## Chapters 9.94A and 9.94B RCW

# Sentencing reform act of 1981

# May 12, 2021 to July 24, 2021

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## Notes:

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### 9.94A.010
### Purpose.

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

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

(2) Promote respect for the law by providing punishment which is just;

(3) Be commensurate with the punishment imposed on others committing similar offenses;

(4) Protect the public;

(5) Offer the offender an opportunity to improve himself or herself;

(6) Make frugal use of the state's and local governments' resources; and

(7) Reduce the risk of reoffending by offenders in the community.

[2011 c 336 § 334; 1999 c 196 § 1; 1981 c 137 § 1.]

**Notes:**

**Severability -- 1999 c 196:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 196 § 20.]

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

**Report on Sentencing Reform Act of 1981:** "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

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## 9.94A.015
## Finding — Intent — 2000 c 28.

The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to adopt clarifying amendments to make the act easier to use and understand.

The legislature does not intend chapter 28, Laws of 2000 to make, and no provision of chapter 28, Laws of 2000 shall be construed as making, a substantive change in the sentencing reform act.

The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement.

[2000 c 28 § 1.]

**Notes:**

**Technical correction bill -- 2000 c 28:** "If any amendments to RCW 9.94A.120, or any sections enacted or affected by chapter 28, Laws of 2000, are enacted in a 2000 legislative session that do not take cognizance of chapter 28, Laws of 2000, the code reviser shall prepare a bill for introduction in the 2001 legislative session that incorporates any such amendments into the reorganization adopted by chapter 28, Laws of 2000 and corrects any incorrect cross-references." [2000 c 28 § 45.]

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## 9.94A.020
## Short title.

This chapter may be known and cited as the sentencing reform act of 1981.

[1981 c 137 § 2.]

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## 9.94A.030
## Definitions.

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

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

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

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

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

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

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

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

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

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

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

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity pursuant to RCW 9.97.020.

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

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon. However, when a defendant is charged with a recividist offense, “criminal history” includes a vacated prior conviction for the sole purpose of establishing that such vacated prior conviction constitutes an element of the present recividist offense as provided in RCW 9.94A.640(3)(b) and 9.96.060(5)(c).

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

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

(13) “Criminal street gang associate or member” means any person who actively participates in any criminal street gang and who individually promotes, furthers, or assists in any criminal act by the criminal street gang.

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

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

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

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

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

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

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

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

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

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

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

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

(20) “Domestic violence” has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

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

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

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

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

(24) “Electronic monitoring” means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual’s presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which detects the location fo the monitored individual and notifies the monitoring agency of the monitored individual’s location and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party, or within the restricted distance of a designated location

(25) "Escape" means:

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

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

(26) "Felony traffic offense" means:

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

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

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

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

(29) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is confined in a private residence twenty-four hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic monitoring.

(30) “Homelessness” or “homeless” means a condition where an individual lacks a fixed, regular and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

(31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal

drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Sexual exploitation;

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

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

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

(s) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

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

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

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986,

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

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

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

(34) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, “offender” also means a misdemeanant or gross misdemeanant probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

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

(36) “Pattern of criminal street gang activity” means:
(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:
(i) Any “serious violent” felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);
(ii) Any “violent” offense as defined in this section, excluding Assault of a Child 2 (RCW 9A.36.120);
(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);
(iv) Any violation of the firearms and dangerous weapons act (chapter 9.41 RCW);
(v) Theft of a Firearm (RCW 9A.56.300);
(vi) Possession of a Stolen Firearm (RCW 9A.56.310);
(vii) Hate Crime (RCW 9A.36.080);
(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));
(ix) Criminal Gang Intimidation (RCW 9A.46.120);
(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;
(xi) Residential Burglary (RCW 9A.52.025);
(xii) Burglary 2 (RCW 9A.52.030);
(xiii) Malicious Mischief 1 (RCW 9A.48.070);
(xiv) Malicious Mischief 2 (RCW 9A.48.080);
(xv) Theft of a Motor Vehicle (RCW 9A.56.065);
(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);
(xix) Extortion 1 (RCW 9A.56.120);
(xx) Extortion 2 (RCW 9A.56.130);
(xxi) Intimidating a Witness (RCW 9A.72.110);
(xxii) Tampering with a Witness (RCW 9A.72.120);
(xxiii) Reckless Endangerment (RCW 9A.36.050);
(xxiv) Coercion (RCW 9A.36.070);
(xxv) Harassment (RCW 9A.46.020); or
(xxvi) Malicious Mischief 3 (RCW 9A.48.090);
(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;
(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a

prior offense listed in (a) of this subsection; and

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

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

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

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

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (38)(b)(i); and

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

(38) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) “Home-based instruction” has the same meaning as defined in RCW 28A.225.010; and (B) “teacher, counselor, volunteer, or other person in authority” does not include the parent or legal guardian of the victim.

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

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

(41) “Repetitive domestic violence offense” means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09. 26.10, 26.26A, 26.26B, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

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

(43) "Risk assessment" means the application of the risk instrument recommended to the department my the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(44) "Serious traffic offense" means:

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

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

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

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

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

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

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

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

(46) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

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

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

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

(v) A felony violation of RCW 9A.44.132(1) (failure to register as a sex offender) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130 prior to June 10, 2010,on at least one prior occasion;

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

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

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

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

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

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

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

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

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

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

(54) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

and

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

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

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

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

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

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

(58) “Recividist offense” means a felony offense where a prior convicton of the same offense or other specified offense is an element of the crime including, but not limited to:
(a) Assault in the fourth degree where domestic violence is pleaded and proven, RCW 9A.36.041(3);
(b) Cyberstalking, RCW 9.61.260(3)(a);
(c) Harassment. RCW 9A.46.020(2)(b)(i);
(d) Indecent exposure, RCW 9A.88.010(2)(c);
(e) Stalking; RCW 9A.46.110(5)(b)(i) and (iii);
(f) Telephone harassment, RCW 9.61.230(2)(a); and
(g) Violation of a no-contact or protection order, RCW 26.50.110(5).

[2020 c 252 § 4; 2020 c 296 § 2; 2020 c 137 § 1; 2019 c 331 § 5; 2019 c 271 § 6; 2019 c 187 § 1; 2019 c 46 § 5007; 2018 c 166 § 3; 2016 c 81 § 16; 2015 c 287 § 1; 2015 c 261 § 12; 2012 c 143 §1; 2011 c 87 §2; 2011 e1 c 40 § 8; 2010 c 274 § 401; 2010 c 267 § 9; 2010 c 227 § 11; 2010 c 224 § 1; 2009 c 375 § 4; 2009 c 375 § 3; 2009 c 28 § 4; 2008 c 276 § 309; 2008 c 231 § 23; 2008 c 7 § 1; 2006 c 139 § 5; (2006 c 139 § 4 expired July 1, 2006); 2006 c 124 § 1; 2006 c 122 § 7; (2006 c 122 § 6 expired July 1, 2006); 2006 c 73 § 5; 2005 c 436 § 1; 2003 c 53 § 55. Prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

**Notes:**

**Reviser's note:** *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

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

(3) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

**Effective date – 2011 e1 c 40 § 8:** “Sections 1 through 9 and 42 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011].” [2011 e1 c 40 § 44]

**Retroactivity – 2009 c 375:** See note following RCW 9.94A.501.

**Effective date -- 2006 c 139 § 5:** "Section 5 of this act takes effect July 1, 2006." [2006 c 139 § 7.]

**Expiration date -- 2006 c 139 § 4:** "Section 4 of this act expires July 1, 2006." [2006 c 139 § 6.]

**Effective date -- 2006 c 124:** "Except for section 2 of this act, this act takes effect July 1, 2006." [2006 c 124 § 5.]

**Effective date -- 2006 c 122 §§ 5 and 7:** See note following RCW 9.94A.712.

**Expiration date -- 2006 c 122 §§ 4 and 6:** See note following RCW 9.94A.712.

**Effective date -- 2006 c 122 §§ 1-4 and 6:** See note following RCW 9.94A.836.

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Severability -- 1987 c 458:** See note following RCW 48.21.160.

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

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

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

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

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## 9.94A.035
## Classification of felonies not in Title 9A RCW.

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

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

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

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

[1996 c 44 § 1.]

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## 9.94A.171
## Tolling of term of confinement, supervision.

(1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction.

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

(3)(a) For any offenders other than sex offender serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the offender is in confinement for any reason unless the offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 for the period of time prior to the hearing or for confinement pursuant to sanctions imposed for violations of sentence conditions, in which case, the period of community custody shall not toll. However, sanctions that result in the imposition of the remaining sentence or the original sentence will continue to toll the period of community custody. In addition, inpatient treatment ordered by the court in lieu of jail time shall not toll the period of community custody.

(b) For sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030,any period of community custody shall be tolled during any period of time the sex offender is in confinement for any reason.

(4) For terms of confinement or community custody, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

(5) For purposes of this section, “tolling” means the period of time in which community custody or confinement time is paused and for which the offender does not receive credit toward the term ordered.

[2011 e1 c 40 § 1; 2008 c 231 § 56; 2008 c 231 § 28; 2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.625.]

**Notes:**

**Effective date – 2011 e1 c 40 § 1:** “Sections 1 through 9 and 42 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011].” [2011 e1 c 40 § 44]

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

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

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

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

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

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

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

(1) A sentence that includes a term or terms of confinement totaling one year or more shall be served in a facility or institution operated, or utilized under contract, by the state, or in home detention pursuant to RCW 9.94A.6551 or the graduated reentry program under RCW 9.94A.733. Except as provided in subsection (3) or (5) of this section, a sentence of up to three hundred sixty-four days of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for up to three hundred sixty-four days, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

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

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

(5) Sentences imposed pursuant to RCW 9.94A.507 shall be served in a facility or institution operated, or utilized under contract, by the state.

[[2018 c 166 § 5; 2011 c 96 § 11; 2010 c 224 § 10; 2009 c 28 § 5; 2001 2nd sp.s. c 12 § 313; 2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

**Notes:**

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

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

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

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

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

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

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

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

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## 9.94A.340
## Equal application.

The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant.

[1983 c 115 § 5.]

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## 9.94A.345
## Timing.

Except as otherwise provided in this chapter, any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.

[2021 c 286 §2; 2000 c 26 § 2.]

**Notes:**

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

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## 9.94A.401
## Introduction.

These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

[1983 c 115 § 14. Formerly RCW 9.94A.430.]

**9.94A.411**
**Evidentiary sufficiency.**

(1) Decision not to prosecute.

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

GUIDELINE/COMMENTARY:

Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Conviction in the pending prosecution is imminent;

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

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

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the

complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

## CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder (RCW 10.95.020)

1st Degree Murder (RCW 9A.32.030)

2nd Degree Murder (RCW 9A.32.050)

1st Degree Manslaughter (RCW 9A.32.060)

2nd Degree Manslaughter (RCW 9A.32.070)

1st Degree Kidnapping (RCW 9A.40.020)

2nd Degree Kidnapping (RCW 9A.40.030)

1st Degree Assault (RCW 9A.36.011)

2nd Degree Assault (RCW 9A.36.021)

3rd Degree Assault (RCW 9A.36.031)

4th Degree Assault (if a violation of RCW 9A.36.041(3))

1st Degree Assault of a Child (RCW 9A.36.120)

2nd Degree Assault of a Child (RCW 9A.36.130)

3rd Degree Assault of a Child (RCW 9A.36.140)

1st Degree Rape (RCW 9A.44.040)

2nd Degree Rape (RCW 9A.44.050)

3rd Degree Rape (RCW 9A.44.060)

1st Degree Rape of a Child (RCW 9A.44.073)

2nd Degree Rape of a Child (RCW 9A.44.076)

3rd Degree Rape of a Child (RCW 9A.44.079)

1st Degree Robbery (RCW 9A.56.200)

2nd Degree Robbery (RCW 9A.56.210)

1st Degree Arson (RCW 9A.48.020)

1st Degree Burglary (RCW 9A.52.020)

1st Degree Identity Theft (RCW 9.35.020(2))

2nd Degree Identity Theft (RCW 9.35.020(3))

1st Degree Extortion (RCW 9A.56.120)

2nd Degree Extortion (RCW 9A.56.130)

1st Degree Criminal Mistreatment (RCW 9A.42.020)

2nd Degree Criminal Mistreatment (RCW 9A.42.030)

1st Degree Theft from a Vulnerable Adult (RCW 9A.56.400(1))

2nd Degree Theft from a Vulnerable Adult (RCW 9A.56.400(2))

Indecent Liberties (RCW 9A.44.100)

Incest (RCW 9A.64.020)

Vehicular Homicide (RCW 46.61.520)

Vehicular Assault (RCW 46.61.522)

1st Degree Child Molestation (RCW 9A.44.083)

2nd Degree Child Molestation (RCW 9A.44.086)

3rd Degree Child Molestation (RCW 9A.44.089)

1st Degree Promoting Prostitution (RCW 9A.88.070)

Intimidating a Juror (RCW 9A.72.130)

Communication with a Minor (RCW 9A.68A.090)

Intimidating a Witness (RCW 9A.72.110)

Intimidating a Public Servant (RCW 9A.76.180)

Bomb Threat (if against person) (RCW 9.61.160)

Unlawful Imprisonment (RCW 9A.40.040)

Promoting a Suicide Attempt (RCW 9A.36.060)

Criminal Mischief (if against person) (RCW 9A.84.010)

Stalking (RCW 9A.46.110))

Custodial Assault (RCW 9A.36.100)

Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.50.110, 26.52.070, or 74.34.145)

Counterfeiting (if a violation of RCW 9.16.035(4))

Felony Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.502(6))

Felony Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson (RCW 9A.48.030)

1st Degree Escape (RCW 9A.76.110)

2nd Degree Escape (RCW 9A.76.120)

2nd Degree Burglary (RCW 9A.52.030)

1st Degree Theft (RCW 9A.56.030)

2nd Degree Theft (RCW 9A.56.040)

1st Degree Perjury (RCW 9A.72.020)

2nd Degree Perjury (RCW 9A.72.030)

1st Degree Introducing Contraband (RCW 9A.76.140)

2nd Degree Introducing Contraband (RCW 9A.76.150)

1st Degree Possession of Stolen Property (RCW 9A.56.150)

2nd Degree Possession of Stolen Property (RCW 9A.56.160)

Bribery (RCW 9A.68.010)

Bribing a Witness (RCW 9A.72.090)

Bribe received by a Witness (RCW 9A.72.100)

Bomb Threat (if against property) (RCW 9.61.160)

1st Degree Malicious Mischief (RCW 9A.48.070)

2nd Degree Malicious Mischief (RCW 9A.48.080)

1st Degree Reckless Burning (RCW 9A.48.040)

Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and 9A.56.075)

Forgery (RCW 9A.60.020)

2nd Degree Promoting Prostitution (RCW 9A.88.080)

Tampering with a Witness (RCW 9A.72.120)

Trading in Public Office (RCW 9A.68.040)

Trading in Special Influence (RCW 9A.68.050)

Receiving/Granting Unlawful Compensation (RCW 9A.68.030)

Bigamy (RCW 9A.62.010)

Eluding a Pursuing Police Vehicle (RCW 46.61.024)

Willful Failure to Return from Furlough

Escape from Community Custody

Criminal Mischief (if against property) (RCW 9A.84.010)

1st Degree Theft of Livestock (RCW 9A.56.080)

2nd Degree Theft of Livestock (RCW 9A.56.083)

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(A) Will significantly enhance the strength of the state's case at trial; or

(B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(A) Charging a higher degree;

(B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(B) The completion of necessary laboratory tests; and

(C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

(iv) Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

[2019 c 46 § 5008; 2017 c 272 § 2; 2017 c 266 § 5; 2006 c 271 § 1; 2006 c 73 § 13. Prior: 2000 c 119 § 28; 2000 c 28 § 17; prior: 1999 c 322 § 6; 1999 c 196 § 11; 1996 c 93 § 2; 1995 c 288 § 3; prior: 1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15. Formerly RCW 9.94A.440.]

**Notes:**

**Reviser's note:** This section was amended by 2006 c 73 § 13 and by 2006 c 271 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

**Application -- 2000 c 119:** See note following RCW 26.50.021.

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

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

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

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

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

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

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## 9.94A.421
## Plea agreements — Discussions — Contents of agreements.

The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(1) Move for dismissal of other charges or counts;

(2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;

(3) Recommend a particular sentence outside of the sentence range;

(4) Agree to file a particular charge or count;

(5) Agree not to file other charges or counts; or

(6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

In a case involving a crime against persons as defined in RCW 9.94A.411, the prosecutor shall make reasonable efforts to inform the victim of the violent offense of the nature of and reasons for the plea agreement, including all offenses the prosecutor has agreed not to file, and ascertain any objections or comments the victim has to the plea agreement.

The court shall not participate in any discussions under this section.

[1995 c 288 § 1; 1981 c 137 § 8. Formerly RCW 9.94A.080.]

**Notes:**

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

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## 9.94A.431
## Plea agreements — Information to court — Approval or disapproval — Sentencing judge not bound.

(1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.421, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The prosecutor shall inform the court on the record whether the victim or victims of all crimes against persons, as defined in RCW 9.94A.411, covered by the plea agreement have expressed any objections to or comments on the nature of and reasons for the plea agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall, on the record, inform the defendant and the prosecutor that they are not bound by the agreement and that the defendant may withdraw the defendant's plea of guilty, if one has been made, and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea.

[1995 c 288 § 2; 1984 c 209 § 4; 1981 c 137 § 9. Formerly RCW 9.94A.090.]

**Notes:**

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

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

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## 9.94A.441
## Plea agreements — Criminal history.

The prosecuting attorney and the defendant shall each provide the court with their understanding of what the defendant's criminal history is prior to a plea of guilty pursuant to a plea agreement. All disputed issues as to criminal history shall be decided at the sentencing hearing.

[1981 c 137 § 10. Formerly RCW 9.94A.100.]

**Notes:**

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

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## 9.94A.450
## Plea dispositions.

STANDARD: (1) Except as provided in subsection (2) of this section, a defendant will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(2) In certain circumstances, a plea agreement with a defendant in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

(a) Evidentiary problems which make conviction on the original charges doubtful;

(b) The defendant's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;

(c) A request by the victim when it is not the result of pressure from the defendant;

(d) The discovery of facts which mitigate the seriousness of the defendant's conduct;

(e) The correction of errors in the initial charging decision;

(f) The defendant's history with respect to criminal activity;

(g) The nature and seriousness of the offense or offenses charged;

(h) The probable effect on witnesses.

[1983 c 115 § 16.]

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## 9.94A.460
## Sentence recommendations.

STANDARD:

The prosecutor may reach an agreement regarding sentence recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement.

[1983 c 115 § 17.]

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## 9.94A.470
## Armed offenders.

Notwithstanding the current placement or listing of crimes in categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.411(2), any and all felony crimes involving any deadly weapon special verdict under RCW 9.94A.825, any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, and any and all felony crimes as defined in RCW 9.94A.533 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancements shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.411(2) as crimes against persons.

[2002 c 290 § 14; 1995 c 129 § 4 (Initiative Measure No. 159).]

**Notes:**

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

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

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

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## 9.94A.475
## Plea agreements and sentences for certain offenders — Public records.

Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:

(1) Any violent offense as defined in this chapter;

(2) Any most serious offense as defined in this chapter;

(3) Any felony with a deadly weapon special verdict under RCW 9.94A.825;

(4) Any felony with any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both;

(5) The felony crimes of possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun or bump-fire stock in a felony; or

(6) The felony crime of driving a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.502, and felony physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504.

[2018 c 7 § 6; 2012 c 183 § 2; 2002 c 290 § 15; 1997 c 338 § 48; 1995 c 129 § 5 (Initiative Measure No. 159). Formerly RCW 9.94A.103.]

**Notes:**

**Effective date – 2018 c 7:** "Sections 3 through 9 of this act take effect July 1, 2019." [2018 c 7 § 11.]

**Effective date – 2012 c 183:** “This act takes effect August 1, 2012.” 2012 c 183 § 17.

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

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

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

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

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

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## 9.94A.480
## Judicial records for sentences of certain offenders.

(1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.475 shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.475. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The caseload forecast council shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section

(3) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the caseload forecast council as required in subsection (2) of this section, the caseload forecast council shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the caseload forecast council.

[2011 e1 c 40 §27; 2002 c 290 § 16; 1997 c 338 § 49; 1995 c 129 § 6 (Initiative Measure No. 159). Formerly RCW 9.94A.105.]

**Notes:**

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

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

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

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

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

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## 9.94A.500
## Sentencing hearing — Presentencing procedures — Disclosure of mental health services information.

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

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

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

Unless specifically waived by the court, the court shall order the department to complete a presentence investigation before imposing a drug offender sentencing alternative upon a defendant who has been convicted of a felony offense where domestic violence has been pleaded and proven.

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

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

(2) To prevent wrongful disclosure of information and records related to mental health services, as described in RCW 71.05.445 and 70.02.050, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information or records relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information and records related to mental health services as authorized by RCW 71.05.445, 70.02.050, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services.

[2019 c 263 § 501; 2013 c 200 § 33; 2008 c 231 § 2; 2006 c 339 § 303; 2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 § 2; 1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11. Formerly RCW 9.94A.110.]

**Notes:**

**Effective date -- 2019 c 263:** "Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021." [2020 c 263 § 1004.]

**Effective date -- 2013 c 200 § 33:** “Except for section 5 of this act, this act takes effect July 1, 2014.” [2013 c 200 §36]

**Intent -- 2008 c 231:** “It is the legislature’s intent to ensure that offenders receive accurate sentences that are based on their actual, complete criminal history. Accurate sentences further the sentencing reform act’s goals of:

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

(2) Ensuring that punishment is just; and

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

Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005); *State v. Lopez*, 147 Wn.2d 515 (2002), *State v. Ford*, 137 Wn.2d 472 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature finds it is necessary to amend the provisions in RCW 9.94A.500, 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed accurately reflect the offender’s actual, complete criminal history, whether imposed at sentencing or upon resentencing. These amendments are consistent with the United States supreme court holding in *Monge v. California*, 524 U.S. 721 (1998), that double jeopardy is not implicated at resentencing following an appeal or collateral attack.” [2008 c 231 § 1].

**Effective date -- 2008 c 231 § 2:** “Sections 2 and 3 of this act apply to all sentencings and resentencings commenced before, on, or after June 12, 2008.” [2008 c 231 §5]

**Intent -- Part headings not law -- 2006 c 339:** See notes following RCW 70.96A.325.

**Intent -- 2000 c 75:** See note following RCW 71.05.445.

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

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

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

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

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

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

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

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

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

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

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

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## 9.94A.501
## Risk assessment — Risk categories — Department must supervise specified offenders.

(1) The department shall supervise the following offenders who are sentenced to probation in superior court:

(a) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

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

(iv) Violation of RCW 9A.44.132(2) (failure to register); and

(b) Offenders who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011.

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

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment places the offender in one of two highest risk categories

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

(a) Has a current conviction for a sex offense or a serious violent felony offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702 or 9.94A.507;

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

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

(d) Has a current conviction for violating of RCW 9A.44.132(2) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701.

(e)(i) Has a current conviction for a repetitive domestic violence offense where domestic violence has been plead and proven after August 1, 2011; and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence was pleaded and proven after August 1, 2011. This subsection (4)(e)(i) applies only to offenses commited prior to July 24, 2015.

(ii) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an offender under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence.

(f) Was sentenced under RCW 9.94A.650, 9.94A.660, 9.94A.665, or 9.94A.670; or 9.94A.171

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control.

(5) The department shall supervise any offender who is released by the indeterminate sentence review board and who was sentenced to community custody or subject to community custody under the terms of release.

(6) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody, community placement, or community supervision or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(7) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody, community placement, or community supervision who may be subject to supervision under this section or [RCW 9.94A.5011.

(8) The period of time the department is authorized to supervise an offender under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701(1) through (8), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535.

(9) The period of time the department is authorized to supervise an offender under this section may be reduced by the earned award of supervision compliance credit pursuant to [2020c275 s2]

[2020 c 275 § 1; 2019 c 191 § 2; 2016 1st ss c 28 § 1. Prior 2015 c 290 § 15;p 2015 c 134 § 1; 2013 2dss c 35 § 15; 2011 e1 c 40 § 2; 2010 c 267 § 10; 2010 c 224 § 3; 2009 c 376 § 2; 2009 c 375 § 1; 2008 c 231 § 24; 2005 c 362 § 1; 2003 c 379 § 3.]

