may impose up to one year of community custody, subject to conditions
12 and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An
13 offender shall be on community custody as of the date of sentencing.
14 However, during the time for which the offender is in total or partial
15 confinement pursuant to the sentence or a violation of the sentence,
16 the period of community custody shall toll.

17 (2) The department may eliminate or terminate any term of community
18 custody imposed by the court under this section, or any term of
19 community supervision imposed by the court under prior law, for an

1 offender who is classified at the lowest risk level pursuant to a risk
2 assessment by the department. No liability may attach to the state,
3 the department, or any department employee based on the determination
4 to classify an offender at the lowest risk level, or to eliminate or
5 terminate a term of community custody or community supervision, in the
6 absence of intentional misconduct. The decision to eliminate or
7 terminate community custody or community supervision shall not affect
8 the superior court's jurisdiction over the offender.

9 **Sec. 2.** RCW 9.94A.631 and 1984 c 209 s 11 are each amended to read
10 as follows:

11 If an offender violates any condition or requirement of a sentence,
12 a community corrections officer may arrest or cause the arrest of the
13 offender without a warrant, pending a determination by the court. If
14 there is reasonable cause to believe that an offender has violated a
15 condition or requirement of the sentence, an offender may be required
16 to submit to a search and seizure of the offender's person, residence,
17 automobile, or other personal property. A community corrections
18 officer may also arrest an offender for any crime committed in his or
19 her presence. The facts and circumstances of the conduct of the
20 offender shall be reported by the community corrections officer, with
21 recommendations, to the court.

22 If a community corrections officer arrests or causes the arrest of
23 an offender under this section, the offender shall be confined and
24 detained in the county jail of the county in which the offender was
25 taken into custody, and the sheriff of that county shall receive and
26 keep in the county jail, where room is available, all prisoners
27 delivered to the jail by the community corrections officer, and such
28 offenders shall not be released from custody on bail or personal
29 recognizance, except upon approval of the court, pursuant to a written
30 order.

31 Community corrections officers have no obligation to arrest and
32 detain an offender, or to report a violation to the superior court,
33 where the department has eliminated or terminated supervision pursuant
34 to RCW 9.94A.545, 9.94A.650, 9.94A.690, 9.94A.700, 9.94A.705, and
35 9.94A.715.

36 **Sec. 3.** RCW 9.94A.637 and 2000 c 119 s 3 are each amended to read
37 as follows:

1 (1) When an offender has completed the requirements of the sentence
2 while under the custody or supervision of the department, the secretary
3 of the department or the secretary's designee shall notify the
4 sentencing court, which shall discharge the offender and provide the
5 offender with a certificate of discharge. The department has no
6 obligation to provide notice under this section if the offender is no
7 longer under the custody or supervision of the department at the time
8 the offender completes the requirements of the sentence.

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

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

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

34 (5) Upon release from custody, the offender may apply to the
35 department for counseling and help in adjusting to the community. This
36 voluntary help may be provided for up to one year following the release
37 from custody.

1 **Sec. 4.** RCW 9.94A.650 and 2000 c 28 s 18 are each amended to read
2 as follows:

3 (1) This section applies to offenders who have never been
4 previously convicted of a felony in this state, federal court, or
5 another state, and who have never participated in a program of deferred
6 prosecution for a felony, and who are convicted of a felony that is
7 not:

8 (a) Classified as a violent offense or a sex offense under this
9 chapter;

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

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

16 (d) The selling for profit of any controlled substance or
17 counterfeit substance classified in Schedule I, RCW 69.50.204, except
18 leaves and flowering tops of marihuana.

19 (2) In sentencing a first-time offender the court may waive the
20 imposition of a sentence within the standard sentence range and impose
21 a sentence which may include up to ninety days of confinement in a
22 facility operated or utilized under contract by the county and a
23 requirement that the offender refrain from committing new offenses.
24 The sentence may also include a term of community supervision or
25 community custody as specified in subsection (3) of this section,
26 which, in addition to crime-related prohibitions, may include
27 requirements that the offender perform any one or more of the
28 following:

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

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

33 (c) Pursue a prescribed, secular course of study or vocational
34 training;

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

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

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

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

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

10 (b) For crimes committed on or after July 1, 2000, up to one year
11 of community custody unless treatment is ordered, in which case the
12 period of community custody may include up to the period of treatment,
13 but shall not exceed two years. Any term of community custody imposed
14 under this section is subject to conditions and sanctions as authorized
15 in this section and in RCW 9.94A.715 (2) and (3).

16 (4) The department shall discharge from community supervision any
17 offender sentenced under this section before July 25, 1999, who has
18 served at least one year of community supervision and has completed any
19 treatment ordered by the court.

20 (5) The department may eliminate or terminate any term of community
21 custody or community supervision imposed by the court under this
22 section for an offender who is classified at the lowest risk level
23 pursuant to a risk assessment by the department. No liability may
24 attach to the state, the department, or any department employee based
25 on the determination to classify an offender at the lowest risk level,
26 or to eliminate or terminate a term of community custody or community
27 supervision, in the absence of intentional misconduct. The decision to
28 eliminate or terminate community custody or community supervision shall
29 not affect the superior court's jurisdiction over the offender.

30 **Sec. 5.** RCW 9.94A.690 and 2000 c 28 s 21 are each amended to read
31 as follows:

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

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

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

1 (iii) Is not currently subject to a sentence for, or being
2 prosecuted for, a violation of the uniform controlled substances act or
3 a criminal solicitation to commit such a violation under chapter 9A.28
4 or 69.50 RCW.

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

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

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

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

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

38 (6) The department may eliminate or terminate any term of community
39 custody imposed by the court under this section for an offender who is

1 classified at the lowest risk level pursuant to a risk assessment by
2 the department. No liability may attach to the state, the department,
3 or any department employee based on the determination to classify an
4 offender at the lowest risk level, or to eliminate or terminate a term
5 of community custody, in the absence of intentional misconduct. The
6 decision to eliminate or terminate community custody shall not affect
7 the superior court's jurisdiction over the offender.

8 **Sec. 6.** RCW 9.94A.700 and 2000 c 28 s 22 are each amended to read
9 as follows:

10 When a court sentences an offender to a term of total confinement
11 in the custody of the department for any of the offenses specified in
12 this section, the court shall also sentence the offender to a term of
13 community placement as provided in this section.

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

16 (a) A sex offense or a serious violent offense committed after July
17 1, 1988, but before July 1, 1990; or

18 (b) An offense committed on or after July 1, 1988, but before July
19 25, 1999, that is:

20 (i) Assault in the second degree;

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

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

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

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

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

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

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

37 (3) The community placement ordered under this section shall begin
38 either upon completion of the term of confinement or at such time as

1 the offender is transferred to community custody in lieu of earned
2 release. When the court sentences an offender to the statutory maximum
3 sentence then the community placement portion of the sentence shall
4 consist entirely of the community custody to which the offender may
5 become eligible. Any period of community custody actually served shall
6 be credited against the community placement portion of the sentence.

