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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

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May 05, 2015
Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA HERSHAW,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:



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TABLE OF CONTENTS

	Page No.
I. <u>IDENTITY OF RESPONDENT</u>	1
II. <u>RELIEF REQUESTED</u>	1
III. <u>ISSUES</u>	1
IV. <u>STATEMENT OF THE CASE</u>	1
V. <u>ARGUMENT</u>	4
A. <u>The Joint Recommendation Has The Effect Of A Stipulation</u>	4
B. <u>The SRA Has Been Amended to Strike Additional Procedural Requirements Before Entry Of Mental Health Conditions In A Criminal Sentence</u>	5
C. <u>If The Court Decides There Is Error, The Parties Should Be Permitted The Remedy Of A Rehearing To Achieve The Mutually Agreed Upon Outcome</u>	11
VI. <u>CONCLUSION</u>	13

TABLE OF AUTHORITIES

State Cases

Page No.

Detention of D.W. v. Dep't of Social and Health Services,
181 Wn.2d 201, 332 P.3d 423 (2014)9

In re Marriage of Morris, 176 Wn. App. 893, 309 P.3d 767 (2013)4

In re Rainey, 168 Wn.2d 367, 229 P.3d 6886 (2010) 11

State v. Brooks, 142 Wn. App. 842, 176 P.3d 549 (2008)5

State v. Henderson, 114 Wn.2d 867, 792 P.2d 514 (1990)4

State v. Locke, 175 Wn. App. 779, 307 P.3d 771 (2013)6

State v. Lopez, 142 Wn. App. 341, 174 P.3d 1216 (2007)5

State v. Jones, 118 Wn. App. 199, 76 P.3d 258 (2003)5

State v. Sims, 171 Wn.2d 436, 256 P.3d 285 (2011) 12

State v. Studd, 137 Wn.2d 533, 973 P.2d 1049 (1999)4

Statutes

Page No.

Laws of 2008 c 231 § 255, 6, 8
Former RCW 9.94A.5055, 6, 8, 10
RCW 9.94B.0807

Secondary Authority

15A Wash. Prac. § 88.4 4

Brandon Friedman, The Rise (and Fall) of the VA Backlog,
Time (June 3, 2013) ([http://nation.time.com/2013/06/03/
the-rise-and-fall-of-the-va-backlog/](http://nation.time.com/2013/06/03/the-rise-and-fall-of-the-va-backlog/)) 10

Lauren E. Glaze, Doris J. James, Mental Health Problems
of Prison and Jail Inmates, Bureau of Justice Statistics
(September 6, 2006) ([http://www.bjs.gov/
index.cfm?ty=pbdetail&iid=789](http://www.bjs.gov/index.cfm?ty=pbdetail&iid=789)) 9

Alana Horowitz, Mental Illness Soars in Prisons,
Jails While Inmates Suffer, The Huffington Post
(February 4, 2013) ([http://www.huffingtonpost.com/2013/
02/04/mental-illness-prisons-jails-inmates_n_2610062.html](http://www.huffingtonpost.com/2013/02/04/mental-illness-prisons-jails-inmates_n_2610062.html)) 9

Thomas Insel, Director’s Blog: Transforming Diagnosis,
Nat’l Inst.s of Health (April 29, 2013) ([http://www.nimh.nih.gov/
about/director/2013/transforming-diagnosis.shtml](http://www.nimh.nih.gov/about/director/2013/transforming-diagnosis.shtml)) 10

Conor Friedersdorf, Methods That Police Use on the Mentally Ill
Are Madness, The Atlantic (March 25, 2015)
([http://www.theatlantic.com/politics/archive/
2015/03/methods-that-cops-use-with-the-mentally-ill-
-are-madness/388610/](http://www.theatlantic.com/politics/archive/2015/03/methods-that-cops-use-with-the-mentally-ill-are-madness/388610/)) 9

Val Willingham, Study: Rates of Many Mental Disorders
Much Higher in Soldiers Than in Civilians,
CNN (March 4, 2014) ([http://www.cnn.com/
2014/03/03/health/jama-military-mental-health/index.html](http://www.cnn.com/2014/03/03/health/jama-military-mental-health/index.html)) 10

I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the sentencing of the Appellant.