**Notes:**

**Effective date -- 2015 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2015]." [2015 c 134 § 9.]

**Effective date – 2011 e1 c 40 § 2:** “Sections 1 through 9 and 42 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011].” [2011 e1 c 40 § 44]

**Retroactivity – 2009 c 375:** “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.” [2009 c 375 § 20].

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

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

Conditions of probation: RCW 9.95.210.

Misdemeanant probation services -- County supervision: RCW 9.95.204.

Suspending sentences: RCW 9.92.060.

## 9.94A.505
## Sentences.

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

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

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

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

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

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

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

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

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

(viii) RCW 9.94A.675, relating to the parenting sentencing alternative;

(ix) RCW 9.94A.507, relating to certain sex offenses;

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

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

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

(xiii) RCW 9.94A.711, relating to the theft or taking of a motor vehicle.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; until July 1, 2000, a term of community custody under RCW 9.94A.702 not to exceed one year and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

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

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

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

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

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:
(a) A violent offense;
(b) Any sex offense;
(c) Any drug offense;
(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A>48.050.
(e) Assault in the third degree as defined in RCW 9A.36.031;
(f) Assault of a child in the third degree;
(g) Unlawful imprisonment as defined in RCW9A.40.040;
(h) Harassment as defined in RCW 9A.46.020.

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

(9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. “Crime-related prohibitions may include a prohibition on the use or possession of alcohol or controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

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

[2019 c 191 § 3; 2015 c 287 § 10; 2015 c 81 § 1; 2010 c 224 § 4; 2009 c 28 § 6; 2008 c 231 § 25; 2006 c 73 § 6. Prior: 2002 c 290 § 17; 2002 c 289 § 6; 2002 c 175 § 6; 2001 2nd sp.s. c 12 § 312; 2001 c 10 § 2; prior: 2000 c 226 § 2; 2000 c 43 § 1; 2000 c 28 § 5; prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12. Formerly RCW 9.94A.120.]

**Notes:**

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

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

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

**Severability -- Effective date -- 2002 c 289:** See notes following RCW 43.43.753.

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

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

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

**Intent -- 2001 c 10:** "It is the intent of the legislature to incorporate into the reorganization of chapter 9.94A RCW adopted by chapter 28, Laws of 2000 amendments adopted to RCW 9.94A.120 during the 2000 legislative session that did not take cognizance of the reorganization. In addition, it is the intent of the legislature to correct any additional incorrect cross-references and to simplify the codification of provisions within chapter 9.94A RCW.

The legislature does not intend to make, and no provision of this act may be construed as making, a substantive change in the sentencing reform act." [2001 c 10 § 1.]

**Effective date -- 2001 c 10:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 10 § 7.]

**Finding -- Intent -- 2000 c 226:** "The legislature finds that supervision of offenders in the community and an offender's payment of restitution enhances public safety, improves offender accountability, is an important component of providing justice to victims, and strengthens the community. The legislature intends that all terms and conditions of an offender's supervision in the community, including the length of supervision and payment of legal financial obligations, not be curtailed by an offender's absence from

supervision for any reason including confinement in any correctional institution. The legislature, through this act, revises the results of *In re Sappenfield*, 980 P.2d 1271 (1999) and declares that an offender's absence from supervision or subsequent incarceration acts to toll the jurisdiction of the court or department over an offender for the purpose of enforcing legal financial obligations." [2000 c 226 § 1.]

**Severability -- 2000 c 226:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 226 § 6.]

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

**Drug offender options -- Report:** "The Washington state institute for public policy, in consultation with the sentencing guidelines commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit a final report to the legislature by December 1, 2004. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates." [1999 c 197 § 12.]

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

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

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

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

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

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

**Finding -- 1996 c 275:** "The legislature finds that improving the supervision of convicted sex offenders in the community upon release from incarceration is a substantial public policy goal, in that effective supervision accomplishes many purposes including protecting the community, supporting crime victims, assisting offenders to change, and providing important information to decision makers." [1996 c 275 § 1.]

**Application -- 1996 c 275 §§ 1-5:** "Sections 1 through 5, chapter 275, Laws of 1996 apply to crimes committed on or after June 6, 1996." [1996 c 275 § 14.]

**Severability -- 1996 c 199:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 199 § 9.]

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

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

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

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

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

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

**Applicability -- 1988 c 143 §§ 21-24:** "Increased sanctions authorized by sections 21 through 24 of this act are applicable only to those persons committing offenses after March 21, 1988." [1988 c 143 § 25.]

**Effective date -- 1987 c 402:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 402 § 3.]

**Effective date -- 1986 c 301 § 4:** "Section 4 of this act shall take effect July 1, 1987." [1986 c 301 § 8.]

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

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

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

**Effective date -- 1983 c 163:** "Sections 1 through 5 of this act shall take effect on July 1, 1984." [1983 c 163 § 7.]

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

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**9.94A.506**
**Standard sentence ranges -- Limitations.**

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

(1) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

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

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

[2011 e1 c 40 § 26]

**9.94A.507**
**Sentencing of nonpersistent offenders.**

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

(a) Is convicted of:

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

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

(iii) An attempt to commit any crime listed in this subsection (1)(a); or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(33)(b), and is convicted of any sex offense other than failure to register.

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

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

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

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

(6)(a) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.95.420 through 9.95.435 .

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are submect to the provisions of RCW 9.95.425 through 9.95.440.

[2008 c 231 § 33; 2006 c 124 § 3; (2006 c 124 § 2 expired July 1, 2006); 2006 c 122 § 5; (2006 c 122 § 4 expired July 1, 2006); 2005 c 436 § 2; 2004 c 176 § 3. Formerly RCW 9.94A.712.]

**Notes:**

**Reviser's note:** (1) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

(2) This section was amended by 2006 c 122 § 5 and by 2006 c 124 § 3, each without reference to the other and without cognizance of its amendment by 2005 c 436 § 2. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

**Expiration date -- 2006 c 124 § 2:** "Section 2 of this act expires July 1, 2006." [2006 c 124 § 4.]

**Effective date -- 2006 c 124:** See note following RCW 9.94A.030.

**Effective date -- 2006 c 122 §§ 5 and 7:** "Sections 5 and 7 of this act take effect July 1, 2006." [2006 c 122 § 9.]

**Expiration date -- 2006 c 122 §§ 4 and 6:** "Sections 4 and 6 of this act expire July 1, 2006." [2006 c 122 § 8.]

**Effective date -- 2006 c 122 §§ 1-4 and 6:** See note following RCW 9.94A.836.

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

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

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

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**9.94A.510**
**Table 1 — Sentencing grid.**

TABLE 1

Sentencing Grid

| SERIOUSNESS LEVEL | OFFENDER SCORE | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 or more |
| XVI | Life sentence without parole/death penalty for offenders at or over the age of eighteen. For offenders under the age of eighteen, a term of twenty-five years to life. | | | | | | | | | |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| XV | 23y4m | 24y4m | 25y4m | 26y4m | 27y4m | 28y4m | 30y4m | 32y10m | 36y | 40y |
| | 240- | 250- | 261- | 271- | 281- | 291- | 312- | 338- | 370- | 411- |
| | 320 | 333 | 347 | 361 | 374 | 388 | 416 | 450 | 493 | 548 |
| XIV | 14y4m | 15y4m | 16y2m | 17y | 17y11m | 18y9m | 20y5m | 22y2m | 25y7m | 29y |
| | 123- | 134- | 144- | 154- | 165- | 175- | 195- | 216- | 257- | 298- |
| | 220 | 234 | 244 | 254 | 265 | 275 | 295 | 316 | 357 | 397 |
| XIII | 12y | 13y | 14y | 15y | 16y | 17y | 19y | 21y | 25y | 29y |
| | 123- | 134- | 144- | 154- | 165- | 175- | 195- | 216- | 257- | 298- |
| | 164 | 178 | 192 | 205 | 219 | 233 | 260 | 288 | 342 | 397 |
| XII | 9y | 9y11m | 10y9m | 11y8m | 12y6m | 13y5m | 15y9m | 17y3m | 20y3m | 23y3m |
| | 93- | 102- | 111- | 120- | 129- | 138- | 162- | 178- | 209- | 240- |
| | 123 | 136 | 147 | 160 | 171 | 184 | 216 | 236 | 277 | 318 |
| XI | 7y6m | 8y4m | 9y2m | 9y11m | 10y9m | 11y7m | 14y2m | 15y5m | 17y11m | 20y5m |
| | 78- | 86- | 95- | 102- | 111- | 120- | 146- | 159- | 185- | 210- |
| | 102 | 114 | 125 | 136 | 147 | 158 | 194 | 211 | 245 | 280 |
| X | 5y | 5y6m | 6y | 6y6m | 7y | 7y6m | 9y6m | 10y6m | 12y6m | 14y6m |
| | 51- | 57- | 62- | 67- | 72- | 77- | 98- | 108- | 129- | 149- |
| | 68 | 75 | 82 | 89 | 96 | 102 | 130 | 144 | 171 | 198 |
| IX | 3y | 3y6m | 4y | 4y6m | 5y | 5y6m | 7y6m | 8y6m | 10y6m | 12y6m |
| | 31- | 36- | 41- | 46- | 51- | 57- | 77- | 87- | 108- | 129- |
| | 41 | 48 | 54 | 61 | 68 | 75 | 102 | 116 | 144 | 171 |
| VIII | 2y | 2y6m | 3y | 3y6m | 4y | 4y6m | 6y6m | 7y6m | 8y6m | 10y6m |
| | 21- | 26- | 31- | 36- | 41- | 46- | 67- | 77- | 87- | 108- |
| | 27 | 34 | 41 | 48 | 54 | 61 | 89 | 102 | 116 | 144 |
| VII | 18m | 2y | 2y6m | 3y | 3y6m | 4y | 5y6m | 6y6m | 7y6m | 8y6m |
| | 15- | 21- | 26- | 31- | 36- | 41- | 57- | 67- | 77- | 87- |
| | 20 | 27 | 34 | 41 | 48 | 54 | 75 | 89 | 102 | 116 |
| VI | 13m | 18m | 2y | 2y6m | 3y | 3y6m | 4y6m | 5y6m | 6y6m | 7y6m |
| | 12+ | 15- | 21- | 26- | 31- | 36- | 46- | 57- | 67- | 77- |
| | 14 | 20 | 27 | 34 | 41 | 48 | 61 | 75 | 89 | 102 |
| V | 9m | 13m | 15m | 18m | 2y2m | 3y2m | 4y | 5y | 6y | 7y |
| | 6- | 12+ | 13- | 15- | 22- | 33- | 41- | 51- | 62- | 72- |
| | 12 | 14 | 17 | 20 | 29 | 43 | 54 | 68 | 82 | 96 |
| IV | 6m | 9m | 13m | 15m | 18m | 2y2m | 3y2m | 4y2m | 5y2m | 6y2m |
| | 3- | 6- | 12+ | 13- | 15- | 22- | 33- | 43- | 53- | 63- |
| | 9 | 12 | 14 | 17 | 20 | 29 | 43 | 57 | 70 | 84 |
| III | 2m | 5m | 8m | 11m | 14m | 20m | 2y2m | 3y2m | 4y2m | 5y |
| | 1- | 3- | 4- | 9- | 12+ | 17- | 22- | 33- | 43- | 51- |
| | 3 | 8 | 12 | 12 | 16 | 22 | 29 | 43 | 57 | 68 |
| II | | 4m | 6m | 8m | 13m | 16m | 20m | 2y2m | 3y2m | 4y2m |
| | 0-90 | 2- | 3- | 4- | 12+ | 14- | 17- | 22- | 33- | 43- |
| | Days | 6 | 9 | 12 | 14 | 18 | 22 | 29 | 43 | 57 |
| I | | | 3m | 4m | 5m | 8m | 13m | 16m | 20m | 2y2m |
| | 0-60 | 0-90 | 2- | 2- | 3- | 4- | 12+ | 14- | 17- | 22- |
| | Days | Days | 5 | 6 | 8 | 12 | 14 | 18 | 22 | 29 |

Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y)

and months(m). Numbers in the second and third rows represent standard sentence ranges in months, or in days if so designated. 12 equals one year and one day.

[2014 c 130 § 1; 2002 c 290 § 10. Prior: 2000 c 132 § 2; 2000 c 28 § 11; prior: 1999 c 352 § 2; 1999 c 324 § 3; prior: 1998 c 235 § 1; 1998 c 211 § 3; prior: 1997 c 365 § 3; 1997 c 338 § 50; 1996 c 205 § 5; 1995 c 129 § 2 (Initiative Measure No. 159); (1994 sp.s. c 7 § 512 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701; prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2. Formerly RCW 9.94A.310.]

**Notes:**

**Effective date – 2014 c 130:** “This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2014.” [ 2014 c 130 §16].

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

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

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

**Effective date -- 1998 c 211:** See note following RCW 46.61.5055.

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

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

**Findings and intent -- 1995 c 129:** "(1) The people of the state of Washington find and declare that:

(a) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.

(b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping.

(c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.

(d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.

(2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:

(a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.

(b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.

(c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.

(d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes." [1995 c 129 § 1 (Initiative Measure No. 159).]

**Short title -- 1995 c 129:** "This act shall be known and cited as the hard time for armed crime act." [1995 c 129 § 21 (Initiative Measure No. 159).]

**Severability -- 1995 c 129:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 129 § 22 (Initiative Measure No. 159).]

**Captions not law -- 1995 c 129:** "Captions as used in this act do not constitute any part of the law." [1995 c 129 § 23 (Initiative Measure No. 159).]

**Finding -- Intent -- Severability -- Effective dates -- Contingent expiration date -- 1994 sp.s. c 7:** See notes following RCW 43.70.540.

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

**Application -- 1989 c 271 §§ 101-111:** "Sections 101-111 of this act apply to crimes committed on or after July 1, 1989." [1989 c 271 § 114.]

**Severability -- 1989 c 271:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 271 § 606.]

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

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

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

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

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

| | |
|---|---|
| XVI | Aggravated Murder 1 (RCW 10.95.020) |
| XV | Homicide by abuse (RCW 9A.32.055) |
| | Malicious explosion 1 (RCW 70.74.280(1)) |
| | Murder 1 (RCW 9A.32.030) |
| XIV | Murder 2 (RCW 9A.32.050) |
| | Trafficking 1 (RCW 9A.40.100(1)) |
| XIII | Malicious explosion 2 (RCW 70.74.280(2)) |
| | Malicious placement of an explosive 1 (RCW 70.74.270(1)) |
| XII | Assault 1 (RCW 9A.36.011) |
| | Assault of a Child 1 (RCW 9A.36.120) |

| | |
|---|---|
| | Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) |
| | Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101) |
| | Rape 1 (RCW 9A.44.040) |
| | Rape of a Child 1 (RCW 9A.44.073) |
| | Trafficking 2 (RCW 9A.40.100(3)) |
| XI | Manslaughter 1 (RCW 9A.32.060) |
| | Rape 2 (RCW 9A.44.050) |
| | Rape of a Child 2 (RCW 9A.44.076) |
| | Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520) |
| | Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520) |
| X | Child Molestation 1 (RCW 9A.44.083) |
| | Criminal Mistreatment 1 (RCW 9A.42.020) |
| | Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) |
| | Kidnapping 1 (RCW 9A.40.020) |
| | Leading Organized Crime (RCW 9A.82.060(1)(a)) |
| | Malicious explosion 3 (RCW 70.74.280(3)) |
| | Sexually Violent Predator Escape (RCW 9A.76.115) |
| IX | Abandonment of Dependent Person 1 (RCW 9A.42.060) |
| | Assault of a Child 2 (RCW 9A.36.130) |
| | Explosive devices prohibited (RCW 70.74.180) |
| | Hit and Run--Death (RCW 46.52.020(4)(a)) |
| | Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050) |
| | Inciting Criminal Profiteering (RCW 9A.82.060(1)(b)) |
| | Malicious placement of an explosive 2 (RCW 70.74.270(2)) |
| | Robbery 1 (RCW 9A.56.200) |
| | Sexual Exploitation (RCW 9.68A.040) |
| VIII | Arson 1 (RCW 9A.48.020) |
| | Commercial Sexual Abuse of a Minor (RCW 9.68A.100) |
| | Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050) |
| | Manslaughter 2 (RCW 9A.32.070) |
| | Promoting Prostitution 1 (RCW 9A.88.070) |

| | |
|---|---|
| | Theft of Ammonia (RCW 69.55.010) |
| VII | Air bag diagnostic systems (causing bodily injury or death) (RCW 46.37.660(2)(b) |
| | Air bag replacement requirements (causing bodily injury or death) (RCW 46.37.660(1)(b) |
| | Burglary 1 (RCW 9A.52.020) |
| | Child Molestation 2 (RCW 9A.44.086) |
| | Civil Disorder Training (RCW 9A.48.120) |
| | Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1)) |
| | Drive-by Shooting (RCW 9A.36.045) |
| | False Reporting 1 (RCW 9A.84.040(2)(a)) |
| | Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050) |
| | Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c)) |
| | Introducing Contraband 1 (RCW 9A.76.140) |
| | Malicious placement of an explosive 3 (RCW 70.74.270(3)) |
| | Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675) |
| | Sell, install or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(b)) |
| | Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1)) |
| | Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)) |
| | Use of a Machine Gun or Bump-fire Stock in Commission of a Felony (RCW 9.41.225) |
| | Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520) |
| VI | Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a)) |
| | Bribery (RCW 9A.68.010) |
| | Incest 1 (RCW 9A.64.020(1)) |
| | Intimidating a Judge (RCW 9A.72.160) |
| | Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130) |
| | Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b)) |
| | Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1(RCW 9.68A.070(1)) |
| | Rape of a Child 3 (RCW 9A.44.079) |
| | Theft of a Firearm (RCW 9A.56.300) |

Unlawful Storage of Ammonia (RCW 69.55.020)

Theft from a Vulnerable Adult 1 (RCW 9A.56.400(1))

V Abandonment of Dependent Person 2 (RCW 9A.42.070)

Advancing money or property for extortionate extension of credit (RCW 9A.82.030)

Air bag diagnostic systems (RCW 46.37.660(2)(c))

Air bag replacement requirements (RCW 46.37.660(1)(c))

Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))

Child Molestation 3 (RCW 9A.44.089)

Manufacture or import counterfeit, nonfunctional, damaged, or previously deployed air bag (RCW 46.37.650(1)(c))

Sale, install, reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag bag (RCW 46.37.650(2)(c))

Criminal Mistreatment 2 (RCW 9A.42.030)

Custodial Sexual Misconduct 1 (RCW 9A.44.160)

Dealing in depictions of minor engaged in sexually explicit conduct 2 (RCW 9.68A.050(2))

Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.50.110, 26.52.070, or 74.34.145)

Extortion 1 (RCW 9A.56.120)

Extortionate Extension of Credit (RCW 9A.82.020)

Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)

Incest 2 (RCW 9A.64.020(2))

Kidnapping 2 (RCW 9A.40.030)

Perjury 1 (RCW 9A.72.020)

Persistent prison misbehavior (RCW 9.94.070)

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

Rape 3 (RCW 9A.44.060)

Rendering Criminal Assistance 1 (RCW 9A.76.070)

Sale of, install or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(c))

Sending, bringing into state depictions of minor engaged in sexually explicit conduct 2 (RCW 9.68A.060(2))

Sexual Misconduct with a Minor 1 (RCW 9A.44.093)

Sexually Violating Human Remains (RCW 9A.44.105)

Stalking (RCW 9A.46.110)

Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)

IV Arson 2 (RCW 9A.48.030)

Assault 2 (RCW 9A.36.021)

Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))

Assault 4 (third domestic violence offense) (RCW 9A.36.041(3))

Assault by Watercraft (RCW 79A.60.060)

Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)

Cheating 1 (RCW 9.46.1961)

Commercial Bribery (RCW 9A.68.060)

Counterfeiting (RCW 9.16.035(4))

Driving While Under the Influence (RCW 46.61.502(6)

Endangerment with a Controlled Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hate Crime (RCW 9A.36.080)

Hit and Run -- Injury (RCW 46.52.020(4)(b))

Hit and Run with Vessel -- Injury Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2))

Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)

Influencing Outcome of Sporting Event (RCW 9A.82.070)

Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))

Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))

Residential Burglary (RCW 9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW 9A.56.080)

Threats to Bomb (RCW 9.61.160)

Trafficking in Stolen Property 1 (RCW 9A.82.050)

Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))

Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))

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|---|---|
| | Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3)) |
| | Unlawful transaction of insurance business (RCW 48.15.023(3)) |
| | Unlicensed practice as an insurance professional (RCW 48.17.063(2)) |
| | Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2)) |
| | Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3)) |
| | Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522) |
| | Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (2010 c 227 s 7(1)) |
| | Willful Failure to Return from Furlough (*RCW 72.66.060) |
| III | Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3)) |
| | Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h)) |
| | Assault of a Child 3 (RCW 9A.36.140) |
| | Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c)) |
| | Burglary 2 (RCW 9A.52.030) |
| | Communication with a Minor for Immoral Purposes (RCW 9.68A.090) |
| | Criminal Gang Intimidation (RCW 9A.46.120) |
| | Custodial Assault (RCW 9A.36.100) |
| | Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3)) |
| | Escape 2 (RCW 9A.76.120) |
| | Extortion 2 (RCW 9A.56.130) |
| | False Reporting 2 (RCW 9A.84.040(2)(b)) |
| | Harassment (RCW 9A.46.020) |
| | Intimidating a Public Servant (RCW 9A.76.180) |
| | Introducing Contraband 2 (RCW 9A.76.150) |
| | Malicious Injury to Railroad Property (RCW 81.60.070) |
| | Manufacture of Untraceable Firearm with Intent to Sell (RCW 9.41.190) |
| | Manufacture or Assembly of an Undetectable Firearm or Untraceable Firearm (RCW 9.41.325) |
| | Mortgage Fraud (RCW 19.144.080) |

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|---|---|
| | Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674) |
| | Organized Retail Theft 1 (RCW 9A.56.350(2)) |
| | Perjury 2 (RCW 9A.72.030) |
| | Possession of Incendiary Device (RCW 9.40.120) |
| | Possession of Machine Gun, Bump-fire Stock, Undetectable Firearm, or Short-Barreled Shotgun or Rifle (RCW 9.41.190) |
| | Promoting Prostitution 2 (RCW 9A.88.080) |
| | Retail Theft with Special Circumstances 1 (RCW 9A.56.360(2)) |
| | Securities Act violation (RCW 21.20.400) |
| | Tampering with a Witness (RCW 9A.72.120) |
| | Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2)) |
| | Theft of Livestock 2 (RCW 9A.56.083) |
| | Theft with the Intent to Resell 1 (RCW 9A.56.340(2)) |
| | Trafficking in Stolen Property 2 (RCW 9A.82.055) |
| | Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b)) |
| | Unlawful Imprisonment (RCW 9A.40.040) |
| | Unlawful Misbranding of Food Fish or Shellfish 1) (new section) |
| | Unlawful possession of firearm in the second degree (RCW 9.41.040(2)) |
| | Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b)) |
| | Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b)) |
| | Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4)) |
| | Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522) |
| | Willful Failure to Return from Work Release (*RCW 72.65.070) |
| II | Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b)) |
| | Computer Trespass 1 (RCW 9A.90.040) |
| | Counterfeiting (RCW 9.16.035(3)) |
| | Electronic Data Service Interference (RCW 9A.90.060) |
| | Electronic Data Tampering 1 (RCW 9A.90.080) |
| | Electronic Data Theft (RCW 9A.90.100) |

Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))

Escape from Community Custody (RCW 72.09.310)

Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010 and RCW 9A.44.132(1)(b))

Health Care False Claims (RCW 48.80.030)

Identity Theft 2 (RCW 9.35.020(3))

Improperly Obtaining Financial Information (RCW 9.35.010)

Malicious Mischief 1 (RCW 9A.48.070)

Organized Retail Theft 2 (RCW 9A.56.350(3))

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

Possession of a Stolen Vehicle (RCW 9A.56.068)

Retail Theft with Special Circumstances 2 (RCW 9A.56.360(3))

Scrap Processing, Recycling or Supplying Without a License (second or subsequent offense) (new section)

Theft 1 (RCW 9A.56.030)

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

Theft of Rental, Leased, Lease-purchased or Loaned Property (valued at five thousand dollars or more) (RCW 9A.56.096(5)(a))

Theft with the Intent to Resell 2 (RCW 9A.56.340(3))

Trafficking in Insurance Claims (RCW 48.30A.015)

Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))

Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))

Unlawful Practice of Law (RCW 2.48.180)

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

Unlawful Purchase or Use of License (RCW 77.15.650(3)(b))

Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))

Voyeurism 1 (RCW 9A.44.115)

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

False Verification for Welfare (RCW 74.08.055)

Forgery (RCW 9A.60.020)

Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)

Malicious Mischief 2 (RCW 9A.48.080)

Mineral Trespass (RCW 78.44.330)

Possession of Stolen Property 2 (RCW 9A.56.160)

Reckless Burning 1 (RCW 9A.48.040)

Spotlighting Big Game 1 (RCW 77.15.450(3)(b))

Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))

Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)

Theft 2 (RCW 9A.56.040)

Theft from a Vulnerable Adult 2 (RCW 9A.56.400(2))

Theft of Rental, Leased, Lease-purchased or Loaned Property (valued at seven hundred fifty dollars or more but less than five thousand dollars) (RCW 9A.56.096(5)(b))

Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))

Unlawful Fish or Shellfish Catch Accounting (RCW 77.15.630(3)(b))

Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)

Unlawful Possession of Fictitious Identification (RCW 9A.56.320)

Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)

Unlawful Possession of Payment Instruments (RCW 9A.56.320)

Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)

Unlawful Production of Payment Instruments (RCW 9A.56.320)

Unlawful Release of Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))

Unlawful Trafficking in Food Stamps (RCW 9.91.142)

Unlawful Use of Food Stamps (RCW 9.91.144)

Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))

Unlawful Use of Prohibited Aquatic Animal Species (RCW 77.15.255(3))

Vehicle Prowl 1 (RCW 9A.52.095)

Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))

[2020 c 344 §4; 2019 c 271 §7; 2019 c 243 § 5, 2019 c 64 § 3; 2019 c 46 § 5009; 2018 c 7 § 7,2018 c 236 § 721; 2017 c 292 § 3; 2017 c 272 § 10; 2017 c 266 § 8; 2016 c 213 § 5; 2016 c 164 § 13; 2016 c 6 § 1; 2015 c 261 § 12017 c 235 § 41; 2013 c 153 § 2; 2013 c 322 § 26; 2013 c 290 § 8; 2013 c 267 § 2; 2012 c 162 § 1; 2012 c 176 § 3; 2010 c 289 § 11; 2010 c 227 § 9; 2008 c 108 § 23; 2008 c 38 § 1; 2007 c 368 § 14; 2007 c 199 § 10; 2006 c 277 § 6; 2006 c 228 § 9; 2006 c 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12. Prior: (2006 c 125 § 5 repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 § 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

**Notes:**

**Reviser's note:** *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) This section was amended by 2007 c199 § 10 and by 2007 c 368 § 14, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(3) In keeping with the directive of 1999 c 352 § 6, the offenses within each seriousness level have been maintained in alphabetical order.