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

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

12 (b) The offender shall work at department-approved education,
13 employment, or community service, or any combination thereof;

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

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

18 (e) The residence location and living arrangements shall be subject
19 to the prior approval of the department during the period of community
20 placement.

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

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

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

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

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

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

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

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

1 (8) The department may eliminate or terminate any term of community
2 placement or community custody imposed by the court under this section
3 for an offender who is classified at the lowest risk level pursuant to
4 a risk assessment by the department. No liability may attach to the
5 state, the department, or any department employee based on the
6 determination to classify an offender at the lowest risk level, or to
7 eliminate or terminate a term of community placement or community
8 custody, in the absence of intentional misconduct. The decision to
9 eliminate or terminate community placement or community custody shall
10 not affect the superior court's jurisdiction over the offender.

11 **Sec. 7.** RCW 9.94A.705 and 2000 c 28 s 23 are each amended to read
12 as follows:

13 (1) Except for persons sentenced under RCW 9.94A.700(2) or
14 9.94A.710, when a court sentences a person to a term of total
15 confinement to the custody of the department for a violent offense, any
16 crime against persons under RCW 9.94A.411(2), or any felony offense
17 under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660,
18 committed on or after July 25, 1999, but before July 1, 2000, the court
19 shall in addition to the other terms of the sentence, sentence the
20 offender to a one-year term of community placement beginning either
21 upon completion of the term of confinement or at such time as the
22 offender is transferred to community custody in lieu of earned release
23 in accordance with RCW 9.94A.728 (1) and (2). When the court sentences
24 the offender under this section to the statutory maximum period of
25 confinement, then the community placement portion of the sentence shall
26 consist entirely of such community custody to which the offender may
27 become eligible, in accordance with RCW 9.94A.728 (1) and (2). Any
28 period of community custody actually served shall be credited against
29 the community placement portion of the sentence.

30 (2) The department may eliminate or terminate any term of community
31 placement or community custody imposed by the court under this section
32 for an offender who is classified at the lowest risk level pursuant to
33 a risk assessment by the department. No liability may attach to the
34 state, the department, or any department employee based on the
35 determination to classify an offender at the lowest risk level, or to
36 eliminate or terminate a term of community placement or community
37 custody, in the absence of intentional misconduct. The decision to

1 eliminate or terminate community placement or community custody shall
2 not affect the superior court's jurisdiction over the offender.

3 **Sec. 8.** RCW 9.94A.715 and 2001 2nd sp.s. c 12 s 302 are each
4 amended to read as follows:

5 (1) When a court sentences a person to the custody of the
6 department for a sex offense not sentenced under RCW 9.94A.712, a
7 violent offense, any crime against persons under RCW 9.94A.411(2), or
8 a felony offense under chapter 69.50 or 69.52 RCW, committed on or
9 after July 1, 2000, the court shall in addition to the other terms of
10 the sentence, sentence the offender to community custody for the
11 community custody range established under RCW 9.94A.850 or up to the
12 period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2),
13 whichever is longer. The community custody shall begin: (a) Upon
14 completion of the term of confinement; (b) at such time as the offender
15 is transferred to community custody in lieu of earned release in
16 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
17 offenders sentenced under RCW 9.94A.660, upon failure to complete or
18 administrative termination from the special drug offender sentencing
19 alternative program.

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

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

37 (c) The department may not impose conditions that are contrary to
38 those ordered by the court and may not contravene or decrease court

1 imposed conditions except as authorized under subsection (8) of this
2 section. The department shall notify the offender in writing of any
3 such conditions or modifications. In setting, modifying, and enforcing
4 conditions of community custody, the department shall be deemed to be
5 performing a quasi-judicial function.

6 (3) If an offender violates conditions imposed by the court or the
7 department pursuant to this section during community custody, the
8 department may transfer the offender to a more restrictive confinement
9 status and impose other available sanctions as provided in RCW
10 9.94A.737 and 9.94A.740.

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

16 (5) At any time prior to the completion or termination of a sex
17 offender's term of community custody, if the court finds that public
18 safety would be enhanced, the court may impose and enforce an order
19 extending any or all of the conditions imposed pursuant to this section
20 for a period up to the maximum allowable sentence for the crime as it
21 is classified in chapter 9A.20 RCW, regardless of the expiration of the
22 offender's term of community custody. If a violation of a condition
23 extended under this subsection occurs after the expiration of the
24 offender's term of community custody, it shall be deemed a violation of
25 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
26 contempt of court as provided for in RCW 7.21.040. If the court
27 extends a condition beyond the expiration of the term of community
28 custody, the department is not responsible for supervision of the
29 offender's compliance with the condition.

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

36 (7) By the close of the next business day after receiving notice of
37 a condition imposed or modified by the department, an offender may
38 request an administrative review under rules adopted by the department.
39 The condition shall remain in effect unless the reviewing officer finds

1 that it is not reasonably related to any of the following: (a) The
2 crime of conviction; (b) the offender's risk of reoffending; or (c) the
3 safety of the community.

4 (8) Except for terms of community custody imposed under RCW
5 9.94A.660 and 9.94A.670 or imposed upon a person convicted of a sex
6 offense, the department may eliminate or terminate any term of
7 community custody imposed by the court under this section for an
8 offender who is classified at the lowest risk level pursuant to a risk
9 assessment by the department. No liability may attach to the state,
10 the department, or any department employee based on the determination
11 to classify an offender at the lowest risk level, or to eliminate or
12 terminate a term of community custody, in the absence of intentional
13 misconduct. The decision to eliminate or terminate community custody
14 shall not affect the superior court's jurisdiction over the offender.

15 **Sec. 9.** RCW 9.94A.720 and 2000 c 28 s 26 are each amended to read
16 as follows:

17 (1)(a) Except as provided in RCW 9.94A.545(2), 9.94A.650(5),
18 9.94A.690(6), 9.94A.700(8), 9.94A.705(2), and 9.94A.715(8), all
19 offenders sentenced to terms involving community supervision,
20 ~~((community service,))~~ community placement, or community custody ~~((or~~
21 ~~legal financial obligation))~~ shall be under the supervision of the
22 department and shall follow explicitly the instructions and conditions
23 of the department. The department may require an offender to perform
24 affirmative acts it deems appropriate to monitor compliance with the
25 conditions of the sentence imposed.

