

Supreme Court No. 84545-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN CHARLES FRANKLIN,

Petitioner.

ON REVIEW FROM THE COURT OF APPEALS, DIVISION ONE

SUPPLEMENTAL BRIEF OF PETITIONER

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A. INTRODUCTION

John Franklin was convicted of both a class B and class C felony, for which he was sentenced to 120 and 60 months confinement respectively. In addition, the court imposed terms of community custody of 9 to 18 months and 9 to 12 months on the two offenses. RCW 9.94A.701(9) requires

The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.¹

Despite the plain statutory directive, and despite the fact that for each of his two offenses, the sum of Mr. Franklin's terms of confinement and community custody exceed the respective statutory maximums, the Court of Appeals affirmed Mr. Franklin's sentence. Based on RCW 9.94A.701(9), this Court must strike the community custody requirement.

B. ISSUE PRESENTED

Where a sentencing court has imposed the statutory maximum term of confinement for a crime, does RCW 9.94A.701(9) require that the imposition of community custody be stricken?

¹ This provision was originally contained in RCW 9.94A.701(8) but is now located in RCW 9.94A.701(9). The wording remains exactly the same.

C. SUMMARY OF THE CASE

At his sentencing, Mr. Franklin received 68 months incarceration on count I (assault in the third degree), and 120 months on count III (possession of cocaine with the intent to deliver). CP 217. Noting that Mr. Franklin was mistakenly sentenced beyond the statutory maximum on count I, the trial court later modified the Judgment and Sentence to lower the period of incarceration to 60 months. CP 274-75.² At the same time, the court imposed a term of community custody of 9 to 18 months on count I and 9 to 12 months on count III. CP 274-75. A second order modifying the Judgment and Sentence provided:

On Count I, the defendant is sentenced to 9-18 months community custody or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. On Count I, the total amount of incarceration and community custody shall not exceed 60 months.

On Count III, the defendant is sentenced to 9-12 months community custody or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. On Count III, the total amount of incarceration and community custody shall not exceed 120 months.

² Assault in the third degree is a class C felony and carries a maximum statutory penalty of five years incarceration and/or a ten thousand dollar fine. RCW 9A.20.021; RCW 9A.36.031. Possession of cocaine with the intent to deliver is a class B felony and carries a maximum statutory penalty of ten years incarceration and/or a twenty five thousand dollar fine. RCW 69.50.401.

CP 276-77.

On appeal, Mr. Franklin argued that the trial court improperly sentenced him to more than the statutory maximum penalty on counts I and III, and then attempted to delegate to DOC the obligation to ensure that the statutory maximum penalty was not exceeded.³ The Court of Appeals rejected the argument in an unpublished opinion, citing to this Court's recent decision in Brooks, 166 Wn.2d at 674. State v. Franklin, 154 Wn. App. 1004, 2010 WL 60175 (No. 61481-9-I, January 11, 2010). Its decision, however, failed to address the impact of the new provision in RCW 9.94A.701(9).

D. ARGUMENT

1. RCW 9.94A.701(9) IS CLEAR ON ITS FACE, AND ITS PLAIN MEANING REQUIRES THAT THE IMPOSITION OF COMMUNITY CUSTODY BE STRICKEN.

Under RCW 9.94A.505(5), "a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20

³ Mr. Franklin's argument was based on State v. Linderud, 147 Wn. App. 944, 947-48, 197 P.3d 1224 (2009), which was later overturned in In re the Pers. Restraint of Brooks, 166 Wn.2d 664, 673-74, 211 P.3d 1023 (2009). But see RCW 9.94A.701(9).

RCW.” Whether a sentence exceeds the statutory maximum is a question of law reviewed de novo. Brooks, 166 Wn.2d at 667; State v. Miller, 156 Wn.2d 23, 27, 123 P.3d 827 (2005).

RCW 9.94A.701(9) specifically directs:

The term of community custody specified by this section shall be reduced by the court whenever an offender’s standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

RCW 9.94A.701(9); 2009 c 375 § 5 (emphasis added). See App. B at 32-34.⁴ This change took effect July 26, 2009 and applies retroactively.⁵

“[I]f a statute is clear on its face, its meaning is to be derived from the language of the statute alone” and it is not subject to judicial interpretation. State v. Moeurn, __ Wn.2d __, __ P.3d __, 2010 WL 3911350 at *2 (No. 82995-1, October 7, 2010); State v. Chapman, 140 Wn.2d 436, 450, 998 P.2d 282, cert. denied, 531 U.S. 984 (2000) (courts “should assume the Legislature means exactly what it says”). The use of the word “shall” in a statute is mandatory and “operates to create a duty

⁴ 2008 c 231 §§ 1-23 is attached as Appendix A, and 2009 c 375 in its entirety is attached as Appendix B.

⁵ 2009 c 375 § 20 states: “This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after July 26, 2009.” See App. B at 47-48.

rather than to confer discretion.” Crown Cascade, Inc. v. O’Neal, 100 Wn.2d 256, 261, 668 P.2d 585 (1983). The plain language of RCW 9.94A.701(9) requires that the imposition of community custody be stricken for Mr. Franklin.

In Brooks, supra, this Court was presented with the question of whether a sentence of the statutory maximum period of incarceration plus community custody exceeded the statutory maximum. Noting that the defendant could earn early release time and that the amended Judgment and Sentence stated the combination of confinement and community custody was not to exceed the statutory maximum, this Court held that Brooks did not receive an unlawful sentence. Id. at 672-73.

The Court of Appeals relied on Brooks in rejecting Mr. Franklin’s appeal. Opinion at 26. Importantly, RCW 9.94A.701(9) had not yet taken effect when Brooks was decided. However, in Brooks, this Court referred to RCW 9.94A.701(9) and noted that for future cases, “it appears the legislature has addressed the very questions we are asked to answer in this case.” Id. at 672, n. 4. RCW 9.94A.701(9) mandates that the imposition of community custody be stricken.

2. RCW 9.94A.729 DOES NOT IMPOSE COMMUNITY CUSTODY, BUT SIMPLY CONTROLS WHEN COMMUNITY CUSTODY BEGINS.

Former RCW 9.94A.715(1) specified both the imposition of community custody, as well as when community custody was to begin.

The portion regarding when community custody began stated:

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.

Former RCW 9.94A.715(1). When RCW 9.94A.715 was repealed in 2008, the portion that detailed when community custody was to begin was moved to a new section, RCW 9.94A.707(1). It read in pertinent part:

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) or (2); or (c) at the time of sentencing if no term of confinement is ordered.

RCW 9.94A.707 (2008 version); 2008 c 231 § 12 (See App. A at 16-17).

This did not constitute a substantive change in the law. The legislature made clear in a statement of intent that the changes in 2008 c 231 §§ 7 - 58 were “not intended to either increase or decrease the authority of

sentencing courts or the department relating to supervision.” 2008 c 231 § 6 (See App. A at 10-11). Rather, they were an attempt by the legislature to reorganize the community custody statutes to “simplify the supervision provisions of the sentencing reform act.” Id.

In 2009, RCW 9.94A.707(1) was amended to read:

(1) Community custody shall begin: (a) Upon completion of the term of confinement; or (b) at the time of sentencing if no term of confinement is ordered.

2009 c 375 § 7 (See App. B at 36). Again, the legislature did not intend this as a substantive change. 2009 c 375 § 10 (See App. B at 40). The portion regarding earned release was taken out of RCW 9.94A.707(1) and moved to a new statute, RCW 9.94A.729:

(5)(a) A person who is eligible for earned early release as provided in this section and who is 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, shall be transferred to community custody in lieu of earned release time.

Together, RCW 9.94A.707(1) and RCW 9.94A.729(5)(a) determine when community custody begins. Neither of these statutes authorize the imposition of community custody. RCW 9.94A.701 and RCW 9.94A.702 (concerning sentences of one year or less) are the only statutes that authorize the court to impose community custody. 13B Seth A. Fine, Washington Practice: Criminal Law § 3607 (Supp. 2009).

3. TO THE EXTENT THAT RCW 9.94A.701 IS
AMBIGUOUS, THE COMMUNITY CUSTODY
STATUTES MUST BE READ TOGETHER AND
HARMONIZED IN ORDER TO DETERMINE
LEGISLATIVE INTENT.

In interpreting statutory provisions, “[t]he fundamental objective ... is to ascertain and carry out the intent of the Legislature.” Rozner v. Bellevue, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). Related statutes should be read together in order to determine the legislative intent underlying the entire statutory scheme. Chapman, 140 Wn.2d at 448.

Former RCW 9.94A.715 provided that an offender should be sentenced 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.

In Brooks, 166 Wn.2d at 671-72, this court relied on RCW 9.94A.715 when it ruled that a sentencing court was authorized to impose community custody in addition to the statutory maximum term of confinement, since DOC would calculate the amount of earned early release and ensure that the defendant did not serve more than the statutory maximum. When RCW 9.94A.715 was repealed in 2008, the above provision was moved to a new statute, RCW 9.94A.701; 2008 c 231 §7 (See App. A at 11-12).

RCW 9.94A.701 was substantively changed in 2009. 2009 c 375 § 5 (see App. B at 32-34). It expressly charges the sentencing court with setting a definite period of community custody. Gone are the community custody ranges. Instead, depending on the crime, a defendant is sentenced to either 36, 18, or 12 months of community custody. RCW 9.94A.701(1) – (3). Also gone from RCW 9.94A.701 is the language relied on in Brooks that authorized the imposition of community custody for the period of earned early release. App. B at 32-33.⁶

At the same time the legislature made these changes, it added the new subsection at the end of RCW 9.94A.701 (RCW 9.94A.701(8), now RCW 9.94A.701(9)) that requires the court to reduce the term of community custody when confinement plus community custody exceeds the statutory maximum for the crime. The doctrine of *noscitur a sociis* provides that “the meaning of words may be indicated or controlled by

⁶ The definition of “community custody” under RCW 9.94A.030(5) is “that portion of an offender’s sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender’s movement and activities by the department.” This is substantially the same definition that existed prior to 2009. Given the 2009 changes made to RCW 9.94A.701 removing the authority to impose community custody for the period of early release, the failure to amend the definition of community custody must be an oversight by the legislature. To the extent that RCW 9.94A.701 conflicts with any other portion of the SRA, it should control if it is the more specific and more recently enacted statute. Gorman v. Garlock, Inc., 155 Wn.2d 198, 210, 118 P.3d 311 (2005).

those with which they are associated.” State v. Roggenkamp, 153 Wn.2d 614, 623, 106 P.3d 196 (2005). Since RCW 9.94A.701(1) – (3) mandate fixed terms of community custody, RCW 9.94A.701(9) must be interpreted to mean that community custody be reduced to a lower fixed term, not a term that varies with earned release.

To the extent a statute is ambiguous, the rule of lenity demands it be construed in favor of Mr. Franklin. City of Seattle v. Winebrenner, 167 Wn.2d 451, 462, 219 P.3d 686 (2009). Moreover, when interpreting statutes, “the court must assume that the Legislature does not engage in meaningless acts.” JJR Inc. v. City of Seattle, 126 Wn.2d 1, 10, 891 P.2d 720 (1995); In re Forbis, 150 Wn.2d 91, 101, 74 P.3d 1189 (2003). To give meaning to the recent changes in RCW 9.94A.701, that statute must be interpreted as requiring the sentencing court to impose a definite term of community custody which, in combination with the term of confinement, does not exceed the statutory maximum.

E. CONCLUSION

Based on RCW 9.94A.701(9), the imposition of community custody must be stricken.

Respectfully submitted this 8th day of November, 2010.

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Appendix A

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2719

Chapter 231, Laws of 2008

60th Legislature
2008 Regular Session

OFFENDER SENTENCING--ACCURACY

EFFECTIVE DATE: 06/12/08 - Except sections 6 through 60, which become effective 08/01/09.

Passed by the House March 12, 2008
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 12, 2008
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 28, 2008, 10:55 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is HOUSE BILL 2719 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 28, 2008

Secretary of State
State of Washington

HOUSE BILL 2719

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Representatives Priest, Hurst, Loomis, and VanDeWege

Read first time 01/16/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to ensuring that offenders receive accurate
2 sentences; amending RCW 9.94A.500, 9.94A.530, 9.94A.737, 9.94A.740,
3 9.94A.501, 9.94A.505, 9.94A.610, 9.94A.612, 9.94A.625, 9.94A.650,
4 9.94A.670, 9.94A.690, 9.94A.728, 9.94A.760, 9.94A.775, 9.94A.780,
5 9.94A.820, 4.24.556, 9.95.017, 9.95.064, 9.95.110, 9.95.123, 9.95.420,
6 9.95.440, 46.61.524, 72.09.015, 72.09.270, 72.09.345, and 72.09.580;
7 reenacting and amending RCW 9.94A.525, 9.94A.030, 9.94A.660, and
8 9.94A.712; adding new sections to chapter 9.94A RCW; adding new
9 sections to chapter 72.09 RCW; adding a new chapter to Title 9 RCW;
10 creating new sections; recodifying RCW 9.94A.628, 9.94A.634, 9.94A.700,
11 9.94A.705, 9.94A.710, 9.94A.610, 9.94A.612, 9.94A.614, 9.94A.616,
12 9.94A.618, and 9.94A.620; repealing RCW 9.94A.545, 9.94A.713,
13 9.94A.715, 9.94A.720, 9.94A.800, 9.94A.830, and 79A.60.070; providing
14 an effective date; and providing an expiration date.

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

16 NEW SECTION. **Sec. 1.** It is the legislature's intent to ensure
17 that offenders receive accurate sentences that are based on their
18 actual, complete criminal history. Accurate sentences further the
19 sentencing reform act's goals of:

1 (1) Ensuring that the punishment for a criminal offense is
2 proportionate to the seriousness of the offense and the offender's
3 criminal history;

4 (2) Ensuring punishment that is just; and

5 (3) Ensuring that sentences are commensurate with the punishment
6 imposed on others for committing similar offenses.

7 Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005);
8 *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472
9 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature
10 finds it is necessary to amend the provisions in RCW 9.94A.500,
11 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed
12 accurately reflect the offender's actual, complete criminal history,
13 whether imposed at sentencing or upon resentencing. These amendments
14 are consistent with the United States supreme court holding in *Monge v.*
15 *California*, 524 U.S. 721 (1998), that double jeopardy is not implicated
16 at resentencing following an appeal or collateral attack.

17 **Sec. 2.** RCW 9.94A.500 and 2006 c 339 s 303 are each amended to
18 read as follows:

19 (1) Before imposing a sentence upon a defendant, the court shall
20 conduct a sentencing hearing. The sentencing hearing shall be held
21 within forty court days following conviction. Upon the motion of
22 either party for good cause shown, or on its own motion, the court may
23 extend the time period for conducting the sentencing hearing.

24 Except in cases where the defendant shall be sentenced to a term of
25 total confinement for life without the possibility of release or, when
26 authorized by RCW 10.95.030 for the crime of aggravated murder in the
27 first degree, sentenced to death, the court may order the department to
28 complete a risk assessment report. If available before sentencing, the
29 report shall be provided to the court.