**Effective date – 2019 c 243:** "This act … takes effect July 1, 2019." [2019 c 243 § 6.]

**Effective date – 2018 c 7:** "Sections 3 through 9 of this act take effect July 1, 2019." [2018 c 7 § 11.]

**Effective date -- 2013 c 153 § 2:** “This act becomes effective January 1, 2014.” [2013 c 153 §3]

**Intent -- Severability -- Effective date -- 2006 c 125:** See notes following RCW 9A.44.190.

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

**Severability -- 2004 c 176:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 176 § 8.]

**Effective date -- 2004 c 176:** "Sections 2 through 6 of this act take effect July 1, 2005." [2004 c 176 § 9.]

**Expiration date -- 2004 c 94 § 2:** "Section 2 of this act expires July 1, 2004." [2004 c 94 § 8.]

**Severability -- Effective dates--2004 c 94:** See notes following RCW 9.61.260.

**Effective date -- 2003 c 335 § 5:** "Section 5 of this act takes effect July 1, 2004." [2003 c 335 § 8.]

**Expiration date -- 2003 c 335 § 4:** "Section 4 of this act expires July 1, 2004." [2003 c 335 § 7.]

**Effective date -- 2003 c 283 § 33:** "Section 33 of this act takes effect July 1, 2004." [2003 c 283 § 37.]

**Expiration date -- 2003 c 283 § 32:** "Section 32 of this act expires July 1, 2004." [2003 c 283 § 36.]

**Severability -- Part headings not law -- 2003 c 283:** See RCW 71.32.900 and 71.32.901.

**Effective date -- 2003 c 267 § 3:** "Section 3 of this act takes effect July 1, 2004." [2003 c 267 § 9.]

**Expiration date -- 2003 c 267 § 2:** "Section 2 of this act expires July 1, 2004." [2003 c 267 § 8.]

**Effective date -- 2003 c 250 § 14:** "Section 14 of this act takes effect July 1, 2004." [2003 c 250 § 17.]

**Expiration date -- 2003 c 250 § 13:** "Section 13 of this act expires July 1, 2004." [2003 c 250 § 16.]

**Severability -- 2003 c 250:** See note following RCW 48.01.080.

**Effective date -- 2003 c 119 § 8:** "Section 8 of this act takes effect July 1, 2004." [2003 c 119 § 10.]

**Expiration date -- 2003 c 119 § 7:** "Section 7 of this act expires July 1, 2004." [2003 c 119 § 9.]

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

**Effective date -- 2003 c 52 § 4:** "Section 4 of this act takes effect July 1, 2004." [2003 c 52 § 6.]

**Expiration date -- 2003 c 52 § 3:** "Section 3 of this act expires July 1, 2004." [2003 c 52 § 5.]

**Study and report -- 2002 c 324:** See note following RCW 9A.56.070.

**Effective date -- 2002 c 290 §§ 7-11 and 14-23:** "Sections 7 through 11 and 14 through 23 of this act take effect July 1, 2003." [2003 c 379 § 10; 2002 c 290 § 31.]

**Effective date -- 2002 c 290 §§ 2 and 3:** "Sections 2 and 3 of this act take effect July 1, 2002, and apply to crimes committed on or after July 1, 2002." [2002 c 290 § 29.]

**Expiration date -- 2002 c 290 § 2:** "Section 2 of this act expires July 1, 2003." [2003 c 379 § 9; 2002 c 290 § 30.]

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

**Effective date -- 2002 c 229:** See note following RCW 9A.42.100.

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

**Effective date -- 2002 c 133:** See note following RCW 69.55.010.

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

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

**Purpose -- Effective date -- 2001 c 310:** See notes following RCW 2.48.180.

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

**Purpose -- Effective date -- 2001 c 224:** See notes following RCW 9A.68.060.

**Purpose -- Effective date -- 2001 c 222:** See notes following RCW 9A.82.001.

**Captions not law -- 2001 c 217:** See note following RCW 9.35.005.

**Purpose -- Effective date -- 2001 c 207:** See notes following RCW 18.130.190.

**Severability -- 2000 c 225:** See note following RCW 69.55.010.

**Effective date -- 2000 c 119 § 17:** "Section 17 of this act takes effect July 1, 2000." [2000 c 119 § 30.]

**Application -- 2000 c 119:** See note following RCW 26.50.021.

**Alphabetization -- 1999 c 352:** "The code reviser shall alphabetize the offenses within each seriousness level in RCW 9.94A.320, including any offenses added in the 1999 legislative session." [1999 c 352 § 6.]

**Application -- 1999 c 352 §§ 3-5:** "The amendments made by sections 3 through 5, chapter 352, Laws of 1999 shall apply to offenses committed on or after July 25, 1999, except that the amendments made by chapter 352, Laws of 1999 to seriousness level V in RCW 9.94A.320 shall apply to offenses committed on or after July 1, 2000." [1999 c 352 § 7.]

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

**Application -- 1998 c 78:** "This act applies to crimes committed on or after July 1, 1998." [1998 c 78 § 2.]

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

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

**Findings -- Intent -- Severability -- 1997 c 266:** See notes following RCW 28A.600.455.

**Severability -- 1996 c 302:** See note following RCW 9A.42.010.

**Effective date -- 1995 c 285:** See RCW 48.30A.900.

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

**Contingent expiration date -- 1994 sp.s. c 7:** See note following RCW 43.70.540.

**Finding -- Intent -- Severability -- Effective dates -- 1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Short title -- Effective date -- 1994 c 275:** See notes following RCW 46.04.015.

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

**Effective date -- 1989 2nd ex.s. c 1:** See note following RCW 9A.52.025.

**Finding -- Intent -- 1989 c 271 §§ 102, 109, and 110:** See note following RCW 9A.36.050.

**Application -- 1989 c 271 §§ 101-111:** See note following RCW 9.94A.510.

**Severability -- 1989 c 271:** See note following RCW 9.94A.510.

**Application -- 1989 c 99:** "This act applies to crimes committed after July 1, 1989." [1989 c 99 § 2.]

**Effective date -- 1989 c 99:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 99 § 3.]

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

**Effective date -- Application -- 1987 c 224:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987. It shall apply to crimes committed on or after July 1, 1987." [1987 c 224 § 2.]

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

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

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

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## 9.94A.517
## Table 3 — Drug offense sentencing grid.

(1)

TABLE 3

DRUG OFFENSE SENTENCING GRID

| **Seriousness Level** | **Offender Score** | **Offender Score** | **Offender Score** |
|---|---|---|---|
| | **0 to 2** | **3 to 5** | **6 to 9 or more** |
| **III** | 51 to 68 months | 68 to 100 months | 100 to 120 months |
| **II** | 12 to 20 months | 20 to 60 months | 60 to 120 months |
| **I** | 0 to 6 months | 6 to 12 months | 12 to 24 months |

References to months represent the standard sentence ranges. 12 equals one year and one day.

(2) The court may utilize any other sanctions or alternatives as authorized by law, including but not

limited to the special drug offender sentencing alternative under RCW 9.94A.660 or drug court under chapter 2 RCW.

(3) Nothing in this section creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment.

[2015 c 291 § 8; 2013 2dss c 14 § 1; 2002 c 290 § 8.]

**Notes:**

**Application -- Recalculation of earned release date -- 2013 2nd sp.s. c 14:** Pursuant to RCW 9.94A.729, the department shall recalculate the earned release date for any offender currently serving a term in a facility or institution either operated by the state or utilized under contract. The earned release date shall be recalculated whether the offender is currently incarcerated or is sentenced after the effective date of this section, and regardless of the offender's date of offense. For offenders whose offense was committed prior to the effective date of this section, the recalculation shall not extend a term of incarceration beyond that to which an offender is currently subject.

**Effective date -- 2013 2dss c 14:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013.." [2013 2dss c 14 § 9.]

**Declaration -- 2013 2dss c 14:** "The legislature declares that section 4 of this act does not create any liberty interest. The department is authorized to take the time reasonably necessary to complete the recalculations of section 4 of this act after the effective date of this section." [2013 2dss c 14 § 6.]

**Application Date – 2013 2dss c 14:** "Section 1 of this act applies to sentences imposed on or after July 1, 2013, regardless of the date of offense." [2013 2dss c 14 § 7]

**Intent -- 2002 c 290:** "It is the intent of the legislature to increase the use of effective substance abuse treatment for defendants and offenders in Washington in order to make frugal use of state and local resources, thus reducing recidivism and increasing the likelihood that defendants and offenders will become productive and law-abiding persons. The legislature recognizes that substance abuse treatment can be effective if it is well planned and involves adequate monitoring, and that substance abuse and addiction is a public safety and public health issue that must be more effectively addressed if recidivism is to be reduced. The legislature intends that sentences for drug offenses accurately reflect the adverse impact of substance abuse and addiction on public safety, that the public must have protection from violent offenders, and further intends that such sentences be based on policies that are supported by research and public policy goals established by the legislature." [2002 c 290 § 1.]

**Effectiveness report:** "The Washington state institute for public policy shall evaluate the effectiveness of the drug offense sentencing grid in reducing recidivism and its financial impact. The Washington state institute for public policy shall present a preliminary report to the legislature by December 1, 2007, and shall present a final report regarding long-term recidivism and its financial impacts to the legislature by December 1, 2008." [2002 c 290 § 24.]

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

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**9.94A.518**
**Table 4 — Drug offenses seriousness level.**

TABLE 4

DRUG OFFENSES

| | INCLUDED WITHIN EACH SERIOUSNESS LEVEL |
|---|---|
| III | Any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under RCW 9.94A.825 |
| | Controlled Substance Homicide (RCW 69.50.415) |
| | Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2)) |
| | Involving a minor in drug dealing (RCW 69.50.4015) |
| | Manufacture of methamphetamine (RCW 69.50.401(2)(b)) |
| | Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406) |
| | Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406) |
| | Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine * (RCW 69.50.440) |
| | Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410) |
| II | Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.4011) |
| | Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(2)(b)) |
| | Delivery of a material in lieu of a controlled substance (RCW 69.50.4012) |
| | Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(1)(f)) |
| | Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(2)(b)) |
| | Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(2)(a)) |
| | Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or |

| | |
|---|---|
| | flunitrazepam) (RCW 69.50.401(2) (c) through (e)) |
| | Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1)) |
| I | Forged Prescription (RCW 69.41.020) |
| | Forged Prescription for a Controlled Substance (RCW 69.50.403) |
| | Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(2)(c)) |
| | Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (RCW 69.50.4013) |
| | Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.4013) |
| | Unlawful Use of Building for Drug Purposes (RCW 69.53.010) |

[2003 c 53 § 57; 2002 c 290 § 9.]

**Notes:**

***Reviser's note:** cf. 2002 c 134 § 1.

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

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

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

## RCW 9.94A.519
## Resentencing of persons convicted of drug offenses.

(1) Except as provided in subsection (3) of this section, any offender sentenced for a violation of chapter 69.50 or 69.52 RCW that was committed prior to July 1, 2004, and who is serving a current sentence under custody of the department of corrections for that offense on the effective date of this section, is entitled to a resentencing hearing. The prosecuting attorney for the county in which any offender was sentenced and to whom this section applies must review the sentencing documents. If the offender is serving a term of incarceration for a violation of chapter 69.50 or 69.52 RCW that was committed prior to July 1, 2004, the prosecuting attorney shall, or the offender may, make a motion for relief from sentence to the original sentencing court.
(2) The sentencing court shall grant the motion if it finds that the offender is serving a sentence for a violation of chapter 69.50 or 69.52 RCW that was committed prior to July 1, 2004, and shall immediately set an expedited date for resentencing. At resentencing, the court shall sentence the offender as if the offender had not previously been sentenced, provided the new sentence is no greater than the initial sentence. Notwithstanding the provisions of RCW 9.94A.345, the court shall sentence the offender based on the sentencing guidelines in effect on the effective date of this section.
(3) An offender is not entitled to resentencing under this section if the offender has been convicted of a violent offense or sex offense involving a child.
(4) This section expires July 1, 2022.

[2021 c286 s1; 2020 c55 s1]

## 9.94A.520
## Offense seriousness level.

The offense seriousness level is determined by the offense of conviction.

[1990 c 3 § 703; 1983 c 115 § 6. Formerly RCW 9.94A.350.]

**Notes:**

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

## 9.94A.525
## Offender score.

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

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

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

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

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

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

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

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate crimes for the offense as defined in RCW 46.61.5055(14) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.

(f) Prior convictions for repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score, if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both adult and juvenile prior convictions.

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

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

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

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

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

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

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

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and ½ point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and ½ point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and ½ point for each prior juvenile nonviolent felony conviction.

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

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and ½ point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and ½ point for each juvenile prior conviction; count one point for each adult and ½ point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and ½ point for each juvenile prior conviction; count one point for each adult and ½ point for each juvenile prior conviction for driving while under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

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

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as ½ point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as ½ point.

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

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

(18) If the present conviction is for failure to register as a sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW 9A.44.130 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (19) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was pleaded and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for any of the following offenses: A felony violation of a no contact or protection order (RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)), felony

Stalking (RCW 9A.46.110(50(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW 9A.40.040), Robbery 1 (RCW9A.56.200), Robbery 2 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

(b) Count two points for each prior adult conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017, for any of the following offenses: Assault of a child in the first degree, RCW 9A.36.120; Assault of a child in the second degree, RCW 9A.36.130; Assault of a child in the third degree, RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW 9A.42.020; or Criminal Mistreatment in the second degree, RCW 9A.42.030;

(c) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(d) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in the criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence.

[2017 c 272 § 3; 2013 2dss c 35 § 8; 2011 c 166 § 3; 2010 c 274 § 403; 2008 c 231 §3; 2007 c 199 § 8; 2007 c 116 § 1; 2006 c 128 § 6; 2006 c 73 § 7. Prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

**Notes:**

**Intent -- 2008 c 231:** See note following RCW 9.94A.500.

**Effective date -- 231 § 3:** “Sections 2 and 3 of this act apply to all sentencings and resentencings commenced before, on, or after June 12, 2008.” [2008 c 231 §5]

**Effective date -- 2007 c 116:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 116 § 2.]

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

**Effective date -- 2002 c 290 §§ 2 and 3:** See note following RCW 9.94A.515.

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

**Finding -- Application -- 2002 c 107:** See notes following RCW 9.94A.030.

**Effective date -- 2001 c 264:** See note following RCW 9A.76.110.

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

**Effective date -- 1999 c 331:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 331 § 5.]

**Effective date -- 1998 c 211:** See note following RCW 46.61.5055.

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

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

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

**Application -- 1989 c 271 §§ 101-111:** See note following RCW 9.94A.510.

**Severability -- 1989 c 271:** See note following RCW 9.94A.510.

**Application -- 1988 c 157:** See note following RCW 9.94A.030.

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

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

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

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

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## 9.94A.530
## Standard sentence range.

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

(2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgement includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537. On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented.

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

[2008 c 231 § 4; 2005 c 68 § 2; 2002 c 290 § 18; 2000 c 28 § 12; 1999 c 143 § 16; 1996 c 248 § 1; 1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8. Formerly RCW 9.94A.370.]

**Notes:**

**Intent -- 2008 c 231:** See note following RCW 9.94A.500.

**Intent -- Severability -- Effective date -- 2005 c 68:** See notes following RCW 9.94A.537.

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

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

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

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

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

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

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## 9.94A.533
## Adjustments to standard sentences.

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:
(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or
(ii) Released under the provisions of RCW 9.94A.730;

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:
(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(3); or
(ii) Released under the provisions of RCW 9.94A.730;

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a

firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Notwithstanding anyother provision of law, all impaired driving enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under this chapter.

An offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c)..

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c);or

(ii) Released under the provisions of RCW 9.94A.730:.

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage in the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined in subsection (2) of this section. For purposes of this subsection, “sexual conduct” means sexual intercourse or sexual contact, both as defined in chapter 9.94A RCW.

**(10)(a) For a person eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing gride sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive evidence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction includes a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving while under the influence (RCW 46.61.502(6)) or felony physical control while under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant’s vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other minor child enhancements, for all offenses sentenced under this chapter. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement shall be mandatory, shall be served in total confinement, and shall

run consecutively to all other sentencing provisions.

(14) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.832.

(15) Regardless of any provisions in this section, if a person is being sentenced in adult court for a crime committed under age eighteen, the court has full discretion to depart from mandatory sentencing enhancements and to take the particular circumstances surrounding the defendant's youth into account.

[2020 c 330 § 1; 2020 c 141 § 1; 2018 c 7 § 8; 2016 c 203 § 7; 2015 c 134 § 2; 2013 c 270 § 2; 2012 c 42 § 3; 2011 c 293; §9; 2009 c 141 § 2; 2008 c 276 § 301; 2008 c 219 § 3; 2007 c 368 § 9; 2006 c 339 § 301; 2006 c 123 § 1; 2003 c 53 § 58; 2002 c 290 § 11.]

**Notes:**

**Effective date – 2018 c 7:** "Sections 3 through 9 of this act take effect July 1, 2019." [2018 c 7 § 11.]

**Effective date -- 2015 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2015]." [2015 c 134 § 9.]

**Effective date – 2011 c 293:** "Sections 1 through 9 of this act takes effect September 1, 2011." [2011 c 293 § 16.]

**Intent -- Part headings not law -- 2006 c 339:** See notes following RCW 70.96A.325.

**Effective date -- 2006 c 123:** "This act takes effect July 1, 2006." [2006 c 123 § 4.]

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

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

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

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## 9.94A.535
## Departures from the guidelines.

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

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

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

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

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

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

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

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

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

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(k) The defendant was convicted of vehicular homicide, by operation of a vehicle in a reckless manner and has committed no other previous serious traffic offenses as defined in RCW 9.94A.030, and the sentence is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

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

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury -Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

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

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

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

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or more of the following was present:

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

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

age of eighteen years; or

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

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

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

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

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

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, “metal property” means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW

9.94A.030, its reputation, influence or membership.

(bb) The current offense involved paying to view, over the internet in violation of [2010 c 227 s 7], depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

(dd) The current offense involved a felony crime against persons, except for assault in the third degree pursuant to RCW 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This subsection shall apply only: (i) During the times when a courtroom, jury room or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with section 3 of [2013 c 256] at the time of the offense.

(ee) During the commission of the current offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater.

(ff) The current offense involved the assault of a utility employee of any publicly or privately owned utility company or agency, who is at the time of the act engaged in official duties, including: (i) The maintenance or repair of utility poles, lines, conduits, pipes, or other infrastructure, or (ii) connecting, disconnecting, or recording utility meters.

[2019 c 219 § 1; 2016 c 6 § 2; 2013 2dss c 35 § 37; 2013 c 256 § 2; 2013 c 84 § 26; 2011 c 87 §1; 2010 c 274 § 402; 2010 c 227 § 10; 2010 c 9 § 4; 2008 c 276 § 303; 2008 c 233 § 1; 2007 c 377 § 10; 2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4. Prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

**Notes:**

**Intent -- Severability -- Effective date -- 2005 c 68:** See notes following RCW 9.94A.537.

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

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

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

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

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

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

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

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

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

**9.94A.537**
**Aggravating circumstances — Sentences above standard range.**

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) In any case where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.

(3) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(4) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the jury has been impaneled solely for resentencing, or unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(5) If the superior court conducts a separate proceeding to determine the existence of aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(6) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

[2007 c 205 § 2; 2005 c 68 § 4.]

**Notes:**

**Intent -- 2007 c 205:** "In *State v. Pillatos*, 150 P.3d 1130 (2007), the Washington supreme court held that the changes made to the sentencing reform act concerning exceptional sentences in chapter 68, Laws of 2005, do not apply to cases where the trials had already begun or guilty pleas had already been entered prior to the effective date of the act on April 15, 2005. The legislature intends that the superior courts shall have the authority to impanel juries to find aggravating circumstances in all cases that come before the courts for trial or sentencing, regardless of the date of the original trial or sentencing. [2007 c 205 § 1.]

**Effective date -- 2007 c 205:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2007]." [2007 c 205 § 3.]

**Intent -- 2005 c 68:** "The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington,* 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new

criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision." [2005 c 68 § 1.]

**Severability -- 2005 c 68:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 68 § 6.]

**Effective date -- 2005 c 68:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 68 § 7.]

## 9.94A.540
## Mandatory minimum terms.

(1) Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535:

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

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

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

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

(e) An offender convicted of the crim of aggravated first degree murder for a murder that was committed prior to the offender's eighteenth birthday shall be sentenced toa term of total confinement not less than twenty-five years.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.728(3).

(3)(a) Subsection (1)(a) through (d) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).

(b) This subsection (3) applies only to crimes committed on or after July 24, 2005.

[2014 c 130 § 2; 2005 c 437 § 2; 2001 2nd sp.s. c 12 § 315; 2000 c 28 § 7. Formerly RCW 9.94A.590.]

**Notes:**

**Effective date – 2014 c 130:** “This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2014.” [ 2014 c 130 §16].

**Findings -- Intent -- 2005 c 437:** "(1) The legislature finds that emerging research on brain development indicates that adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to take these differences into consideration when sentencing juveniles tried as adults. The legislature further finds that applying mandatory minimum sentences for juveniles tried as adults prevents trial court judges from taking these differences into consideration in appropriate circumstances.

(2) The legislature intends to eliminate the application of mandatory minimum sentences under RCW 9.94A.540 to juveniles tried as adults, and to continue to apply all other adult sentencing provisions to juveniles tried as adults." [2005 c 437 § 1.]