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

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

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

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

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

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

31 **Sec. 10.** RCW 9.94A.740 and 1999 c 196 s 9 are each amended to read
32 as follows:

33 (1) The secretary may issue warrants for the arrest of any offender
34 who violates a condition of community placement or community custody.
35 The arrest warrants shall authorize any law enforcement or peace
36 officer or community corrections officer of this state or any other
37 state where such offender may be located, to arrest the offender and
38 place him or her in total confinement pending disposition of the

1 alleged violation. The department shall compensate the local
2 jurisdiction at the office of financial management's adjudicated rate,
3 in accordance with RCW 70.48.440. A community corrections officer, if
4 he or she has reasonable cause to believe an offender in community
5 placement or community custody has violated a condition of community
6 placement or community custody, may suspend the person's community
7 placement or community custody status and arrest or cause the arrest
8 and detention in total confinement of the offender, pending the
9 determination of the secretary as to whether the violation has
10 occurred. The community corrections officer shall report to the
11 secretary all facts and circumstances and the reasons for the action of
12 suspending community placement or community custody status. A
13 violation of a condition of community placement or community custody
14 shall be deemed a violation of the sentence for purposes of RCW
15 9.94A.631. The authority granted to community corrections officers
16 under this section shall be in addition to that set forth in RCW
17 9.94A.631. Community corrections officers have no obligation to arrest
18 and detain an offender, or to report a violation to the superior court,
19 where the department has eliminated or terminated supervision pursuant
20 to RCW 9.94A.545, 9.94A.650, 9.94A.690, 9.94A.700, 9.94A.705, and
21 9.94A.715.

22 (2) Inmates, as defined in RCW 72.09.015, who have been transferred
23 to community custody and who are detained in a local correctional
24 facility are the financial responsibility of the department of
25 corrections, except as provided in subsection (3) of this section. The
26 community custody inmate shall be removed from the local correctional
27 facility, except as provided in subsection (3) of this section, not
28 later than eight days, excluding weekends and holidays, following
29 admittance to the local correctional facility and notification that the
30 inmate is available for movement to a state correctional institution.

31 (3) The department may negotiate with local correctional
32 authorities for an additional period of detention; however, sex
33 offenders sanctioned for community custody violations under RCW
34 9.94A.737(2) to a term of confinement shall remain in the local
35 correctional facility for the complete term of the sanction. For
36 confinement sanctions imposed under RCW 9.94A.737(2)(a), the local
37 correctional facility shall be financially responsible. For
38 confinement sanctions imposed under RCW 9.94A.737(2)(b), the department
39 of corrections shall be financially responsible for that portion of the

1 sanction served during the time in which the sex offender is on
2 community custody in lieu of earned release, and the local correctional
3 facility shall be financially responsible for that portion of the
4 sanction served by the sex offender after the time in which the sex
5 offender is on community custody in lieu of earned release. The
6 department, in consultation with the Washington association of sheriffs
7 and police chiefs and those counties in which the sheriff does not
8 operate a correctional facility, shall establish a methodology for
9 determining the department's local correctional facilities bed
10 utilization rate, for each county in calendar year 1998, for offenders
11 being held for violations of conditions of community custody, community
12 placement, or community supervision. For confinement sanctions imposed
13 under RCW 9.94A.737(2) (c) or (d), the local correctional facility
14 shall continue to be financially responsible to the extent of the
15 calendar year 1998 bed utilization rate. If the department's use of
16 bed space in local correctional facilities of any county for
17 confinement sanctions imposed on offenders sentenced to a term of
18 community custody under RCW 9.94A.737(2) (c) or (d) exceeds the 1998
19 bed utilization rate for the county, the department shall compensate
20 the county for the excess use at the per diem rate equal to the lowest
21 rate charged by the county under its contract with a municipal
22 government during the year in which the use occurs.

23 **Sec. 11.** RCW 9.94A.750 and 2000 c 28 s 32 are each amended to read
24 as follows:

25 This section applies to offenses committed on or before July 1,
26 1985.

27 (1) If restitution is ordered, the court shall determine the amount
28 of restitution due at the sentencing hearing or within one hundred
29 eighty days. The court may continue the hearing beyond the one hundred
30 eighty days for good cause. The court shall then set a minimum monthly
31 payment that the offender is required to make towards the restitution
32 that is ordered. The court should take into consideration the total
33 amount of the restitution owed, the offender's present, past, and
34 future ability to pay, as well as any assets that the offender may
35 have.

36 (2) During the period of supervision, the community corrections
37 officer may examine the offender to determine if there has been a
38 change in circumstances that warrants an amendment of the monthly

1 payment schedule. The community corrections officer may recommend a
2 change to the schedule of payment and shall inform the court of the
3 recommended change and the reasons for the change. The sentencing
4 court may then reset the monthly minimum payments based on the report
5 from the community corrections officer of the change in circumstances.

6 (3) Except as provided in subsection (6) of this section,
7 restitution ordered by a court pursuant to a criminal conviction shall
8 be based on easily ascertainable damages for injury to or loss of
9 property, actual expenses incurred for treatment for injury to persons,
10 and lost wages resulting from injury. Restitution shall not include
11 reimbursement for damages for mental anguish, pain and suffering, or
12 other intangible losses, but may include the costs of counseling
13 reasonably related to the offense. The amount of restitution shall not
14 exceed double the amount of the offender's gain or the victim's loss
15 from the commission of the offense.

16 (4) For the purposes of this section, the offender shall remain
17 under the court's jurisdiction for a term of ten years following the
18 offender's release from total confinement or ten years subsequent to
19 the entry of the judgment and sentence, whichever period is longer.
20 Prior to the expiration of the initial ten-year period, the superior
21 court may extend jurisdiction under the criminal judgment an additional
22 ten years for payment of restitution. (~~(If jurisdiction under the~~
23 ~~criminal judgment is extended, the department is not responsible for~~
24 ~~supervision of the offender during the subsequent period.)) The
25 portion of the sentence concerning restitution may be modified as to
26 amount, terms and conditions during either the initial ten-year period
27 or subsequent ten-year period if the criminal judgment is extended,
28 regardless of the expiration of the offender's term of community
29 supervision and regardless of the statutory maximum sentence for the
30 crime. The court may not reduce the total amount of restitution
31 ordered because the offender may lack the ability to pay the total
32 amount. The offender's compliance with the restitution (~~(shall))~~ may
33 be supervised by the department during any term of community placement,
34 community custody, or community supervision. The department is not
35 responsible for supervision of the offender during any subsequent
36 period of time the offender remains under the court's jurisdiction.~~

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

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

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

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

1 (8) This section does not limit civil remedies or defenses
2 available to the victim or offender including support enforcement
3 remedies for support ordered under subsection (6) of this section for
4 a child born as a result of a rape of a child victim. The court shall
5 identify in the judgment and sentence the victim or victims entitled to
6 restitution and what amount is due each victim. The state or victim
7 may enforce the court-ordered restitution in the same manner as a
8 judgment in a civil action. Restitution collected through civil
9 enforcement must be paid through the registry of the court and must be
10 distributed proportionately according to each victim's loss when there
11 is more than one victim.