30 Unless specifically waived by the court, the court shall order the
31 department to complete a chemical dependency screening report before
32 imposing a sentence upon a defendant who has been convicted of a
33 violation of the uniform controlled substances act under chapter 69.50
34 RCW, a criminal solicitation to commit such a violation under chapter
35 9A.28 RCW, or any felony where the court finds that the offender has a
36 chemical dependency that has contributed to his or her offense. In
37 addition, the court shall, at the time of plea or conviction, order the

1 department to complete a presentence report before imposing a sentence
2 upon a defendant who has been convicted of a felony sexual offense.
3 The department of corrections shall give priority to presentence
4 investigations for sexual offenders. If the court determines that the
5 defendant may be a mentally ill person as defined in RCW 71.24.025,
6 although the defendant has not established that at the time of the
7 crime he or she lacked the capacity to commit the crime, was
8 incompetent to commit the crime, or was insane at the time of the
9 crime, the court shall order the department to complete a presentence
10 report before imposing a sentence.

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

17 A criminal history summary relating to the defendant from the
18 prosecuting authority or from a state, federal, or foreign governmental
19 agency shall be prima facie evidence of the existence and validity of
20 the convictions listed therein. If the court is satisfied by a
21 preponderance of the evidence that the defendant has a criminal
22 history, the court shall specify the convictions it has found to exist.
23 All of this information shall be part of the record. Copies of all
24 risk assessment reports and presentence reports presented to the
25 sentencing court and all written findings of facts and conclusions of
26 law as to sentencing entered by the court shall be sent to the
27 department by the clerk of the court at the conclusion of the
28 sentencing and shall accompany the offender if the offender is
29 committed to the custody of the department. Court clerks shall
30 provide, without charge, certified copies of documents relating to
31 criminal convictions requested by prosecuting attorneys.

32 (2) To prevent wrongful disclosure of information related to mental
33 health services, as defined in RCW 71.05.445 and 71.34.345, a court may
34 take only those steps necessary during a sentencing hearing or any
35 hearing in which the department presents information related to mental
36 health services to the court. The steps may be taken on motion of the
37 defendant, the prosecuting attorney, or on the court's own motion. The
38 court may seal the portion of the record relating to information

1 relating to mental health services, exclude the public from the hearing
2 during presentation or discussion of information relating to mental
3 health services, or grant other relief to achieve the result intended
4 by this subsection, but nothing in this subsection shall be construed
5 to prevent the subsequent release of information related to mental
6 health services as authorized by RCW 71.05.445, 71.34.345, or
7 72.09.585. Any person who otherwise is permitted to attend any hearing
8 pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the
9 hearing solely because the department intends to disclose or discloses
10 information related to mental health services.

11 **Sec. 3.** RCW 9.94A.525 and 2007 c 199 s 8 and 2007 c 116 s 1 are
12 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

7 (e) If the present conviction is felony driving while under the
8 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
9 felony physical control of a vehicle while under the influence of
10 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
11 of felony driving while under the influence of intoxicating liquor or
12 any drug, felony physical control of a vehicle while under the
13 influence of intoxicating liquor or any drug, and serious traffic
14 offenses shall be included in the offender score if: (i) The prior
15 convictions were committed within five years since the last date of
16 release from confinement (including full-time residential treatment) or
17 entry of judgment and sentence; or (ii) the prior convictions would be
18 considered "prior offenses within ten years" as defined in RCW
19 46.61.5055.

20 (f) This subsection applies to both adult and juvenile prior
21 convictions.

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

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

34 (5) (a) In the case of multiple prior convictions, for the purpose
35 of computing the offender score, count all convictions separately,
36 except:

37 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
38 encompass the same criminal conduct, shall be counted as one offense,

1 the offense that yields the highest offender score. The current
2 sentencing court shall determine with respect to other prior adult
3 offenses for which sentences were served concurrently or prior juvenile
4 offenses for which sentences were served consecutively, whether those
5 offenses shall be counted as one offense or as separate offenses using
6 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
7 if the court finds that they shall be counted as one offense, then the
8 offense that yields the highest offender score shall be used. The
9 current sentencing court may presume that such other prior offenses
10 were not the same criminal conduct from sentences imposed on separate
11 dates, or in separate counties or jurisdictions, or in separate
12 complaints, indictments, or informations;

13 (ii) In the case of multiple prior convictions for offenses
14 committed before July 1, 1986, for the purpose of computing the
15 offender score, count all adult convictions served concurrently as one
16 offense, and count all juvenile convictions entered on the same date as
17 one offense. Use the conviction for the offense that yields the
18 highest offender score.

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

25 (6) If the present conviction is one of the anticipatory offenses
26 of criminal attempt, solicitation, or conspiracy, count each prior
27 conviction as if the present conviction were for a completed offense.
28 When these convictions are used as criminal history, score them the
29 same as a completed crime.

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

35 (8) If the present conviction is for a violent offense and not
36 covered in subsection (9), (10), (11), (12), or (13) of this section,
37 count two points for each prior adult and juvenile violent felony

1 conviction, one point for each prior adult nonviolent felony
2 conviction, and 1/2 point for each prior juvenile nonviolent felony
3 conviction.

4 (9) If the present conviction is for a serious violent offense,
5 count three points for prior adult and juvenile convictions for crimes
6 in this category, two points for each prior adult and juvenile violent
7 conviction (not already counted), one point for each prior adult
8 nonviolent felony conviction, and 1/2 point for each prior juvenile
9 nonviolent felony conviction.

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

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

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

35 (13) If the present conviction is for manufacture of
36 methamphetamine count three points for each adult prior manufacture of
37 methamphetamine conviction and two points for each juvenile manufacture
38 of methamphetamine offense. If the present conviction is for a drug

1 offense and the offender has a criminal history that includes a sex
2 offense or serious violent offense, count three points for each adult
3 prior felony drug offense conviction and two points for each juvenile
4 drug offense. All other adult and juvenile felonies are scored as in
5 subsection (8) of this section if the current drug offense is violent,
6 or as in subsection (7) of this section if the current drug offense is
7 nonviolent.

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

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

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

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

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

32 (19) If the present conviction is for an offense committed while
33 the offender was under community (~~(placement)~~) custody, add one point.
34 For purposes of this subsection, community custody includes community
35 placement or postrelease supervision, as defined in chapter 9.-- RCW
36 (the new chapter created in section 56 of this act).

37 (20) If the present conviction is for Theft of a Motor Vehicle,
38 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without

1 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
2 priors as in subsections (7) through (18) of this section; however
3 count one point for prior convictions of Vehicle Prowling 2, and three
4 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
5 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
6 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
7 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
8 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
9 Permission 2 conviction.

10 (21) The fact that a prior conviction was not included in an
11 offender's offender score or criminal history at a previous sentencing
12 shall have no bearing on whether it is included in the criminal history
13 or offender score for the current offense. ~~((Accordingly,))~~ Prior
14 convictions that were not counted in the offender score or included in
15 criminal history under repealed or previous versions of the sentencing
16 reform act shall be included in criminal history and shall count in the
17 offender score if the current version of the sentencing reform act
18 requires including or counting those convictions. Prior convictions
19 that were not included in criminal history or in the offender score
20 shall be included upon any resentencing to ensure imposition of an
21 accurate sentence.

22 **Sec. 4.** RCW 9.94A.530 and 2005 c 68 s 2 are each amended to read
23 as follows:

24 (1) The intersection of the column defined by the offender score
25 and the row defined by the offense seriousness score determines the
26 standard sentence range (see RCW 9.94A.510, (Table 1) and RCW
27 9.94A.517, (Table 3)). The additional time for deadly weapon findings
28 or for other adjustments as specified in RCW 9.94A.533 shall be added
29 to the entire standard sentence range. The court may impose any
30 sentence within the range that it deems appropriate. All standard
31 sentence ranges are expressed in terms of total confinement.

32 (2) In determining any sentence other than a sentence above the
33 standard range, the trial court may rely on no more information than is
34 admitted by the plea agreement, or admitted, acknowledged, or proved in
35 a trial or at the time of sentencing, or proven pursuant to RCW
36 9.94A.537. Acknowledgment includes not objecting to information stated
37 in the presentence reports and not objecting to criminal history

1 presented at the time of sentencing. Where the defendant disputes
2 material facts, the court must either not consider the fact or grant an
3 evidentiary hearing on the point. The facts shall be deemed proved at
4 the hearing by a preponderance of the evidence, except as otherwise
5 specified in RCW 9.94A.537. On remand for resentencing following
6 appeal or collateral attack, the parties shall have the opportunity to
7 present and the court to consider all relevant evidence regarding
8 criminal history, including criminal history not previously presented.

9 (3) In determining any sentence above the standard sentence range,
10 the court shall follow the procedures set forth in RCW 9.94A.537.
11 Facts that establish the elements of a more serious crime or additional
12 crimes may not be used to go outside the standard sentence range except
13 upon stipulation or when specifically provided for in RCW
14 9.94A.535(~~((2))~~) (3) (d), (e), (g), and (h).

15 NEW SECTION. **Sec. 5.** Sections 2 and 3 of this act apply to all
16 sentencings and resentencings commenced before, on, or after the
17 effective date of sections 1 through 4 of this act.

18 NEW SECTION. **Sec. 6.** The existing sentencing reform act contains
19 numerous provisions for supervision of different types of offenders.
20 This duplication has caused great confusion for judges, lawyers,
21 offenders, and the department of corrections, and often results in
22 inaccurate sentences. The clarifications in this act are intended to
23 support continued discussions by the sentencing guidelines commission
24 with the courts and the criminal justice community to identify and
25 propose policy changes that will further simplify and improve the
26 sentencing reform act relating to the supervision of offenders. The
27 sentencing guidelines commission shall submit policy change proposals
28 to the legislature on or before December 1, 2008.

29 Sections 7 through 58 of this act are intended to simplify the
30 supervision provisions of the sentencing reform act and increase the
31 uniformity of its application. These sections are not intended to
32 either increase or decrease the authority of sentencing courts or the
33 department relating to supervision, except for those provisions
34 instructing the court to apply the provisions of the current community
35 custody law to offenders sentenced after July 1, 2009, but who

1 committed their crime prior to the effective date of this section to
2 the extent that such application is constitutionally permissible.

3 This will effect a change for offenders who committed their crimes
4 prior to the offender accountability act, chapter 196, Laws of 1999.
5 These offenders will be ordered to a term of community custody rather
6 than community placement or community supervision. To the extent
7 constitutionally permissible, the terms of the offender's supervision
8 will be as provided in current law. With the exception of this change,
9 the legislature does not intend to make, and no provision of sections
10 7 through 58 of this act may be construed as making, a substantive
11 change to the supervision provisions of the sentencing reform act.

12 It is the intent of the legislature to reaffirm that section 3,
13 chapter 379, Laws of 2003, expires July 1, 2010.

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

16 (1) If an offender is sentenced to the custody of the department
17 for one of the following crimes, the court shall impose a term of
18 community custody for the community custody range established under RCW
19 9.94A.850 or up to the period of earned release awarded pursuant to RCW
20 9.94A.728 (1) and (2), whichever is longer:

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

22 (b) A violent offense;

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

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

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

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

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

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

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

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

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

9 (a) A sex offense, other than failure to register under RCW
10 9A.44.130(1);

11 (b) A violent offense;

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

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

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

17 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.94A RCW
18 to read as follows:

19 When a court sentences a person to a term of community custody, the
20 court shall impose conditions of community custody as provided in this
21 section.

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

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

26 (b) Require the offender to comply with any conditions imposed by
27 the department under section 10 of this act;

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

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

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

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

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

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

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

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

10 (a) Remain within, or outside of, a specified geographical
11 boundary;

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

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

15 (d) Participate in rehabilitative programs or otherwise perform
16 affirmative conduct reasonably related to the circumstances of the
17 offense, the offender's risk of reoffending, or the safety of the
18 community;

19 (e) Refrain from consuming alcohol; or

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

21 (4) **Special conditions.**

22 (a) In sentencing an offender convicted of a crime of domestic
23 violence, as defined in RCW 10.99.020, if the offender has a minor
24 child, or if the victim of the offense for which the offender was
25 convicted has a minor child, the court may order the offender to
26 participate in a domestic violence perpetrator program approved under
27 RCW 26.50.150.

28 (b)(i) In sentencing an offender convicted of an alcohol or drug
29 related traffic offense, the court shall require the offender to
30 complete a diagnostic evaluation by an alcohol or drug dependency
31 agency approved by the department of social and health services or a
32 qualified probation department, defined under RCW 46.61.516, that has
33 been approved by the department of social and health services. If the
34 offense was pursuant to chapter 46.61 RCW, the report shall be
35 forwarded to the department of licensing. If the offender is found to
36 have an alcohol or drug problem that requires treatment, the offender
37 shall complete treatment in a program approved by the department of
38 social and health services under chapter 70.96A RCW. If the offender

1 is found not to have an alcohol or drug problem that requires
2 treatment, the offender shall complete a course in an information
3 school approved by the department of social and health services under
4 chapter 70.96A RCW. The offender shall pay all costs for any
5 evaluation, education, or treatment required by this section, unless
6 the offender is eligible for an existing program offered or approved by
7 the department of social and health services.

8 (ii) For purposes of this section, "alcohol or drug related traffic
9 offense" means the following: Driving while under the influence as
10 defined by RCW 46.61.502, actual physical control while under the
11 influence as defined by RCW 46.61.504, vehicular homicide as defined by
12 RCW 46.61.520(1)(a), vehicular assault as defined by RCW
13 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050,
14 or assault by watercraft as defined by RCW 79A.60.060.

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

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 9.94A RCW
20 to read as follows:

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

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

27 (b) Within the funds available for community custody, the
28 department shall determine conditions and duration of community custody
29 on the basis of risk to community safety, and shall supervise offenders
30 during community custody on the basis of risk to community safety and
31 conditions imposed by the court. The secretary shall adopt rules to
32 implement the provisions of this subsection (2)(b).

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

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

36 (b) Remain within prescribed geographical boundaries;

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

3 (d) Pay the supervision fee assessment; and

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

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

9 (5) If the offender was sentenced pursuant to a conviction for a
10 sex offense, the department may impose electronic monitoring. Within
11 the resources made available by the department for this purpose, the
12 department shall carry out any electronic monitoring using the most
13 appropriate technology given the individual circumstances of the
14 offender. As used in this section, "electronic monitoring" means the
15 monitoring of an offender using an electronic offender tracking system
16 including, but not limited to, a system using radio frequency or active
17 or passive global positioning system technology.

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

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

23 (b) By the close of the next business day after receiving notice of
24 a condition imposed or modified by the department, an offender may
25 request an administrative review under rules adopted by the department.
26 The condition shall remain in effect unless the reviewing officer finds
27 that it is not reasonably related to the crime of conviction, the
28 offender's risk of reoffending, or the safety of the community.

29 (8) The department may require offenders to pay for special
30 services rendered including electronic monitoring, day reporting, and
31 telephone reporting, dependent on the offender's ability to pay. The
32 department may pay for these services for offenders who are not able to
33 pay.

34 (9)(a) When a sex offender has been sentenced pursuant to RCW
35 9.94A.712, the board shall exercise the authority prescribed in RCW
36 9.95.420 through 9.95.435.

37 (b) The department shall assess the offender's risk of recidivism

1 and shall recommend to the board any additional or modified conditions
2 based upon the risk to community safety. The board must consider and
3 may impose department-recommended conditions.

4 (c) If the department finds that an emergency exists requiring the
5 immediate imposition of additional conditions in order to prevent the
6 offender from committing a crime, the department may impose such
7 conditions. The department may not impose conditions that are contrary
8 to those set by the board or the court and may not contravene or
9 decrease court-imposed or board-imposed conditions. Conditions imposed
10 under this subsection shall take effect immediately after notice to the
11 offender by personal service, but shall not remain in effect longer
12 than seven working days unless approved by the board.