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

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

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

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## 9.94A.550
## Fines.

Unless otherwise provided by a statute of this state, on all sentences under this chapter the court may impose fines on adult offenders according to the following ranges:

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

[2015 c 265 § 15; 2003 c 53 § 59; 1984 c 209 § 23. Formerly RCW 9.94A.386.]

**Notes:**

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

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

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## 9.94A.555
## Findings and intent — 1994 c 1.

(1) The people of the state of Washington find and declare that:

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

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

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

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

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

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

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

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

(d) Restore public trust in our criminal justice system by directly involving the people in the process.

[1994 c 1 § 1 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.392.]

**Notes:**

**Severability -- 1994 c 1:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 1 § 6 (Initiative Measure No. 593, approved November 2, 1993).]

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

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

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## 9.94A.561
## Offender notification and warning.

A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties.

[1994 c 1 § 4 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.393.]

**Notes:**

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

## 9.94A.562
## Court-ordered treatment — Required notices.

When any person is convicted in a superior court, the judgment and sentence shall include a statement that if the offender is or becomes subject to court-ordered mental health or chemical dependency treatment, the offender must notify the department and the offender's treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by an offender who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety is not enhanced by the sharing of this offender's information.

[2004 c 166 § 11.]

**Notes:**

**Severability -- Effective dates--2004 c 166:** See notes following RCW 71.05.040.

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## 9.94A.565
## Governor's powers.

(1) Nothing in chapter 1, Laws of 1994 shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender.

[1994 c 1 § 5 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.394.]

**Notes:**

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

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## 9.94A.570
## Persistent offenders.

Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time,

furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.728 (1), (2), (3), (4), (6), (8), or (9), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) In the case of an offender in need of emergency medical treatment; or (2) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

[2000 c 28 § 6. Formerly RCW 9.94A.560.]

**Notes:**

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

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### 9.94A.575
### Power to defer or suspend sentences abolished — Exceptions.

The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.670, the special sex offender sentencing alternative, whose sentence may be suspended.

[2000 c 28 § 9; 1999 c 143 § 12; 1984 c 209 § 7; 1981 c 137 § 13. Formerly RCW 9.94A.130.]

**Notes:**

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

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

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

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### 9.94A.580
### Specialized training.

The department is authorized to determine whether any person subject to the confines of a correctional facility would substantially benefit from successful participation in: (1) Literacy training, (2) employment skills training, or (3) educational efforts to identify and control sources of anger and, upon a determination that the person would, may require such successful participation as a condition for eligibility to obtain early release from the confines of a correctional facility.

The department shall adopt rules and procedures to administer this section.

[1994 sp.s. c 7 § 533. Formerly RCW 9.94A.132.]

**Notes:**

**Finding -- Intent -- Severability -- 1994 sp.s. c 7:** See notes following RCW 43.70.540.

## 9.94A.585
## Which sentences appealable — Procedure — Grounds for reversal — Written opinions.

(1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

[2002 c 290 § 19; 2000 c 28 § 10; 1989 c 214 § 1; 1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21. Formerly RCW 9.94A.210.]

**Notes:**

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

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

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

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

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

## 9.94A.589
## Consecutive or concurrent sentences.

(1)(a) Except as provided in (b), (c) or (d) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under this subsection (1)(b) shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection. Even if the court orders the confinement terms to run consecutively to each other, the terms of community custody shall run concurrently to each other, unless the court expressly orders the community custody terms to run consecutively to each other.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(d) All sentences imposed under RCW 46.61.502(d), 46.61.504(6), or 46.61.5055(4) shall be served consecutively with any sentences imposed under RCW 46.20.740 and 46.20.750.

(2)(a) Whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term of confinement shall not begin until expiration of all prior terms of confinement. However, any terms of community custody shall run concurrently to each other, unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(b) Whenever a second or later felony conviction results in consecutive community custody with conditions not currently in effect, under the prior sentence or sentences of community custody, the court may require that the conditions of community custody contained in the second or later sentence begin during the immediate term of community custody and continue throughout the duration of the consecutive term of community custody.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that the confinement terms be served consecutively to each other. Even if the court orders the confinement terms to run consecutively to each other, the terms of community custody shall run concurrently to each other, unless the court expressly orders the community custody terms to run consecutively to each other..

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more

sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

[2020 c 276 § 1; 2014 c 101 § 1; 2002 c 175 § 7; 2000 c 28 § 14; 1999 c 352 § 11; 1998 c 235 § 2; 1996 c 199 § 3; 1995 c 167 § 2; 1990 c 3 § 704. Prior: 1988 c 157 § 5; 1988 c 143 § 24; 1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11. Formerly RCW 9.94A.400.]

**Notes:**

**Applicability - 2020 c 276**: "This act applies retroactively and prospectively, regardless of the date of an offender's underlying offense." 2020 c 276 § 6.

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

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

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

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

**Application -- 1988 c 157:** See note following RCW 9.94A.030.

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

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

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

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

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## 9.94A.595
## Anticipatory offenses.

For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent.

[2000 c 28 § 16; 1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12. Formerly RCW 9.94A.410.]

**Notes:**

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

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

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

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

## 9.94A.599
## Presumptive ranges that exceed the statutory maximum.

If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. If the addition of a firearm or deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

[1998 c 235 § 3; 1983 c 115 § 13. Formerly RCW 9.94A.420.]

## 9.94A.603
## Felony alcohol violators — Treatment during incarceration — Conditions.

(1) When sentencing an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the provisions of this chapter, shall order the offender to undergo alcohol or chemical dependency treatment services during incarceration. The offender shall be liable for the cost of treatment unless the court finds the offender indigent and no third-party insurance coverage is available.

(2) The provisions under RCW 46.61.5055 (8) and (9) regarding the suspension, revocation, or denial of the offender's license, permit, or nonresident privilege to drive shall apply to an offender convicted of a violation of RCW 46.61.502(6) or46.61.504 (6).

(3) The provisions under RCW 46.20.720 and 46.61.5055(5) regarding ignition interlock devices shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

[2006 c 73 § 4.]

**Notes:**

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

## 9.94A.607
## Chemical dependency.

(1) Where the court finds that the offender has any chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender. A rehabilitative program may include a directive that the offender obtain an evaluation as to the need for chemical dependency treatment related to the use of alcohol or controlled substances, regardless of the particular substance that contributed to the commission of the offense. The court may also impose a prohibition on the use or possession of alcohol or controlled substances regardless of whether a chemical dependency evaluation is ordered.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, including suspended sentences.

[[2015 c 81 § 2; 1999 c 197 § 2. Formerly RCW 9.94A.129.]

**Notes:**

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

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## 9.94A.610 [Recodified as RCW 72.09.710]
## Drug offenders — Notice of release or escape.

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

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

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

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

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

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

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

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(2) (a) or (b) or69.50.4011 (2) (a) or (b).

[2008 c 231 § 56(1); 2008 c 231 § 26; 2003 c 53 § 61; 1996 c 205 § 4; 1991 c 147 § 1. Formerly RCW 9.94A.154.]

**Notes:**

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

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**9.94A.612 [Recodified as RCW 72.09.712]**
**Prisoner escape, parole, release, placement, or furlough — Notification procedures.**

(1) At the earliest possible date, and in no event later than thirty days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community custody, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense;

(c) Any person specified in writing by the prosecuting attorney; and

(d) Any person who requests such notice about a specific inmate convicted of a sex offense as defined by RCW 9.94A.030 from the department of corrections at least sixty days prior to the expected release date of the offender.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate. Whenever the department of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

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

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

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

inmate, the following:

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

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

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

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

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

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

[2008 c 231 § 56(1); 2008 c 231 § 27; 1996 c 215 § 4. Prior: 1994 c 129 § 3; 1994 c 77 § 1; prior: 1992 c 186 § 7; 1992 c 45 § 2; 1990 c 3 § 121; 1989 c 30 § 1; 1985 c 346 § 1. Formerly RCW 9.94A.155.]

**Notes:**

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

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

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

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

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### 9.94A.614 [Recodified as RCW 72.09.714]
### Prisoner escape, release, or furlough — Homicide, violent, and sex offenses — Rights of victims and witnesses.

The department of corrections shall provide the victims and next of kin in the case of a homicide and witnesses involved in violent offense cases or sex offenses as defined by RCW 9.94A.030 where a judgment and sentence was entered after October 1, 1983, a statement of the rights of victims and witnesses to request and receive notification under RCW 72.09.712 and 72.09.716.

[2008 c 231 § 56(1); 1989 c 30 § 2; 1985 c 346 § 2. Formerly RCW 9.94A.156.]

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### 9.94A.616 [Recodified as RCW 72.09.716]
### Prisoner escape, release, or furlough — Requests for notification.

Requests for notification under RCW 72.09.712 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections.

[2008 c 231 § 56(1); 1985 c 346 § 3. Formerly RCW 9.94A.157.]

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### 9.94A.618 [Recodified as RCW 72.09.718]
### Prisoner escape, release, or furlough — Notification as additional requirement.

The notification requirements of RCW 72.09.712 are in addition to any requirements in RCW 43.43.745 or other law.

[2008 c 231 § 56(1); 1985 c 346 § 4. Formerly RCW 9.94A.158.]

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### 9.94A.620 [Recodified as RCW 72.09.720]
### Prisoner escape, release, or furlough — Consequences of failure to notify.

Civil liability shall not result from failure to provide notice required under RCW 72.09.712 through 72.09.718, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence.

[2008 c 231 § 56(1); 1985 c 346 § 7. Formerly RCW 9.94A.159.]

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### 9.94A.631
### Violation of condition or requirement of sentence — Arrest by community corrections officer — Confinement in county jail.

(1) If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court or by the department. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to submit to a search and seizure of the offender's person, residence, automobile, or other personal property.

(2) For the safety and security of department staff, an offender may be required to submit to pat searches, or other limited security searches, by community corrections officers, correctional officers, and other agency approved staff, without reasonable cause, when in or on department premises, grounds, or facilities, or while preparing to enter department premises, grounds, facilities, or vehicles. Pat searches of offenders shall be conducted only by staff who are the same gender as the offender, except in emergency situations.

(3) A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court, local law enforcement, or local prosecution for consideration of new charges. The community corrections officer's report shall serve as the notice that the department will hold the offender for not more than three days from the time of such notice for the new crime, except if the offender's underlying offense is a felony listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest, or until a prosecuting attorney charges the offender with a crime, or until a prosecuting attorney provides written notice to the department that new charges will not be filed, whichever occurs first. This does not affect the department's authority under RCW 9.94A.737.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into

custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court or authorized department staff, pursuant to a written order.

[[2020 c 82 §2; 2012 e1 c 6 § 1;2009 c 391 § 1; 1984 c 209 § 11. Formerly RCW 9.94A.195.]

**Notes:**

**Applicablility - 2020 c 82**: "Sections 1 through 3 of this act apply retroactively and prospectively regardless of the date of an offender's underlying crime." 2020 c 82 § 6.

**Effective date – 2012 e1 c 6:** "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take June 1, 2012." [2012 e1 c 6 § 16.]

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

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## 9.94A.633
## Violation of condition or requirement -- Sanctions.

(1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned by the court with up to sixty days' confinement for each violation or by the department with up to thirty days' confinement as provided in RCW 9.94A.737.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other community-based sanctions.

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

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

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

(c) If the offender was sentenced under the parenting sentencing alternative set out in RCW 9.94A.655, the offender may be sanctioned in accordance with that section.

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

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

(f) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204 or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) The parole or probation of an offender who is charged with a new felony offense may be suspended and the offender placed in total confinement pending disposition of the new criminal charges if:

(a) The offender is on parole pursuant to RCW 9.95.110(1); or

(b) The offender is being supervised pursuant to RCW 9.94A.745 and is on parole or probation pursuant to the laws of another state.

[2012 e1 c 6 § 2;2010 c 258 § 1; 2010 c 224 § 12; 2009 c 375 § 12; 2009 c 28 § 7; 2008 c 231 § 15.]

## Notes:

**Effective date – 2012 e1 c 6:** "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2012]." [2012 e1 c 6 § 14.]

**Effective date -- 2010 c 258:** "Section 1 of this act applies to all offenders who committed their crimes before, on, or after the effective date of section 1 of this act [June 10, 2010]." 2010 c 258 § 2.

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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### 9.94A.6331
### Sanctions – Where served.

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

(a) If the sanction was imposed pursuant to RCW 9.94A.633(1), the sanction shall be served in a county facility.

(b) If the sanction was imposed pursuant to RCW 9.94A.633 (2), the sanction shall be served in a state facility.

(2) If a sanction of confinement is imposed by the department, and if the offender is an inmate as defined by RCW 72.09.015, no more than eight days of the sanction, including any credit for time served, may be served in a county facility. The balance of the sanction shall be served in a state facility. In computing the eight-day period, weekends and holidays shall be excluded. The department may negotiate with local correctional authorities for an additional period of detention.

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

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

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

[2008 c 231 § 17.]

## Notes:

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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### 9.94A.6332
### Sanctions – Which entity imposes.

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

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

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

(3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.

(4) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.
(5) If the offender was released pursuant to [2014 c130 s 10], any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(6) If the offender was sentenced pursuant to RCW 10.95.030(3) or [2014 c 130 s 11], any sanctions will be imposed by the board pursuant to RCW 9.95.435.

(7) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that thos statutes provide to respond to a probationer's violation of conditions.

(8) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

[2014 c 130 § 3; 2010 c 224 § 11; 2009 c 375 § 14; 2009 c 28 § 8; 2008 c 231 § 18.]

## Notes:

**Effective date – 2014 c 130:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2014." [ 2014 c 130 §16].

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

**9.94A.6333**
**Sanctions – Modification of sentence – Noncompliance hearing.**

(1) If an offender violates any condition or requirement of a sentence, and the offender is not being supervised by the department, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

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

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

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

(c) If the court finds that a violation has been proved, it may impose the sanctions specified in RCW 9.94A.633(1). Alternatively, the court may:

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

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

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

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

(3) If an offender fails to pay legal financial obligations as a requirement of a sentence the following provisions apply:

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

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

(c) The court may not sanction the offender for failure to pay legal financial obligations unless the court finds, after a hearing and on the record, that the failure to pay is willful. A failure to pay is willful if the offender has the current ability to pay but refuses to do so. In determining whether the offender has the current ability to pay, the court shall inquire into and consider: (i)The offender's income and assets; (ii) the offender's basic living costs as defined by RCW 10.101.010 and other liabilities including child support and other legal financial obligations; and (iii) the offender's bona fide efforts to acquire additional resources. An offender who is indigent as defined by RCW 10.101.010(3)(a) through (c) is presumed to lack the current ability to pay;

(d) If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties;

(e) If the court finds that a failure to pay is willful noncompliance, it may impose the sanctions specified in RCW 9.94A.633(1); and

(f)If the court finds that the violation was not willful, the court may, and if the court finds that the defendant is indigent as defined in RCW 10.101.010(3)(a) through (c), the court shall modify the terms of payment of the legal financial obligations, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. The crime victim penalty assessment under RCW 7.68.035 may not be reduced, waived, or converted to community restitution hours.

(4) Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement ordered by the court.

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

[2018 c 269 § 13; 2008 c 231 § 19.]

## Notes:

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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### 9.94A.637
### Discharge upon completion of sentence — Certificate of discharge — Obligations, counseling after discharge.

(1) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody or supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address. A certificate of discharge issued under this subsection (1) is effective on the date the offender completed all conditions of his or her sentence.

(2)(a) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence. The notice must list the specific sentence requirements that have been completed, so that it is clear to the sentencing court that the offender is entitled to discharge upon completion of the legal financial obligations of the sentence.

(b) When the department has provided the county clerk with notice under (a) of this subsection that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall promptly notify the sentencing court. Upon receipt of the notice under this subsection (2)(b), the court shall discharge the offender and provide the offender with a certificate of discharge. A certificate of discharge under this subsection (2) is effective on the date the offender completed all conditions of his or her sentence.

(3) In the absence of a certificate of discharge issued under subsection (1) or (2) of this section, the offender may file a motion with the sentencing court for a certificate of discharge. The sentencing court shall issue a certificate of discharge upon verification of completion of all sentencing conditions, including any and all legal financial obligations. A certificate of discharge issued under this subsection (2) is effective on the date the offender completed all conditions of his or her sentence.

(4) In the absence of a certificate of discharge issued under subsection (1), (2), or (3) of this section, the offender may file a motion with the sentencing court for a certificate of discharge and shall provide verification of completion of all nonfinancial conditions of his or her sentence, unless the court finds good cause to waive this requirement. A certificate of discharge issued under this subsection (4) is effective on the later of: (a) Five years after completion of community custody, or if the offender was not required to serve community custody, after the completion of full and partial confinement; or (b) the date any and all

legal financial obligations were satisfied.

(5) The court shall issue a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(6)(a) A no-contact order is not a requirement of the offender's sentence. An offender who has completed all requirements of the sentence, including any and all legal financial obligations, is eligible for a certificate of discharge even if the offender has an existing no-contact order that excludes or prohibits the offender from having contact with a specified person or entity or coming within a set distance of any specified location.

(b) In the case of an eligible offender who has a no-contact order as part of the judgment and sentence, the offender may petition the sentencing court to issue a certificate of discharge and a separate no-contact order, which must include paying the appropriate filing fee for the separate no-contact order. The filing fee does not apply to an offender seeking a certificate of discharge when the offender has a no-contact order separate from the judgment and sentence. The court shall reissue the no-contact order separately under a new civil cause number for the remaining term and under the same conditions as contained in the judgment and sentence.

(b) The clerk of the court shall send a copy of the new no-contact order to the individuals or entities protected by the no-contact order, along with an explanation of the reason for the change, if there is an address available in the court file. If no address in available, the clerk of the court shall forward a copy of the no-contact order with an explanation of the reason for the change to the last known address of the protected individuals or entities.

(c) The clerk shall also include a cover sheet that indicates the case number of the judgment and sentence that had been discharged. Upon receipt of the copy of the order and cover sheet, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Th order shall remain in the system until it expires. The new order, and case number of the discharged judgment and sentence, shall be linked in the criminal intelligence information system for purposes of enforcing the no-contact order.

(d) A separately issued no-contact order may be enforced under chapter 26.50 RCW.

(e) A separate no-contact order issued under this subsection (6) is not a modification of the offender's sentence.

(7) Every signed certificate and order of discharge shall be filed with the county clerk of the sentencing county. In addition, the court shall send to the department a copy of every signed certificate and order of discharge for offender sentences under the authority of the department. The county clerk shall enter into a database maintained by the administrator for the courts the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

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

(9) The discharge shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

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

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

[2019 c 331 § 2; 2009 c 325 § 3; 2009 c 288 § 2; 2007 c 171 § 1; 2004 c 121 § 2; 2003 c 379 § 19; 2002 c 16 § 2; 2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22. Formerly RCW 9.94A.220.]

**Notes:**

**Intent -- 2009 c 288:** "The legislature finds that restoration of the right to vote and serve on a jury, for individuals who have satisfied every other obligation of their sentence, best serves to reintegrate them into society, even if a no-contact order exists. Therefore, the legislature further finds clarification of the existing statute is desirable to provide clarity to the courts that a certificate of discharge shall be issued, while the no-contact order remains in effect, once other obligations are completed." [2009 c 288 § 1.]

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

**Intent -- Purpose -- 2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

**Intent -- 2002 c 16:** "The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge." [2002 c 16 § 1.]

**Application -- 2000 c 119:** See note following RCW 26.50.021.

**Purpose -- Severability -- 1994 c 271:** See notes following RCW 9A.28.020.

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

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

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## 9.94A.640
## Vacation of offender's record of conviction.

(1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court;
(b) The offense was a violent offense as defined in RCW 9.94A.030 or crime against persons as defined in RCW 43.43.830, except the following offenses may be vacated if the conviction didi not include a firearm, deadly weapon, or sexual motivation enhancement: (i) Assault in the second dgree under RCW 9A.36.021; (b) assault in the third degree under RCW 9A.36.031 when not committed against a law enforcement officer or peace officer; and (iii) robbery in the second degree;
(c) The offense is a class B felony has been convicted of a new crime in this state, another state , or federal court in the ten years prior to the application for vacation;
(d) The offense is a class C felony and offender has been convicted of a new crime in this state, another state, or federal court in the five years prior to the application for vacation;
(e) The offense is a class B felony and less than ten years have passed since the later of: (i) The application's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date;
(f) The offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or46.61.504 (6), and less than five years have passed since the later of: (i) The application's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date; or
(g) The offense was a felony described in RCW 46.61.502 or 46.61.504.

(3)(a) Except as otherwise provided, once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the

offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution, and nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

(b) A conviction vacated on or after the effective date of this section qualifies as a prior conviction for the purpose of charging a present recividist offense occurring on or after the effective date of this section, and may be used to establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

[2019 c 331 § 3; 2012 c 183 § 3; 2006 c 73 § 8; 1987 c 486 § 7; 1981 c 137 § 23. Formerly RCW 9.94A.230.]

**Notes:**

**Effective date – 2012 c 183:** "This act takes effect August 1, 2012." 2012 c 183 § 17.

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

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

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**9.94A.645**
**Civil action against victim.**

(1) A person convicted and confined for any of the offenses set forth in subsection (3) of this section must, prior to commencing any civil action in state court against the victim of such offense, or the victim's family, first obtain an order authorizing such action to proceed from the sentencing judge, if available, or the presiding judge in the county of conviction.

(2) This section does not apply to an action brought under Title 26 RCW.

(3) This section applies to persons convicted and confined for any serious violent offense as defined in RCW 9.94A.030.

(4) A court may refust to authorize an action, or a claim contained therein, to proceed if the court finds that the action, or claim, is frivoious or malicious. In determining whether an action, or a claim asserted therein, is frivolous or malicious, the court may consider, among other things, whether:

(a) The claim's realistic chance of ultimate success is slight;

(b) The claim has no arguable basis in law or fact;

(c) It is clear that the party cannot prove facts in support of the claim;

(d) The claim has been brought with the intent to harass the opposing party; or

(e) The claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

(5) For purposes of this section, "victim's family" includes a victim's spouse, domestic partner, children, parents, and siblings.

(6) Failure to obtain the authorization required by this section prior to commencing an action may result in loss of early release time or other privileges, or some combination thereof. The department may exercise discretion to determine whether and how the loss may be applied, and the amount of reduction of early release time, loss of other privileges, or some combination thereof. The department shall adopt rules to implement the provisiosn of this subsection.

[2014 c 113 § 1];

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## 9.94A.650
## First-time offender waiver.

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

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2);

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana; or

(e) Felony driving while under the influence of intoxicating liquor or any drug or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses.

(3) The court may impose up to six months of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed one year.

(4) As a condition of community custody, in addition to any conditions authorized in RCW 9.94A.703, the court may order the offender to pay all court-ordered legal financial obligations and/or perform community restitution work.

[2011 e1 c 40 § 9; 2008 c 231 § 29; 2006 c 73 § 9; 2002 c 175 § 9; 2000 c 28 § 18.]

**Notes:**

**Effective date – 2011 e1 c 40 § 9:** "Sections 1 through 9 and 42 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011]." [2011 e1 c 40 § 44]

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

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

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

## RCW 9.94A.655
## Parenting sentencing alternative.

(1) An offender is eligible for the parenting sentencing alternative if:

(a) The high end of the standard sentence range for the current offense is greater than one year;

(b) The offender has no prior or current conviction for: A felony sex offense; a serious violent offense; or a felony offense where the offender was armed with a firearm or deadly weapon in the commission of the offense;

(c) The offender has no current conviction for a violent offense:

(d) The offender signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with the department and the court: and

(e) The offender is:

(i) A parent with physical custody of a minor child;
(ii) An expectant parent;
(iii) A legal guardian of a minor child; or
(iv) A biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense.

(2) Prior juvenile adjudications are not considered offenses when considering eligibility under this section, except for any sex offense, serious violent offense, or felony offense where the offender was armed with a firearm or deadly weapon in the commission of the offense.

(3) To assist the court in making its determination, the court may order the department to complete a risk assessment, including a family impact statement, or a chemical dependency screening report as provided in RCW 9.94A.500, prior to sentencing.