12 **Sec. 12.** RCW 9.94A.753 and 2000 c 226 s 3 and 2000 c 28 s 33 are
13 each reenacted and amended to read as follows:

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

15 (1) When restitution is ordered, the court shall determine the
16 amount of restitution due at the sentencing hearing or within one
17 hundred eighty days except as provided in subsection (7) of this
18 section. 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
38 reimbursement for damages for mental anguish, pain and suffering, or

1 other intangible losses, but may include the costs of counseling
2 reasonably related to the offense. The amount of restitution shall not
3 exceed double the amount of the offender's gain or the victim's loss
4 from the commission of the crime.

5 (4) For the purposes of this section, for an offense committed
6 prior to July 1, 2000, the offender shall remain under the court's
7 jurisdiction for a term of ten years following the offender's release
8 from total confinement or ten years subsequent to the entry of the
9 judgment and sentence, whichever period ends later. Prior to the
10 expiration of the initial ten-year period, the superior court may
11 extend jurisdiction under the criminal judgment an additional ten years
12 for payment of restitution. For an offense committed on or after July
13 1, 2000, the offender shall remain under the court's jurisdiction until
14 the obligation is completely satisfied, regardless of the statutory
15 maximum for the crime. The portion of the sentence concerning
16 restitution may be modified as to amount, terms, and conditions during
17 any period of time the offender remains under the court's jurisdiction,
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~~) may
23 be supervised by the department (~~for ten years following the entry of~~
24 ~~the judgment and sentence or ten years following the offender's release~~
25 ~~from total confinement~~) during any term of community placement,
26 community custody, or community supervision. The department is not
27 responsible for supervision of the offender during any subsequent
28 period of time the offender remains under the court's jurisdiction.

29 (5) Restitution shall be ordered whenever the offender is convicted
30 of an offense which results in injury to any person or damage to or
31 loss of property or as provided in subsection (6) of this section
32 unless extraordinary circumstances exist which make restitution
33 inappropriate in the court's judgment and the court sets forth such
34 circumstances in the record. In addition, restitution shall be ordered
35 to pay for an injury, loss, or damage if the offender pleads guilty to
36 a lesser offense or fewer offenses and agrees with the prosecutor's
37 recommendation that the offender be required to pay restitution to a
38 victim of an offense or offenses which are not prosecuted pursuant to
39 a plea agreement.

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

27 (7) Regardless of the provisions of subsections (1) through (6) of
28 this section, the court shall order restitution in all cases where the
29 victim is entitled to benefits under the crime victims' compensation
30 act, chapter 7.68 RCW. If the court does not order restitution and the
31 victim of the crime has been determined to be entitled to benefits
32 under the crime victims' compensation act, the department of labor and
33 industries, as administrator of the crime victims' compensation
34 program, may petition the court within one year of entry of the
35 judgment and sentence for entry of a restitution order. Upon receipt
36 of a petition from the department of labor and industries, the court
37 shall hold a restitution hearing and shall enter a restitution order.

38 (8) In addition to any sentence that may be imposed, an offender
39 who has been found guilty of an offense involving fraud or other

1 deceptive practice or an organization which has been found guilty of
2 any such offense may be ordered by the sentencing court to give notice
3 of the conviction to the class of persons or to the sector of the
4 public affected by the conviction or financially interested in the
5 subject matter of the offense by mail, by advertising in designated
6 areas or through designated media, or by other appropriate means.

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

18 **Sec. 13.** RCW 9.94A.760 and 2001 c 10 s 3 are each amended to read
19 as follows:

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

35 (2) If the court determines that the offender, at the time of
36 sentencing, has the means to pay for the cost of incarceration, the
37 court may require the offender to pay for the cost of incarceration at
38 a rate of fifty dollars per day of incarceration. Payment of other

1 court-ordered financial obligations, including all legal financial
2 obligations and costs of supervision shall take precedence over the
3 payment of the cost of incarceration ordered by the court. All funds
4 recovered from offenders for the cost of incarceration in the county
5 jail shall be remitted to the county and the costs of incarceration in
6 a prison shall be remitted to the department.

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

17 If a judgment and sentence or subsequent order to pay does not
18 include the statement that a notice of payroll deduction may be issued
19 or other income-withholding action may be taken if a monthly legal
20 financial obligation payment is past due, the department may serve a
21 notice on the offender stating such requirements and authorizations.
22 Service shall be by personal service or any form of mail requiring a
23 return receipt.

24 (4) Independent of the department, the party or entity to whom the
25 legal financial obligation is owed shall have the authority to use any
26 other remedies available to the party or entity to collect the legal
27 financial obligation. These remedies include enforcement in the same
28 manner as a judgment in a civil action by the party or entity to whom
29 the legal financial obligation is owed. Restitution collected through
30 civil enforcement must be paid through the registry of the court and
31 must be distributed proportionately according to each victim's loss
32 when there is more than one victim. The judgment and sentence shall
33 identify the party or entity to whom restitution is owed so that the
34 state, party, or entity may enforce the judgment. If restitution is
35 ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of
36 rape of a child or a victim's child born from the rape, the Washington
37 state child support registry shall be identified as the party to whom
38 payments must be made. Restitution obligations arising from the rape
39 of a child in the first, second, or third degree that result in the

1 pregnancy of the victim may be enforced for the time periods provided
2 under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial
3 obligations for an offense committed prior to July 1, 2000, may be
4 enforced at any time during the ten-year period following the
5 offender's release from total confinement or within ten years of entry
6 of the judgment and sentence, whichever period ends later. Prior to
7 the expiration of the initial ten-year period, the superior court may
8 extend the criminal judgment an additional ten years for payment of
9 legal financial obligations including crime victims' assessments. All
10 other legal financial obligations for an offense committed on or after
11 July 1, 2000, may be enforced at any time the offender remains under
12 the court's jurisdiction. For an offense committed on or after July 1,
13 2000, the court shall retain jurisdiction over the offender, for
14 purposes of the offender's compliance with payment of the legal
15 financial obligations, until the obligation is completely satisfied,
16 regardless of the statutory maximum for the crime. The department of
17 corrections (~~shall~~) may supervise the offender's compliance with
18 payment of the legal financial obligations (~~for ten years following~~
19 ~~the entry of the judgment and sentence, or ten years following the~~
20 ~~offender's release from total confinement, whichever period ends~~
21 ~~later~~) during any term of community placement, community custody, or
22 community supervision. The department is not responsible for
23 supervision of the offender during any subsequent period of time the
24 offender remains under the court's jurisdiction.