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

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

18 No offender sentenced to a term of community custody under the
19 supervision of the department may own, use, or possess firearms or
20 ammunition. Offenders who own, use, or are found to be in actual or
21 constructive possession of firearms or ammunition shall be subject to
22 the violation process and sanctions under sections 15 and 21 of this
23 act and RCW 9.94A.737.

24 "Constructive possession" as used in this section means the power
25 and intent to control the firearm or ammunition. "Firearm" as used in
26 this section has the same definition as in RCW 9.41.010.

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

29 (1) Community custody shall begin: (a) Upon completion of the term
30 of confinement; (b) at such time as the offender is transferred to
31 community custody in lieu of earned release in accordance with RCW
32 9.94A.728 (1) or (2); or (c) at the time of sentencing if no term of
33 confinement is ordered.

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

1 (3) When an offender is sentenced to a community custody range
2 pursuant to section 7 (1) or (2) of this act, the department shall
3 discharge the offender from community custody on a date determined by
4 the department, which the department may modify, based on risk and
5 performance of the offender, within the range or at the end of the
6 period of earned release, whichever is later.

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

9 (1) When an offender is under community custody, the community
10 corrections officer may obtain information from the offender's mental
11 health treatment provider on the offender's status with respect to
12 evaluation, application for services, registration for services, and
13 compliance with the supervision plan, without the offender's consent,
14 as described under RCW 71.05.630.

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

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

26 (1) At any time prior to the completion or termination of a sex
27 offender's term of community custody, if the court finds that public
28 safety would be enhanced, the court may impose and enforce an order
29 extending any or all of the conditions of community custody for a
30 period up to the maximum allowable sentence for the crime as it is
31 classified in chapter 9A.20 RCW, regardless of the expiration of the
32 offender's term of community custody.

33 (2) If a violation of a condition extended under this section
34 occurs after the expiration of the offender's term of community
35 custody, it shall be deemed a violation of the sentence for the

1 purposes of RCW 9.94A.631 and may be punishable as contempt of court as
2 provided for in RCW 7.21.040.

3 (3) If the court extends a condition beyond the expiration of the
4 term of community custody, the department is not responsible for
5 supervision of the offender's compliance with the condition.

6 NEW SECTION. **Sec. 15.** A new section is added to chapter 9.94A RCW
7 to read as follows:

8 (1)(a) An offender who violates any condition or requirement of a
9 sentence may be sanctioned with up to sixty days' confinement for each
10 violation.

11 (b) In lieu of confinement, an offender may be sanctioned with work
12 release, home detention with electronic monitoring, work crew,
13 community restitution, inpatient treatment, daily reporting, curfew,
14 educational or counseling sessions, supervision enhanced through
15 electronic monitoring, or any other sanctions available in the
16 community.

17 (2) If an offender was under community custody pursuant to one of
18 the following statutes, the offender may be sanctioned as follows:

19 (a) If the offender was transferred to community custody in lieu of
20 earned early release in accordance with RCW 9.94A.728(2), the offender
21 may be transferred to a more restrictive confinement status to serve up
22 to the remaining portion of the sentence, less credit for any period
23 actually spent in community custody or in detention awaiting
24 disposition of an alleged violation.

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

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

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

35 (e) If a sex offender was sentenced pursuant to RCW 9.94A.712, the
36 offender may be transferred to a more restrictive confinement status to

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

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

6 (1) If an offender has not completed his or her maximum term of
7 total confinement and is subject to a third violation hearing pursuant
8 to RCW 9.94A.737 for any violation of community custody and is found to
9 have committed the violation, the department shall return the offender
10 to total confinement in a state correctional facility to serve up to
11 the remaining portion of his or her sentence, unless it is determined
12 that returning the offender to a state correctional facility would
13 substantially interfere with the offender's ability to maintain
14 necessary community supports or to participate in necessary treatment
15 or programming and would substantially increase the offender's
16 likelihood of reoffending.

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

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

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

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

31 (a) If the sanction was imposed pursuant to section 15(1) of this
32 act, the sanction shall be served in a county facility.

33 (b) If the sanction was imposed pursuant to section 15(2) of this
34 act, the sanction shall be served in a state facility.

35 (2) If a sanction of confinement is imposed by the department, and
36 if the offender is an inmate as defined by RCW 72.09.015, no more than

1 eight days of the sanction, including any credit for time served, may
2 be served in a county facility. The balance of the sanction shall be
3 served in a state facility. In computing the eight-day period,
4 weekends and holidays shall be excluded. The department may negotiate
5 with local correctional authorities for an additional period of
6 detention.

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

9 (4) Sanctions imposed pursuant to RCW 9.94A.670(3) shall be served
10 in a county facility.

11 (5) As used in this section, "county facility" means a facility
12 operated, licensed, or utilized under contract by the county, and
13 "state facility" means a facility operated, licensed, or utilized under
14 contract by the state.

15 NEW SECTION. **Sec. 18.** A new section is added to chapter 9.94A RCW
16 to read as follows:

17 The procedure for imposing sanctions for violations of sentence
18 conditions or requirements is as follows:

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

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

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

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

30 (5) If the offender is not being supervised by the department, any
31 sanctions shall be imposed by the court pursuant to section 19 of this
32 act.

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

35 (1) If an offender violates any condition or requirement of a

1 sentence, and the offender is not being supervised by the department,
2 the court may modify its order of judgment and sentence and impose
3 further punishment in accordance with this section.

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

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

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

12 (c) If the court finds that a violation has been proved, it may
13 impose the sanctions specified in section 15(1) of this act.
14 Alternatively, the court may:

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

16 (ii) Convert community restitution obligation to total or partial
17 confinement; or

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

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

26 (e) If the violation involves a failure to undergo or comply with
27 a mental health status evaluation and/or outpatient mental health
28 treatment, the court shall seek a recommendation from the treatment
29 provider or proposed treatment provider. Enforcement of orders
30 concerning outpatient mental health treatment must reflect the
31 availability of treatment and must pursue the least restrictive means
32 of promoting participation in treatment. If the offender's failure to
33 receive care essential for health and safety presents a risk of serious
34 physical harm or probable harmful consequences, the civil detention and
35 commitment procedures of chapter 71.05 RCW shall be considered in
36 preference to incarceration in a local or state correctional facility.

37 (3) Any time served in confinement awaiting a hearing on

1 noncompliance shall be credited against any confinement ordered by the
2 court.

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

5 **Sec. 20.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to
6 read as follows:

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

13 ~~(2) If an offender has not completed his or her maximum term of
14 total confinement and is subject to a third violation hearing for any
15 violation of community custody and is found to have committed the
16 violation, the department shall return the offender to total
17 confinement in a state correctional facility to serve up to the
18 remaining portion of his or her sentence, unless it is determined that
19 returning the offender to a state correctional facility would
20 substantially interfere with the offender's ability to maintain
21 necessary community supports or to participate in necessary treatment
22 or programming and would substantially increase the offender's
23 likelihood of reoffending.~~

24 ~~(3)(a) For a sex offender sentenced to a term of community custody
25 under RCW 9.94A.670 who violates any condition of community custody,
26 the department may impose a sanction of up to sixty days' confinement
27 in a local correctional facility for each violation. If the department
28 imposes a sanction, the department shall submit within seventy-two
29 hours a report to the court and the prosecuting attorney outlining the
30 violation or violations and the sanctions imposed.~~

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

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

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

24 ~~(4) If an offender has been arrested for a new felony offense while~~
25 ~~under community supervision, community custody, or community placement,~~
26 ~~the department shall hold the offender in total confinement until a~~
27 ~~hearing before the department as provided in this section or until the~~
28 ~~offender has been formally charged for the new felony offense,~~
29 ~~whichever is earlier. Nothing in this subsection shall be construed as~~
30 ~~to permit the department to hold an offender past his or her maximum~~
31 ~~term of total confinement if the offender has not completed the maximum~~
32 ~~term of total confinement or to permit the department to hold an~~
33 ~~offender past the offender's term of community supervision, community~~
34 ~~custody, or community placement.~~

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

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

7 ~~((7))~~ (2) The hearing procedures required under subsection
8 ~~((6))~~ (1) of this section shall be developed by rule and include the
9 following:

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

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

18 (c) The hearing shall be held unless waived by the offender, and
19 shall be electronically recorded. For offenders not in total
20 confinement, the hearing shall be held within fifteen working days, but
21 not less than twenty-four hours, after notice of the violation. For
22 offenders in total confinement, the hearing shall be held within five
23 working days, but not less than twenty-four hours, after notice of the
24 violation;

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

31 (e) The sanction shall take effect if affirmed by the hearing
32 officer. Within seven days after the hearing officer's decision, the
33 offender may appeal the decision to a panel of three reviewing officers
34 designated by the secretary or by the secretary's designee. The
35 sanction shall be reversed or modified if a majority of the panel finds
36 that the sanction was not reasonably related to any of the following:
37 (i) The crime of conviction; (ii) the violation committed; (iii) the
38 offender's risk of reoffending; or (iv) the safety of the community.

1 ~~((8))~~ (3) For purposes of this section, no finding of a violation
2 of conditions may be based on unconfirmed or unconfirmable allegations.

3 ~~((9) The department shall work with the Washington association of
4 sheriffs and police chiefs to establish and operate an electronic
5 monitoring program for low risk offenders who violate the terms of
6 their community custody. Between January 1, 2006, and December 31,
7 2006, the department shall endeavor to place at least one hundred low-
8 risk community custody violators on the electronic monitoring program
9 per day if there are at least that many low risk offenders who qualify
10 for the electronic monitoring program.~~

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

17 NEW SECTION. **Sec. 21.** (1) The secretary may issue warrants for
18 the arrest of any offender who violates a condition of community
19 custody. The arrest warrants shall authorize any law enforcement or
20 peace officer or community corrections officer of this state or any
21 other state where such offender may be located, to arrest the offender
22 and place him or her in total confinement pending disposition of the
23 alleged violation.

24 (2) A community corrections officer, if he or she has reasonable
25 cause to believe an offender has violated a condition of community
26 custody, may suspend the person's community custody status and arrest
27 or cause the arrest and detention in total confinement of the offender,
28 pending the determination of the secretary as to whether the violation
29 has occurred. The community corrections officer shall report to the
30 secretary all facts and circumstances and the reasons for the action of
31 suspending community custody status.

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

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

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

9 **Sec. 22.** RCW 9.94A.740 and 1999 c 196 s 9 are each amended to read
10 as follows:

11 ~~((The secretary may issue warrants for the arrest of any
12 offender who violates a condition of community placement or community
13 custody. The arrest warrants shall authorize any law enforcement or
14 peace officer or community corrections officer of this state or any
15 other state where such offender may be located, to arrest the offender
16 and place him or her in total confinement pending disposition of the
17 alleged violation.))~~ When an offender is arrested pursuant to section
18 21 of this act, the department shall compensate the local jurisdiction
19 at the office of financial management's adjudicated rate, in accordance
20 with RCW 70.48.440. ((A community corrections officer, if he or she
21 has reasonable cause to believe an offender in community placement or
22 community custody has violated a condition of community placement or
23 community custody, may suspend the person's community placement or
24 community custody status and arrest or cause the arrest and detention
25 in total confinement of the offender, pending the determination of the
26 secretary as to whether the violation has occurred. The community
27 corrections officer shall report to the secretary all facts and
28 circumstances and the reasons for the action of suspending community
29 placement or community custody status. A violation of a condition of
30 community placement or community custody shall be deemed a violation of
31 the sentence for purposes of RCW 9.94A.631. The authority granted to
32 community corrections officers under this section shall be in addition
33 to that set forth in RCW 9.94A.631.))

34 (2) Inmates, as defined in RCW 72.09.015, who have been transferred
35 to community custody and who are detained in a local correctional
36 facility are the financial responsibility of the department of
37 corrections, except as provided in subsection (3) of this section.

1 ~~((The community custody inmate shall be removed from the local~~
2 ~~correctional facility, except as provided in subsection (3) of this~~
3 ~~section, not later than eight days, excluding weekends and holidays,~~
4 ~~following admittance to the local correctional facility and~~
5 ~~notification that the inmate is available for movement to a state~~
6 ~~correctional institution.))~~

7 (3) ~~((The department may negotiate with local correctional~~
8 ~~authorities for an additional period of detention; however, sex~~
9 ~~offenders sanctioned for community custody violations under RCW~~
10 ~~9.94A.737(2) to a term of confinement shall remain in the local~~
11 ~~correctional facility for the complete term of the sanction.))~~ For
12 confinement sanctions imposed by the department under RCW
13 ~~((9.94A.737(2)(a)))~~ 9.94A.670, the local correctional facility shall be
14 financially responsible. ~~((For confinement sanctions imposed under RCW~~
15 ~~9.94A.737(2)(b), the department of corrections shall be financially~~
16 ~~responsible for that portion of the sanction served during the time in~~
17 ~~which the sex offender is on community custody in lieu of earned~~
18 ~~release, and the local correctional facility shall be financially~~
19 ~~responsible for that portion of the sanction served by the sex offender~~
20 ~~after the time in which the sex offender is on community custody in~~
21 ~~lieu of earned release.))~~

22 (4) The department, in consultation with the Washington association
23 of sheriffs and police chiefs and those counties in which the sheriff
24 does not operate a correctional facility, shall establish a methodology
25 for determining the department's local correctional facilities bed
26 utilization rate, for each county in calendar year 1998, for offenders
27 being held for violations of conditions of community custody(~~(7~~
28 ~~community placement, or community supervision))~~. ~~((For confinement~~
29 ~~sanctions imposed under RCW 9.94A.737(2)(c) or (d)))~~

30 (5) Except as provided in subsections (1) and (2) of this section,
31 the local correctional facility shall continue to be financially
32 responsible to the extent of the calendar year 1998 bed utilization
33 rate for confinement sanctions imposed by the department pursuant to
34 RCW 9.94A.737. If the department's use of bed space in local
35 correctional facilities of any county for such confinement sanctions
36 ~~((imposed on offenders sentenced to a term of community custody under~~
37 ~~RCW 9.94A.737(2)(c) or (d)))~~ exceeds the 1998 bed utilization rate for
38 the county, the department shall compensate the county for the excess

1 use at the per diem rate equal to the lowest rate charged by the county
2 under its contract with a municipal government during the year in which
3 the use occurs.

4 **Sec. 23.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c
5 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
6 amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

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

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

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

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

24 (5) "Community custody" means that portion of an offender's
25 sentence of confinement in lieu of earned release time or imposed
26 (~~pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,~~
27 ~~9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,)~~ as part of a
28 sentence and served in the community subject to controls placed on the
29 offender's movement and activities by the department. (~~For offenders~~
30 ~~placed on community custody for crimes committed on or after July 1,~~
31 ~~2000, the department shall assess the offender's risk of reoffense and~~
32 ~~may establish and modify conditions of community custody, in addition~~
33 ~~to those imposed by the court, based upon the risk to community~~
34 ~~safety.))~~

35 (6) "Community custody range" means the minimum and maximum period
36 of community custody included as part of a sentence under RCW

1 9.94A.715, as established by the commission or the legislature under
2 RCW 9.94A.850 (~~for crimes committed on or after July 1, 2000~~)).