III. ISSUE

Did the court abuse its discretion in ordering the Defendant to participate in mental health treatment at the agreed recommendation of both parties?

IV. STATEMENT OF THE CASE

On May 24, 2014, the Defendant Joshua Hershaw was arrested for burglary in the first degree. CP 1. The next week, on May 31, he was arrested for theft of a motor vehicle. CP 1. Two weeks later, on June 15, he was arrested for residential burglary. CP 1. On August 11, the Defendant was convicted of several misdemeanors committed on May 31. CP 21. This included two counts of criminal trespass, vehicle prowl, and possession of burglary tools. CP 21. Only a month after this conviction,

the Defendant recidivated again, resulting in this case and his first felony conviction. CP 1.

The Defendant is transient, a methamphetamine user, and on military disability. CP 3. On September 18, he met Leigh Colton and arranged to trade a cell phone for a bicycle. CP 1. The next morning, he came to her home and intimidated her by saying that he was a meth user, that he had killed lots of people in Iraq, that he had killed two people without anyone knowing, and that he would kill Ms. Colton's boyfriend. CP 1-2. He refused to leave her home, instead going through every room and appropriating various items from the house, including a bicycle, sword, and snowboard. CP 2. He said he would be back. CP 2.

When Ms. Colton and her boyfriend returned to her home that evening, the Defendant was sitting on her porch. CP 2. Afraid, the couple called police and then found somewhere else to sleep. CP 2.

Neighbors called police back to the home later that night. CP 2. The Defendant was in Ms. Colton's garage and picking through her property. CP 2.

The Defendant pleaded guilty as charged to burglary in the second degree and was sentenced on the same day. CP 4-5, 8-31; RP I, 2-3, 7. He understood that the prosecutor would be recommending "participation

in mental health and drug treatment through the V.A. to the extent available.” CP 11. At sentencing, he acknowledged a substance abuse problem and requested the court order treatment “during which time he would be required to participate in *mental health* and drug treatment through the VA to the extent those services are available to him.” RP 4-5 (emphasis added). The prosecutor concurred, noting that the Defendant’s apparent issues may be linked to his veteran experience. RP 5-6.

THE COURT: My question is, if he gets treatment through the VA, is that going to be inpatient?

MS. BURKHART: That is the expectation, your Honor, yes.

THE COURT: And for how long approximately?

MS. BURKHART: I think the minimum in Washington is 28 days and I think through the VA, it would be to the extent it is needed.

THE COURT: So we could start this beginning in January, your payments?

THE DEFENDANT: Yes. Yes, sir. The VA also has outpatient too and I could attend on a weekly basis too.

THE COURT: Okay.

THE DEFENDANT: So this could go on. *I’m really wanting to go.*

RP 6-7 (emphasis added). Following the joint recommendation, the court ordered mental health treatment. CP 29.

On appeal, the Defendant challenges the very sentencing condition (mental health treatment) that he had himself requested of the court.

V. ARGUMENT

A. THE JOINT RECOMMENDATION HAS THE EFFECT OF A STIPULATION.

The Defendant challenges the sentencing condition that he himself requested of the court: mental health treatment. He argues that the condition may only be entered with a finding that the offender is mentally ill and that his illness likely influenced the offense. Because both parties recommended the court impose the condition of mental health treatment, the court was entitled to rely upon this agreement. By making the request, the Defendant essentially stipulated to the findings necessary for this condition or invited the error.