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

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

37 (7) During the period of supervision, the department may make a
38 recommendation to the court that the offender's monthly payment
39 schedule be modified so as to reflect a change in financial

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

12 (8) After the judgment and sentence or payment order is entered,
13 the department is authorized, for any period of supervision, to collect
14 the legal financial obligation from the offender. Any amount collected
15 by the department shall be remitted daily to the county clerk for the
16 purpose of disbursements. The department is authorized to accept
17 credit cards as payment for a legal financial obligation, and any costs
18 incurred related to accepting credit card payments shall be the
19 responsibility of the offender.

20 (9) The department or any obligee of the legal financial obligation
21 may seek a mandatory wage assignment for the purposes of obtaining
22 satisfaction for the legal financial obligation pursuant to RCW
23 9.94A.7701.

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

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

32 (12) The department may arrange for the collection of unpaid legal
33 financial obligations through the county clerk, or through another
34 entity if the clerk does not assume responsibility for collection. The
35 costs for collection services shall be paid by the offender.

36 (13) Nothing in this chapter makes the department, the state, or
37 any of its employees, agents, or other persons acting on their behalf
38 liable under any circumstances for the payment of these legal financial
39 obligations.

1 **Sec. 14.** RCW 9.92.060 and 1996 c 298 s 5 are each amended to read
2 as follows:

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

14 (2) As a condition to suspension of sentence, the superior court
15 shall require the payment of the penalty assessment required by RCW
16 7.68.035. In addition, the superior court may require the convicted
17 person to make such monetary payments, on such terms as the superior
18 court deems appropriate under the circumstances, as are necessary: (a)
19 To comply with any order of the court for the payment of family
20 support; (b) to make restitution to any person or persons who may have
21 suffered loss or damage by reason of the commission of the crime in
22 question or when the offender pleads guilty to a lesser offense or
23 fewer offenses and agrees with the prosecutor's recommendation that the
24 offender be required to pay restitution to a victim of an offense or
25 offenses which are not prosecuted pursuant to a plea agreement; (c) to
26 pay any fine imposed and not suspended and the court or other costs
27 incurred in the prosecution of the case, including reimbursement of the
28 state for costs of extradition if return to this state by extradition
29 was required; and (d) to contribute to a county or interlocal drug
30 fund.

31 (3) As a condition of the suspended sentence, the superior court
32 may order the probationer to report to the secretary of corrections or
33 such officer as the secretary may designate and as a condition of the
34 probation to follow the instructions of the secretary. If the county
35 legislative authority has elected to assume responsibility for the
36 supervision of superior court misdemeanor probationers within its
37 jurisdiction, the superior court misdemeanor probationer shall report
38 to a probation officer employed or contracted for by the county. In
39 cases where a superior court misdemeanor probationer is sentenced in

1 one county, but resides within another county, there must be provisions
2 for the probationer to report to the agency having supervision
3 responsibility for the probationer's county of residence.

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

12 (5) In cases where the court has ordered supervision as a condition
13 of probation, the department of corrections may eliminate or terminate
14 the supervision, including supervision for payment of restitution or
15 legal financial obligations, if the department has classified the
16 offender at the lowest risk level pursuant to a risk assessment. No
17 liability shall attach to the state, the department, or any department
18 employee based on the determination to classify an offender at the
19 lowest risk level, or to eliminate or terminate supervision, in the
20 absence of intentional misconduct. The decision to eliminate or
21 terminate supervision shall not affect the superior court's
22 jurisdiction over the offender.

23 **Sec. 15.** RCW 9.95.204 and 1996 c 298 s 1 are each amended to read
24 as follows:

25 (1) When a superior court places a defendant convicted of a
26 misdemeanor or gross misdemeanor on probation and orders supervision
27 under RCW 9.92.060 or 9.95.210, the department of corrections has
28 initial responsibility for supervision of that defendant. The
29 department may eliminate or terminate supervision, including
30 supervision for payment of restitution or legal financial obligations,
31 if the department has classified the offender at the lowest risk level
32 pursuant to a risk assessment. No liability shall attach to the state,
33 the department, or any department employee based on the determination
34 to classify an offender at the lowest risk level, or to eliminate or
35 terminate supervision, in the absence of intentional misconduct. The
36 decision to eliminate or terminate supervision shall not affect the
37 superior court's jurisdiction over the offender.

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

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

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

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

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

20 (c) The county's agreement to comply with the minimum standards for
21 classification and supervision of offenders as required under RCW
22 9.95.206;

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

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

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

32 (g) The county's agreement to account to the department of
33 corrections for the expenditure of all funds received under the
34 contract and to submit to audits for compliance with the supervision
35 standards and financial requirements of this section;

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

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

1 (5) If the contract between the county and the department of
2 corrections is terminated for any reason, the department of corrections
3 shall reassume responsibility for supervision of superior court
4 misdemeanor probationers within that county, unless the department has
5 terminated supervision pursuant to subsection (1) of this section. In
6 such an event, the department of corrections retains any and all rights
7 and remedies available by law and under the contract.

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

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

29 **Sec. 16.** RCW 9.95.210 and 1996 c 298 s 3 are each amended to read
30 as follows:

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

36 (2) In the order granting probation and as a condition thereof, the
37 superior court may in its discretion imprison the defendant in the
38 county jail for a period not exceeding one year and may fine the

1 defendant any sum not exceeding the statutory limit for the offense
2 committed, and court costs. As a condition of probation, the superior
3 court shall require the payment of the penalty assessment required by
4 RCW 7.68.035. The superior court may also require the defendant to
5 make such monetary payments, on such terms as it deems appropriate
6 under the circumstances, as are necessary: (a) To comply with any
7 order of the court for the payment of family support; (b) to make
8 restitution to any person or persons who may have suffered loss or
9 damage by reason of the commission of the crime in question or when the
10 offender pleads guilty to a lesser offense or fewer offenses and agrees
11 with the prosecutor's recommendation that the offender be required to
12 pay restitution to a victim of an offense or offenses which are not
13 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be
14 imposed and court costs, including reimbursement of the state for costs
15 of extradition if return to this state by extradition was required; (d)
16 following consideration of the financial condition of the person
17 subject to possible electronic monitoring, to pay for the costs of
18 electronic monitoring if that monitoring was required by the court as
19 a condition of release from custody or as a condition of probation; (e)
20 to contribute to a county or interlocal drug fund; and (f) to make
21 restitution to a public agency for the costs of an emergency response
22 under RCW 38.52.430, and may require bonds for the faithful observance
23 of any and all conditions imposed in the probation.