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

10 ~~(8))~~ (8) "Community protection zone" means the area within eight
11 hundred eighty feet of the facilities and grounds of a public or
12 private school.

13 ~~((9))~~ (8) "Community restitution" means compulsory service,
14 without compensation, performed for the benefit of the community by the
15 offender.

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

26 ~~(11))~~ (9) "Confinement" means total or partial confinement.

27 ~~((12))~~ (10) "Conviction" means an adjudication of guilt pursuant
28 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
29 guilty, and acceptance of a plea of guilty.

30 ~~((13))~~ (11) "Crime-related prohibition" means an order of a court
31 prohibiting conduct that directly relates to the circumstances of the
32 crime for which the offender has been convicted, and shall not be
33 construed to mean orders directing an offender affirmatively to
34 participate in rehabilitative programs or to otherwise perform
35 affirmative conduct. However, affirmative acts necessary to monitor
36 compliance with the order of a court may be required by the department.

37 ~~((14))~~ (12) "Criminal history" means the list of a defendant's

1 prior convictions and juvenile adjudications, whether in this state, in
2 federal court, or elsewhere.

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

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

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

16 (~~(15)~~) (13) "Day fine" means a fine imposed by the sentencing
17 court that equals the difference between the offender's net daily
18 income and the reasonable obligations that the offender has for the
19 support of the offender and any dependents.

20 (~~(16)~~) (14) "Day reporting" means a program of enhanced
21 supervision designed to monitor the offender's daily activities and
22 compliance with sentence conditions, and in which the offender is
23 required to report daily to a specific location designated by the
24 department or the sentencing court.

25 (~~(17)~~) (15) "Department" means the department of corrections.

26 (~~(18)~~) (16) "Determinate sentence" means a sentence that states
27 with exactitude the number of actual years, months, or days of total
28 confinement, of partial confinement, of community (~~supervision~~)
29 custody, the number of actual hours or days of community restitution
30 work, or dollars or terms of a legal financial obligation. The fact
31 that an offender through earned release can reduce the actual period of
32 confinement shall not affect the classification of the sentence as a
33 determinate sentence.

34 (~~(19)~~) (17) "Disposable earnings" means that part of the earnings
35 of an offender remaining after the deduction from those earnings of any
36 amount required by law to be withheld. For the purposes of this
37 definition, "earnings" means compensation paid or payable for personal
38 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the
2 payments exempt from garnishment, attachment, or other process to
3 satisfy a court-ordered legal financial obligation, specifically
4 includes periodic payments pursuant to pension or retirement programs,
5 or insurance policies of any type, but does not include payments made
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
7 or Title 74 RCW.

8 ~~((20))~~ (18) "Drug offender sentencing alternative" is a
9 sentencing option available to persons convicted of a felony offense
10 other than a violent offense or a sex offense and who are eligible for
11 the option under RCW 9.94A.660.

12 ~~((21))~~ (19) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of
14 a controlled substance (RCW 69.50.4013) or forged prescription for a
15 controlled substance (RCW 69.50.403);

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

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

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

24 ~~((23))~~ (21) "Escape" means:

25 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
26 first degree (RCW 9A.76.110), escape in the second degree (RCW
27 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
28 willful failure to return from work release (RCW 72.65.070), or willful
29 failure to be available for supervision by the department while in
30 community custody (RCW 72.09.310); or

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

34 ~~((24))~~ (22) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
37 run injury-accident (RCW 46.52.020(4)), felony driving while under the

1 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
2 felony physical control of a vehicle while under the influence of
3 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

7 ~~((25))~~ (23) "Fine" means a specific sum of money ordered by the
8 sentencing court to be paid by the offender to the court over a
9 specific period of time.

10 ~~((26))~~ (24) "First-time offender" means any person who has no
11 prior convictions for a felony and is eligible for the first-time
12 offender waiver under RCW 9.94A.650.

13 ~~((27))~~ (25) "Home detention" means a program of partial
14 confinement available to offenders wherein the offender is confined in
15 a private residence subject to electronic surveillance.

16 ~~((28))~~ (26) "Legal financial obligation" means a sum of money
17 that is ordered by a superior court of the state of Washington for
18 legal financial obligations which may include restitution to the
19 victim, statutorily imposed crime victims' compensation fees as
20 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
21 drug funds, court-appointed attorneys' fees, and costs of defense,
22 fines, and any other financial obligation that is assessed to the
23 offender as a result of a felony conviction. Upon conviction for
24 vehicular assault while under the influence of intoxicating liquor or
25 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
26 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
27 legal financial obligations may also include payment to a public agency
28 of the expense of an emergency response to the incident resulting in
29 the conviction, subject to RCW 38.52.430.

30 ~~((29))~~ (27) "Most serious offense" means any of the following
31 felonies or a felony attempt to commit any of the following felonies:

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

35 (b) Assault in the second degree;

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

37 (d) Child molestation in the second degree;

38 (e) Controlled substance homicide;

1 (f) Extortion in the first degree;
2 (g) Incest when committed against a child under age fourteen;
3 (h) Indecent liberties;
4 (i) Kidnapping in the second degree;
5 (j) Leading organized crime;
6 (k) Manslaughter in the first degree;
7 (l) Manslaughter in the second degree;
8 (m) Promoting prostitution in the first degree;
9 (n) Rape in the third degree;
10 (o) Robbery in the second degree;
11 (p) Sexual exploitation;
12 (q) Vehicular assault, when caused by the operation or driving of
13 a vehicle by a person while under the influence of intoxicating liquor
14 or any drug or by the operation or driving of a vehicle in a reckless
15 manner;
16 (r) Vehicular homicide, when proximately caused by the driving of
17 any vehicle by any person while under the influence of intoxicating
18 liquor or any drug as defined by RCW 46.61.502, or by the operation of
19 any vehicle in a reckless manner;
20 (s) Any other class B felony offense with a finding of sexual
21 motivation;
22 (t) Any other felony with a deadly weapon verdict under RCW
23 9.94A.602;
24 (u) Any felony offense in effect at any time prior to December 2,
25 1993, that is comparable to a most serious offense under this
26 subsection, or any federal or out-of-state conviction for an offense
27 that under the laws of this state would be a felony classified as a
28 most serious offense under this subsection;
29 (v)(i) A prior conviction for indecent liberties under RCW
30 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
31 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
32 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
33 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
34 (ii) A prior conviction for indecent liberties under RCW
35 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
36 if: (A) The crime was committed against a child under the age of
37 fourteen; or (B) the relationship between the victim and perpetrator is
38 included in the definition of indecent liberties under RCW

1 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
2 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
3 through July 27, 1997.

4 ~~((30))~~ (28) "Nonviolent offense" means an offense which is not a
5 violent offense.

6 ~~((31))~~ (29) "Offender" means a person who has committed a felony
7 established by state law and is eighteen years of age or older or is
8 less than eighteen years of age but whose case is under superior court
9 jurisdiction under RCW 13.04.030 or has been transferred by the
10 appropriate juvenile court to a criminal court pursuant to RCW
11 13.40.110. Throughout this chapter, the terms "offender" and
12 "defendant" are used interchangeably.

13 ~~((32))~~ (30) "Partial confinement" means confinement for no more
14 than one year in a facility or institution operated or utilized under
15 contract by the state or any other unit of government, or, if home
16 detention or work crew has been ordered by the court, in an approved
17 residence, for a substantial portion of each day with the balance of
18 the day spent in the community. Partial confinement includes work
19 release, home detention, work crew, and a combination of work crew and
20 home detention.

21 ~~((33))~~ (31) "Persistent offender" is an offender who:

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

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

32 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
33 of a child in the first degree, child molestation in the first degree,
34 rape in the second degree, rape of a child in the second degree, or
35 indecent liberties by forcible compulsion; (B) any of the following
36 offenses with a finding of sexual motivation: Murder in the first
37 degree, murder in the second degree, homicide by abuse, kidnapping in
38 the first degree, kidnapping in the second degree, assault in the first

1 degree, assault in the second degree, assault of a child in the first
2 degree, assault of a child in the second degree, or burglary in the
3 first degree; or (C) an attempt to commit any crime listed in this
4 subsection (~~((33))~~) (31)(b)(i); and

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

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

19 ~~(35))~~ (32) "Predatory" means: (a) The perpetrator of the crime
20 was a stranger to the victim, as defined in this section; (b) the
21 perpetrator established or promoted a relationship with the victim
22 prior to the offense and the victimization of the victim was a
23 significant reason the perpetrator established or promoted the
24 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
25 volunteer, or other person in authority in any public or private school
26 and the victim was a student of the school under his or her authority
27 or supervision. For purposes of this subsection, "school" does not
28 include home-based instruction as defined in RCW 28A.225.010; (ii) a
29 coach, trainer, volunteer, or other person in authority in any
30 recreational activity and the victim was a participant in the activity
31 under his or her authority or supervision; or (iii) a pastor, elder,
32 volunteer, or other person in authority in any church or religious
33 organization, and the victim was a member or participant of the
34 organization under his or her authority.

35 ~~((36))~~ (33) "Private school" means a school regulated under
36 chapter 28A.195 or 28A.205 RCW.

37 ~~((37))~~ (34) "Public school" has the same meaning as in RCW
38 28A.150.010.

1 (~~(38)~~) (35) "Restitution" means a specific sum of money ordered
2 by the sentencing court to be paid by the offender to the court over a
3 specified period of time as payment of damages. The sum may include
4 both public and private costs.

5 (~~(39)~~) (36) "Risk assessment" means the application of an
6 objective instrument supported by research and adopted by the
7 department for the purpose of assessing an offender's risk of
8 reoffense, taking into consideration the nature of the harm done by the
9 offender, place and circumstances of the offender related to risk, the
10 offender's relationship to any victim, and any information provided to
11 the department by victims. The results of a risk assessment shall not
12 be based on unconfirmed or unconfirmable allegations.

13 (~~(40)~~) (37) "Serious traffic offense" means:

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

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

22 (~~(41)~~) (38) "Serious violent offense" is a subcategory of violent
23 offense and means:

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

25 (ii) Homicide by abuse;

26 (iii) Murder in the second degree;

27 (iv) Manslaughter in the first degree;

28 (v) Assault in the first degree;

29 (vi) Kidnapping in the first degree;

30 (vii) Rape in the first degree;

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

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

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

37 (~~(42)~~) (39) "Sex offense" means:

1 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
2 RCW 9A.44.130(~~(11)~~) (12);

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

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

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

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

11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.835 or 13.40.135; or

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

16 (~~(43)~~) (40) "Sexual motivation" means that one of the purposes
17 for which the defendant committed the crime was for the purpose of his
18 or her sexual gratification.

19 (~~(44)~~) (41) "Standard sentence range" means the sentencing
20 court's discretionary range in imposing a nonappealable sentence.

21 (~~(45)~~) (42) "Statutory maximum sentence" means the maximum length
22 of time for which an offender may be confined as punishment for a crime
23 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
24 the crime, or other statute defining the maximum penalty for a crime.

25 (~~(46)~~) (43) "Stranger" means that the victim did not know the
26 offender twenty-four hours before the offense.

27 (~~(47)~~) (44) "Total confinement" means confinement inside the
28 physical boundaries of a facility or institution operated or utilized
29 under contract by the state or any other unit of government for twenty-
30 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

31 (~~(48)~~) (45) "Transition training" means written and verbal
32 instructions and assistance provided by the department to the offender
33 during the two weeks prior to the offender's successful completion of
34 the work ethic camp program. The transition training shall include
35 instructions in the offender's requirements and obligations during the
36 offender's period of community custody.

37 (~~(49)~~) (46) "Victim" means any person who has sustained

1 emotional, psychological, physical, or financial injury to person or
2 property as a direct result of the crime charged.

3 ~~((+50+))~~ (47) "Violent offense" means:

4 (a) Any of the following felonies:

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

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

9 (iii) Manslaughter in the first degree;

10 (iv) Manslaughter in the second degree;

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

12 (vi) Kidnapping in the second degree;

13 (vii) Arson in the second degree;

14 (viii) Assault in the second degree;

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

16 (x) Extortion in the first degree;

17 (xi) Robbery in the second degree;

18 (xii) Drive-by shooting;

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

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

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

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

33 ~~((+51+))~~ (48) "Work crew" means a program of partial confinement
34 consisting of civic improvement tasks for the benefit of the community
35 that complies with RCW 9.94A.725.

36 ~~((+52+))~~ (49) "Work ethic camp" means an alternative incarceration
37 program as provided in RCW 9.94A.690 designed to reduce recidivism and
38 lower the cost of corrections by requiring offenders to complete a

1 comprehensive array of real-world job and vocational experiences,
2 character-building work ethics training, life management skills
3 development, substance abuse rehabilitation, counseling, literacy
4 training, and basic adult education.

5 ((+53+)) (50) "Work release" means a program of partial confinement
6 available to offenders who are employed or engaged as a student in a
7 regular course of study at school.

8 **Sec. 24.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read
9 as follows:

10 (1) When the department performs a risk assessment pursuant to RCW
11 9.94A.500, or to determine a person's conditions of supervision, the
12 risk assessment shall classify the offender or a probationer sentenced
13 in superior court into one of at least four risk categories.

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

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

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

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

23 (A) A sex offense;

24 (B) A violent offense;

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

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

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

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

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

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

34 (A) A sex offense;

35 (B) A violent offense;

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

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

Appendix B

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5288

Chapter 375, Laws of 2009

(partial veto)

61st Legislature
2009 Regular Session

SUPERVISION OF OFFENDERS

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 25, 2009
YEAS 26 NAYS 23

BRAD OWEN

President of the Senate

Passed by the House April 21, 2009
YEAS 51 NAYS 45

FRANK CHOPP

Speaker of the House of Representatives

Approved May 6, 2009, 2:21 p.m., with
the exception of Section 18 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is ENGROSSED
SUBSTITUTE SENATE BILL 5288 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 8, 2009

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5288

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by
Senators Hargrove, Stevens, Regala, and Shin)

READ FIRST TIME 01/26/09.

1 AN ACT Relating to the supervision of offenders; amending RCW
2 9.94A.501, 9.94A.501, 9.94A.030, 9.94A.701, 9.94A.704, 9.94A.707,
3 9.94A.850, 9.95.220, 9.94A.633, 9.94A.737, and 9.94A.6332; amending
4 2008 c 231 s 6 (uncodified); reenacting and amending RCW 9.94A.030;
5 creating new sections; repealing RCW 9.95.206 and 9.95.212; repealing
6 2008 c 231 s 60 (uncodified); providing an effective date; providing an
7 expiration date; and declaring an emergency.

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

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

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

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

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

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

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

5 ~~(A) A sex offense;~~

6 ~~(B) A violent offense;~~

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

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

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

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

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

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

16 ~~(A) A sex offense;~~

17 ~~(B) A violent offense;~~

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

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

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

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

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

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

29 ~~(iv) The offender))~~ The department shall supervise every offender
30 convicted of a misdemeanor or gross misdemeanor offense who is
31 sentenced to probation in superior court, pursuant to RCW 9.92.060,
32 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this
33 subsection. The superior court shall order probation for:

34 (a) Offenders convicted of fourth degree assault, violation of a
35 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
36 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
37 and who also have a prior conviction for one or more of the following:

38 (i) A violent offense;

1 (ii) A sex offense;
2 (iii) A crime against a person as provided in RCW 9.94A.411;
3 (iv) Fourth degree assault; or
4 (v) Violation of a domestic violence court order; and

5 (b) Offenders convicted of:

6 (i) Sexual misconduct with a minor second degree;
7 (ii) Custodial sexual misconduct second degree;
8 (iii) Communication with a minor for immoral purposes; and
9 (iv) Failure to register pursuant to RCW 9A.44.130.