(4) If the court is considering this alternative, the court shall request that the department contact the department of children, youth and families to determine if the agency has an open child welfare case or prior substantiated referral of abuse or neglect involving the offender or if the agency is aware of any substantiated case of abuse or neglect with a tribal child welfare agency involving the offender.

(a) If the offender has an open child welfare case or child abuse or neglect investigation, the department will provide the release of information waiver and request that the department of children, youth, and families or the tribal child welfare agency provide a report to the court. The department of children, youth and families shall provide, within seven business days of the request: Provide a copy of the most recent court order entered in proceedings under chapter 13.34 or 13.36 RCW pertaining to the offender, and provide a report regarding whether the offender has been cooperative with services ordered by the court in those proceedings; or, if there is no court order or there has not been court involvement, provide a report that includes, at the minimum, the following:

(i) Legal status of the child welfare case or child protective services response;

(ii) Length of time the department of children, youth, and families has had an open child welfare case or child protective services response involving the offender; and

(iii) Any special needs of the child;

(b) The department shall report to the court if the offender has been convicted of a crime against the child.

(c) If a report is required from a tribal child welfare agency, the department shall attempt to obtain information that is similar to what is required for the report provided by the department of children, youth, and families in a timely manner.

(d) If the offender does not have an open child welfare case with the department of children, youth, and families or with a tribal child welfare agency but has prior involvement, the department shall obtain information from the children's administration on the number and type of past substantiated referrals of abuse or neglect and report that information to the court. If the department of children, youth, and families has never had any substantiated referrals or an open case with the offender, the department will inform the court.

(e)The existence of a prior substantiated referral of child abuse or neglect or of an open child welfare case does not, alone, disqualify the parent from applying or participating in this alternative. The court shall consider whether the child-parent relationship can be readily maintained during parental incarceration, and

whether, due to the existence of an open child welfare case, parental incarceration exacerbates the likelihood of termination of the child-parent relationship.

(5) If the sentencing court determines that the offender is eligible for a sentencing alternative under this section and that the sentencing alternative is appropriate and should be imposed, the court shall waive imposition of a sentence within the standard range and impose a sentence consisting of twelve months of community custody. The court shall consider the offender's criminal history when determining if the alternative is appropriate.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate.

(b) The department may impose conditions as authorized in RCW 9.94A.704 that may include, but are not limited to:

(i) Parenting classes;

(ii) Chemical dependency treatment;

(iii) Mental health treatment;

(iv) Vocational training;

(v) Change programs;

(vi) Life skills classes.

(c) The department shall report to the court if the offender commits any violations of his or her sentence conditions.

(7) The department shall provide the court with quarterly progress reports regarding the offender's progress in required programming, treatment, and other supervision conditions. When an offender has an open child welfare case, the department will seek to coordinate services with the department of children, youth, and families

(8)(a) The court may bring any offender sentenced under this section back into court at any time during the period of community custody on its own initative to evaluate the offender's progress in treatment, or to determine if any violations of the conditions of the sentence have occurred.

(b) At the commencement of such a hearing, the court shall advise the offender sentenced under this section of the offender's right to assistance of counsel and appoint counsel if the offender is indigent.

(c) If the offender is brought back to court, the court may modify the conditions of community custody or impose sanctions under (d) of this subsection, including extending the length of participation in the alternative program by no more than six months.

(d) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody, if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(e) An offender ordered to serve a term of total confinement under (d) of this subsection shall receive credit for any time previously served in confinement under this section.

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

(9)The state and its agencies, officers, agents, or employees are not liable for the acts of offenders participating in the sentencing alternative under this section unless the state or its agencies, officers, agents, or employees act with willful disregard of a known risk of immediate harm.

(10)For the purposes of this section:

(a)"Expectant parent" means a pregnant or other parent awaiting the birth of his or her child, or an adoptive parent or person in the process of a final adoption.

(b)"Minor child" means a child under the age of eighteen.

[2020 c 137 § 2; 2018 c 58 § 45; 2010 c 224 § 2.]

**Notes:**

**Effective date -- 2018 c 58:** "This act takes effect July 1, 2018." [2018 c 58 § 82.]

## RCW 9.94A.6551
## Parenting program as part of partial confinement.

For an offender not sentenced under RCW 9.94A.655, but otherwise eligible under this section, no more than the final twelve months of the offender's term of confinement may be served in partial confinement as home detention as part of the parenting program developed by the department.

(1) The secretary may transfer an offender from a correctional facility to home detention in the community if it is determined that the parenting program is an appropriate placement and when all of the following conditions exist:

(a) The offender is serving a sentence in which the high end of the standard sentence range is greater than one year;

(b) The offender has no current convictions for a felony that is classified as a sex offense or a serious violent offense;

(c) The offender has no current conviction for a violent offense, or where the offender has a current conviction for a violent offense, he or she has not been determined to be a high risk to reoffend;

(d) The offender signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with the department and the court: and

(e) The offender is :

(i) A parent with guardianship or legal custody of a minor child;

(ii) An expectant parent; or

(iii) A biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense and

(f) The department determines that the offender's participation in the parenting program is in the best interests of the child. Nothing in this section provides the department with authority to determine placement of a minor child.

(2) Except for sex offenses and serious violent offenses, prior juvenile adjudications are not considered offenses when considering eligibility for the parenting program developed by the department.

(3) When the department is considering partial confinement as part of the parenting program for an offender, the department inquire of the department of children, youth, and families to determine if the agency has an open child welfare case or prior substantiated referral of abuse or neglect involving the offender.

(4) If the department of children, youth, and families or a tribal jurisdiction has an open child welfare case, the department will seek input from the department of children, youth, and families or the involved tribal jurisdiction as to: (a) The status of the child welfare case; and (b) recommendations regarding placement of the offender, services agreed to by the offender working voluntariy with the department, or services ordered by the court within the offender's child welfare case. The department and its officers, agents, and employees are not liable for the acts of offenders participating in the parenting program unless the department or its officers, agents, and employees acted with willful and wanton disregard.

(5) All offenders placed on home detention as part of the parenting program shall provide an approved residence and living arrangement prior to transfer to home detention.

(6) While in the community on home detention as part of the parenting program, the department shall:

(a) Require the offender to be placed on electronic home monitoring;

(b) Require the offender to participate in programming and treatment that the department determines is needed after consideration of the offender's stated needs:

(c) Assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements; and

(d) If the offender has an open child welfare case with the department of children, youth, and families, collaborate and communicate with the identified social worker in the provision of services.

(7) The department has the authority to return any offender serving partial confinement in the parenting program to total confinement if the offender is not complying with sentence requirements.

(8) For the purposes of this section:

(a) "Expectant parent" means a pregnant or other parent awaiting34the birth of his or her child, or an adoptive parent or person in the35process of a final adoption.

(b) "Minor child" means a child under the age of eighteen.

[[2020 c 137 § 3; 2018 c 58 § 47; 2010 c 224 § 8]

**Notes:**

**Effective date -- 2018 c 58:** "This act takes effect July 1, 2018." [2018 c 58 § 82.]

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**9.94A.660**
**Drug offender sentencing alternative.**

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under

the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense for which the offender is currently or may be required to register pursuant to RCW 9A.44.130;

(d) The offender has no prior convictions in this state, and no prior convictions for an equivalent out-of-state or federal offense, for the following offenses during the following time frames:

(i) Robbery in the second degree that did not involve the use of a firearm and was not reduced from robbery in the first degree within seven years before conviction of the current offense; or

(ii) Any other violent offense within ten years before conviction of the current offense,;

(e) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(f) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential substance use disorder treatment-based alternative under RCW 9.94A.664. The residential substance use disorder treatment-based alternative is only available if the midpoint of the standard range is twenty-six months or less.

(4)(a) To assist the court in making its determination, the court may order the department of complete either or both a risk assessment report and a substance use disorder screening report as provided in RCW 9.94A.500.

(b) To assist the court in making its determination in domestic violence cases, the court shall order the department to complete a presentence investigation and a chemical dependency screening report as provided in RCW 9.94A.500, unless otherwise specifically waived by the court.

(5) If the court is considering imposing a sentence under the residential substance use disorder treatment-based alternative, the court may order an examination of the offender by the department. The examination must be performed by an agency certified by the department of health to provide substance use disorder services. The examination shall, at a minimum, address the following issues:

(a) Whether the offender suffers a substance use disorder;

(b) Whether the substance abuse disorder is such that there is a probability that criminal behavior will occur in the future;

(c) Whether effective treatment for the offender's substance use disorder is available from a provider that has been licensed or certified by the department of health and where applicable, whether effective domestic violence perpetrator treatment is available from a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW; and

(d) Whether the offender and the community will benefit from the use of the alternative.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances, or in cases of domestic violence for monitoring with global positioning system technology for compliance

with a no-contact order.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and RCW 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for time previously served in total or partial confinement and inpatient treatment under this section, and shall receive fifty percent credit for time previously served in community custody under this section..

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender’s particiapation in the program.

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

(10) The Washington state institute for public policy shall submit a report to the governor and the appropriate committees of the legislature by November 1, 2022, analyzing the effectiveness of the drug offender sentencing alternative in reducing recidivism among various offender populations. An additional report is due November 1, 2028, and every five years thereafter. The Washington state institute for public policy may coordinate with the department and the caseload forecast council in tracking data and preparing the report.

[2020 c 252 § 1; 2019 c 263 § 502; 2019 c 325 § 5002; 2016e1 c 29 § 524; 2009 c 389 § 3; 2008 c 231 § 30; 2006 c 339 § 302; 2006 c 73 § 10; 2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

**Notes:**

**Reviser's note:** This section was amended by 2006 c 73 § 10 and by 2006 c 339 § 302, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date -- 2020 c 252:** "[T]his act takes effect January 1, 2021." [2020 c 252 § 5.]

**Effective date -- 2019 c 263:** "Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021." [2020 c 263 § 1004.]

**Effective date -- 2019 c 325:** "[T]his act takes effect January 1, 2020." [2019 c 325 § 6008.]

**Effective date – 2016e1 c 29:** “Sections 501, 503 through 532, and 701 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect April 1, 2016.” 2016e1 c29 § 803.

” **Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

**Intent -- Part headings not law -- 2006 c 339:** See notes following RCW 70.96A.325.

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

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

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

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

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

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

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

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

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## RCW 9.94A.662
## Drug offender sentencing alternative – Prison-based alternative.

(1)The court may only order a prison-based special drug offender sentencing alternative if the high end of the standard sentence range6for the current offense is greater than one year.

(2) A sentence for a prison-based special drug offender sentencing alternative shall include:
(a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;
(b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance use disorder treatment in a program that has been approved by the department of health; and for co-occurring drug and domestic violence cases, must also include an appropriate domestic violence treatment program by a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW;;
(c) Crime-related prohibitions, including a condition not to use illegal controlled substances;
(d) A requirement to submit to urinalysis or other testing to monitor that status; and
(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(3)(a) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance use disorder assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be licensed by the department of health.
(b) When applicable for cases involving domestic violence, domestic violence treatment must be provided by a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW during the term of community custody.

(4) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

(5) If an offender sentenced to the prison-based alternative under this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order,

the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

[2020 c 252 § 2; 2019 c 263 § 503; 2009 c 389 § 4]

**Notes:**

**Effective date -- 2020 c 252:** "[T]his act takes effect January 1, 2021." [2020 c 252 § 5.]

**Effective date -- 2019 c 263:** "Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021." [2020 c 263 § 1004.]

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## RCW 9.94A.664
## Drug offender sentencing alternative – Residential substance use disorder treatment-based alternative.

(1)(a) A sentence for a residential substance use disorder treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential substance use disorder treatment certified by the department of health for a period set by the court up to six months with treatment completion and continued care delivered in accordance with rules established by the health care authority. In establishing rules pursuant to this subsection, the health care authority must consider criteria established by the American society of addiction medicine.

(b) The sentence may include an indeterminate term of confinement of no more than thirty days in a facility operated or utilized under contract by the county in order to facilitate direct transfer to a residential substance use disorder treatment facility.

(2)(a)During any period of community custody, the court shall impose treatment and other conditions.

(b) The department shall, within available resources, make substance use disorder assessment and treatment services available to the offender during the term of community custody, and within available resources, make domestic violence treatment services available to a domestic violence offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential substance use disorder treatment program and, where applicable, the domestic violence treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:
(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;
(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or
(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make substance use disorder assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody.

[2020 c 252 § 3; 2019 c 325 § 5003; 2019 c 263 § 504; 2009 c 389 § 5]

**Effective date -- 2020 c 252:** "[T]his act takes effect January 1, 2021." [2020 c 252 § 5.]

**Effective date -- 2019 c 263:** "Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021." [2020 c 263 § 1004.]

**Effective date -- 2019 c 325:** "[T]his act takes effect January 1, 2020." [2019 c 325 § 6008.]

**Notes:**

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## 9.94A.670
## Special sex offender sentencing alternative.

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

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

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

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

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

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

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

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

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

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion

of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

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

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

(ii) The offender's offense history;

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

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

(v) Other evaluation measures used.

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

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

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

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

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

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

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

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentenceas provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

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

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

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

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

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

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

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the

evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

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

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

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

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

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

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

[2009 c 28 § 9; 2008 c 231 § 31; 2006 c 133 § 1. Prior: 2004 c 176 § 4; 2004 c 38 § 9; 2002 c 175 § 11; 2001 2nd sp.s. c 12 § 316; 2000 c 28 § 20.]

**Notes:**

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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

**Effective date -- 2004 c 38:** See note following RCW 18.155.075.

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

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

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

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

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## 9.94A.680
## Alternatives to total confinement.

Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

(1) One day of partial confinement may be substituted for one day of total confinement;

(2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community restitution may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community restitution hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; and

(3) For offenders convicted of nonviolent and nonsex offenses, the court credit time served by the offender before the sentencing in an available county supervised community option and may authorize county jails to convert jail confinement to an available county supervised community option, may authorize the time spent in the community option to be reduced by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used.

[2009 c 227 § 1; 2002 c 175 § 12; 1999 c 197 § 6. Prior: 1988 c 157 § 4; 1988 c 155 § 3; 1984 c 209 § 21; 1983 c 115 § 9. Formerly RCW 9.94A.380.]

**Notes:**

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

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

**Application -- 1988 c 157:** See note following RCW 9.94A.030.

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

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## 9.94A.685
## Alien offenders.

(1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and customs enforcement agency for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee has reached an agreement with the immigration and customs enforcement agency that the alien offender placed on conditional release status will be detained in total confinement at a facility operated by the immigration and customs enforcement agency pending the offender's return to the country of origin or other location designated in the final deportation or exclusion order. No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030,.

(3) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and customs enforcement agency for deportation. Upon the release of an offender to the immigration and customs enforcement agency, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect indefinitely.

(4) Upon arrest of an offender, the department may seek extradition as necessary and the offender may be returned to the department for completion of the unserved portion of the offender's term of total confinement. If returned, the offender shall also be required to fully comply with all the terms and conditions of the sentence.

(5) Alien offenders released to the immigration and customs enforcement agency for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

(6) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

(7) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

(8) The provisiosn of this section apply to persons convicted on or before April 29, 2011.

[2011 c 206 § 1; 1993 c 419 § 1. Formerly RCW 9.94A.280.]

**Effective date – 2011 c 206:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2011]."

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## 9.94A.690
## Work ethic camp program — Eligibility — Sentencing.

(1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of felony driving while

under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), a violation of the uniform controlled substances act, or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing court determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of community custody as authorized by RCW 9.94A.703; and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

[2008 c 231 § 32; 2006 c 73 § 11; 2000 c 28 § 21; 1999 c 197 § 5; 1995 1st sp.s. c 19 § 20; 1993 c 338 § 4. Formerly RCW 9.94A.137.]

**Notes:**

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

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

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

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

**Findings -- Intent--1993 c 338:** See RCW 72.09.400.

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

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**9.94A.701**
**Community custody – Offenders sentenced to the custody of the department.**

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

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

(b) A serious violent offense.

(2) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

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

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

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

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

(d) A felony violation of [2010 c 267 § 3(a)] (failure to register) that is the offender's first violation for a felony failure to register.

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

(5) If an offender is sentenced under the special sex offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

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

(7) If an offender is sentenced under the parenting sentencing alternative, the court shall impose a term of community custody as provided in RCW 9.94A.675

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

(9) 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.

[2010 c 267 § 11; 2010 c 224 § 5; 2009 c 375 § 5; 2009 c 28 § 10; 2008 c 231 § 7.]

## Notes:

**Intent -- 2008 c 231:** "The existing sentencing reform act contains numerous provisions for supervision of different types of offenders. This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences. The clarifications in this act are intended to support continued discussions by the sentencing guidelines commission with the courts and the criminal justice community to identify and propose policy changes that will further simplify and improve the sentencing reform act relating to the supervision of offenders. The sentencing guidelines commission shall submit policy change proposals to the legislature on or before December 1, 2008.

Sections 7 through 58 of this act are intended to simplify the supervision provisions of the sentencing reform act and increase the uniformity of its application. These sections are not intended to either increase or decrease the authority of sentencing courts or the department relating to supervision, except

for those provisions instructing the court to apply the provisions of the current community custody law to offenders sentenced after July 1, 2009, but who committed their crime prior to August 1, 2009, to the extent that such application is constitutionally permissible.

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

It is the intent of the legislature to reaffirm that section 3, chapter 379, Laws of 2003, expires July 1, 2010." [2008 c 231 § 6.]

**Application -- 2008 c 231 §§ 6-58:** "(1) Sections 6 through 58 of this act apply to all sentences imposed or reimposed on or after August 1, 2009, for any crime committed on or after August 1, 2009.

(2) Sections 6 through 58 of this act also apply to all sentences imposed or reimposed on or after August 1, 2009, for crimes committed prior to August 1, 2009, to the extent that such application is constitutionally permissible.

(3) To the extent that application of sections 6 through 58 of this act is not constitutionally permissible with respect to any offender, the sentence for such offender shall be governed by the law as it existed before August 1, 2009, or on such prior date as may be constitutionally required, notwithstanding any amendment or repeal of provisions of such law.

(4) If application of sections 6 through 58 of this act is not constitutionally permissible with respect to any offender, the judgment and sentence shall specify the particular sentencing provisions that will not apply to such offender. Whenever practical, the judgment and sentence shall use the terminology set out in this act.

(5) The sentencing guidelines commission shall prepare a summary of the circumstances under which application of sections 6 through 58 of this act is not constitutionally permissible. The summary should include recommendations of conditions that could be included in judgments and sentences in order to prevent unconstitutional application of the act. This summary shall be incorporated into the *Adult Sentencing Guidelines Manual*.

(6) Sections 6 through 58 of this act shall not affect the enforcement of any sentence that was imposed prior to August 1, 2009, unless the offender is resentenced after that date." [2008 c 231 § 55.]

**Application of repealers -- 2008 c 231 § 57:** "The repealers in section 57 of this act shall not affect the validity of any sentence that was imposed prior to August 1, 2009, or the authority of the department of corrections to supervise any offender pursuant to such sentence." [2008 c 231 § 58.]

**Effective date -- 2008 c 231 §§ 6-60:** "Sections 6 through 60 of this act take effect August 1, 2009." [2008 c 231 § 61.]

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

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## 9.94A.702
## Community custody – Offenders sentenced to one year or less.

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

(a) A sex offense;

(b) A violent offense;

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

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

(e) A felony violation of [2010 c 267 § 3(a)] (failure to register).

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

[2010 c 267 § 12; 2008 c 231 § 8.]

## Notes:

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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### 9.94A.703
### Community custody – Conditions.

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

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

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

(b) Require the offender to comply with any conditions imposed by the department under RCW 9.94A.704;

(c) If the offender was sentenced under RCW 9.94A.507 for an offense listed in RCW 9.94A.507(1)(a), and the victim of the offense was under eighteen years of age at the time of the offense, prohibit the offender from residing in a community protection zone;

(d) If the offender was sentenced under RCW 9A.36.120, prohibit the offender from serving in any paid or volunteer capacity where he or she has control or supervision of minors under the age of thirteen.

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

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

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

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

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

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

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

offender to:

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

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

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

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

(e) Refrain from possessing or consuming alcohol; or

(f) Comply with any crime-related prohibitions.

(4) **Special conditions.**

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

(b)(i) In sentencing an offender convicted of an alcohol or drug-related traffic offense, the court shall require the offender to complete a diagnostic evaluation by a substance use disorder treatment program approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the offense was pursuant to chapter 46.61 RCW, the report shall be forwarded to the department of licensing. If the offender is found to have an alcohol or drug problem that requires treatment, the offender shall complete treatment in an approved substance use disorder treatment program as defined in chapter 71.24 RCW. If the offender is found not to have an alcohol or drug problem that requires treatment, the offender shall complete a course in an alcohol and drug information school licensed or certified by the department of health under chapter 70.96A RCW. The offender shall pay all costs for any evaluation, education, or treatment required by this section, unless the offender is eligible for an existing program offered or approved by the department of social and health services.

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

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

[2018 c 201 § 9004; 2009 c 214 § 3; 2009 c 28 § 11; 2008 c 231 § 9.]

## Notes:

**Effective date -- 2018 c 201:** “Except as provided in section 11005 of this act, this act takes effect July 1, 2018.” [2018 c 201 § 11006].

**Effective date -- 2009 c 214:** “This act takes effect August 1, 2009.” [2009 c 214 § 4].

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

## 9.94A.704
## Community custody – Supervision by the department -- Conditions.

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

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

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

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

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

(b) Remain within prescribed geographical boundaries;

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

(d) Pay the supervision fee assessment; and

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

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

(5) If the offender was sentenced pursuant to a conviction for a sex offense or domestic violence, the department may:

(a) Require the offender to refrain from direct or indirect contact with the victim of the crime or immediate family member of the victim of the crime. If a victim or an immediate family member of a victim has requested that the offender not contact him or her after notice as provided in RCW 72.09.340, the department shall require the offender to refrain from contact with the requestor. Where the victim is a minor, the parent or guardian of the victim may make a request on the victim's behalf. This subsection is not intended to reduce the preexisting authority of the department to impose no-contact conditions regardless of the offender's crime and regardless of who is protected by the no-contact condition, where such condition is based on community risk.

(b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" has the same meaning as in RCW 9.94A.030.

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

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

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

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

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

(10)(a) When an offender on community custody is under the authority of the board, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordere conditions. The board must consider and may impose department-recommended conditions. The board must impose a condition requiring the offender to refrain from contact with the victim or immediate family member as provided in subsection (5)(a) of this section.

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

(i) The crime of conviction;

(ii) The offender's risk of reoffending;

(iii) The safety of the community

(iv) The offender's risk of domestic violence reoffense.

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

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

[2020 c 263 § 601; 2016 c 108 § 1; 2015 c 287 § 7; 2015 c 134 § 8; 2014 c 35 § 1; 2012 e1 c 6 § 3; 2009 c 375 § 6; 2009 c 28 § 12; 2008 c 231 § 10.]

## Notes:

**Effective date -- 2019 c 263:** "Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021." [2020 c 263 § 1004.]

**Effective date -- 2015 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2015]." [2015 c 134 § 9.]

**Effective date – 2012 e1 c 6:** "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2012." [2012 e1 c 6 § 16.]

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

**9.94A.706**
**Community custody – Possession of firearm or ammunition prohibited.**

(1) No offender sentenced to a term of community custody under the supervision of the department may own, use, or possess firearms, ammunition, or explosives. An offender's actual or constructive possession of firearms, ammunition, or explosives shall be reported to local law enforcement or local prosecution for consideration of new charnges and subject to sanctions under RCW 9.94A.633 or 9.94A.737.

(2) For purposes of this section:
(a) Constructive possession" means the power and intent to control the firearm, ammunition, or explosives.
(b) "Explosives" has the same definition as in RCW 46.04.170.
(c) "Firearm" has the same definition as in RCW 9.41.010.

[2012 e1 c 6 § 4;2008 c 231 § 11.]

## Notes:

**Effective date – 2012 e1 c 6:** "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2012." [2012 e1 c 6 § 16.]

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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**9.94A.707**
**Community custody – Commencement, discharge.**

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.

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

[2009 c 375 § 7; 2008 c 231 § 12.]

## Notes:

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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**9.94A.708**
**Community custody – Mental health information – Access by department.**

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

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

[2008 c 231 § 13.]

## Notes:

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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### 9.94A.709
### Community custody – Sex offenders -- Conditions.