Invited error results when a party's own action creates the error, which may not thereafter be complained of on appeal. *In re Marriage of Morris*, 176 Wn. App. 893, 900, 309 P.3d 767 (2013). This is a strict rule, precluding review even of constitutional error. *State v. Studd*, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999); *State v. Henderson*, 114 Wn.2d 867, 792 P.2d 514 (1990). The doctrine applies when a party takes affirmative and voluntary action that induces the trial court to take the action that the party later challenges on appeal. 15A Wash. Prac. § 88.4. Without a doubt, the Defendant (both through his attorney and personally) requested the

treatment condition. RP 7 ("I'm really wanting to go.") He cannot complain now.

B. THE SRA HAS BEEN AMENDED TO STRIKE ADDITIONAL PROCEDURAL REQUIREMENTS BEFORE ENTRY OF MENTAL HEALTH CONDITIONS IN A CRIMINAL SENTENCE.

The Defendant relies on several cases as well RCW 9.94B.080. It is apparent that this authority is inapplicable after Laws of 2008 c 231 § 25, in which the Legislature struck the former RCW 9.94A.505(9).

In *State v. Brooks*, 142 Wn. App. 842, 850-51, 176 P.3d 549 (2008), *State v. Lopez*, 142 Wn. App. 341, 353-54, 174 P.3d 1216 (2007), and *State v. Jones*, 118 Wn. App. 199, 209-11, 76 P.3d 258 (2003), the decisions relied upon RCW 9.94A.505(9) to strike the mental health provision.

That section then read:

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.

Former RCW 9.94A.505(9). This section was removed from the statute by Laws of 2008 c 231 § 25.

The *Jones* opinion included this comment:

Before closing, we want to observe that the trial court should not be faulted for the defects in its judgment and sentence. Since 1981, the SRA has been amended by 175 session laws, an average of almost *eight per year!* It has become so astoundingly and needlessly complex that it cannot possibly be used both quickly and accurately. It is extremely difficult to identify what statute applies to a given crime, much less to coordinate that statute with others that may be related. The situation was recognized but not remedied-it may even have been exacerbated-by wholesale recodifications in 2001. The SRA screams for thoughtful simplification.

State v. Jones, 118 Wn. App. at 210-12.

The Defendant also cites to an opinion which issued after the change in the law. In *State v. Locke*, 175 Wn. App. 779, 785-86, 307 P.3d 771 (2013), the issue appears as an after-thought in a sufficiency appeal regarding death threats against the governor. When confronted about the threats he had communicated, it was apparent that Locke had been very angry, but it was not apparent that he suffered from any mental disorder. He acknowledged that he made the communications, explained his animus

against the attorney general's office which the governor used to head, profusely apologized for his temper, and admitted that he used the "worst judgment" but "needed the outlet" at the time. *State v. Locke*, 175 Wn. App. at 787.

The state defended Locke's conviction but conceded the mental health treatment condition. *State v. Locke*, 175 Wn.App. at 804. Accordingly, the court resolved the issue in a single paragraph and footnote:

Finally, Locke argues that the trial court improperly ordered a mental health evaluation and recommended treatment as a condition of his sentence without making statutorily-required findings. The State concedes that the trial court improperly imposed this sentence condition. The trial court did not obtain the pre-sentence report required by RCW 9.94B.080⁷ before requiring a mental health evaluation. Therefore, we accept the State's concession and we remand for the trial court to vacate this sentence condition.

7 Although by its terms chapter 9.94B RCW appears to apply only to sentences imposed before July 1, 2000, an *uncodified* portion of the statute makes clear that the provision also applies to all sentences imposed after August 1, 2009, for any crime committed on or after the effective date of this section. Laws of 2008, ch. 231, § 55 (referring to Laws of 2008, ch. 231, § 53, *codified at* RCW 9.94B.080).

Id. (emphasis added).

The *Locke* case is the only authority supporting the Defendant's argument, and it is wrongly decided. It overlooks section 25 in the same legislation, which explicitly removed the extra procedural requirements from RCW 9.94A.505.