10 (2) Misdemeanor and gross misdemeanor offenders supervised by the
11 department pursuant to this section shall be placed on community
12 custody.

13 (3) The department shall supervise every felony offender sentenced
14 to community custody whose risk assessment, conducted pursuant to
15 subsection (6) of this section, places the offender in one of the two
16 highest risk categories.

17 (4) Notwithstanding any other provision of this section, the
18 department shall supervise an offender sentenced to community custody
19 regardless of risk classification if the offender:

20 (a) Has a current conviction for a sex offense;

21 (b) Has been identified by the department as a dangerous mentally
22 ill offender pursuant to RCW 72.09.370;

23 (c) Has an indeterminate sentence and is subject to parole pursuant
24 to RCW 9.95.017;

25 (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

26 ((~~(v) The offender~~) (e) Is subject to supervision pursuant to RCW
27 9.94A.745.

28 ((~~(3)~~) (5) The department is not authorized to, and may not,
29 supervise any offender sentenced to a term of community custody,
30 community placement, or community supervision or any probationer unless
31 the offender or probationer is one for whom supervision is required
32 under subsection (1), (2), (3), or (4) of this section.

33 ((~~(4) This section expires July 1, 2010~~) (6) The department shall
34 conduct a risk assessment for every felony offender sentenced to a term
35 of community custody, community placement, or community supervision who
36 may be subject to supervision under this section.

1 **Sec. 2.** RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read
2 as follows:

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

7 ~~(2) The department shall supervise every offender sentenced to a~~
8 ~~term of community custody and every misdemeanor and gross misdemeanor~~
9 ~~probationer ordered by a superior court to probation under the~~
10 ~~supervision of the department pursuant to RCW 9.92.060, 9.95.204, or~~
11 ~~9.95.210.~~

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

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

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

16 ~~(A) A sex offense;~~

17 ~~(B) A violent offense;~~

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

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

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

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

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

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

27 ~~(A) A sex offense;~~

28 ~~(B) A violent offense;~~

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

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

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

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

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

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

1 ~~(iv) The offender~~) The department shall supervise every offender
2 convicted of a misdemeanor or gross misdemeanor offense who is
3 sentenced to probation in superior court, pursuant to RCW 9.92.060,
4 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this
5 subsection. The superior court shall order probation for:

6 (a) Offenders convicted of fourth degree assault, violation of a
7 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,
8 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,
9 and who also have a prior conviction for one or more of the following:

10 (i) A violent offense;

11 (ii) A sex offense;

12 (iii) A crime against a person as provided in RCW 9.94A.411;

13 (iv) Fourth degree assault; or

14 (v) Violation of a domestic violence court order; and

15 (b) Offenders convicted of:

16 (i) Sexual misconduct with a minor second degree;

17 (ii) Custodial sexual misconduct second degree;

18 (iii) Communication with a minor for immoral purposes; and

19 (iv) Failure to register pursuant to RCW 9A.44.130.

20 (2) Misdemeanor and gross misdemeanor offenders supervised by the
21 department pursuant to this section shall be placed on community
22 custody.

23 (3) The department shall supervise every felony offender sentenced
24 to community custody whose risk assessment, conducted pursuant to
25 subsection (6) of this section, classifies the offender as one who is
26 at a high risk to reoffend.

27 (4) Notwithstanding any other provision of this section, the
28 department shall supervise an offender sentenced to community custody
29 regardless of risk classification if the offender:

30 (a) Has a current conviction for a sex offense;

31 (b) Has been identified by the department as a dangerous mentally
32 ill offender pursuant to RCW 72.09.370;

33 (c) Has an indeterminate sentence and is subject to parole pursuant
34 to RCW 9.95.017;

35 (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

36 ~~((v) The offender)~~ (e) Is subject to supervision pursuant to RCW
37 9.94A.745.

1 (~~(3)~~) (5) The department is not authorized to, and may not,
2 supervise any offender sentenced to a term of community custody or any
3 probationer unless the offender or probationer is one for whom
4 supervision is required under subsection (1), (2), (3), or (4) of this
5 section.

6 (~~(4) This section expires July 1, 2010~~) (6) The department shall
7 conduct a risk assessment for every felony offender sentenced to a term
8 of community custody who may be subject to supervision under this
9 section.

10 **Sec. 3.** RCW 9.94A.030 and 2008 c 276 s 309 and 2008 c 7 s 1 are
11 each reenacted and amended to read as follows:

12 Unless the context clearly requires otherwise, the definitions in
13 this section apply throughout this chapter.

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

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

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

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

29 (5) "Community custody" means that portion of an offender's
30 sentence of confinement in lieu of earned release time or imposed
31 (~~(pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,~~
32 ~~9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,)~~) as part of a
33 sentence under this chapter and served in the community subject to
34 controls placed on the offender's movement and activities by the
35 department. For offenders placed on community custody for crimes
36 committed on or after July 1, 2000, the department shall assess the

1 offender's risk of reoffense and may establish and modify conditions of
2 community custody, in addition to those imposed by the court, based
3 upon the risk to community safety.

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

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

15 (8) "Community protection zone" means the area within eight hundred
16 eighty feet of the facilities and grounds of a public or private
17 school.

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

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

31 (11) "Confinement" means total or partial confinement.

32 (12) "Conviction" means an adjudication of guilt pursuant to
33 Title((§)) 10 or 13 RCW and includes a verdict of guilty, a finding of
34 guilty, and acceptance of a plea of guilty.

35 (13) "Crime-related prohibition" means an order of a court
36 prohibiting conduct that directly relates to the circumstances of the
37 crime for which the offender has been convicted, and shall not be
38 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct. However, affirmative acts necessary to monitor
3 compliance with the order of a court may be required by the department.

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

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

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

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

20 (15) "Criminal street gang" means any ongoing organization,
21 association, or group of three or more persons, whether formal or
22 informal, having a common name or common identifying sign or symbol,
23 having as one of its primary activities the commission of criminal
24 acts, and whose members or associates individually or collectively
25 engage in or have engaged in a pattern of criminal street gang
26 activity. This definition does not apply to employees engaged in
27 concerted activities for their mutual aid and protection, or to the
28 activities of labor and bona fide nonprofit organizations or their
29 members or agents.

30 (16) "Criminal street gang associate or member" means any person
31 who actively participates in any criminal street gang and who
32 intentionally promotes, furthers, or assists in any criminal act by the
33 criminal street gang.

34 (17) "Criminal street gang-related offense" means any felony or
35 misdemeanor offense, whether in this state or elsewhere, that is
36 committed for the benefit of, at the direction of, or in association
37 with any criminal street gang, or is committed with the intent to

1 promote, further, or assist in any criminal conduct by the gang, or is
2 committed for one or more of the following reasons:

3 (a) To gain admission, prestige, or promotion within the gang;

4 (b) To increase or maintain the gang's size, membership, prestige,
5 dominance, or control in any geographical area;

6 (c) To exact revenge or retribution for the gang or any member of
7 the gang;

8 (d) To obstruct justice, or intimidate or eliminate any witness
9 against the gang or any member of the gang;

10 (e) To directly or indirectly cause any benefit, aggrandizement,
11 gain, profit, or other advantage for the gang, its reputation,
12 influence, or membership; or

13 (f) To provide the gang with any advantage in, or any control or
14 dominance over any criminal market sector, including, but not limited
15 to, manufacturing, delivering, or selling any controlled substance
16 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
17 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
18 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
19 (chapter 9.68 RCW).

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

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

29 (20) "Department" means the department of corrections.

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

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

13 (23) "Drug offender sentencing alternative" is a sentencing option
14 available to persons convicted of a felony offense other than a violent
15 offense or a sex offense and who are eligible for the option under RCW
16 9.94A.660.

17 (24) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of
19 a controlled substance (RCW 69.50.4013) or forged prescription for a
20 controlled substance (RCW 69.50.403);

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

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

27 (25) "Earned release" means earned release from confinement as
28 provided in RCW 9.94A.728.

29 (26) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
31 first degree (RCW 9A.76.110), escape in the second degree (RCW
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
33 willful failure to return from work release (RCW 72.65.070), or willful
34 failure to be available for supervision by the department while in
35 community custody (RCW 72.09.310); or

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

1 (27) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
4 run injury-accident (RCW 46.52.020(4)), felony driving while under the
5 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
6 felony physical control of a vehicle while under the influence of
7 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

20 (31) "Legal financial obligation" means a sum of money that is
21 ordered by a superior court of the state of Washington for legal
22 financial obligations which may include restitution to the victim,
23 statutorily imposed crime victims' compensation fees as assessed
24 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
25 court-appointed attorneys' fees, and costs of defense, fines, and any
26 other financial obligation that is assessed to the offender as a result
27 of a felony conviction. Upon conviction for vehicular assault while
28 under the influence of intoxicating liquor or any drug, RCW
29 46.61.522(1)(b), or vehicular homicide while under the influence of
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
31 obligations may also include payment to a public agency of the expense
32 of an emergency response to the incident resulting in the conviction,
33 subject to RCW 38.52.430.

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

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

- 1 (b) Assault in the second degree;
2 (c) Assault of a child in the second degree;
3 (d) Child molestation in the second degree;
4 (e) Controlled substance homicide;
5 (f) Extortion in the first degree;
6 (g) Incest when committed against a child under age fourteen;
7 (h) Indecent liberties;
8 (i) Kidnapping in the second degree;
9 (j) Leading organized crime;
10 (k) Manslaughter in the first degree;
11 (l) Manslaughter in the second degree;
12 (m) Promoting prostitution in the first degree;
13 (n) Rape in the third degree;
14 (o) Robbery in the second degree;
15 (p) Sexual exploitation;
16 (q) Vehicular assault, when caused by the operation or driving of
17 a vehicle by a person while under the influence of intoxicating liquor
18 or any drug or by the operation or driving of a vehicle in a reckless
19 manner;
20 (r) Vehicular homicide, when proximately caused by the driving of
21 any vehicle by any person while under the influence of intoxicating
22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
23 any vehicle in a reckless manner;
24 (s) Any other class B felony offense with a finding of sexual
25 motivation;
26 (t) Any other felony with a deadly weapon verdict under RCW
27 9.94A.602;
28 (u) Any felony offense in effect at any time prior to December 2,
29 1993, that is comparable to a most serious offense under this
30 subsection, or any federal or out-of-state conviction for an offense
31 that under the laws of this state would be a felony classified as a
32 most serious offense under this subsection;
33 (v)(i) A prior conviction for indecent liberties under RCW
34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1)(d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997;

9 (w) Any out-of-state conviction for a felony offense with a finding
10 of sexual motivation if the minimum sentence imposed was ten years or
11 more; provided that the out-of-state felony offense must be comparable
12 to a felony offense under Title 9 or 9A RCW and the out-of-state
13 definition of sexual motivation must be comparable to the definition of
14 sexual motivation contained in this section.

15 (33) "Nonviolent offense" means an offense which is not a violent
16 offense.

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

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

32 (36) "Pattern of criminal street gang activity" means:

33 (a) The commission, attempt, conspiracy, or solicitation of, or any
34 prior juvenile adjudication of or adult conviction of, two or more of
35 the following criminal street gang-related offenses:

36 (i) Any "serious violent" felony offense as defined in ((RCW
37 ~~9.94A.030~~) this section, excluding Homicide by Abuse (RCW 9A.32.055)
38 and Assault of a Child 1 (RCW 9A.36.120);

1 (ii) Any "violent" offense as defined by (~~RCW 9.94A.030~~) this
2 section, excluding Assault of a Child 2 (RCW 9A.36.130);

3 (iii) Deliver or Possession with Intent to Deliver a Controlled
4 Substance (chapter 69.50 RCW);

5 (iv) Any violation of the firearms and dangerous weapon act
6 (chapter 9.41 RCW);

7 (v) Theft of a Firearm (RCW 9A.56.300);

8 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

9 (vii) Malicious Harassment (RCW 9A.36.080);

10 (viii) Harassment where a subsequent violation or deadly threat is
11 made (RCW 9A.46.020(2)(b));

12 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

13 (x) Any felony conviction by a person eighteen years of age or
14 older with a special finding of involving a juvenile in a felony
15 offense under RCW 9.94A.833;

16 (xi) Residential Burglary (RCW 9A.52.025);

17 (xii) Burglary 2 (RCW 9A.52.030);

18 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

19 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

20 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

21 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

22 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

23 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
24 9A.56.075);

25 (xix) Extortion 1 (RCW 9A.56.120);

26 (xx) Extortion 2 (RCW 9A.56.130);

27 (xxi) Intimidating a Witness (RCW 9A.72.110);

28 (xxii) Tampering with a Witness (RCW 9A.72.120);

29 (xxiii) Reckless Endangerment (RCW 9A.36.050);

30 (xxiv) Coercion (RCW 9A.36.070);

31 (xxv) Harassment (RCW 9A.46.020); or

32 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

33 (b) That at least one of the offenses listed in (a) of this
34 subsection shall have occurred after July 1, 2008;

35 (c) That the most recent committed offense listed in (a) of this
36 subsection occurred within three years of a prior offense listed in (a)
37 of this subsection; and

1 (d) Of the offenses that were committed in (a) of this subsection,
2 the offenses occurred on separate occasions or were committed by two or
3 more persons.

4 (37) "Persistent offender" is an offender who:

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

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

15 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
16 of a child in the first degree, child molestation in the first degree,
17 rape in the second degree, rape of a child in the second degree, or
18 indecent liberties by forcible compulsion; (B) any of the following
19 offenses with a finding of sexual motivation: Murder in the first
20 degree, murder in the second degree, homicide by abuse, kidnapping in
21 the first degree, kidnapping in the second degree, assault in the first
22 degree, assault in the second degree, assault of a child in the first
23 degree, assault of a child in the second degree, or burglary in the
24 first degree; or (C) an attempt to commit any crime listed in this
25 subsection (37)(b)(i); and

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

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

3 (39) "Predatory" means: (a) The perpetrator of the crime was a
4 stranger to the victim, as defined in this section; (b) the perpetrator
5 established or promoted a relationship with the victim prior to the
6 offense and the victimization of the victim was a significant reason
7 the perpetrator established or promoted the relationship; or (c) the
8 perpetrator was: (i) A teacher, counselor, volunteer, or other person
9 in authority in any public or private school and the victim was a
10 student of the school under his or her authority or supervision. For
11 purposes of this subsection, "school" does not include home-based
12 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
13 volunteer, or other person in authority in any recreational activity
14 and the victim was a participant in the activity under his or her
15 authority or supervision; or (iii) a pastor, elder, volunteer, or other
16 person in authority in any church or religious organization, and the
17 victim was a member or participant of the organization under his or her
18 authority.

19 (40) "Private school" means a school regulated under chapter
20 28A.195 or 28A.205 RCW.

21 (41) "Public school" has the same meaning as in RCW 28A.150.010.

22 (42) "Restitution" means a specific sum of money ordered by the
23 sentencing court to be paid by the offender to the court over a
24 specified period of time as payment of damages. The sum may include
25 both public and private costs.