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

(2) If a violation of a condition extended under this section occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

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

[2008 c 231 § 14.]

## Notes:

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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### 9.94A.711

### Community custody - Motor vehicle-related felonies - Sentencing - Report

(1) Notwithstanding the provisions of RCW 9.94A.701 and 9.94A.702 and subject to the provisions of this section, a court may sentence an offender to community custody for a period of six to twelve months when the midpoint of the standard sentence range is greater than one year and the person is being sentenced for one of the following crimes:

(a) Theft of a motor vehicle (RCW 9A.56.065);

(b) Possession of a stolen vehicle (RCW 9A.56.068);

(c) Taking a motor vehicle without permission in the first degree (RCW 9A.56.070);

(d) Taking a motor vehicle without permission in the second degree (RCW 9A.56.075); or

(e) Attempt of (a) or (b) of this subsection.

(2) The department shall conduct an assessment of the offender and identify programming and services that would be appropriate to address the offender's needs. To the extent possible, the department shall make available the programming identified by the assessment while the offender is on community custody.

(3) For purposes of this section, the offender's sentence of incarceration may not exceed the mid-point of the standard sentence range reduced by one-third of the ordered term of community custody.

(4) An offender receiving a sentence under this section is not eligible for earned release time under RCW 9.94A.729 in excess of one-third of the total sentence.

(5) No later than November 1, 2025, the department shall submit a report to the governor and the appropriate committees of the legislature analyzing the effectiveness of supervision in reducing recidivism among offenders committing felonies relating to the theft or taking of a motor vehicle. The department shall consult with the16Washington state institute for public policy in guiding its data tracking efforts and preparing the report.

(6) This section expires June 30, 2026.

[2019 c 191 § 1]

**9.94A.714**
**Community custody – Violations – Immunity from civil liability for placing offenders on electronic home monitoring.**

(1) The department may work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for offenders who violate the terms of their community custody.

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

[2012 e1 c 6 §52; 2008 c 231 § 16.]

## Notes:

**Effective date – 2012 e1 c 6:** "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2012." [2012 e1 c 6 § 16.]

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

**9.94A.716**
**Community custody – Violations – Arrest.**

(1) The secretary may issue warrants for the arrest of any offender who violates a condition of community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation pursuant to RCW 9.94A.633.

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

(3) If an offender has been arrested by the department for a new felony offense while under community custody the facts and circumstances of the conduct of the offender shall be reported by the community corrections officer to local law enforcement or local prosecution for consideration of new charges. The community corrections officer's report shall serve as notice that the department will hold the offender in total confinement for not more than three days from the time of such notice for the new crime, except if the offender's underlying conduct is a felony offense listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest, or until a prosecuting attorney charges the offender with a a crime, or until a prosecuting attorney provides written notice to the department that new charges will not be filed, whichever occurs first. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community custody.

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

[2020 c 82 §3; 2012 e1 c 6 § 6; 2008 c 231 § 21.]

## Notes:

**Applicablility - 2020 c 82**: "Sections 1 through 3 of this act apply retroactively and prospectively regardless of the date of an offender's underlying crime." 2020 c 82 § 6.

**Effective date – 2012 e1 c 6:** "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2012." [2012 e1 c 6 § 16.]

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

RCW 9.94A.717
Community custody -- Supervision compliance credit.

(1) If an offender sentenced under this chapter or chapter 9.94B RCW is supervised by the department, the offender may earn supervision compliance credit in accordance with procedures that are developed and adopted by the department.
(a) The supervision compliance credit shall be awarded to offenders who are in compliance with supervision terms and are making progress towards the goals of their individualized supervision case plan, including: Participation in specific targeted interventions, risk-related programming, or treatment; or completing steps towards specific targeted goals that enhance protective factors and stability, as determined by the department.
(b) For each month in compliance with community custody conditions in accordance with (a) of this subsection, an offender may earn supervision compliance credit of ten days.
(c) Supervision compliance credit is accrued monthly and time shall not be applied to an offender's term of supervision prior to the earning of the time.
(2) An offender is not eligible to earn supervision compliance credit if he or she:
(a) Was sentenced under RCW 9.94A.507 or 10.95.030;
(b) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or 9.94A.670;
(c) Is subject to supervision pursuant to RCW 9.94A.745;
(d) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017; or
(e) Is serving community custody pursuant to early release under RCW 9.94A.730.

[2020 c 275 § 2]

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RCW 9.94A.718
Supervision of offenders -- Peace officers have authority to assist.

(1) Any peace officer has authority to assist the department with the supervision of offenders.

(2) If a peace officer has reasonable cause to believe an offender is violation of the terms of supervision, the peace officer may conduct a search as provided under RCW 9.94A.631, of the offender's person, automobile, or other personal property to search for evidence of the violation. A peace officer may assist a community corrections officer with a search of the offender's residence if requested to do so by the community corrections officer.

(3) Nothing in this section prevents a peace officer from arresting an offender for any new crim found as a result of the offender's arrest or search authorized by this section.

(4) Upon substantiation of a violation of the offender's conditions of community supervision, utilizing existing methods and systems, the peace officer should notify the department of the violation.

(5) For purposes of this section, "peace officer" refers to limited or general authority Washington peace officer as defined in RCW 10.93.020.

[2016 c 234 § 1]

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**9.94A.722**
**Court-ordered treatment — Required disclosures.**

When an offender receiving court-ordered mental health, chemical dependency, or domestic violence treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health, chemical dependency, or domestiv violence treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the offender must provide the mental health, chemical dependency, or domestic violence treatment provider with a copy of the order granting the relief.

[2020 c 263 § 702; 2004 c 166 § 9.]

**Notes:**

**Effective date -- 2019 c 263:** "Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021." [2020 c 263 § 1004.]

**Severability -- Effective dates--2004 c 166:** See notes following RCW 71.05.040.

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### 9.94A.723
### Court-ordered treatment — Offender's failure to inform.

An offender's failure to inform the department of court-ordered treatment upon request by the department is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

[2004 c 166 § 7.]

**Notes:**

**Severability -- Effective dates--2004 c 166:** See notes following RCW 71.05.040.

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### 9.94A.725
### Offender work crews.

Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules require the offender to work to the best of his or her abilities and provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.737, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crew projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity,

except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

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

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

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

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

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

(5) Other extenuating circumstances as determined by the court.

[2000 c 28 § 27; 1991 c 181 § 2. Formerly RCW 9.94A.135.]

**Notes:**

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

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## 9.94A.728
## Earned release time.

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

(a) An offender may earn early release time as authorized by RCW 9.94A.729.

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

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

(A) The offender has a medical condition that is serious and is expected to require costly care or treatment;

(B) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

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

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

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offender are eligible for extraordinary medical placement;

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

(e) No more than the final twelve months of the sentence may be served in partial confinement for aiding the offender with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(f) No more than the final six months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733.

(g) The governor may pardon any offender;

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

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

(j) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540; and

(k) Any person convicted of one or more crimes committed prior to the person's eighteenth birthday may be released from confinement pursuant to RCW 9.94A.730.

(2) Offenders residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section.

[2018 c 166 § 2; 2015 c 156 § 1; 2015 c 134 § 3; 2010 c 224 § 6; 2009 c 455 § 2; 2009 c 441 § 1; 2009 c 399 § 1; 2008 c 231 § 34; 2007 c 483 § 304; 2004 c 176 § 6; 2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

**Notes:**

**Effective date -- 2015 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2015]." [2015 c 134 § 9.]

**Effective date – 2009 c 455:** "Section 2 of this act takes effect August 1, 2009." [2009 c 455 § 5.]

**Effective date – 2009 c 441:** “This act takes effect August 1, 2009.” [2009 c 441 § 2.]

**Effective date – 2009 c 399:** “This act takes effect August 1, 2009.” [2009 c 399 § 2.]

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

**Severability -- 2003 c 379:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 379 § 28.]

**Effective dates -- 2003 c 379:** "(1) Sections 1 through 12, 20, and 28 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

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

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

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

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

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

**Severability -- 2002 c 50:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 50 § 4.]

**Effective date -- 2002 c 50:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 50 § 5.]

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

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

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

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

**Application -- 1989 c 248:** See note following RCW 9.92.151.

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

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

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

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### 9.94A.7281
### Legislative declaration — Earned release time not an entitlement.

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

[2003 c 379 § 2.]

**Notes:**

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

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### 9.94A.7282
### Earned release study.

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

[2003 c 379 § 12.]

**Notes:**

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

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### RCW 9.94A.729
### Earned release time – Risk assessments.

(1)(a) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in

advance of the offender actually earning the credits.

(b) Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the number of days of early release credits lost or not earned. The department may approve a jail certification from a correctional agency that calculates early release time based on the actual amount of confinement served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence. The department must adjust an offender's rate of early release listed on the jail certification to be consistent with the rate applicable to offenders in the department's facilities. However, the department is not authorized to adjust the number of presentence early release days that the jail has certified as lost or not earned.

(2) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(3) An offender may earn early release time as follows:

(a) In the case of an offender sentenced pursuant to RCW 10.95.030(3) or 10.95.035, the offender may not receive any earned early release time during the minimum term of confinement imposed by the court; for any remaining portion of the sentence served by the offender, the aggregate earned release time may not exceed ten percent of the sentence.

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

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

(d) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

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

(A) A sex offense;

(B) A violent offense;

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

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

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

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

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

(iii) Has no prior conviction for the offenses listed in (d)(ii) of this subsection;

(iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(v) Has not committed a new felony after July 22, 2007 while under community supervision, community placement or community custody.

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

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(d) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)(d) of this section does not apply to offenders convicted acter July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 or 9.94A.5011 shall be transferred to community custody status in lieu of earned release time;

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

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

(d) If the department is unable to approve the offender’s release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender’s term of confinement that may be served in partial confinement as provided in RCW 9.94A.728(5).

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan. The voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming;

(e) The department shall maintain a list of housing providers that meets the requirements of section 2 of [2013 c 266]. If more than two voucher recipients will be residing per dwelling unit, as defined in RCW 59.18.030, rental vouchers may only be paid to a housing provider on the department’s list;

(f) For each offender who is the recipient of a rental voucher, the department shall gather data as recommended by the Washington state institute for public policy in order to best demonstrate whether rental vouchers are effective in reducing recividism.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section;

[2015 c 134 § 4; 2014 c 130 § 4; 2013 2dss c 14 § 2; 2013 c 266 § 1; 2011 e1 c 40 § 4; 2010 c 224 § 7; 2009 c 455 § 3.]

**Notes:**

**Effective date -- 2015 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2015]." [2015 c 134 § 9.]

**Effective date – 2014 c 130:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2014." [ 2014 c 130 §16].

**Effective date -- 2013 2dss c 14:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013.." [2013 2dss c 14 § 9.]

**Effective date – 2011 e1 c 40 § 4:** "Sections 1 through 9 and 42 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011]." [2011 e1 c 40 § 44]

**Effective dates -- 2009 c 455:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effects immediately [May 11, 2009]." [2009 c 455 § 7.]

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**9.94A.730** Early release for persons convicted of one or more crimes committed prior to eighteenth birthday -- Petition to indeterminate sentence review board -- Conditions -- Assessments, programming and services -- Hearing -- Supervision --Denial of petition.

(1) Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition in indeterminate sentence review board for early release after serving no less than twenty years of total confinement, provided the person has not been convicted for any crime committed subsequent to the person's eighteenth birthday, the person has not committed a disqualifying serious infraction as defined by the department in the twelve months prior to filing the petition for early release, and the current sentence was not imposed under RCW 10.95.030 or 9.94A.507.

(2) No later than five years prior to the date the offender will be eligible to petition for release, the department shall conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(3) No later than one hundred eighty days from receipt of the petition for early relase, the department shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input shall be provided by rule. To facilitate victim and survivor of victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence.

(5) An offender released by the board is subject to the supervision of the department for a period of time to be determined by the board, up to the length of the court-imposed term of incarceration. The department shall monitor the offender's compliance with conditions of community custody imposed by the court or board and promptly report any violations to the board. Any violation of community custody conditions established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

(6) An offender whose petition for release is denied may file a new petition for release five years from the date of denial or at an earlier date as may be set by the board.

(7) An offender released under the provisions of this section may be returned to the institution at the

discretion of the board if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. If the board finds that the offender has committed a new violation, the board may return the offender to the institution for up to the remainder of the court-imposed term of incarceration. The offender may file a new petition for release five years from the date of return to the institution or at an earlier date as may be set by the board.

[2015 c 134 § 6; 2014 c 130 § 10].

**Notes:**

**Effective date -- 2015 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2015]." [2015 c 134 § 9.]

**Effective date – 2014 c 130:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2014." [ 2014 c 130 §16].

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**9.94A.731**
**Term of partial confinement, work release, home detention.**

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

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

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

[2009 c 28 § 13; 2003 c 254 § 2; 2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18. Formerly RCW 9.94A.180.]

**Notes:**

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

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

## 9.94A.733
## Home detention -- Graduated rentry program.

(1) No more than the final six months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department. However, an offender may not participate in the graduated reentry program under this section unless he or she has served at least twelve months in total confinement in a state correctional facility.

(2) The secretary of the department may transfer an offender from a department correctional facility to home detention in the community if it is determined that the graduated reentry program is an appropriate placement and must assist the offender's transition from confinement to the community.

(3) The department and its officers, agents, and employees are not liable for the acts of offenders participating in the graduated reentry program unless the department or its officers, agents, and employees acted with willful and wanton disregard.

(4) All offenders placed on home detention as part of the graduated reentry program must provide an approved residence and living arrangement prior to transfer to home detention.

(5) While in the community on home detention as part of the graduated reentry program, the department must:

(a) Require the offender to be placed on electronic home monitoring;

(b) Require the offender to participate in programming and treatment that the department shall assign based on an offender's assessed need; and

(c) Assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements.

(6) The department retains the authority to return any offender serving partial confinement in the graduated reentry program to total confinement for any reason including, but not limited to, the offender's noncompliance with any sentence requirement.

(7) The department may issue rental vouchers for a period not to exceed six months for those transferring to partial confinement under this section if an approved address cannot be obtained without the assistance of a voucher.

(8) In the selection of offenders to participate in the graduated reentry program, and in setting, modifying, and enforcing the requirements of the graduated release program, the department is deemed to be performing a quasi-judicial function.

[2018 c 166 § 1]]

**Notes:**

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## 9.94A.734
## Home detention — Conditions.

(1) Home detention may not be imposed for offenders convicted of the following offenses, unless imposed as partial confinement in the department's parenting program under RCW 9.94A.6551 or the graduated reentry program under RCW 9.94A.733:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

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

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

(a) Successfully completing twenty-one days in a work release program;

(b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Home detention may be imposed for offenders convicted of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen motor vehicle as defined under RCW 9A.56.068 conditioned upon the offender:

(a) Having no convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle during the preceding five years and not more than two prior convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle;

(b) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(c) Having no prior charges of escape; and

(d) Fulfilling the other conditions of the home detention program.

(4) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations.

(5) The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

(6)(a) A sentencing court shall deny the imposition of home detention if the court finds that (i) the offender has previously and knowingly violated the terms of a home detention program and (ii) the previous violation is not a technical, minor, or nonsubstantive violation.

(b) A sentencing court may deny the imposition of home detention if the court finds that (i) the offender has previously and knowingly violated the terms of a home detention program and (ii) the previous violation or violations were technical, minor, or nonsubstantive violation.

(7) A home detention program must be administered by a monitoring agency that meets the conditions described in section 3 of 2015 c 287.

[[2018 c 166 § 4; 2015 c 287 § 2; 2010 c 224 § 9; 2007 c 199 § 9; 2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

**Notes:**

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

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

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

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**9.94A.735**
**Home detention -- Forms.**

(1) By December 1, 2015, the administrative office of the courts shall create a pattern form order for use by a court in cases where a court orders a person to comply with a home detention program.

(2) The court shall provide a copy of the form order to the person ordered to comply with a home detention program. The form order must include:
(a) In a conspicuous location, a notice of criminal penalties resulting for a violation of the terms and conditions of a home detention program;
(b) Language stating that a person may leave his or her residence for specific purposes only as ordered by the court, with a list of common purposes, such as school, employment, treatment, counseling, programming, or other activities from which a court may select.

(3) When a court orders a person to comply with the terms of a home detention program, the court must, in addition to its order, complete the form order completed pursuant to this section to notify the person of the criminal penalties associated with violation of the terms and conditions of the program and of any express permission granted for absence from the residence.

[2015 c 287 § 4]

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**9.94A.736**
**Electronic monitoring -- Supervising agency to establish terms and conditions -- Duties of monitoring agency.**

(1) A supervising agency must establish terms and conditions of electronic monitoring for each individual subject to electronic monitoring under the agency's jurisdiction. The supervising agency must communicate those terms and conditions to the monitoring agency. A supervising agency must also establish protocols for when and how a monitoring agency must notify the supervising agency when a violation of the terms and conditions occurs. A monitoring agency must comply with the terms and conditions as established by the supervising agency.

(2) A monitoring agency shall:
(a) Provide notification within twenty-four hours to the court or other supervising agency when the

monitoring agency discovers that the monitored individual is unaccounted for, or is beyond an approved location, for twenty-four consecutive hours. Notification shall also be provided to the probation department, the prosecuting attorney, local law enforcement, the local detention facility, or the department, as applicable;

(b) Establish geographic boundaries consistent with court-ordered activities and report substantive violations of those boundaries;

(c) Verify the location of the offender through in-person contact on a random basis at least once per month; and

(d) Report to the supervising agency or other appropriate authority any known violation of the law or court-ordered condition.

(3) In addition, a private monitoring agency shall:

(a) Have detailed contingency plans for the monitoring agency's operation with provisions for power outage, loss of telephone service, fire, flood, malfunction of equipment, death, incapacitation or personal emergency of a monitor, and financial insolvency of the monitoring agency;

(b) Prohibit certain relationships between a monitored individual and a monitoring agency, including:

(i) Personal associations between a monitored individual and a monitoring agency or agency employee;

(ii) A monitoring agency or employee entering into another business relationship with a monitored individual or monitored individual's family during the monitoring;

(iii) A monitoring agency or employee employing a monitored individual for at least one year after termination of the monitoring;

(c) Not employ or be owned by any person convicted of a felony offense within the last four years;

(d) Obtain a background check through the Washington state patrol for every partner, director, officer, owner, employee, or operator of the monitoring agency, at the monitoring agency's expense.

(4) A private monitoring agency that fails to comply with any of the requirements in this section may be subject to a civil penalty, as determined by a court of competent jurisidiction or a court administrator, in an amount of not more than one thousand dollars for each violation, in addition to any penalties imposed by contract. A court or court administrator may cancel a contract with a monitoring agency for any violation by the monitoring agency.

(5)(a) A court that receives notice of a violation by a monitored individual of the terms of electronic monitoring or home detention shall note and maintain a record of the violation in the court file.

(b)(i) The presiding judge of a court must notify the administrative office of the courts if:

(A) The court or court administrator decides it will not allow use of a particular monitoring agency by persons order to comply with an electronic monitoring or home detention program; and

(B) The court or court administrator, after previously deciding not to allow use of a particular monitoring agency, decides to resume allowing use of the monitoring agency py persons order to comply with a home detention program.

(ii) In either case, the court or court administrator must include in its notice the reasons for the court's decision.

(6) The administrative office of the courts shall, after receiving notice pursuant to subsection (5) of this section, transmit the notice to all superior courts and courts of limited jurisdiction in the state, and any law enforcement or corrections agency that has requested such information.

(7) The courts, administrative office of the courts, and their employees and agents are not liable for acts and omission pursuant to subsections (5) and (6) of this section absent a showing of gross negligence or bad faith.

(8) For purposes of this section:

(a) A "monitoring agency" means an entity, private or public, which electronically monitors an individual, pursuant to an electronic monitoring or home detention program, including the department of corrections, a sheriff's office, a police department, a local detention facility, or a private entity; and

(b) A "supervising agency" means the public entity that authorized, approved, administers or manages, whether pretrial or posttrial, the home detention or electronic monitoring program of an individual and has jurisdisction and control over the monitored individual. A supervising agency may also be a monitoring agency.

(9) All government contracts with a private monitoring agency to provide electronic monitoring or home detention must be in writing and may provide contractual penalties in addition to those provided under this act.

[2015 c 287 § 3]

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**9.94A.737**
**Community custody — Violations.**

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

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

(b) After an offender has committed and been sanctioned for five low level offenses, subsequent violations committed by that offender may be considered high level violations, provided that any decision to elevate a violation complies with policies and rules established by the department.

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

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

(3) The department may intervene when an offender commits a low level violation by sanctioning the offender to one or more nonconfinement sanctions or to not more than three days in total confinement.

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

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

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

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

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

(5) If the offender's underlying offense is one of the following felonies provided in this subsection and the violation behavior constitutes a new misdemeanor, gross misdemeanor, or felony, the offender shall be held in total confinement pending a sanction hearing, and until the earlier of: The date the sanction expires;the date a prosecuting attorney files new charges against the offender; or the date a prosecuting attorney provides the department with written notice that new charges will not be filed for the violation behavior. The following underlying offenses apply to the restrictions in this subsection:

(a) Assault in the first degree, as defined in RCW 9A.36.011;
(b) Assault of a child in the first degree, as defined in RCW 9A.36.120;
(c) Assault of a child in the second degree, as defined in RCW 9A.36.130;
(d) Burglary in the first degree, as defined in RCW 9A.52.020;
(e) Child molestation in the first degree, as defined in RCW 9A.44.083;
(f) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;
(g) Dealing in depictions of a minor engaged in sexually explicit conduct, as defined in RCW 9.68A.050;
(h) Homicide by abuse, as defined in RCW 9A.32.055;
(i) Indecent liberties with forcible compulsion, as defined in RCW 9A.44.100(1)(a);
(j) Indecent liberties with a person capable of consent, as defined in RCW 9A.44.100(1)(b);
(k) Kidnapping in the first degree, as defined in RCW 9A.40.020;
(l) Murder in the first degree, as defined in RCW 9A.32.030;
(m) Murder in the second degree, as defined in RCW 9A.32.050;
(n) Promoting sexual abuse of a minor, as defined in RCW 9.68A.101;
(o) Rape in the first degree, as defined in RCW 9A.44.040;
(p) Rape in the second degree, as defined in RCW 9A.44.050;
(q) Rape of a child in the first degree, as defined in RCW 9A.44.073;
(r) Rape of child in the second degree, as defined in RCW 9A.44.076;

(s) Robbery in the first degree, as defined in RCW 9A.56.200;
(t) Sexual exploitation of a minor, as defined in RCW 9.68A.040; or
(u) Vehicular homicide while under the influence of intoxicating liquor or any drug, as defined in RCW 46.61.520(1)(a).

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

(a) The department shall provide the offender with written notice of the alleged violation and evidence supporting it. The notice must include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision;

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

(c) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) receive a written summary of the reasons for the hearing officer's decision; and

(d) The sanction shall take effect if affirmed by the hearing officer. The offender may appeal the sanction to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The offender's appeal must be in writing and hand-delievered to department staff, or postmarked, within seven days after the sanction was imposed. The appeals panel shall affirm, reverse, modify, vacate, or remand based on its findings. If a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community, then the panel will reverse, vacate, remand, or modify the sanction..

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

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

[2020 c 82 §1; 2012 e1 c 6 § 7; 2009 c 375 §13; 2008 c 231 § 20; 2007 c 483 § 305; 2005 c 435 § 3; 2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

**Notes:**

**Applicablility - 2020 c 82**: "Sections 1 through 3 of this act apply retroactively and prospectively regardless of the date of an offender's underlying crime." 2020 c 82 § 6.

**Effective date – 2012 e1 c 6:** "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take June 1, 2012." [2012 e1 c 6 § 16.]

**Retroactivity – 2009 c 375:** See note following RCW 9.94A.501.

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

**Finding -- Intent -- 2005 c 435:** "The legislature believes that electronic monitoring, as an alternative to incarceration, is a proper and cost-effective method of punishment and supervision for many criminal offenders. The legislature further finds that advancements in electronic monitoring technology have made the technology more common and acceptable to criminal justice system personnel, policymakers, and the general public.

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

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

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

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

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

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

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

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

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## 9.94A.740
## Community placement, custody violators — Arrest, detention, financial responsibility.