It is the *codification* which demonstrates the legislature's true intent. The codification takes into account *every* section of the session law. Sentencing judges, already flummoxed by a complex, constantly mutating SRA, are not expected to review uncodified comments in the lengthy legislation. Not only may they rely on the actual codified statutes, but they also should. This practice prevents the kind of error which resulted in the *Locke* decision. There the court considered section 55, but failed to consider section 25, a far plainer provision. From that section, it is obvious that the legislature removed the requirement of additional findings premised on a presentence report. When a court imposes a sentence for a crime committed after July 1, 2000, it is no longer encumbered by additional procedural requirements before it may impose a condition of mental health treatment.

The relaxing of the procedural requirements is a reflection of the times. There is a growing awareness of the overlap between mental illness and incarceration and a preference for treatment over incarceration. More

than half of all prison and jail inmates have mental health problems. Alana Horowitz, Mental Illness Soars in Prisons, Jails While Inmates Suffer, The Huffington Post (February 4, 2013)¹, (citing Lauren E. Glaze, Doris J. James, Mental Health Problems of Prison and Jail Inmates, Bureau of Justice Statistics (September 6, 2006)²).

A dearth of community mental health services is likely to blame for the high incidence of incarceration among the mentally ill. *Id.* Treatment space is often not even available for those who are detained on an emergent basis under RCW 71.05.010 et seq. *Detention of D.W. v. Dep't of Social and Health Services*, 181 Wn.2d 201, 332 P.3d 423 (2014). When mental health services are unavailable, the mentally ill eventually collide with law enforcement, sometimes with devastating results. Conor Friedersdorf, Methods That Police Use on the Mentally Ill Are Madness, The Atlantic (March 25, 2015).³

However, a judge's order can assist a patient to get services that would otherwise be unavailable. This might be particularly useful where the Defendant's care provider is the Veteran's Administration which is

¹ http://www.huffingtonpost.com/2013/02/04/mental-illness-prisons-jails-inmates_n_2610062.html

² <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=789>

³ <http://www.theatlantic.com/politics/archive/2015/03/methods-that-cops-use-with-the-mentally-ill-are-madness/388610/>

notoriously plagued by backlogs and which sees a high incidence of mental illness. Brandon Friedman, The Rise (and Fall) of the VA Backlog, Time (June 3, 2013)⁴; Val Willingham, Study: Rates of Many Mental Disorders Much Higher in Soldiers Than in Civilians, CNN (March 4, 2014).⁵

The legislative amendment to RCW 9.94A.505(9) also reflects a changing perspective among mental health professionals. Substance abuse is listed in the Diagnostic and Statistical Manual (DSM) as a disorder. If the law does not require any special report before the court can order substance abuse treatment, the threshold for treatment should not be higher for other mental health disorders.

It is likely that the diagnostic conventions for mental disorders will move to more comprehensive approaches which factor in biology, genetics, and neurology. Thomas Insel, Director's Blog: Transforming Diagnosis, Nat'l Inst.s of Health (April 29, 2013).⁶ The Defendant's substance abuse treatment undoubtedly will include treatment of him as whole person. Such a whole-person approach to diagnosis may diminish

⁴ <http://nation.time.com/2013/06/03/the-rise-and-fall-of-the-va-backlog/>

⁵ <http://www.cnn.com/2014/03/03/health/jama-military-mental-health/index.html>

⁶ <http://www.nimh.nih.gov/about/director/2013/transforming-diagnosis.shtml>

the stigma about mental illness. This criminal appeal however does the opposite; it magnifies the stigma, asking that this condition be held to a different standard. It suggests that there is something inherently negative or onerous about mental health treatment. And it makes treatment harder to come by for our underserved population than it already is.

An outcome which relies upon a mental health patient to seek treatment without any oversight sets the Defendant up for failure and puts the public at risk.

The code writers properly codified the Session Law to remove additional hurdles to mental health treatment.