26 (43) "Risk assessment" means the application of ~~((an objective))~~
27 the risk instrument ~~((supported by research and adopted by))~~
28 recommended to the department ~~((for the purpose of assessing an~~
29 ~~offender's risk of reoffense, taking into consideration the nature of~~
30 ~~the harm done by the offender, place and circumstances of the offender~~
31 ~~related to risk, the offender's relationship to any victim, and any~~
32 ~~information provided to the department by victims. The results of a~~
33 ~~risk assessment shall not be based on unconfirmed or unconfirmable~~
34 ~~allegations))~~ by the Washington state institute for public policy as
35 having the highest degree of predictive accuracy for assessing an
36 offender's risk of reoffense.

37 (44) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
3 while under the influence of intoxicating liquor or any drug (RCW
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
5 attended vehicle (RCW 46.52.020(5)); or

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

9 (45) "Serious violent offense" is a subcategory of violent offense
10 and means:

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

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

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

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

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

24 (46) "Sex offense" means:

25 (a) (i) A felony that is a violation of chapter 9A.44 RCW other than
26 RCW 9A.44.130(12);

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

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

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

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

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex
2 offense under (a) of this subsection.

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

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

8 (49) "Statutory maximum sentence" means the maximum length of time
9 for which an offender may be confined as punishment for a crime as
10 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
11 crime, or other statute defining the maximum penalty for a crime.

12 (50) "Stranger" means that the victim did not know the offender
13 twenty-four hours before the offense.

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

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

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

27 (54) "Violent offense" means:

28 (a) Any of the following felonies:

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

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

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

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

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;
2 (x) Extortion in the first degree;
3 (xi) Robbery in the second degree;
4 (xii) Drive-by shooting;
5 (xiii) Vehicular assault, when caused by the operation or driving
6 of a vehicle by a person while under the influence of intoxicating
7 liquor or any drug or by the operation or driving of a vehicle in a
8 reckless manner; and

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

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

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

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

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

29 (57) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school.

32 **Sec. 4.** RCW 9.94A.030 and 2009 c 28 s 4 are each amended to read
33 as follows:

34 Unless the context clearly requires otherwise, the definitions in
35 this section apply throughout this chapter.

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

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

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

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

14 (5) "Community custody" means that portion of an offender's
15 sentence of confinement in lieu of earned release time or imposed as
16 part of a sentence under this chapter and served in the community
17 subject to controls placed on the offender's movement and activities by
18 the department.

19 ~~((6) ("Community custody range" means the minimum and maximum
20 period of community custody included as part of a sentence under RCW
21 9.94A.701, as established by the commission or the legislature under
22 RCW 9.94A.850.~~

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

26 ~~((8))~~ (7) "Community restitution" means compulsory service,
27 without compensation, performed for the benefit of the community by the
28 offender.

29 ~~((9))~~ (8) "Confinement" means total or partial confinement.

30 ~~((10))~~ (9) "Conviction" means an adjudication of guilt pursuant
31 to Title 10 or 13 RCW and includes a verdict of guilty, a finding of
32 guilty, and acceptance of a plea of guilty.

33 ~~((11))~~ (10) "Crime-related prohibition" means an order of a court
34 prohibiting conduct that directly relates to the circumstances of the
35 crime for which the offender has been convicted, and shall not be
36 construed to mean orders directing an offender affirmatively to
37 participate in rehabilitative programs or to otherwise perform

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

3 ~~((12))~~ (11) "Criminal history" means the list of a defendant's
4 prior convictions and juvenile adjudications, whether in this state, in
5 federal court, or elsewhere.

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

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

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

19 ~~((13))~~ (12) "Criminal street gang" means any ongoing
20 organization, association, or group of three or more persons, whether
21 formal or informal, having a common name or common identifying sign or
22 symbol, having as one of its primary activities the commission of
23 criminal acts, and whose members or associates individually or
24 collectively engage in or have engaged in a pattern of criminal street
25 gang activity. This definition does not apply to employees engaged in
26 concerted activities for their mutual aid and protection, or to the
27 activities of labor and bona fide nonprofit organizations or their
28 members or agents.

29 ~~((14))~~ (13) "Criminal street gang associate or member" means any
30 person who actively participates in any criminal street gang and who
31 intentionally promotes, furthers, or assists in any criminal act by the
32 criminal street gang.

33 ~~((15))~~ (14) "Criminal street gang-related offense" means any
34 felony or misdemeanor offense, whether in this state or elsewhere, that
35 is committed for the benefit of, at the direction of, or in association
36 with any criminal street gang, or is committed with the intent to
37 promote, further, or assist in any criminal conduct by the gang, or is
38 committed for one or more of the following reasons:

- 1 (a) To gain admission, prestige, or promotion within the gang;
2 (b) To increase or maintain the gang's size, membership, prestige,
3 dominance, or control in any geographical area;
4 (c) To exact revenge or retribution for the gang or any member of
5 the gang;
6 (d) To obstruct justice, or intimidate or eliminate any witness
7 against the gang or any member of the gang;
8 (e) To directly or indirectly cause any benefit, aggrandizement,
9 gain, profit, or other advantage for the gang, its reputation,
10 influence, or membership; or
11 (f) To provide the gang with any advantage in, or any control or
12 dominance over any criminal market sector, including, but not limited
13 to, manufacturing, delivering, or selling any controlled substance
14 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
15 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
16 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
17 (chapter 9.68 RCW).

18 ~~((+16+))~~ (15) "Day fine" means a fine imposed by the sentencing
19 court that equals the difference between the offender's net daily
20 income and the reasonable obligations that the offender has for the
21 support of the offender and any dependents.

22 ~~((+17+))~~ (16) "Day reporting" means a program of enhanced
23 supervision designed to monitor the offender's daily activities and
24 compliance with sentence conditions, and in which the offender is
25 required to report daily to a specific location designated by the
26 department or the sentencing court.

27 ~~((+18+))~~ (17) "Department" means the department of corrections.

28 ~~((+19+))~~ (18) "Determinate sentence" means a sentence that states
29 with exactitude the number of actual years, months, or days of total
30 confinement, of partial confinement, of community custody, the number
31 of actual hours or days of community restitution work, or dollars or
32 terms of a legal financial obligation. The fact that an offender
33 through earned release can reduce the actual period of confinement
34 shall not affect the classification of the sentence as a determinate
35 sentence.

36 ~~((+20+))~~ (19) "Disposable earnings" means that part of the earnings
37 of an offender remaining after the deduction from those earnings of any
38 amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal
2 services, whether denominated as wages, salary, commission, bonuses, or
3 otherwise, and, notwithstanding any other provision of law making the
4 payments exempt from garnishment, attachment, or other process to
5 satisfy a court-ordered legal financial obligation, specifically
6 includes periodic payments pursuant to pension or retirement programs,
7 or insurance policies of any type, but does not include payments made
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
9 or Title 74 RCW.

10 ~~((+21+))~~ (20) "Drug offender sentencing alternative" is a
11 sentencing option available to persons convicted of a felony offense
12 other than a violent offense or a sex offense and who are eligible for
13 the option under RCW 9.94A.660.

14 ~~((+22+))~~ (21) "Drug offense" means:

15 (a) Any felony violation of chapter 69.50 RCW except possession of
16 a controlled substance (RCW 69.50.4013) or forged prescription for a
17 controlled substance (RCW 69.50.403);

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

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

24 ~~((+23+))~~ (22) "Earned release" means earned release from
25 confinement as provided in RCW 9.94A.728.

26 ~~((+24+))~~ (23) "Escape" means:

27 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
28 first degree (RCW 9A.76.110), escape in the second degree (RCW
29 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
30 willful failure to return from work release (RCW 72.65.070), or willful
31 failure to be available for supervision by the department while in
32 community custody (RCW 72.09.310); or

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

36 ~~((+25+))~~ (24) "Felony traffic offense" means:

37 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
38 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-

1 run injury-accident (RCW 46.52.020(4)), felony driving while under the
2 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
3 felony physical control of a vehicle while under the influence of
4 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

8 ~~((26))~~ (25) "Fine" means a specific sum of money ordered by the
9 sentencing court to be paid by the offender to the court over a
10 specific period of time.

11 ~~((27))~~ (26) "First-time offender" means any person who has no
12 prior convictions for a felony and is eligible for the first-time
13 offender waiver under RCW 9.94A.650.

14 ~~((28))~~ (27) "Home detention" means a program of partial
15 confinement available to offenders wherein the offender is confined in
16 a private residence subject to electronic surveillance.

17 ~~((29))~~ (28) "Legal financial obligation" means a sum of money
18 that is ordered by a superior court of the state of Washington for
19 legal financial obligations which may include restitution to the
20 victim, statutorily imposed crime victims' compensation fees as
21 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
22 drug funds, court-appointed attorneys' fees, and costs of defense,
23 fines, and any other financial obligation that is assessed to the
24 offender as a result of a felony conviction. Upon conviction for
25 vehicular assault while under the influence of intoxicating liquor or
26 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
27 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
28 legal financial obligations may also include payment to a public agency
29 of the expense of an emergency response to the incident resulting in
30 the conviction, subject to RCW 38.52.430.

31 ~~((30))~~ (29) "Most serious offense" means any of the following
32 felonies or a felony attempt to commit any of the following felonies:

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

36 (b) Assault in the second degree;

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

38 (d) Child molestation in the second degree;

1 (e) Controlled substance homicide;
2 (f) Extortion in the first degree;
3 (g) Incest when committed against a child under age fourteen;
4 (h) Indecent liberties;
5 (i) Kidnapping in the second degree;
6 (j) Leading organized crime;
7 (k) Manslaughter in the first degree;
8 (l) Manslaughter in the second degree;
9 (m) Promoting prostitution in the first degree;
10 (n) Rape in the third degree;
11 (o) Robbery in the second degree;
12 (p) Sexual exploitation;
13 (q) Vehicular assault, when caused by the operation or driving of
14 a vehicle by a person while under the influence of intoxicating liquor
15 or any drug or by the operation or driving of a vehicle in a reckless
16 manner;
17 (r) Vehicular homicide, when proximately caused by the driving of
18 any vehicle by any person while under the influence of intoxicating
19 liquor or any drug as defined by RCW 46.61.502, or by the operation of
20 any vehicle in a reckless manner;
21 (s) Any other class B felony offense with a finding of sexual
22 motivation;
23 (t) Any other felony with a deadly weapon verdict under RCW
24 9.94A.602;
25 (u) Any felony offense in effect at any time prior to December 2,
26 1993, that is comparable to a most serious offense under this
27 subsection, or any federal or out-of-state conviction for an offense
28 that under the laws of this state would be a felony classified as a
29 most serious offense under this subsection;
30 (v)(i) A prior conviction for indecent liberties under RCW
31 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
32 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
33 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
34 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
35 (ii) A prior conviction for indecent liberties under RCW
36 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
37 if: (A) The crime was committed against a child under the age of
38 fourteen; or (B) the relationship between the victim and perpetrator is

1 included in the definition of indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
3 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
4 through July 27, 1997;

5 (w) Any out-of-state conviction for a felony offense with a finding
6 of sexual motivation if the minimum sentence imposed was ten years or
7 more; provided that the out-of-state felony offense must be comparable
8 to a felony offense under Title 9 or 9A RCW and the out-of-state
9 definition of sexual motivation must be comparable to the definition of
10 sexual motivation contained in this section.

11 (~~(31)~~) (30) "Nonviolent offense" means an offense which is not a
12 violent offense.

13 (~~(32)~~) (31) "Offender" means a person who has committed a felony
14 established by state law and is eighteen years of age or older or is
15 less than eighteen years of age but whose case is under superior court
16 jurisdiction under RCW 13.04.030 or has been transferred by the
17 appropriate juvenile court to a criminal court pursuant to RCW
18 13.40.110. In addition, for the purpose of community custody
19 requirements under this chapter, "offender" also means a misdemeanor or
20 gross misdemeanor probationer convicted of an offense included in RCW
21 9.94A.501(1) and ordered by a superior court to probation under the
22 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
23 9.95.210. Throughout this chapter, the terms "offender" and
24 "defendant" are used interchangeably.

25 (~~(33)~~) (32) "Partial confinement" means confinement for no more
26 than one year in a facility or institution operated or utilized under
27 contract by the state or any other unit of government, or, if home
28 detention or work crew has been ordered by the court, in an approved
29 residence, for a substantial portion of each day with the balance of
30 the day spent in the community. Partial confinement includes work
31 release, home detention, work crew, and a combination of work crew and
32 home detention.

33 (~~(34)~~) (33) "Pattern of criminal street gang activity" means:

34 (a) The commission, attempt, conspiracy, or solicitation of, or any
35 prior juvenile adjudication of or adult conviction of, two or more of
36 the following criminal street gang-related offenses:

37 (i) Any "serious violent" felony offense as defined in ((RCW

1 ~~9.94A.030~~) this section, excluding Homicide by Abuse (RCW 9A.32.055)
2 and Assault of a Child 1 (RCW 9A.36.120);

3 (ii) Any "violent" offense as defined by (~~RCW 9.94A.030~~) this
4 section, excluding Assault of a Child 2 (RCW 9A.36.130);

5 (iii) Deliver or Possession with Intent to Deliver a Controlled
6 Substance (chapter 69.50 RCW);

7 (iv) Any violation of the firearms and dangerous weapon act
8 (chapter 9.41 RCW);

9 (v) Theft of a Firearm (RCW 9A.56.300);

10 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

11 (vii) Malicious Harassment (RCW 9A.36.080);

12 (viii) Harassment where a subsequent violation or deadly threat is
13 made (RCW 9A.46.020(2)(b));

14 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

15 (x) Any felony conviction by a person eighteen years of age or
16 older with a special finding of involving a juvenile in a felony
17 offense under RCW 9.94A.833;

18 (xi) Residential Burglary (RCW 9A.52.025);

19 (xii) Burglary 2 (RCW 9A.52.030);

20 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

21 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

22 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

23 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

24 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

25 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
26 9A.56.075);

27 (xix) Extortion 1 (RCW 9A.56.120);

28 (xx) Extortion 2 (RCW 9A.56.130);

29 (xxi) Intimidating a Witness (RCW 9A.72.110);

30 (xxii) Tampering with a Witness (RCW 9A.72.120);

31 (xxiii) Reckless Endangerment (RCW 9A.36.050);

32 (xxiv) Coercion (RCW 9A.36.070);

33 (xxv) Harassment (RCW 9A.46.020); or

34 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

35 (b) That at least one of the offenses listed in (a) of this
36 subsection shall have occurred after July 1, 2008;

37 (c) That the most recent committed offense listed in (a) of this

1 subsection occurred within three years of a prior offense listed in (a)
2 of this subsection; and

3 (d) Of the offenses that were committed in (a) of this subsection,
4 the offenses occurred on separate occasions or were committed by two or
5 more persons.

6 (~~(35)~~) (34) "Persistent offender" is an offender who:

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

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

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
18 of a child in the first degree, child molestation in the first degree,
19 rape in the second degree, rape of a child in the second degree, or
20 indecent liberties by forcible compulsion; (B) any of the following
21 offenses with a finding of sexual motivation: Murder in the first
22 degree, murder in the second degree, homicide by abuse, kidnapping in
23 the first degree, kidnapping in the second degree, assault in the first
24 degree, assault in the second degree, assault of a child in the first
25 degree, assault of a child in the second degree, or burglary in the
26 first degree; or (C) an attempt to commit any crime listed in this
27 subsection (~~(35)~~) (34) (b)(i); and

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

1 subsection only when the offender was eighteen years of age or older
2 when the offender committed the offense.