(1) When an offender is arrested pursuant to RCW 9.94A.631 or 9.94A.716, the department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440, until the department releases its detainer.

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

(3) For confinement sanctions imposed under RCW 9.94A.670, , the local correctional facility shall be financially responsible.

(4) The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody.

(5) Except as provided in subsections (1) and (2) of this section, the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate for confinement sanctions imposed by the department pursuant to RCW 9.94A.737. If the department's use of bed space in local correctional facilities of any county for such confinement sanctions exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs.

[2012 e1 c 6 § 8; 2008 c 231 § 22; 1999 c 196 § 9; 1996 c 275 § 4; 1988 c 153 § 5. Formerly RCW 9.94A.207.]

**Notes:**

**Effective date – 2012 e1 c 6:** "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take June 1, 2012." [2012 e1 c 6 § 16.]

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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

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

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

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

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

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## 9.94A.745
## Interstate compact for adult offender supervision.

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

ARTICLE I

PURPOSE

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

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

(c) In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active

cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

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

## ARTICLE II

## DEFINITIONS

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

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

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

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

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(l) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender

supervision created by each state under article IV of this compact.

(n) "Victim" means a person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of criminal conduct against the person or a member of the person's family.

## ARTICLE III

## THE COMPACT COMMISSION

(a) The compacting states hereby create the "interstate commission for adult offender supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein; including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

## ARTICLE IV

## THE STATE COUNCIL

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims' groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

## ARTICLE V

## POWERS AND DUTIES OF THE

## INTERSTATE COMMISSION

The interstate commission shall have the following powers:

(a) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

(b) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(c) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;

(d) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(e) To establish and maintain offices;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

(h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III of this compact which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(i) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) To establish a budget and make expenditures and levy dues as provided in article X of this compact;

(n) To sue and be sued;

(o) To provide for dispute resolution among compacting states;

(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(q) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

(r) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity;

(s) To establish uniform standards for the reporting, collecting, and exchanging of data.

## ARTICLE VI

## ORGANIZATION AND OPERATION OF THE

## INTERSTATE COMMISSION

(a) **Bylaws.** The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(i) For the establishment of committees, and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

(3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) **Officers and staff.** (1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice-

chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission: PROVIDED, That subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

(c) **Corporate records of the interstate commission.** The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

(d) **Qualified immunity, defense and indemnification.** (1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That nothing in this subsection (d)(1) shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

## ARTICLE VII

## ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of

telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "government in sunshine act," 5 U.S.C. Sec. 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

## ARTICLE VIII

## RULEMAKING FUNCTIONS OF THE

INTERSTATE COMMISSION

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal administrative procedure act, 5 U.S.C. Sec. 551 et seq., and the federal advisory committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) Notice to victims and opportunity to be heard;

(2) Offender registration and compliance;

(3) Violations/returns;

(4) Transfer procedures and forms;

(5) Eligibility for transfer;

(6) Collection of restitution and fees from offenders;

(7) Data collection and reporting;

(8) The level of supervision to be provided by the receiving state;

(9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;

(10) Mediation, arbitration and dispute resolution.

(f) The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

(g) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

## ARTICLE IX

## OVERSIGHT, ENFORCEMENT, AND DISPUTE

## RESOLUTION BY THE INTERSTATE COMMISSION

(a) **Oversight.** (1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) **Dispute resolution.** (1) The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) **Enforcement.** The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII(b) of this compact.

## ARTICLE X

## FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds

adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

## ARTICLE XI

## COMPACTING STATES, EFFECTIVE DATE

## AND AMENDMENT

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

## ARTICLE XII

## WITHDRAWAL, DEFAULT, TERMINATION, AND

## JUDICIAL ENFORCEMENT

(a) **Withdrawal.** (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state: PROVIDED, That a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state

reenacting the compact or upon such later date as determined by the interstate commission.

(b) **Default.** (1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(i) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(ii) Remedial training and technical assistance as directed by the interstate commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(c) **Judicial enforcement.** The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) **Dissolution of compact.** (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

## ARTICLE XIII

## SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

## ARTICLE XIV

## BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) **Other laws.** (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) **Binding effect of the compact.** (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

[2001 c 35 § 2.]

**Notes:**

**Short title -- 2001 c 35:** "This act shall be known and may be cited as the "interstate compact for adult offender supervision."" [2001 c 35 § 1.]

**Effective date -- 2001 c 35:** "(1) This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001.

*(2) The interstate compact for adult offender supervision becomes effective and binding July 1, 2001, or on the date of enactment of the interstate compact for adult offender supervision by thirty-five jurisdictions, whichever is later. In determining that the compact has become effective and binding, the code reviser may rely on the written representation of the national institute of corrections of the United States department of justice." [2001 c 35 § 6.]

***Reviser's note:** The interstate compact was enacted and signed into law by the thirty-fifth state on June 19, 2002.

**9.94A.74501**
**State council.**

(1) The department of corrections shall serve as the state council for interstate adult offender supervision as required under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. The department of corrections may form a subcommittee, including members representing the legislative, judicial, and executive branches of state government, and victims' groups to perform the functions of the state council. Any such subcommittee shall include representation of both houses and at least two of the four largest political caucuses in the legislature.

(2) The department, or a subcommittee if formed for that purpose, shall:

(a) Review department operations and procedures under RCW 9.94A.745, and recommend policies to the compact administrator, including policies to be pursued in the administrator's capacity as the state's representative on the interstate commission created under article III of RCW 9.94A.745; and

(b) Report annually to the legislature on interstate supervision operations and procedures under RCW 9.94A.745, including recommendations for policy changes.

(3) The secretary shall appoint an employee of the department, or a subcommittee if formed for that purpose shall appoint one of its members, to represent the state at meetings of the interstate commission created under article III of RCW 9.94A.745 when the compact administrator cannot attend.

[2011 e1 c 40 §31; 2001 c 35 § 3.]

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**9.94A.74502**
**Compact administrator.**

The secretary of corrections, or an employee of the department designated by the secretary, shall serve as the compact administrator under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. The legislature intends that the compact administrator, representing the state on the interstate commission created under article III of RCW 9.94A.745, will take an active role to assure that the interstate compact operates to protect the safety of the people and communities of the state.

[2001 c 35 § 4.]

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**9.94A.74503**
**Other compacts and agreements — Withdrawal from current compact.**

(1) The state shall continue to meet its obligations under RCW 9.95.270, the interstate compact for the supervision of parolees and probationers, to those states which continue to meet their obligations to the state of Washington under the interstate compact for the supervision of parolees and probationers, and have not approved the interstate compact for adult offender supervision after July 1, 2001.

(2) If a state withdraws from the interstate compact for adult offender supervision under article XII(a) of RCW 9.94A.745, the state council for interstate adult offender supervision created by RCW 9.94A.74501 shall seek to negotiate an agreement with the withdrawing state fulfilling the purposes of RCW 9.94A.745, subject to the approval of the legislature.

(3) Nothing in chapter 35, Laws of 2001 limits the secretary's authority to enter into agreements with other jurisdictions for supervision of offenders.

[2001 c 35 § 5.]

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## 9.94A.74504
## Supervision of transferred offenders — Processing transfer applications.

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

(2) The department shall process applications for interstate transfer of felony and nonfelony offenders requesting transfer of supervision out-of-state pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and may charge offenders a reasonable fee for processing the application.

(3) The department shall adopt a rule prescribing the amount of the interstate transfer application fee.

[2011 e1 c 40 § 14; 2005 c 400 § 1.]

**Notes:**

**Application -- 2005 c 400:** "This act applies to offenders sentenced before, on, or after July 1, 2005." [2005 c 400 § 8.]

**Effective date -- 2005 c 400:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 400 § 9.]

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## 9.94A.750
## Restitution.

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

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court shall not issue any order that postpones the commencement of restitution payments until after the offender is released from total confinement. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. An offender's inability to make restitution payments while in total confinement may not be the basis for a violation of his or her sentence unless his or her inability to make payments resulted from a refusal to accept an employment offer to a class I or class II job or a termination for cause from such a job.

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

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual

expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

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

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

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

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

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

[2018 c 123 § 1; 2003 c 379 § 15; 2000 c 28 § 32. Prior: 1997 c 121 § 3; 1997 c 52 § 1; 1995 c 231 § 1; 1994 c 271 § 601; 1989 c 252 § 5; 1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14. Formerly RCW 9.94A.140.]

**Notes:**

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

**Intent -- Purpose -- 2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

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

**Retroactive application -- 1995 c 231 §§ 1 and 2:** "Sections 1 and 2 of this act shall apply retroactively to allow courts to set restitution in cases sentenced prior to July 23, 1995, if:

(1) The court failed to set restitution within sixty days of sentencing as required by RCW 9.94A.140 prior to July 23, 1995;

(2) The defendant was sentenced no more than three hundred sixty-five days before July 23, 1995; and

(3) The defendant is not unfairly prejudiced by the delay.

In those cases, the court may set restitution within one hundred eighty days of July 23, 1995, or at a later hearing set by the court for good cause." [1995 c 231 § 5.]

**Purpose -- Severability -- 1994 c 271:** See notes following RCW 9A.28.020.

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

**Effective date -- 1987 c 281:** See note following RCW 7.68.020.

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## 9.94A.753
## Restitution — Application dates.

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

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court shall not issue any order that postpones the commencement of restitution payments until after the offender is released from total confinement. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. An offender's inability to make restitution payments while in total confinement may not be the basis for a violation of his or her sentence unless his or her inability to make payments resulted from a refusal to accept an employment offer to a class I or class II job or a termination for cause from such a job.

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

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

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

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

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

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

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

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

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for

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

(10) If a person has caused a vehicle to lose money or property through the filing of a vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale, upon conviction or wheh the offender pleads guilty and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim, the court may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the filing of the vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent fileing of the report of sale. Such am amount may be used to provide restitution to the victim at the order of the court. It is the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court must make a finding as to the amount of the victim's loss due to the filing of a vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale, and if the record does not contain sufficient evidence to support such finding, the court may conduct a hearing on the issue. For purposes of this section, "loss" refers to the amount of money or the value of property or services lost.

[2018 c 123 § 2; 2016 c 86 § 5; 2003 c 379 § 16. Prior: 2000 c 226 § 3; 2000 c 28 § 33; prior: 1997 c 121 § 4; 1997 c 52 § 2; prior: 1995 c 231 § 2; 1995 c 33 § 4; 1994 c 271 § 602; 1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10. Formerly RCW 9.94A.142.]

**Notes:**

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

**Intent -- Purpose -- 2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

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

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

**Retroactive application -- 1995 c 231 §§ 1 and 2:** See note following RCW 9.94A.750.

**Purpose -- Severability -- 1994 c 271:** See notes following RCW 9A.28.020.

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

**Effective date -- 1987 c 281:** See note following RCW 7.68.020.

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

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## 9.94A.760
## Legal financial obligations.

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court may not order an offender to pay costs as described in RCW 10.01.160 if the court finds that the offender at the time of sentencing is indigent as defined in RCW 10.01.010(3)(a) though (c). An offender being indigent as defined in RCW 10.01.010(3)(a) through (c) is not grounds for failing to impose restitution or the crime victim penalty assessment under RCW 7.78.035. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount

of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount.

(2) Upon receipt each payment made by or on behalf of an offender, the county clerk shall distribute the payment in the following order of priority until satisfied:
(a) First, proportionally to restitution to victims that have not been fully compensated from other sources;
(b) Second, proportionally to restitution to insurance or other sources with respect to a loss that has provided compensation to victims;
(c) Third, proportionally to crime victims' assessments; and
(d) Fourth, proportionally to costs, fines, and other assessments required by law

(3) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration. The court shall not order the offender to pay the cost of incarceration if the court finds that the offender at the time of sentencing is indigent as defined in RCW 10.01.010(3)(a) through (c). Costs of incarceration ordered by the court shall not exceed a rate of fifty dollars per day of incarceration, if incarcerated in a prison, actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

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

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

(5) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the

community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

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

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

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

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

(9) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

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

(11) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740. If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties.

(12)(a) The administrative office of the courts shall mail individualized periodic billings to the address

known by the office for each offender with an unsatisfied legal financial obligation.

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

(c) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

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

(13) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(14) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

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

[2018 c 269 § 14; 2011 c 106 § 3; 2008 c 231 § 35; 2005 c 263 § 1; 2004 c 121 § 3; 2003 c 379 § 14; 2001 c 10 § 3. Prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

**Notes:**

**Intent -- Purpose--2003 c 379 §§ 13-27:** "The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for [of] the courts. The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections." [2003 c 379 § 13.]

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

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

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

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

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

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

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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

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## 9.94A.7601
## "Earnings," "disposable earnings," and "obligee" defined.

As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. The term "obligee" means the department, party, or entity to whom the legal financial obligation is owed, or the department, party, or entity to whom the right to receive or collect support has been assigned.

[1991 c 93 § 1. Formerly RCW 9.94A.200005.]

**Notes:**

**Retroactive application -- 1991 c 93:** "The provisions of this act are retroactive and apply to any actions commenced but not final before May 9, 1991." [1991 c 93 § 15.]

**Captions not law -- 1991 c 93:** "Captions as used in this act constitute no part of the law." [1991 c 93 § 12.]

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## 9.94A.7602
## Legal financial obligation — Notice of payroll deduction — Issuance and content.

(1) The department may issue a notice of payroll deduction in a criminal action if:

(a) The court at sentencing orders its immediate issuance; or

(b) The offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month, provided:

(i) The judgment and sentence or subsequent order to pay contains a statement that a notice of payroll deduction may be issued without further notice to the offender; or

(ii) The department has served a notice on the offender stating such requirements and authorization. Service of such notice shall be made by personal service or any form of mail requiring a return receipt.

(2) The notice of payroll deduction is to be in writing and include:

(a) The name, social security number, and identifying court case number of the offender/employee;

(b) The amount to be deducted from the offender/employee's disposable earnings each month, or

alternative amounts and frequencies as may be necessary to facilitate processing of the payroll deduction by the employer;

(c) A statement that the total amount withheld on all payroll deduction notices for payment of court-ordered legal financial obligations combined shall not exceed twenty-five percent of the offender/employee's disposable earnings; and

(d) The address to which the payments are to be mailed or delivered.

(3) An informational copy of the notice of payroll deduction shall be mailed to the offender's last known address by regular mail or shall be personally served.

(4) Neither the department nor any agents of the department shall be held liable for actions taken under RCW 9.94A.760 and 9.94A.7601 through 9.94A.761.

[1991 c 93 § 3. Formerly RCW 9.94A.200010.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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## 9.94A.7603
## Legal financial obligations — Payroll deductions — Maximum amounts withheld, apportionment.

(1) The total amount to be withheld from the offender/employee's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the offender.

(2) If the offender is subject to two or more notices of payroll deduction for payment of a court-ordered legal financial obligation from different obligees, the employer or entity shall, if the nonexempt portion of the offender's earnings is not sufficient to respond fully to all notices of payroll deduction, apportion the offender's nonexempt disposable earnings between or among the various obligees equally.

[1991 c 93 § 4. Formerly RCW 9.94A.200015.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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## 9.94A.7604
## Legal financial obligations — Notice of payroll deduction — Employer or entity rights and responsibilities.

(1) An employer or entity upon whom a notice of payroll deduction is served, shall make an answer to the department within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the offender is employed by or receives earnings from the employer or entity, whether the employer or entity anticipates paying earnings, and the amount of earnings. If the offender is no longer employed, or receiving earnings from the employer or entity, the answer shall state the present employer or entity's name and address, if known.

(2) Service of a notice of payroll deduction upon an employer or entity requires an employer or entity to immediately make a mandatory payroll deduction from the offender/employee's unpaid disposable earnings. The employer or entity shall thereafter at each pay period deduct the amount stated in the notice divided by the number of pay periods per month. The employer or entity must remit the proper amounts to the appropriate clerk of the court on each date the offender/employee is due to be paid.

(3) The employer or entity may combine amounts withheld from the earnings of more than one employee in a single payment to the clerk of the court, listing separately the amount of the payment that is attributable to each individual employee.

(4) The employer or entity may deduct a processing fee from the remainder of the employee's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and

(b) One dollar for each subsequent disbursement made under the notice of payroll deduction.

(5) The notice of payroll deduction shall remain in effect until released by the department or the court enters an order terminating the notice.

(6) An employer shall be liable to the obligee for the amount of court-ordered legal financial obligation moneys that should have been withheld from the offender/employee's earnings, if the employer:

(a) Fails or refuses, after being served with a notice of payroll deduction, to deduct and promptly remit from unpaid earnings the amounts of money required in the notice; or

(b) Fails or refuses to submit an answer to the notice of payroll deduction after being served. In such cases, liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney fees, and staff costs as part of the award.

(7) No employer who complies with a notice of payroll deduction under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discipline or discharge an employee or refuse to hire a person by reason of an action authorized in this chapter. If an employer disciplines or discharges an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual.

[1991 c 93 § 5. Formerly RCW 9.94A.200020.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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## 9.94A.7605
## Motion to quash, modify, or terminate payroll deduction — Grounds for relief.

(1) The offender subject to a payroll deduction under this chapter, may file a motion in superior court to quash, modify, or terminate the payroll deduction. The court may grant relief if:

(a) It is demonstrated that the payroll deduction causes extreme hardship or substantial injustice; or

(b) In cases where the court did not immediately order the issuance of a notice of payroll deduction at sentencing, that a court-ordered legal financial obligation payment was not more than thirty days past due in an amount equal to or greater than the amount payable for one month.

(2) Satisfactions by the offender of all past-due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction. If a notice of payroll deduction has been in operation for twelve consecutive months and the offender's payment towards a court-ordered legal financial obligation is current, upon motion of the offender, the court may order the department to terminate the payroll deduction, unless the department can show good cause as to why the notice of payroll deduction should remain in effect.

[1991 c 93 § 6. Formerly RCW 9.94A.200025.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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## 9.94A.7606
## Legal financial obligations — Order to withhold and deliver — Issuance and contents.

(1) The department or county clerk may issue to any person or entity, except to the department, an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department or county clerk has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department or couty clerk has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department or county clerk shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver.

[2011 c 106 § 5; 1991 c 93 § 7. Formerly RCW 9.94A.200030.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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## 9.94A.7607
## Legal financial obligations — Order to withhold and deliver — Duties and rights of person or entity served.

(1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the order; and

(b) Provide further and additional answers when requested by the department or county clerk.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department or county clerk of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied,or other employment arrangement, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department or county clerk is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding.

[2011 c 106 § 6; 1991 c 93 § 8. Formerly RCW 9.94A.200035.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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## 9.94A.7608
## Legal financial obligations — Financial institutions — Service on main office or branch, effect — Collection actions against community bank account, court hearing.

An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601 through 9.94A.761, if the department or county clerk initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department or the superior court contesting the withholding of his or her interest in the account or funds. The department or county clerk shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department or county clerk is authorized to proceed with the collection action.

[2011 c 106 § 7; 1991 c 93 § 9. Formerly RCW 9.94A.200040.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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## 9.94A.7609
## Legal financial obligations — Notice of debt — Service or mailing — Contents — Action on, when.

(1) The department or county clerk may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owned.

(6) The department or county clerk shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender.

[2011 c 106 § 8; 1991 c 93 § 10. Formerly RCW 9.94A.200045.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

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## 9.94A.761
## Legal financial obligations — Exemption from notice of payroll deduction or order to withhold and deliver.

Whenever a notice of payroll deduction or order to withhold and deliver is served upon a person or entity asserting a court-ordered legal financial obligation debt against earnings and there is in the possession of the person or entity any of the earnings, RCW 6.27.150 shall not apply, but seventy-five percent of the disposable earnings shall be exempt and may be disbursed to the offender whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there is due the offender earnings for one week or for a longer period. The notice of payroll deduction or order to withhold and deliver shall continue to operate and require said person or entity to withhold the nonexempt portion of earnings, at each succeeding earnings disbursement interval until the entire amount of the court-ordered legal financial obligation debt has been withheld.

[1991 c 93 § 11. Formerly RCW 9.94A.200050.]

**Notes:**

**Retroactive application -- Captions not law -- 1991 c 93:** See notes following RCW 9.94A.7601.

## 9.94A.7701
## Legal financial obligations — Wage assignments — Petition or motion.

A petition or motion seeking a mandatory wage assignment in a criminal action may be filed by the department or any obligee if the offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month. The petition or motion shall include a sworn statement by the secretary or designee, or if filed solely by an obligee, by such obligee, stating the facts authorizing the issuance of the wage assignment order, including: (1) That the offender, stating his or her name and last known residence, is more than thirty days past due in payments in an amount equal to or greater than the amount payable for one month; (2) a description of the terms of the judgment and sentence and/or payment order requiring payment of a court-ordered legal financial obligation, the total amount remaining unpaid, and the amount past due; (3) the name and address of the offender's employer; (4) that notice by personal service, or any form of mail requiring a return receipt, has been provided to the offender at least fifteen days prior to the filing of a mandatory wage assignment, unless the judgment and sentence or the order for payment states that the department or obligee may seek a mandatory wage assignment without notice to the defendant. A copy of the judgment and sentence or payment order shall be attached to the petition or motion seeking the wage assignment.

[1989 c 252 § 9. Formerly RCW 9.94A.2001.]

**Notes:**

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

## 9.94A.7702
## Legal financial obligations — Wage assignments — Answer.

Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with RCW 9.94A.7701, the court shall issue a wage assignment order as provided in RCW 9.94A.7704 and including the information required in RCW 9.94A.7701, directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with RCW 9.94A.7706 within twenty days after service of the order upon the employer.

[1989 c 252 § 10. Formerly RCW 9.94A.2002.]

**Notes:**

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

## 9.94A.7703
## Legal financial obligations — Wage assignments — Amounts to be withheld.

(1) The wage assignment order in RCW 9.94A.7702 shall include: (a) The maximum amount or current amount owed on a court-ordered legal financial obligation, if any, to be withheld from the defendant's earnings each month, or from each earnings disbursement; and (b) the total amount of the arrearage or

reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the defendant's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the defendant. If the amounts to be paid toward the arrearage are specified in the payment order, then the maximum amount to be withheld is the sum of the current amount owed and the amount ordered to be paid toward the arrearage, or twenty-five percent of the disposable earnings of the defendant, whichever is less.

(3) If the defendant is subject to two or more attachments for payment of a court-ordered legal financial obligation on account of different obligees, the employer shall, if the nonexempt portion of the defendant's earnings is not sufficient to respond fully to all the attachments, apportion the defendant's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the defendant's nonexempt disposable earnings upon notice to all interested parties. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute.

[1989 c 252 § 11. Formerly RCW 9.94A.2003.]

**Notes:**

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

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## 9.94A.7704
## Legal financial obligations — Wage assignments — Rules.

The department shall develop a form and adopt rules for the wage assignment order.

[1989 c 252 § 12. Formerly RCW 9.94A.2004.]

**Notes:**

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

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## 9.94A.7705
## Legal financial obligations — Wage assignments — Employer responsibilities.

(1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the offender is employed by or receives earnings from the employer, whether the employer will honor the wage assignment order, and whether there are multiple attachments against the offender.

(2) If the employer possesses any earnings due and owing to the offender, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The employer shall deliver the withheld earnings to the clerk of the court pursuant to the wage assignment order. The employer shall make the first delivery no sooner than twenty days after receipt of the wage assignment order.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings of the

offender until notified that the wage assignment has been modified or terminated. The employer shall promptly notify the clerk of the court who entered the order when the employee is no longer employed.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under RCW 9.94A.7703. The processing fee may not exceed: (a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and (b) one dollar for each subsequent disbursement made under the wage assignment order.

(5) An employer who fails to withhold earnings as required by a wage assignment order issued under this chapter may be held liable for the amounts disbursed to the offender in violation of the wage assignment order, and may be found by the court to be in contempt of court and may be punished as provided by law.

(6) No employer who complies with a wage assignment order issued under this chapter may be liable to the employee for wrongful withholding.

(7) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment order issued and executed under this chapter. A person who violates this subsection may be found by the court to be in contempt of court and may be punished as provided by law.

(8) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible.

[1989 c 252 § 13. Formerly RCW 9.94A.2005.]

**Notes:**

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

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## 9.94A.7706
## Legal financial obligations — Wage assignments — Form and rules.

The department shall develop a form and adopt rules for the wage assignment answer, and instructions for employers for preparing such answer.