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

35 (4) In granting probation, the superior court may order the
36 probationer to report to the secretary of corrections or such officer
37 as the secretary may designate and as a condition of the probation to
38 follow the instructions of the secretary. If the county legislative
39 authority has elected to assume responsibility for the supervision of

1 superior court misdemeanor probationers within its jurisdiction, the
2 superior court misdemeanor probationer shall report to a probation
3 officer employed or contracted for by the county. In cases where a
4 superior court misdemeanor probationer is sentenced in one county, but
5 resides within another county, there must be provisions for the
6 probationer to report to the agency having supervision responsibility
7 for the probationer's county of residence.

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

21 (6) The department may eliminate or terminate supervision,
22 including supervision for payment of restitution or legal financial
23 obligations, if the department has classified the probationer at the
24 lowest risk level pursuant to a risk assessment. No liability shall
25 attach to the state, the department, or any department employee based
26 on the determination to classify a probationer at the lowest risk
27 level, or to eliminate or terminate supervision, in the absence of
28 intentional misconduct. The decision to eliminate or terminate
29 supervision shall not affect the superior court's jurisdiction over the
30 probationer.

31 **Sec. 17.** RCW 72.04A.090 and 1981 c 136 s 84 are each amended to
32 read as follows:

33 Whenever a parolee breaches a condition or conditions under which
34 he or she was granted parole, or violates any law of the state or rules
35 and regulations of the indeterminate sentence review board (~~(of prison~~
36 ~~terms and paroles)~~), any (~~(probation and parole)~~) community corrections
37 officer may arrest, or cause the arrest and suspension of parole of,
38 such parolee without a warrant, pending a determination by the board.

1 The facts and circumstances of such conduct of the parolee shall be
2 reported by the (~~(probation and parole)~~) community corrections officer,
3 with recommendations, to the indeterminate sentence review board (~~(of~~
4 ~~prison terms and paroles)~~), who may order the revocation or suspension
5 of parole, revise or modify the conditions of parole or take such other
6 action as may be deemed appropriate in accordance with RCW 9.95.120.
7 The indeterminate sentence review board (~~(of prison terms and~~
8 ~~paroles)~~), after consultation with the secretary of corrections, shall
9 make all rules and regulations concerning procedural matters, which
10 shall include the time when state (~~(probation and parole)~~) community
11 corrections officers shall file with the board reports required by this
12 section, procedures pertaining thereto and the filing of such
13 information as may be necessary to enable the indeterminate sentence
14 review board (~~(of prison terms and paroles)~~) to perform its functions
15 under this section.

16 The (~~(probation and parole)~~) community corrections officers shall
17 have like authority and power regarding the arrest and detention of a
18 probationer who has breached a condition or conditions under which he
19 or she was granted probation by the superior court, or violates any law
20 of the state, pending a determination by the superior court. Community
21 corrections officers have no obligation to arrest and detain a
22 probationer, or to report a violation to the superior court, where the
23 department has eliminated or terminated supervision pursuant to RCW
24 9.92.060, 9.95.204, or 9.95.210.

25 In the event a (~~(probation and parole)~~) community corrections
26 officer shall arrest or cause the arrest and suspension of parole of a
27 parolee or probationer in accordance with the provisions of this
28 section, such parolee or probationer shall be confined and detained in
29 the county jail of the county in which the parolee or probationer was
30 taken into custody, and the sheriff of such county shall receive and
31 keep in the county jail, where room is available, all prisoners
32 delivered thereto by the (~~(probation and parole)~~) community corrections
33 officer, and such parolees shall not be released from custody on bail
34 or personal recognizance, except upon approval of the indeterminate
35 sentence review board (~~(of prison terms and paroles)~~) and the issuance
36 by the board of an order of reinstatement on parole on the same or
37 modified conditions of parole.

1 **Sec. 18.** RCW 4.56.100 and 1997 c 358 s 4 are each amended to read
2 as follows:

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

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

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

32 **Sec. 19.** RCW 72.65.080 and 1982 1st ex.s. c 48 s 18 are each
33 amended to read as follows:

34 The secretary may enter into contracts with ~~((the appropriate~~
35 ~~authorities)) other governmental agencies or private organizations for~~
36 ~~the ((payment of the cost of feeding and lodging and other expenses of~~
37 ~~housing)) management and operation of work release ((participants))~~
38 programs. Such contracts may include any other terms and conditions as

1 may be appropriate for the implementation of the work release program.
2 In addition the secretary is authorized to acquire, by lease or
3 contract, appropriate facilities for the housing of work release
4 participants and providing for their subsistence and supervision. Such
5 work release participants placed in leased or contracted facilities
6 shall be required to reimburse the department the per capita cost of
7 subsistence and lodging in accordance with the provisions and in the
8 priority established by RCW 72.65.050(2). The location of such
9 facilities shall be subject to the zoning laws of the city or county in
10 which they may be situated.

11 Any work release program in existence on the effective date of this
12 act shall be managed and operated pursuant to a contract with a private
13 organization under this section.

14 **Sec. 20.** RCW 41.06.380 and 1979 ex.s. c 46 s 2 are each amended to
15 read as follows:

16 Nothing contained in this chapter shall prohibit any department, as
17 defined in RCW 41.06.020, from purchasing services by contract with
18 individuals or business entities if such services were regularly
19 purchased by valid contract by such department prior to April 23, 1979:
20 PROVIDED, That no such contract may be executed or renewed if it would
21 have the effect of terminating classified employees or classified
22 employee positions existing at the time of the execution or renewal of
23 the contract, except as authorized by RCW 72.65.080.

24 NEW SECTION. **Sec. 21.** This act takes effect July 1, 2002. The
25 legislature intends that sections 1 through 18 of this act apply
26 retroactively to sentences imposed and offenders on community custody,
27 community placement, community supervision, or probation before, on, or
28 after July 1, 2002.

--- END ---

Judiciary Committee

HB 2712

Title: An act relating to supervision of offenders.

Brief Description: Changing provisions relating to supervision of offenders.

Sponsors: Representative Sommers; by request of Department of Corrections.

Brief Summary of Bill

- Authorizes the Department of Corrections (DOC) to terminate a court-ordered term of community custody, community placement, or community supervision for offenders classified at the lowest risk level.
- Provides immunity to the DOC for offender risk classifications and for decisions to terminate an offender's term of community custody, community placement, or community supervision.
- Terminates the DOC's responsibility for supervising offenders for legal financial obligations and provides that they may supervise for financial obligations while the offender is under DOC supervision for community custody, community placement, or community supervision.
- Provides that a community corrections officer has no duty to arrest an offender for a violation of a sentence condition if the DOC has eliminated or terminated supervision of the offender.
- Requires current work release programs to be managed and operated by contract with private organizations.

Hearing Date: 2/14/02

Staff: Edie Adams (786-7180).