3 ~~((36))~~ (35) "Predatory" means: (a) The perpetrator of the crime
4 was a stranger to the victim, as defined in this section; (b) the
5 perpetrator established or promoted a relationship with the victim
6 prior to the offense and the victimization of the victim was a
7 significant reason the perpetrator established or promoted the
8 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
9 volunteer, or other person in authority in any public or private school
10 and the victim was a student of the school under his or her authority
11 or supervision. For purposes of this subsection, "school" does not
12 include home-based instruction as defined in RCW 28A.225.010; (ii) a
13 coach, trainer, volunteer, or other person in authority in any
14 recreational activity and the victim was a participant in the activity
15 under his or her authority or supervision; or (iii) a pastor, elder,
16 volunteer, or other person in authority in any church or religious
17 organization, and the victim was a member or participant of the
18 organization under his or her authority.

19 ~~((37))~~ (36) "Private school" means a school regulated under
20 chapter 28A.195 or 28A.205 RCW.

21 ~~((38))~~ (37) "Public school" has the same meaning as in RCW
22 28A.150.010.

23 ~~((39))~~ (38) "Restitution" means a specific sum of money ordered
24 by the sentencing court to be paid by the offender to the court over a
25 specified period of time as payment of damages. The sum may include
26 both public and private costs.

27 ~~((40))~~ (39) "Risk assessment" means the application of ~~((an~~
28 ~~objective))~~ the risk instrument ~~((supported by research and adopted~~
29 ~~by))~~ recommended to the department ~~((for the purpose of assessing an~~
30 ~~offender's risk of reoffense, taking into consideration the nature of~~
31 ~~the harm done by the offender, place and circumstances of the offender~~
32 ~~related to risk, the offender's relationship to any victim, and any~~
33 ~~information provided to the department by victims. The results of a~~
34 ~~risk assessment shall not be based on unconfirmed or unconfirmable~~
35 ~~allegations))~~ by the Washington state institute for public policy as
36 having the highest degree of predictive accuracy for assessing an
37 offender's risk of reoffense.

38 ~~((41))~~ (40) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
3 while under the influence of intoxicating liquor or any drug (RCW
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
5 attended vehicle (RCW 46.52.020(5)); or

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

9 (~~(42)~~) (41) "Serious violent offense" is a subcategory of violent
10 offense and means:

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

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

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

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

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

24 (~~(43)~~) (42) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
26 RCW 9A.44.130(12);

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

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

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

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

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex
2 offense under (a) of this subsection.

3 ~~((44))~~ (43) "Sexual motivation" means that one of the purposes
4 for which the defendant committed the crime was for the purpose of his
5 or her sexual gratification.

6 ~~((45))~~ (44) "Standard sentence range" means the sentencing
7 court's discretionary range in imposing a nonappealable sentence.

8 ~~((46))~~ (45) "Statutory maximum sentence" means the maximum length
9 of time for which an offender may be confined as punishment for a crime
10 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
11 the crime, or other statute defining the maximum penalty for a crime.

12 ~~((47))~~ (46) "Stranger" means that the victim did not know the
13 offender twenty-four hours before the offense.

14 ~~((48))~~ (47) "Total confinement" means confinement inside the
15 physical boundaries of a facility or institution operated or utilized
16 under contract by the state or any other unit of government for twenty-
17 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

18 ~~((49))~~ (48) "Transition training" means written and verbal
19 instructions and assistance provided by the department to the offender
20 during the two weeks prior to the offender's successful completion of
21 the work ethic camp program. The transition training shall include
22 instructions in the offender's requirements and obligations during the
23 offender's period of community custody.

24 ~~((50))~~ (49) "Victim" means any person who has sustained
25 emotional, psychological, physical, or financial injury to person or
26 property as a direct result of the crime charged.

27 ~~((51))~~ (50) "Violent offense" means:

28 (a) Any of the following felonies:

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

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

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

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

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;
2 (x) Extortion in the first degree;
3 (xi) Robbery in the second degree;
4 (xii) Drive-by shooting;
5 (xiii) Vehicular assault, when caused by the operation or driving
6 of a vehicle by a person while under the influence of intoxicating
7 liquor or any drug or by the operation or driving of a vehicle in a
8 reckless manner; and

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

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

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

19 ~~((+52+))~~ (51) "Work crew" means a program of partial confinement
20 consisting of civic improvement tasks for the benefit of the community
21 that complies with RCW 9.94A.725.

22 ~~((+53+))~~ (52) "Work ethic camp" means an alternative incarceration
23 program as provided in RCW 9.94A.690 designed to reduce recidivism and
24 lower the cost of corrections by requiring offenders to complete a
25 comprehensive array of real-world job and vocational experiences,
26 character-building work ethics training, life management skills
27 development, substance abuse rehabilitation, counseling, literacy
28 training, and basic adult education.

29 ~~((+54+))~~ (53) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school.

32 **Sec. 5.** RCW 9.94A.701 and 2009 c 28 s 10 are each amended to read
33 as follows:

34 (1) If an offender is sentenced to the custody of the department
35 for one of the following crimes, the court shall ~~((impose a term of~~
36 ~~community custody for the community custody range established under RCW~~
37 ~~9.94A.850 or up to the period of earned release awarded pursuant to RCW~~

1 ~~9.94A.728 (1) and (2), whichever is longer)), in addition to the other~~
2 ~~terms of the sentence, sentence the offender to community custody for~~
3 ~~three years:~~

4 (a) A sex offense not sentenced under RCW 9.94A.507;

5 (b) A serious violent offense; or

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

7 ~~(d) An offense involving the unlawful possession of a firearm under~~
8 ~~RCW 9.41.040, where the offender is a criminal street gang member or~~
9 ~~associate;~~

10 ~~(e) A felony offender under chapter 69.50 or 69.52 RCW)) A~~
11 violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006,
12 when a court sentences the person to a term of confinement of one year
13 or less.

14 ~~(2) ((If an offender is sentenced to a term of confinement of one~~
15 ~~year or less for a violation of RCW 9A.44.130(11)(a), the court shall~~
16 ~~impose a term of community custody for the community custody range~~
17 ~~established under RCW 9.94A.850 or up to the period of earned release~~
18 ~~awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer)) A~~
19 court shall, in addition to the other terms of the sentence, sentence
20 an offender to community custody for eighteen months when the court
21 sentences the person to the custody of the department for a violent
22 offense that is not considered a serious violent offense.

23 (3) A court shall, in addition to the other terms of the sentence,
24 sentence an offender to community custody for one year when the court
25 sentences the person to the custody of the department for:

26 (a) Any crime against persons under RCW 9.94A.411(2);

27 (b) An offense involving the unlawful possession of a firearm under
28 RCW 9.41.040, where the offender is a criminal street gang member or
29 associate; or

30 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed on
31 or after July 1, 2000.

32 ~~((+3))~~ (4) If an offender is sentenced under the drug offender
33 sentencing alternative, the court shall impose community custody as
34 provided in RCW 9.94A.660.

35 ~~((+4))~~ (5) If an offender is sentenced under the special sexual
36 offender sentencing alternative, the court shall impose community
37 custody as provided in RCW 9.94A.670.

1 ~~((5))~~ (6) If an offender is sentenced to a work ethic camp, the
2 court shall impose community custody as provided in RCW 9.94A.690.

3 ~~((6))~~ (7) If a sex offender is sentenced as a nonpersistent
4 offender pursuant to RCW 9.94A.507, the court shall impose community
5 custody as provided in that section.

6 ~~((7) If the offender is a criminal street gang associate or member
7 and is found guilty of unlawful possession of a firearm under RCW
8 9.41.040, the court shall impose a term of community custody under
9 subsection (1)(d) of this section))~~ (8) The term of community custody
10 specified by this section shall be reduced by the court whenever an
11 offender's standard range term of confinement in combination with the
12 term of community custody exceeds the statutory maximum for the crime
13 as provided in RCW 9A.20.021.

14 **Sec. 6.** RCW 9.94A.704 and 2009 c 28 s 12 are each amended to read
15 as follows:

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

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

22 (b) Within the funds available for community custody, the
23 department shall determine conditions ~~((and duration of community
24 custody))~~ on the basis of risk to community safety, and shall supervise
25 offenders during community custody on the basis of risk to community
26 safety and conditions imposed by the court. The secretary shall adopt
27 rules to implement the provisions of this subsection (2)(b).

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

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

31 (b) Remain within prescribed geographical boundaries;

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

34 (d) Pay the supervision fee assessment; and

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

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

4 (5) If the offender was sentenced pursuant to a conviction for a
5 sex offense, the department may impose electronic monitoring. Within
6 the resources made available by the department for this purpose, the
7 department shall carry out any electronic monitoring using the most
8 appropriate technology given the individual circumstances of the
9 offender. As used in this section, "electronic monitoring" means the
10 monitoring of an offender using an electronic offender tracking system
11 including, but not limited to, a system using radio frequency or active
12 or passive global positioning system technology.

13 (6) The department may not impose conditions that are contrary to
14 those ordered by the court and may not contravene or decrease court-
15 imposed conditions.

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

18 (b) By the close of the next business day after receiving notice of
19 a condition imposed or modified by the department, an offender may
20 request an administrative review under rules adopted by the department.
21 The condition shall remain in effect unless the reviewing officer finds
22 that it is not reasonably related to the crime of conviction, the
23 offender's risk of reoffending, or the safety of the community.

24 (8) The department may require offenders to pay for special
25 services rendered including electronic monitoring, day reporting, and
26 telephone reporting, dependent on the offender's ability to pay. The
27 department may pay for these services for offenders who are not able to
28 pay.

29 (9)(a) When a sex offender has been sentenced pursuant to RCW
30 9.94A.507, the department shall assess the offender's risk of
31 recidivism and shall recommend to the board any additional or modified
32 conditions based upon the offender's risk to community safety and may
33 recommend affirmative conduct or electronic monitoring consistent with
34 subsections (4) through (6) of this section.

35 (b) The board may impose conditions in addition to court-ordered
36 conditions. The board must consider and may impose department-
37 recommended conditions.

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

- 6 (i) The crime of conviction;
7 (ii) The offender's risk of reoffending;
8 (iii) The safety of the community.

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

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

21 **Sec. 7.** RCW 9.94A.707 and 2008 c 231 s 12 are each amended to read
22 as follows:

23 (1) Community custody shall begin: (a) Upon completion of the term
24 of confinement; or (b) ((at such time as the offender is transferred to
25 community custody in lieu of earned release in accordance with RCW
26 9.94A.728 (1) or (2), or (c)) at the time of sentencing if no term of
27 confinement is ordered.

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

31 ~~((3) When an offender is sentenced to a community custody range
32 pursuant to RCW 9.94A.701 (1) or (2), the department shall discharge
33 the offender from community custody on a date determined by the
34 department, which the department may modify, based on risk and
35 performance of the offender, within the range or at the end of the
36 period of earned release, whichever is later.))~~

1 **Sec. 8.** RCW 9.94A.850 and 2009 c 28 s 17 are each amended to read
2 as follows:

3 (1) A sentencing guidelines commission is established as an agency
4 of state government.

5 (2) The legislature finds that the commission, having accomplished
6 its original statutory directive to implement this chapter, and having
7 expertise in sentencing practice and policies, shall:

8 (a) Evaluate state sentencing policy, to include whether the
9 sentencing ranges and standards are consistent with and further:

10 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

11 (ii) The intent of the legislature to emphasize confinement for the
12 violent offender and alternatives to confinement for the nonviolent
13 offender.

14 The commission shall provide the governor and the legislature with
15 its evaluation and recommendations under this subsection not later than
16 December 1, 1996, and every two years thereafter;

17 (b) Recommend to the legislature revisions or modifications to the
18 standard sentence ranges, state sentencing policy, prosecuting
19 standards, and other standards. If implementation of the revisions or
20 modifications would result in exceeding the capacity of correctional
21 facilities, then the commission shall accompany its recommendation with
22 an additional list of standard sentence ranges which are consistent
23 with correction capacity;

24 (c) Study the existing criminal code and from time to time make
25 recommendations to the legislature for modification;

26 (d)(i) Serve as a clearinghouse and information center for the
27 collection, preparation, analysis, and dissemination of information on
28 state and local adult and juvenile sentencing practices; (ii) develop
29 and maintain a computerized adult and juvenile sentencing information
30 system by individual superior court judge consisting of offender,
31 offense, history, and sentence information entered from judgment and
32 sentence forms for all adult felons; and (iii) conduct ongoing research
33 regarding adult and juvenile sentencing guidelines, use of total
34 confinement and alternatives to total confinement, plea bargaining, and
35 other matters relating to the improvement of the adult criminal justice
36 system and the juvenile justice system;

37 (e) Assume the powers and duties of the juvenile disposition
38 standards commission after June 30, 1996;

1 (f) Evaluate the effectiveness of existing disposition standards
2 and related statutes in implementing policies set forth in RCW
3 13.40.010 generally, specifically review the guidelines relating to the
4 confinement of minor and first-time offenders as well as the use of
5 diversion, and review the application of current and proposed juvenile
6 sentencing standards and guidelines for potential adverse impacts on
7 the sentencing outcomes of racial and ethnic minority youth;

8 (g) Solicit the comments and suggestions of the juvenile justice
9 community concerning disposition standards, and make recommendations to
10 the legislature regarding revisions or modifications of the standards.
11 The evaluations shall be submitted to the legislature on December 1 of
12 each odd-numbered year. The department of social and health services
13 shall provide the commission with available data concerning the
14 implementation of the disposition standards and related statutes and
15 their effect on the performance of the department's responsibilities
16 relating to juvenile offenders, and with recommendations for
17 modification of the disposition standards. The administrative office
18 of the courts shall provide the commission with available data on
19 diversion, including the use of youth court programs, and dispositions
20 of juvenile offenders under chapter 13.40 RCW; and

21 (h) Not later than December 1, 1997, and at least every two years
22 thereafter, based on available information, report to the governor and
23 the legislature on:

24 (i) Racial disproportionality in juvenile and adult sentencing,
25 and, if available, the impact that diversions, such as youth courts,
26 have on racial disproportionality in juvenile prosecution,
27 adjudication, and sentencing;

28 (ii) The capacity of state and local juvenile and adult facilities
29 and resources; and

30 (iii) Recidivism information on adult and juvenile offenders.

31 (3) Each of the commission's recommended standard sentence ranges
32 shall include one or more of the following: Total confinement, partial
33 confinement, community supervision, community restitution, and a fine.

34 (4) The standard sentence ranges of total and partial confinement
35 under this chapter, except as provided in RCW 9.94A.517, are subject to
36 the following limitations:

37 (a) If the maximum term in the range is one year or less, the
38 minimum term in the range shall be no less than one-third of the

1 maximum term in the range, except that if the maximum term in the range
2 is ninety days or less, the minimum term may be less than one-third of
3 the maximum;

4 (b) If the maximum term in the range is greater than one year, the
5 minimum term in the range shall be no less than seventy-five percent of
6 the maximum term in the range, except that for murder in the second
7 degree in seriousness level XIV under RCW 9.94A.510, the minimum term
8 in the range shall be no less than fifty percent of the maximum term in
9 the range; and

10 (c) The maximum term of confinement in a range may not exceed the
11 statutory maximum for the crime as provided in RCW 9A.20.021.