C. IF THE COURT DECIDES THERE IS ERROR, THE PARTIES SHOULD BE PERMITTED THE REMEDY OF A REHEARING TO ACHIEVE THE MUTUALLY AGREED UPON OUTCOME.

The Defendant asks the condition simply be stricken. If this Court determines that imposition of the treatment condition requires additional findings, striking the condition is the wrong remedy. The Court should remand for the superior court to make the appropriate pre-sentencing investigation and related findings.

A new hearing is appropriate to clarify a sentencing court's reasons for a sentencing condition. *In re Rainey*, 168 Wn.2d 367, 229 P.3d 6886

(2010) (remanding for sentencing court to provide explanation and parameters of no-contact condition). A rehearing may be limited to a particular issue. *State v. Sims*, 171 Wn.2d 436, 256 P.3d 285 (2011) (resentencing limited to clarification of the geographical condition of the SSOSA).

If the counseling condition is inappropriate, it is not because the Defendant's condition does not exist or is unrelated to his offense,⁷ but because the court did not make the proper investigation by ordering a presentence report. The remand should then require a presentence report and a court's decision following receipt of the report.

Such procedure would (1) permit the superior court and parties to familiarize themselves with the procedure in RCW 9.94B; (2) permit the parties, which had a meeting of the minds at the plea and sentencing hearing, to obtain the mutually desired and agreed upon result; and (3) avoid the extra cost to both sides of a state's motion to vacate the guilty plea.

Here the prosecutor did not object to a first time offender waiver and a "credit for time served" sentence, because the Defendant was

⁷ Although the Defendant had only just met Ms. Colton, he believed he had a right to be at her home and a right to appropriate her property. CP 1-3. The number of arrests in a short period of time suggests a rapid deterioration in the Defendant's condition. The Defendant himself requested mental health counseling.

agreeing to treatment. RP 7. If the Defendant is now refusing treatment, the State may have cause to vacate the guilty plea. If this Court determines the condition must be supported by additional findings, the better use of court resources is remand for resentencing with a presentence report.

VI. CONCLUSION

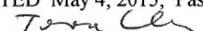
Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction and sentence.

DATED: May 4, 2015.

Respectfully submitted:



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<p>David Koch kochd@nwattorney.net sloancj@nwattorney.net</p>	<p>A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED May 4, 2015, Pasco, WA  Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201</p>
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APPENDIX

LAWS OF 2008, C 231 § 25

- (A) A sex offense;
- (B) A violent offense;
- (C) A crime against persons as defined in RCW 9.94A.411;
- (D) A felony that is domestic violence as defined in RCW 10.99.020;
- (E) A violation of RCW 9A.52.025 (residential burglary);
- (F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or
- (G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
- (ii) The offender or probationer has a prior conviction for:
 - (A) A sex offense;
 - (B) A violent offense;
 - (C) A crime against persons as defined in RCW 9.94A.411;
 - (D) A felony that is domestic violence as defined in RCW 10.99.020;
 - (E) A violation of RCW 9A.52.025 (residential burglary);
 - (F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or
 - (G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
- (iii) The conditions of the offender's community custody(~~((community placement, or community supervision))~~) or the probationer's supervision include chemical dependency treatment;
- (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670; or
- (v) The offender is subject to supervision pursuant to RCW 9.94A.745.
- (3) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody(~~((community placement, or community supervision))~~) or any probationer unless the offender or probationer is one for whom supervision is required under subsection (2) of this section.
- (4) This section expires July 1, 2010.

Sec. 25. RCW 9.94A.505 and 2006 c 73 s 6 are each amended to read as follows:

- (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))~~ Sections 7 and 8 of this act, relating to community custody;
 - (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))~~ (vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

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

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

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

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

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

(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))~~ custody 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.

(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))~~ that 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.))~~

Sec. 26. RCW 9.94A.610 and 2003 c 53 s 61 are each amended to read as follows:

(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))~~ custody, 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).

Sec. 27. RCW 9.94A.612 and 1996 c 215 s 4 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than thirty 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,