Background:

Offender Accountability Act

In 1999, the Legislature enacted the Offender Accountability Act (OAA), which represents a

significant change in the manner of supervision of offenders by the DOC. The key components of the OAA are: focusing resources on high-risk offenders through the use of a risk assessment system; holding offenders accountable by providing the DOC more authority to establish and modify conditions of supervision and administratively sanction violations; and developing a community-oriented approach to offender management.

Under the OAA, certain offenses require a mandatory term of community custody within a community custody range. Conditions of community custody and levels of supervision are based on risk. The DOC may establish and modify additional conditions and impose sanctions for a violation of a term of community custody. In addition, the DOC may discharge an offender from community custody, after any period of earned release, depending on the performance of the offender and risk to the community.

One of the major components of the OAA is the requirement that the DOC concentrate supervision resources on the offenders with the highest level of risk according to a risk assessment. The DOC has developed a risk management identification system that considers both an offender's risk of re-offense and the nature of the harm done by the offender in determining how to rank the offender. The goal of the risk assessment is to identify the offenders that pose the greatest risk to the community, as opposed to just looking at those who are most likely to re-offend. The DOC's risk management identification system classifies offenders into four levels, Risk Management A-D, with level A being the highest level of risk.

Community Custody, Community Placement, and Community Supervision

When an offender is convicted of a crime, the court may, and sometimes must, sentence the offender to a term of community custody, community supervision, or community placement, depending on the type of offense committed and when the offense was committed.

For offenses committed on or after July 1, 2000, a mandatory term of community custody, within the community custody range, is required for sex offenses, violent offenses, crimes against persons, and drug offenses not sentenced under the Drug Offender Sentencing Alternative. The community custody ranges start at 9-12 months for drug offenses and go up to 3-4 years for sex offenses. In addition, the court may impose a term of community custody on sentences of confinement for one year or less, on sentences for unranked felonies, or for sentences under the first-time offender waiver.

For crimes committed prior to July 1, 2000, various terms of either community custody, community placement or community supervision are required, depending on the type of crime committed and when the crime was committed.

All offenders sentenced to terms of community custody, community placement, or community supervision are under the supervision of the DOC.

Legal Financial Obligations and Restitution

The DOC is responsible for supervising offenders who are under a sentence of legal financial obligations or restitution orders. The DOC must supervise an offender's compliance with

payment of the legal financial obligation for 10 years following conviction or 10 years after the offender is released from total confinement, regardless of the statutory maximum for the crime. The DOC is not responsible for supervising the offender during any subsequent period of time that the offender is under the court's supervision for payment of financial obligations or restitution.

Community Corrections Officers

A community corrections officer may arrest an offender under the following circumstances: if the offender violates any condition or requirement of a sentence; if an arrest warrant has been issued against the offender for a violation of community custody or community placement; or if a probationer has violated a condition of probation. The corrections officer must report the violation to the court.

Work Release

The DOC operates work release programs at various locations around the state. The DOC contracts with a number of private sector businesses to operate all but one of these programs. The work release program allows inmates to leave the prison facility for a specified number of hours each day to work or otherwise re-establish themselves in the community. The inmates return to the facility for the rest of the day.

Miscellaneous

When an offender has completed all requirements of a sentence, the sentencing court must discharge the offender, which has the effect of restoring all civil rights lost by the offender. The DOC is required to notify the sentencing court when an offender has completed the requirements of a sentence.

When a court enters a judgment for the payment of money, the court clerk must note satisfaction of the judgment whenever the clerk receives the payment or a third party files a satisfaction of judgment. In the case of criminal legal financial obligations, the clerk may note satisfaction whenever the clerk's records indicate payment in full or as directed by the court. The DOC is required to file a satisfaction of judgment with the court clerk for an offender under a legal financial obligation who does not pay money directly through the court.

Summary of Bill:

A number of changes are made with respect to the DOC's supervision of offenders under a term of community custody, community placement, community supervision, or legal financial obligations. In addition, the bill provides that corrections officers do not have a duty to arrest and detain offenders if the DOC is no longer supervising the offender and requires work release programs to be managed and operated by contract with private organizations.

Community Custody, Community Placement, and Community Supervision

The DOC may terminate or eliminate a term of community custody, community placement,

or community supervision imposed by a court, or any supervision ordered by a court as a condition of probation, if the offender is classified at the lowest risk level under a risk assessment by the DOC and the supervision was imposed under certain sentencing provisions. The DOC may not terminate a term of community custody imposed under a DOSA or SSOSA sentence or for a sex offense.

The state, the DOC, and DOC employees are not liable for the classification of an offender at the lowest risk level or for the decision to eliminate or terminate a term of community custody, community placement, or community supervision, unless there was intentional misconduct.

The decision to eliminate or terminate a term of community custody, community placement, or community supervision does not affect the court's jurisdiction over the offender.

Legal Financial Obligations and Restitution

The DOC's duty to supervise all offenders sentenced to terms involving community service, legal financial obligations, or restitution is removed. The DOC may continue to supervise for restitution or legal financial obligations during any term of community custody, community placement, or community supervision, but is not responsible for supervision during any subsequent period of time the offender remains under the court's jurisdiction.

Community Corrections Officers

If the DOC has eliminated or terminated supervision of an offender as the result of ranking the offender at the lowest risk level, a community corrections officer has no duty to arrest and detain the offender, or report a violation to the court, if the offender is violating a condition or requirement of the sentence, if an arrest warrant for such a violation has been issued, or whenever a parolee breaches a condition of parole.

Work Release

The secretary of the DOC may enter into private contracts with governmental agencies or private organizations for the management and operation of work release programs. Every work release program that exists on the effective date of this act must be managed and operated pursuant to a contract with a private organization. An amendment is made to the state civil service law attempting to exempt work release program contracts from the prohibition on entering into a contract that would have the effect of terminating classified employee positions.

Miscellaneous

The DOC has no obligation to notify the sentencing court when an offender has completed the requirements of a sentence if the offender is not under DOC supervision at the time the sentence requirements are completed.

The requirement that the DOC file a satisfaction of judgment with the court clerk for an offender under a legal financial obligation is removed.

The act applies retroactively to all sentences imposed and offenders on community custody, community placement, or community supervision prior to the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2002.

ESSB 5990
FINAL BILL REPORT

FINAL BILL REPORT

ESSB 5990

C 379 L 03

Synopsis as Enacted

Brief Description: Changing times and supervision standards for release of offenders.

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

Senate Committee on Children & Family Services & Corrections
House Committee on Appropriations

- **Background:** "Earned release" means the amount of time by which an offender can reduce the amount of time he or she is confined. It is earned by successful participation in required work, education, treatment, and other programming and by appropriate behavior. It can be lost in a disciplinary hearing for infractions or by a refusal to participate in required programming. Earned release time is not discretionary for the Department of Corrections (DOC). Maximum amounts of earned release are set in statute. Under current law, offenders convicted of a serious violent offense or a sex offense that is a class A felony are eligible for a maximum of 15 percent earned release time. All other offenders are eligible for a maximum of 33 percent earned release time.