12 ~~(5) ((a) Not later than December 31 of each year, the commission
13 may propose modifications to the community custody ranges to be
14 included in sentences under RCW 9.94A.701. The ranges shall be based
15 on the principles in RCW 9.94A.010, and shall take into account the
16 funds available to the department for community custody. The minimum
17 term in each range shall not be less than one half of the maximum term.~~

18 ~~(b) The legislature may, by enactment of a legislative bill, adopt
19 or modify the community custody ranges proposed by the commission. If
20 the legislature fails to adopt or modify the initial ranges in its next
21 regular session after they are proposed, the proposed ranges shall take
22 effect without legislative approval for crimes committed on or after
23 July 1, 2000.~~

24 ~~(c) When the commission proposes modifications to ranges pursuant
25 to this subsection, the legislature may, by enactment of a bill, adopt
26 or modify the ranges proposed by the commission for crimes committed on
27 or after July 1 of the year after they were proposed. Unless the
28 legislature adopts or modifies the commission's proposal in its next
29 regular session, the proposed ranges shall not take effect.~~

30 ~~(6))~~ The commission shall exercise its duties under this section
31 in conformity with chapter 34.05 RCW.

32 NEW SECTION. **Sec. 9.** The department of corrections shall
33 recalculate the term of community custody and reset the date that
34 community custody will end for each offender currently in confinement
35 or serving a term of community custody for a crime specified in RCW
36 9.94A.701. The recalculation shall not extend a term of community
37 custody beyond that to which an offender is currently subject.

1 **Sec. 10.** 2008 c 231 s 6 (uncodified) is amended to read as
2 follows:

3 The existing sentencing reform act contains numerous provisions for
4 supervision of different types of offenders. This duplication has
5 caused great confusion for judges, lawyers, offenders, and the
6 department of corrections, and often results in inaccurate sentences.
7 The clarifications in this act are intended to support continued
8 discussions by the sentencing guidelines commission with the courts and
9 the criminal justice community to identify and propose policy changes
10 that will further simplify and improve the sentencing reform act
11 relating to the supervision of offenders. The sentencing guidelines
12 commission shall submit policy change proposals to the legislature on
13 or before December 1, 2008.

14 Sections 7 through 58 of this act are intended to simplify the
15 supervision provisions of the sentencing reform act and increase the
16 uniformity of its application. These sections are not intended to
17 either increase or decrease the authority of sentencing courts or the
18 department relating to supervision, except for those provisions
19 instructing the court to apply the provisions of the current community
20 custody law to offenders sentenced after July 1, 2009, but who
21 committed their crime prior to August 1, 2009, to the extent that such
22 application is constitutionally permissible.

23 This will effect a change for offenders who committed their crimes
24 prior to the offender accountability act, chapter 196, Laws of 1999.
25 These offenders will be ordered to a term of community custody rather
26 than community placement or community supervision. To the extent
27 constitutionally permissible, the terms of the offender's supervision
28 will be as provided in current law. With the exception of this change,
29 the legislature does not intend to make, and no provision of sections
30 7 through 58 of this act may be construed as making, a substantive
31 change to the supervision provisions of the sentencing reform act.

32 ~~((It is the intent of the legislature to reaffirm that section 3,~~
33 ~~chapter 379, Laws of 2003, expires July 1, 2010.))~~

34 **Sec. 11.** RCW 9.95.220 and 1957 c 227 s 5 are each amended to read
35 as follows:

36 (1) Except as provided in subsection (2) of this section, whenever
37 the state parole officer or other officer under whose supervision the

1 probationer has been placed shall have reason to believe such
2 probationer is violating the terms of his or her probation, or engaging
3 in criminal practices, or is abandoned to improper associates, or
4 living a vicious life, he or she shall cause the probationer to be
5 brought before the court wherein the probation was granted. For this
6 purpose any peace officer or state parole officer may rearrest any such
7 person without warrant or other process. The court may thereupon in
8 its discretion without notice revoke and terminate such probation. In
9 the event the judgment has been pronounced by the court and the
10 execution thereof suspended, the court may revoke such suspension,
11 whereupon the judgment shall be in full force and effect, and the
12 defendant shall be delivered to the sheriff to be transported to the
13 penitentiary or reformatory as the case may be. If the judgment has
14 not been pronounced, the court shall pronounce judgment after such
15 revocation of probation and the defendant shall be delivered to the
16 sheriff to be transported to the penitentiary or reformatory, in
17 accordance with the sentence imposed.

18 (2) If a probationer is being supervised by the department of
19 corrections pursuant to RCW 9.95.204, the department shall have
20 authority to issue a warrant for the arrest of an offender who violates
21 a condition of community custody, as provided in RCW 9.94A.716. Any
22 sanctions shall be imposed by the department pursuant to RCW 9.94A.737.
23 The department shall provide a copy of the violation hearing report to
24 the sentencing court in a timely manner. Nothing in this subsection is
25 intended to limit the power of the sentencing court to respond to a
26 probationer's violation of conditions.

27 **Sec. 12.** RCW 9.94A.633 and 2009 c 28 s 7 are each amended to read
28 as follows:

29 (1) (a) An offender who violates any condition or requirement of a
30 sentence may be sanctioned with up to sixty days' confinement for each
31 violation.

32 (b) In lieu of confinement, an offender may be sanctioned with work
33 release, home detention with electronic monitoring, work crew,
34 community restitution, inpatient treatment, daily reporting, curfew,
35 educational or counseling sessions, supervision enhanced through
36 electronic monitoring, or any other sanctions available in the
37 community.

1 (2) If an offender was under community custody pursuant to one of
2 the following statutes, the offender may be sanctioned as follows:

3 (a) If the offender was transferred to community custody in lieu of
4 earned early release in accordance with RCW 9.94A.728(2), the offender
5 may be transferred to a more restrictive confinement status to serve up
6 to the remaining portion of the sentence, less credit for any period
7 actually spent in community custody or in detention awaiting
8 disposition of an alleged violation.

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

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

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

19 (e) If a sex offender was sentenced pursuant to RCW 9.94A.507, the
20 offender may be transferred to a more restrictive confinement status to
21 serve up to the remaining portion of the sentence, less credit for any
22 period actually spent in community custody or in detention awaiting
23 disposition of an alleged violation.

24 (3) If a probationer is being supervised by the department pursuant
25 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be
26 sanctioned pursuant to subsection (1) of this section. The department
27 shall have authority to issue a warrant for the arrest of an offender
28 who violates a condition of community custody, as provided in RCW
29 9.94A.716. Any sanctions shall be imposed by the department pursuant
30 to RCW 9.94A.737. The department shall provide a copy of the violation
31 hearing report to the sentencing court in a timely manner. Nothing in
32 this subsection is intended to limit the power of the sentencing court
33 to respond to a probationer's violation of conditions.

34 **Sec. 13.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to
35 read as follows:

36 (1) If an offender violates any condition or requirement of
37 community custody, the department may transfer the offender to a more

1 restrictive confinement status to serve up to the remaining portion of
2 the sentence, less credit for any period actually spent in community
3 custody or in detention awaiting disposition of an alleged violation
4 and subject to the limitations of subsection (3) of this section.

5 (2) If an offender has not completed his or her maximum term of
6 total confinement and is subject to a third violation hearing for any
7 violation of community custody and is found to have committed the
8 violation, the department shall return the offender to total
9 confinement in a state correctional facility to serve up to the
10 remaining portion of his or her sentence, unless it is determined that
11 returning the offender to a state correctional facility would
12 substantially interfere with the offender's ability to maintain
13 necessary community supports or to participate in necessary treatment
14 or programming and would substantially increase the offender's
15 likelihood of reoffending.

16 (3)(a) For a sex offender sentenced to a term of community custody
17 under RCW 9.94A.670 who violates any condition of community custody,
18 the department may impose a sanction of up to sixty days' confinement
19 in a local correctional facility for each violation. If the department
20 imposes a sanction, the department shall submit within seventy-two
21 hours a report to the court and the prosecuting attorney outlining the
22 violation or violations and the sanctions imposed.

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

29 (c) For an offender sentenced to a term of community custody under
30 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,
31 for a crime committed on or after July 1, 2000, who violates any
32 condition of community custody after having completed his or her
33 maximum term of total confinement, including time served on community
34 custody in lieu of earned release, the department may impose a sanction
35 of up to sixty days in total confinement for each violation. The
36 department may impose sanctions such as work release, home detention
37 with electronic monitoring, work crew, community restitution, inpatient

1 treatment, daily reporting, curfew, educational or counseling sessions,
2 supervision enhanced through electronic monitoring, or any other
3 sanctions available in the community.

4 (d) For an offender sentenced to a term of community placement
5 under RCW 9.94A.705 who violates any condition of community placement
6 after having completed his or her maximum term of total confinement,
7 including time served on community custody in lieu of earned release,
8 the department may impose a sanction of up to sixty days in total
9 confinement for each violation. The department may impose sanctions
10 such as work release, home detention with electronic monitoring, work
11 crew, community restitution, inpatient treatment, daily reporting,
12 curfew, educational or counseling sessions, supervision enhanced
13 through electronic monitoring, or any other sanctions available in the
14 community.

15 (e) If a probationer is being supervised by the department pursuant
16 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be
17 sanctioned by the department pursuant to (c) of this subsection. The
18 department shall have authority to issue a warrant for the arrest of an
19 offender who violates a condition of community custody, as provided in
20 RCW 9.94A.740. The department shall provide a copy of the violation
21 hearing report to the sentencing court in a timely manner. Nothing in
22 this subsection is intended to limit the power of the sentencing court
23 to respond to a probationer's violation of conditions.

24 (4) If an offender has been arrested for a new felony offense while
25 under community supervision, community custody, or community placement,
26 the department shall hold the offender in total confinement until a
27 hearing before the department as provided in this section or until the
28 offender has been formally charged for the new felony offense,
29 whichever is earlier. Nothing in this subsection shall be construed as
30 to permit the department to hold an offender past his or her maximum
31 term of total confinement if the offender has not completed the maximum
32 term of total confinement or to permit the department to hold an
33 offender past the offender's term of community supervision, community
34 custody, or community placement.

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

1 (6) If an offender is accused of violating any condition or
2 requirement of community custody, he or she is entitled to a hearing
3 before the department prior to the imposition of sanctions. The
4 hearing shall be considered as offender disciplinary proceedings and
5 shall not be subject to chapter 34.05 RCW. The department shall
6 develop hearing procedures and a structure of graduated sanctions.

7 (7) The hearing procedures required under subsection (6) of this
8 section shall be developed by rule and include the following:

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

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

17 (c) The hearing shall be held unless waived by the offender, and
18 shall be electronically recorded. For offenders not in total
19 confinement, the hearing shall be held within fifteen working days, but
20 not less than twenty-four hours, after notice of the violation. For
21 offenders in total confinement, the hearing shall be held within five
22 working days, but not less than twenty-four hours, after notice of the
23 violation;

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

30 (e) The sanction shall take effect if affirmed by the hearing
31 officer. Within seven days after the hearing officer's decision, the
32 offender may appeal the decision to a panel of three reviewing officers
33 designated by the secretary or by the secretary's designee. The
34 sanction shall be reversed or modified if a majority of the panel finds
35 that the sanction was not reasonably related to any of the following:
36 (i) The crime of conviction; (ii) the violation committed; (iii) the
37 offender's risk of reoffending; or (iv) the safety of the community.

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

3 (9) The department shall work with the Washington association of
4 sheriffs and police chiefs to establish and operate an electronic
5 monitoring program for low-risk offenders who violate the terms of
6 their community custody. Between January 1, 2006, and December 31,
7 2006, the department shall endeavor to place at least one hundred low-
8 risk community custody violators on the electronic monitoring program
9 per day if there are at least that many low-risk offenders who qualify
10 for the electronic monitoring program.

11 (10) Local governments, their subdivisions and employees, the
12 department and its employees, and the Washington association of
13 sheriffs and police chiefs and its employees shall be immune from civil
14 liability for damages arising from incidents involving low-risk
15 offenders who are placed on electronic monitoring unless it is shown
16 that an employee acted with gross negligence or bad faith.

17 **Sec. 14.** RCW 9.94A.6332 and 2009 c 28 s 8 are each amended to read
18 as follows:

19 The procedure for imposing sanctions for violations of sentence
20 conditions or requirements is as follows:

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

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

27 (3) If a sex offender was sentenced pursuant to RCW 9.94A.507, any
28 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

29 (4) In any other case, if the offender is being supervised by the
30 department, any sanctions shall be imposed by the department pursuant
31 to RCW 9.94A.737. If a probationer is being supervised by the
32 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon
33 receipt of a violation hearing report from the department, the court
34 retains any authority that those statutes provide to respond to a
35 probationer's violation of conditions.

36 (5) If the offender is not being supervised by the department, any
37 sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

1 NEW SECTION. **Sec. 15.** The legislature directs the sentencing
2 guidelines commission to include in its biennial report to the
3 legislature, as required by RCW 9.94A.850(2)(h)(iii), and due no later
4 than December 1, 2011, an analysis of the impact on recidivism of the
5 following:

6 (1) The supervision of offenders pursuant to sections 1 and 2 of
7 this act;

8 (2) The department's authority to issue warrants for offenders
9 under its supervision who are sentenced for misdemeanor and gross
10 misdemeanor offenses in superior court; and

11 (3) The community custody terms of supervision pursuant to section
12 5 of this act.

13 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
14 each repealed:

15 (1) RCW 9.95.206 (Misdemeanant probation services--Offender
16 classification system--Supervision standards) and 1996 c 298 s 2; and

17 (2) RCW 9.95.212 (Standards for supervision of misdemeanant
18 probationers) and 1998 c 245 s 2 & 1995 1st sp.s. c 19 s 31.

19 NEW SECTION. **Sec. 17.** 2008 c 231 s 60 (uncodified) is repealed.

20 ****NEW SECTION.** **Sec. 18.** (1) Sections 1, 3, 11, 13, 16, 17, and 20*
21 *of this act are necessary for the immediate preservation of the public*
22 *peace, health, or safety, or support of the state government and its*
23 *existing public institutions, and take effect immediately.*

24 *(2) Sections 2, 4 through 10, 12, and 14 of this act take effect*
25 *August 1, 2009.*

**Sec. 18 was vetoed. See message at end of chapter.*

26 NEW SECTION. **Sec. 19.** Sections 1, 3, and 13 of this act expire
27 August 1, 2009.

28 NEW SECTION. **Sec. 20.** This act applies retroactively and
29 prospectively regardless of whether the offender is currently on
30 community custody or probation with the department, currently
31 incarcerated with a term of community custody or probation with the

1 department, or sentenced after the effective date of this section.

Passed by the Senate April 25, 2009.

Passed by the House April 21, 2009.

Approved by the Governor May 6, 2009, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 8, 2009.

Note: Governor's explanation of partial veto is as follows:

"I have approved, except for Section 18, Engrossed Substitute Senate Bill 5288 entitled:

"AN ACT Relating to the supervision of offenders."

I am vetoing the emergency clause in Section 18. I have spoken with the Department of Corrections, and have been informed that they need time to implement the changes of the bill. They have begun preparing and will be ready to implement the changes August 1, 2009, but are not able to make these changes immediately. The elimination of the emergency clause will not affect the fiscal assumptions of the bill.

For this reason, I have vetoed Section 18 of Engrossed Substitute Senate Bill 5288. With the exception of Section 18, Engrossed Substitute Senate Bill 5288 is approved."