Community custody, community placement, and community supervision are terms to describe different kinds of supervision in the community. Whether a sentence includes a requirement for supervision in the community depends on the crime. In 1999, the Offender Accountability Act (OAA) expanded the list of crimes subject to supervision in the community to all sex offenses, violent offenses, crimes against persons, and drug offenses. Offenders convicted of other crimes are not supervised after release from prison. The OAA also eliminated the use of community placement and community supervision for crimes committed after July 1, 2000. Community custody applies to these crimes. Under community custody, DOC has the opportunity to require conditions of supervision in addition to those required by the court.

In the case of felony offenders sentenced to jail, the current law permits the court to add a term of community custody up to one year onto any sentence, including those that would not be eligible for community custody if the offender were sentenced to prison.

The OAA also required DOC to use a validated risk assessment tool and to move from a policy of trying to spread supervision resources equally over all offenders to a policy of focusing resources on the offenders in the highest risk management categories. The current practice sorts offenders into four risk management categories from "A" (greatest risk) to "D" (least risk). Under the OAA, most DOC supervision resources go to offenders in risk management categories "A" and "B," who may also have an interdisciplinary team. Offenders in risk management categories "C" and "D" usually check in with their community corrections officer electronically. Those offenders classified as "C" or "D" who are

sentenced to court-ordered treatment under the special sex offender sentencing alternative, the drug offender sentencing alternative, and the drug sentencing reform act of 2001 are supervised with regard to their court ordered treatment. Otherwise, offenders classified as "D" are actively supervised only if a violation of a release condition is brought to the attention of the department.

No changes to the maximum terms of earned release or to which offenders will be supervised in the community may be made without statutory change by the Legislature.

Under current law, DOC both bills offenders with outstanding legal financial obligations and engages in collections efforts related to those obligations. Some county clerks have engaged in active collections efforts with a significant degree of success, resulting in increased victim restitution payments and in increases in the funds to both state and counties. During the Legal Financial Obligations Work Group in the 2002 interim, the county clerks raised the possibility of taking a more comprehensive role in collections of legal financial obligations.

Summary: Offenders convicted of serious violent offenses or sex offenses that are class A felonies committed after July 1, 2003 are able to earn a maximum of 10 percent earned release time.

Offenders convicted of offenses that are not subject to supervision in the community and offenders convicted of drug offenses may earn a maximum of 50 percent earned release time if they are classified in one of the two lowest risk categories. This increase does not apply to any offender with any conviction for any of the following:

- sex offense;
- violent offense;
- crime against persons;
- residential burglary;
- felony domestic violence;
- methamphetamine manufacture, delivery or possession with intent to deliver;
- delivering a controlled substance to a minor.

The increase to a maximum of 50 percent earned release applies retroactively and prospectively and expires July 1, 2010. No offender convicted after July 1, 2003 has a reasonable expectation or enforceable interest in his or her earned release time under the due process clause and the Legislature retains the right to change the maximum amount of earned release for which offenders are eligible.

For offenders sentenced to less than one year (a jail sentence), courts may impose a term of community custody up to one year only if the crime for which the offender is convicted is a sex offense, violent offense, crime against a person, a drug offense, or if the offender was sentenced under the first time offender waiver.

DOC must perform a risk assessment on offenders with sentences to community custody, community placement, or community supervision and classify the offender into one of four risk management classifications, from highest to lowest. DOC must supervise those offenders classified in the two highest risk management classifications and is not authorized to supervise

those offenders in the other risk management classifications unless the offender has any conviction for any of the following:

- sex offense;
- violent offense;
- crime against persons;
- residential burglary;
- felony domestic violence;
- methamphetamine manufacture, delivery or possession with intent to deliver; or
- delivering a controlled substance to a minor.

Or the offender:

- is required to participate in drug treatment or sex offender treatment;
- has been transferred to Washington under the Interstate Compact for Adult Offender Supervision; or
- was sentenced under the first time offender waiver.

The change to which offenders are supervised applies retroactively and prospectively and expires July 1, 2010.

The Washington State Institute for Public Policy must study whether the changes to earned release impact the rate of recidivism or the types of crimes committed and report to the Legislature by December 1, 2009.

The Drug Sentence Reform Act is implemented July 1, 2003.

The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. DOC must collect or arrange for the collection of legal financial obligations while an offender is incarcerated, while the department is authorized to supervise the offender in the community, or if a county clerk does not engage in collections. When the offender completes his or her term of supervision, or if the offender is not subject to a supervision order in the community, DOC must notify the Administrative Office of the Courts (AOC) of the termination of the offender's supervision and provide information to enable the county clerk to collect the remaining legal financial obligations. AOC will provide the billing services and maintain its existing statewide database of offender payments.

When an offender with outstanding legal financial obligations has completed the non-financial requirements of his or her sentence, DOC will provide the county clerk with a notice that the offender has completed all the non-financial requirements of the sentence. When the offender completes payment of the legal financial obligations, the county clerk will notify the court, including the notice from DOC. The court then issues a certificate of discharge for the offense to the offender.

The Washington Association of County Officials, in consultation with the county clerks, will determine a funding formula for allocation of moneys appropriated for the purposes of collecting legal financial obligations and will report to the appropriate committee of the Legislature and the Administrative Office of the Courts by September 1, 2003. The

association also reports annually beginning December 1, 2004, to the appropriate committee of the Legislature on the amounts of legal financial obligations collected by the county clerks.

The Administrative Office of the Courts shall distribute the funds appropriated to the counties for purpose of the county clerk collection budgets by October 1, 2003 without deducting any portion for administrative costs. The Administrative Office of the Courts may expend those funds appropriated by the Legislature for legal financial obligation billing.

The state, DOC, the counties, and their employees are not liable for the acts of an offender who is not under supervision by DOC, but remains under the jurisdiction of the court for payment of legal financial obligations.

DOC may make mandatory deductions for legal financial obligations, including victims compensation, restitution, and cost of incarceration from any worker's compensation benefit an offender receives. Monthly payment schedules are not a limit on civil collections.

Votes on Final Passage:

Senate	41	8	
House	84	13	(House amended)
Senate	43	4	(Senate concurred)

Effective: July 1, 2003 (Sections 1-12, 20 and 28)
October 1, 2003 (Sections 13-19 and 21-27)

GREENEN & GREENEN, PLLC

December 14, 2017 - 11:08 AM

Transmittal Information

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Appellate Court Case Title: State of Washington, Dept. of Corrections, Appellant v. M. Gwyn Myles, Respondent
Superior Court Case Number: 09-2-00347-9

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