[1989 c 252 § 14. Formerly RCW 9.94A.2006.]

**Notes:**

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

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## 9.94A.7707
## Legal financial obligations — Wage assignments — Service.

(1) Service of the wage assignment order on the employer is invalid unless it is served with five answer forms in substantial conformance with RCW 9.94A.7706, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney, the petitioner, the department, and the obligor. The petitioner shall also include an extra copy of the wage assignment order for the employer to deliver to the obligor. Service on the employer shall be in person or by any form of mail

requiring a return receipt.

(2) On or before the date of service of the wage assignment order on the employer, the petitioner shall mail or cause to be mailed by certified mail a copy of the wage assignment order to the obligor at the obligor's last known post office address; or, in the alternative, a copy of the wage assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the employer. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection provides, or if any irregularity appears with respect to the mailing of service, the superior court, in its discretion, may quash the wage assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the defendant has suffered substantial injury due to the failure to mail or serve the copy.

[1989 c 252 § 15. Formerly RCW 9.94A.2007.]

**Notes:**

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

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### 9.94A.7708
### Legal financial obligations — Wage assignments — Hearing — Scope of relief.

In a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfactions by the defendant of all past-due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's payment towards a court-ordered legal financial obligation is current, the court may terminate the order upon motion of the obligor unless the obligee or the department can show good cause as to why the wage assignment order should remain in effect. The department shall notify the employer of any modification or termination of the wage assignment order.

[1989 c 252 § 16. Formerly RCW 9.94A.2008.]

**Notes:**

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

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### 9.94A.7709
### Legal financial obligations — Wage assignments — Recovery of costs, attorneys' fees.

In any action to enforce legal financial obligations under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorneys' fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question.

[1989 c 252 § 17. Formerly RCW 9.94A.2009.]

**Notes:**

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

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### 9.94A.771
### Legal financial obligations — Wage assignments — Sentences imposed before July 1, 1989.

For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW 9.94B.040.

[2009 c 28 § 14; 1989 c 252 § 18. Formerly RCW 9.94A.201.]

**Notes:**

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

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### 9.94A.772
### Legal financial obligations — Monthly payment, starting dates — Construction.

Notwithstanding any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation on the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit reporting. Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment.

[2004 c 121 § 4; 2003 c 379 § 22.]

**Notes:**

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

**Intent -- Purpose -- 2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

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### 9.94A.775
### Legal financial obligations — Termination of supervision — Monitoring of payments.

If an offender with an unsatisfied legal financial obligation is not subject to supervision by the department for a term of community custody, or has not completed payment of all legal financial obligations included in the sentence at the expiration of his or her term of community custody, the department shall notify the

administrative office of the courts of the termination of the offender's supervision and provide information to the administrative office of the courts to enable the county clerk to monitor payment of the remaining obligations. The county clerk is authorized to monitor payment after such notification. The secretary of corrections and the administrator for the courts shall enter into an interagency agreement to facilitate the electronic transfer of information about offenders, unpaid obligations, and payees to carry out the purposes of this section.

[2008 c 231 § 36; 2003 c 379 § 17.]

**Notes:**

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

**Intent -- Purpose -- 2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

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## RCW 9.94A.777
## Legal financial obligations — Defendant with mental health condition.

(1) Before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, other than restitution or the victim penalty assessment under RCW 7.78.035, a judge must first determine that the defendant, under the terms of this section, has the means to pay such additional sums.

(2) For the purposes of this section, a defendant suffers from a mental health condition when the defendant has been diagnosed with a mental health disorder that prevents the defendant from participating in gainful employment, as evidenced by a determination of mental disability as the basis for the defendant's enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation.

[2010 c 280 § 6

**Notes:**

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## 9.94A.780
## Offender supervision assessments.

(1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the supervision intake fee, prescribed under subsection (2) of this section, which shall be considered as payment or part payment of the cost of establishing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the intake fee based upon any of the following factors:

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

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

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

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

(e) The offender is responsible for the support of dependents and the payment of the intake fee constitutes an undue hardship on the offender.

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

(2) The department of corrections shall adopt a rule prescribing the amount of the supervision intake fee. The supervision intake fee shall be imposed after the determination of eligibility for supervision has been completed. For offenders whose crime was committed on or after October 1, 2011, the intake fee prescribed shall be not less than four hundred dollars nor more than six hundred dollars, and shall be assessed for each judgment and sentence imposed by the superior court in which supervision by the department is required.

(3) For offenders whose offense date was before October 1, 2011, the monthly rate shall be converted on a one-time fee. The amount due shall be based upon the most recent monthly fee amount by the months of supervision left to serve, but in no case shall exceed six hundred dollars.

(4) Nothing in this cat shall affect the amount or dates payments are due for any prior balances owed by an offender for the cost of supervision.

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

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

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

[2011 e1 c 40 § 10; 2008 c 231 § 37; 2003 c 379 § 18; 1991 c 104 § 1; 1989 c 252 § 8; 1984 c 209 § 15; 1982 c 207 § 2. Formerly RCW 9.94A.270.]

**Notes:**

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

**Intent -- Purpose -- 2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

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

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

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## 9.94A.810
## Transition and relapse prevention strategies.

Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.

[2000 c 28 § 35.]

**Notes:**

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

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## 9.94A.820
## Sex offender treatment in the community.

(1) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department finds that: (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (b) the treatment provider is employed by the department; or (c)(i) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult with a certified sex offender treatment provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A sex offender's failure to participate in treatment required as a condition of community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

[2008 c 231 § 38; 2004 c 38 § 10; 2000 c 28 § 36.]

**Notes:**

**Effective date -- 2004 c 38:** See note following RCW 18.155.075.

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

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## 9.94A.825
## Deadly weapon special verdict — Definition.

In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to

inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

[1983 c 163 § 3. Formerly RCW 9.94A.125.]

**Notes:**

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

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## 9.94A.827
## Methamphetamine — Manufacturing with child on premises — Special allegation.

In a criminal case where:

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

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person under the age of eighteen was present in or upon the premises of manufacture;

the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation.

[2003 c 53 § 60; 2002 c 134 § 3; 2000 c 132 § 1. Formerly RCW 9.94A.605 and 9.94A.128.]

**Notes:**

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

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

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## 9.94A.829
## Special allegation – Unlawful possession of firearm by criminal street gang member or associate.

In a criminal case where:in which the defendant has been convicted of unlawful possession of a firearm under RCW 9.41.040; and there has been a special allegation pleaded and proved by a preponderance of the evidence that the accused is a criminal street gang member or associate as defined in RCW 9.94A.030, the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if if finds the defendant guilty, also find a special verdict as to whether or not the accused was a criminal street gang member or associate during the commission of the crime.

[2009 c 28 § 16]

## 9.94A.831
## Special allegation — Assaulting law enforcement personnel with firearm.

In a criminal case where:

(1) The defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault as provided under RCW 9A.36.021; and

(2) There has been a special allegation pleaded and proved beyond a reasonable doubt that the defendant intentionally committed the assault with what appears to be a firearm;

the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if if finds the defendant guilty, also find a special verdict as to the special allegation.

[2009 c 141 § 1]

## RCW 9.94A.832
## Special allegation — Robbery of a pharmacy.

In a criminal case where:

(1) The defendant has been convicted of robbery in the first degree or robbery in the second degree; and

(2) There has been a special allegation pleaded and proved beyond a reasonable doubt that the defendant committed robbery of a pharmacy as defined in RCW 18.64.011(21);

The court shall make a finding of the special allegation, or if a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation.

[2013 c 270 § 1]

## RCW 9.94A.833
## Special allegation — Involving minor in felony offense — Procedures.

(1) In a prosecution of a criminal street gang-related felony offense, the prosecuting attorney may file a special allegation that the felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense, as described in RCW 9.94A.533(10)(a).

(2) The state has the burden of proving a special allegation made under this section beyond a reasonable doubt. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the criminal street gang-related felony offense offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense. If no jury is had, the court shall make a finding of fact as to whether the criminal street gang-related felony offense offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense.

[2008 c 276 § 302]

## RCW 9.94A.834
## Special allegation — Endangerment by eluding a police vehicle — Procedures.

(1) The prosecuting attorney may file a special allegation of endangerment by eluding in every criminal case involving a charge of attempting to elude a police vehicle under RCW 46.61.024, when sufficient admissible evidence exists, to show that one or more persons other than the defendant or the pursuing law enforcement officer were threatened with physical injury or harm by the actions of the person committing the

crime of attempting to elude a police vehicle.

(2) In a criminal case in which there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime while endangering one or more persons other than the defendant or the pursuing law enforcement officer. The court shall make a finding of fact of whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered during the commission of the crime.

[2008 c 219 § 2]

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## 9.94A.835
## Special allegation — Sexual motivation — Procedures.

(1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030(38) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in *RCW 9.94A.030(38) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

[2009 c 28 § 15; 2006 c 123 § 2; 1999 c 143 § 11; 1990 c 3 § 601. Formerly RCW 9.94A.127.]

**Notes:**

**Effective date -- 2006 c 123:** See note following RCW 9.94A.533.

**Effective date -- Application -- 1990 c 3 §§ 601-605:** "(1) Sections 601 through 605 of this act, for purposes of sentencing adult or juvenile offenders, shall take effect July 1, 1990, and shall apply to crimes or offenses committed on or after July 1, 1990.

(2) For purposes of defining a "sexually violent offense" pursuant to section 1002(4) of this act, sections 601 through 605 of this act shall take effect July 1, 1990, and shall apply to crimes committed on, before, or after July 1, 1990." [1990 c 3 § 606.]

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

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## 9.94A.836
## Special allegation — Offense was predatory — Procedures.

(1) In a prosecution for rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, the prosecuting attorney shall file a special allegation that the offense was predatory whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact-finder that the offense was predatory, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the offense was predatory. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the offense was predatory. If no jury is had, the court shall make a finding of fact as to whether the offense was predatory.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

[2006 c 122 § 1.]

**Notes:**

**Effective date -- 2006 c 122 §§ 1-4 and 6:** "Sections 1 through 4 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 20, 2006]." [2006 c 122 § 10.]

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## 9.94A.837
## Special allegation — Victim was under fifteen years of age — Procedures.

(1) In a prosecution for rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was under fifteen years of age at the time of the offense whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact-finder that the victim was under fifteen years of age at the time of the offense, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was under fifteen years of age at the time of the offense. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was under the age of fifteen at the time of the offense. If no jury is had, the court shall make a finding of fact as to whether the victim was under the age of fifteen at the time of the offense.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

[2006 c 122 § 2.]

**Notes:**

**Effective date -- 2006 c 122 §§ 1-4 and 6:** See note following RCW 9.94A.836.

## 9.94A.838
## Special allegation — Victim had diminished capacity — Procedures.

(1) In a prosecution for rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact-finder that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult. If no jury is had, the court shall make a finding of fact as to whether the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

(4) For purposes of this section, "developmentally disabled," "mentally disordered," and "frail elder or vulnerable adult" have the same meaning as in RCW 9A.44.010.

[2006 c 122 § 3.]

**Notes:**

**Effective date -- 2006 c 122 §§ 1-4 and 6:** See note following RCW 9.94A.836.

## 9.94A.839
## Special allegation — Sexual motivation — Sexual conduct in return for a fee.

(1) In a prosecution for a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, or an anticipatory offense for violation of a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, committed on or after July 22, 2007, the prosecuting attorney may file a special allegation that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raise under the evidence, would justify a finding by a reasonable and objective fact-finder that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee.

(2) Once a special allegation has been made under this section, the state has the burden to prove

beyond a reasonable doubt that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee. If no jury is had, the court shall make a finding of fact as to whether the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee.

(3) For purposes of this section, “sexual conduct” means sexual intercourse or sexual contact as defined in chapter 9A.44 RCW.

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**9.94A.840**
**Sex offenders — Release from total confinement — Notification of prosecutor.**

(1)(a) When it appears that a person who has been convicted of a sexually violent offense may meet the criteria of a sexually violent predator as defined in *RCW 71.09.020(1), the agency with jurisdiction over the person shall refer the person in writing to the prosecuting attorney of the county where that person was convicted, three months prior to the anticipated release from total confinement.

(b) The agency shall inform the prosecutor of the following:

(i) The person's name, identifying factors, anticipated future residence, and offense history; and

(ii) Documentation of institutional adjustment and any treatment received.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency with jurisdiction, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services.

[1992 c 45 § 1; 1990 c 3 § 122. Formerly RCW 9.94A.151.]

**Notes:**

***Reviser's note:** RCW 71.09.020 was amended by 2001 2nd sp.s. c 12 § 102, changing subsection (1) to subsection (12). RCW 71.09.020 was subsequently amended by 2002 c 58 § 2, changing subsection (12) to subsection (16).

**Severability -- 1992 c 45:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 45 § 8.]

**Application -- 1992 c 45:** "This act applies to sex offenses committed on, before, or after March 26, 1992." [1992 c 45 § 10.]

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

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## 9.94A.843
## Sex offenders — Release of information — Immunity.

The department, its employees, and officials, shall be immune from liability for release of information regarding sex offenders that complies with RCW 4.24.550.

[1990 c 3 § 123. Formerly RCW 9.94A.152.]

**Notes:**

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

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## 9.94A.844
## Sex offenders — Discretionary decisions — Immunity.

Law enforcement agencies and the department of corrections are immune from civil liability for damages from discretionary decisions made under chapter 436, Laws of 2005 if they make a good faith effort to comply with chapter 436, Laws of 2005.

[2005 c 436 § 5.]

**Notes:**

**Reviser's note:** 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

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## 9.94A.8445
## Community protection zones — Preemption of local regulations — Retrospective application. (Contingent expiration date.)

(1) Sections 1 through 3 and 5 of chapter 436, Laws of 2005, supersede and preempt all rules, regulations, codes, statutes, or ordinances of all cities, counties, municipalities, and local agencies regarding the same subject matter. The state preemption created in this section applies to all rules, regulations, codes, statutes, and ordinances pertaining to residency restrictions for persons convicted of any sex offense at any time.

(2) This section does not apply to rules, regulations, codes, statutes, or ordinances adopted by cities, counties, municipalities, or local agencies prior to March 1, 2006, except as required by an order issued by a court of competent jurisdiction pursuant to litigation regarding the rules, regulations, codes, statutes, or ordinances.

[2006 c 131 § 1.]

**Notes:**

**Contingent expiration date -- 2006 c 131 § 1:** "(1) If the association of Washington cities submits consensus statewide standards to the governor and the legislature on or before December 31, 2007, section 1 of this act expires July 1, 2008, and may only be revived by an affirmative act of the legislature through duly enacted legislation.

(2) If the association of Washington cities does not submit consensus statewide standards to the governor and legislature on or before December 31, 2007, section 1 of this act does not expire." [2006 c 131 § 4.]

**Residency restrictions on sex offenders -- Statewide standards -- 2006 c 131:** "(1) The association of Washington cities, working with the cities and towns of Washington state, shall develop statewide standards for cities and towns to use when determining whether to impose residency restrictions on sex offenders within their jurisdiction.

(2) The association of Washington cities shall work in consultation with a representative from each of the following agencies and organizations:

(a) The attorney general of Washington;

(b) The Washington state association of counties;

(c) The department of corrections;

(d) The Washington state coalition of sexual assault programs;

(e) The Washington association of sheriffs and police chiefs; and

(f) Any other agencies and organizations as deemed appropriate by the association of Washington cities, such as the Washington association of prosecuting attorneys, the juvenile rehabilitation administration of the department of social and health services, the indeterminate sentence review board, the Washington association for the treatment of sexual abusers, and the department of community, trade, and economic development.

(3) The statewide standards for whether to impose residency restrictions on sex offenders should consider the following elements:

(a) An identification of areas in which sex offenders should not reside due to concerns regarding public safety and welfare;

(b) An identification of areas in which sex offenders may reside, taking into consideration factors such as:

(i) How many housing units must reasonably be available in order to accommodate registered sex offenders in a city or town;

(ii) The average response time of emergency services to the areas;

(iii) The proximity of risk potential activities to the areas; and

(iv) The proximity of medical care, mental health care providers, and sex offender treatment providers to the areas;

(c) A prohibition against completely precluding sex offender residences within a city or town, implicating a sex offender's right to travel, or enacting a criminal regulatory measure;

(d) Appropriate civil remedies for violations of a local ordinance; and

(e) Unique local conditions that should be given due deference, such as proximity to state facilities that house or treat sex offenders.

(4) The association of Washington cities, on behalf of the cities and towns in Washington, shall present consensus statewide standards, along with any consensus recommendations and proposed legislation, to the governor and the legislature no later than December 31, 2007. The standards and any recommendations or proposed legislation must reflect a consensus among the association of Washington cities and the entities in subsection (2)(a) through (e) of this section. These entities must participate in good faith in activities carried out under this section with a goal of achieving consensus standards." [2006 c 131 § 3.]

## 9.94A.846
## Sex offenders — Release of information.

In addition to any other information required to be released under other provisions of this chapter, the department may, pursuant to RCW 4.24.550, release information concerning convicted sex offenders confined to the department of corrections.

[1990 c 3 § 124. Formerly RCW 9.94A.153.]

**Notes:**

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

## 9.94A.860
## Sentencing guidelines commission — Membership — Appointments — Terms of office — Expenses and compensation.

(1) The sentencing guidelines commission is hereby created, located within the office of financial management. Except as provided in RCW 9.94A.875, the commission shall serve to advise the governor and the legislature as necessary on issues relating to adult and juvenile sentencing. The commission may meet, as necessary, to accomplish these purposes within funds appropriated.

(2) The commission consists of twenty voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, or his or her designee, subject to confirmation by the senate.

(3) The voting membership consists of the following:

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

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

(c) The chair of the indeterminate sentence review board, as an ex officio member;

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

(e) Two prosecuting attorneys;

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

(g) Four persons who are superior court judges;

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

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

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

sheriff;

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

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

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

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

(b) The governor shall stagger the terms of the members appointed under subsection (2)(j), (k), and (l) of this section by appointing one of them for a term of one year, one for a term of two years, and one for a term of three years.

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

(6) The members of the commission may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members may be reimbursed by their respective houses as provided under RCW 44.04.120. Except for the reimbursement of travel expenses, members shall not be compensated in accordance with RCW 43.03.250.

[2016 e1 c 179 §3; 2011 e1 c 40 §36; 2001 2nd sp.s. c 12 § 311; 1996 c 232 § 3; 1993 c 11 § 1; 1988 c 157 § 2; 1984 c 287 § 10; 1981 c 137 § 6. Formerly RCW 9.94A.060.]

**Notes:**

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

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

**Effective dates -- 1996 c 232:** See note following RCW 9.94A.850.

**Effective date -- 1993 c 11:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 12, 1993]." [1993 c 11 § 2.]

**Application -- 1988 c 157:** See note following RCW 9.94A.030.

**Legislative findings -- Severability -- Effective date -- 1984 c 287:** See notes following RCW 43.03.220.

## 9.94A.865
## Standard sentence ranges — Revisions or modifications — Submission to legislature.

Revisions or modifications of standard sentence ranges or other standards, together with any additional list of standard sentence ranges, shall be submitted to the legislature at least every two years.

[1986 c 257 § 19; 1981 c 137 § 7. Formerly RCW 9.94A.070.]

**Notes:**

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

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

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## 9.94A.8673
## Sex offender policy board.

(1) Within funds appropriated for this purpose, the sentencing guidelines commission shall establish and maintain a sex offender policy board.

(2)(a) The board shall serve to advise the governor and the legislature as necessary on issues relating to sex offender management.

(b) At such times as the governor or a legislative committee of jurisdiction may request, the sex offender policy board may be convened to:

(i) Undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy; and

(ii) Conduct case reviews of sex offense incidents to understand performance of Washington's sex offender prevention and response systems.

(3) The sex offender policy board shall consist of thirteen voting members. Unless the member is specifically named in this section, the following organizations shall designate a person to sit on the board. The voting membership shall consist of the following:

(a) A representative of the Washington association of sheriffs and police chiefs;

(b) A representative of the Washington association of prosecuting attorneys;

(c) A representative of the Washington association of criminal defense lawyers;

(d) The chair of the indeterminate sentence review board or his or her designee;

(e) A representative of the Washington association for the treatment of sex offenders;

(f) The secretary of the department of corrections or his or her designee;

(g) A representative of the Washington state superior court judge's association;

(h) The assistant secretary of the juvenile rehabilitation administration or his or her designee;

(i) The office of crime victims advocacy in the department of commerce;

(j) A representative of the Washington State association of counties;

(k) A representative of the Washington State association of cities;

(l) A representive of the Washington association of sexual assault programs; and

(m) The director of the special commitment center or his or her designee.

(4) The board shall choose its chair by majority vote among its voting membersip. The chair's term shal be two years.

(5) As appropriate, the board shall consult with the criminal justice division in the attorney general's office and the Washington institute for public policy.

(6) Members of the board shall receive no compensation but may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

[2011 e1 c 40 §37; 2008 c 249 § 3]

## 9.94A.870
## Emergency due to inmate population exceeding correctional facility capacity.

If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency.

[1999 c 143 § 13; 1984 c 246 § 1; 1983 c 163 § 4; 1981 c 137 § 16. Formerly RCW 9.94A.160.]

**Notes:**

**Severability -- 1984 c 246:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 246 § 12.]

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

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

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## 9.94A.875
## Emergency in county jails population exceeding capacity.

If the governor finds that an emergency exists in that the populations of county jails exceed their reasonable, maximum capacity in a significant manner as a result of increases in the sentenced felon population due to implementation of chapter 9.94A RCW, the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the

standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment. The commission shall also analyze how alternatives to total confinement are being provided and used and may recommend other emergency measures that may relieve the overcrowding.

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency.

[1984 c 209 § 9. Formerly RCW 9.94A.165.]

**Notes:**

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

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## 9.94A.880
## Clemency and pardons board — Membership — Terms — Chairman — Bylaws — Travel expenses — Staff.

(1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chair from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board.

[2011 c 336 § 335; 1981 c 137 § 25. Formerly RCW 9.94A.250.]

**Notes:**

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

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## 9.94A.885
## Clemency and pardons board — Petitions for review — Hearing.

(1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost

by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to engaging in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency under subsection (1) of this section until a public hearing has been held on the petition. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider statements presented as set forth in section 1 of this act [2009 c 138]. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person.

[2009 c 325 § 6; 2009 c 138 § 4; 1999 c 323 § 3; 1989 c 214 § 2; 1981 c 137 § 26. Formerly RCW 9.94A.260.]

**Notes:**

**Intent -- 1999 c 323:** "The pardoning power is vested in the governor under such regulations and restrictions as may be prescribed by law. To assist the governor in gathering the facts necessary to the wise exercise of this power, the legislature created the clemency and pardons board.

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime, an intelligent recommendation on an application for clemency is dependent upon input from the victims and survivors of victims of crimes. It is the intent of the legislature to ensure that all victims and survivors of victims of crimes are afforded a meaningful role in the clemency process.

The impact of the crime on the community must also be assessed when passing upon an application for clemency. The prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are uniquely situated to provide an accurate account of the offense and the impact felt by the community as a result of the offense. It is the intent of the legislature to ensure that the prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are afforded a meaningful role in the clemency process." [1999 c 323 § 1.]

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

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## 9.94A.890
## Abused victim — Resentencing for murder of abuser.

(1) The sentencing court or the court's successor shall consider recommendations from the indeterminate sentence review board for resentencing offenders convicted of murder if the indeterminate sentence review board advises the court of the following:

(a) The offender was convicted for a murder committed prior to July 23, 1989;

(b) RCW 9.94A.535(1)(h), if effective when the offender committed the crime, would have provided a basis for the offender to seek a mitigated sentence; and

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the offender for the murder, did not consider evidence that the victim subjected the offender or the offender's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the offender in light of RCW 9.94A.535(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the offender committed the crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed.

[2000 c 28 § 42; 1993 c 144 § 5. Formerly RCW 9.94A.395.]

**Notes:**

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

**Effective date -- 1993 c 144:** See note following RCW 9.95.045.

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### 9.94A.905
### Effective date of *RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, 9.94A.250,9.94A.260 — Sentences apply to felonies committed after June 30, 1984.

*RCW 9.94A.080 through 9.94A.130, 9.94A.150 through9.94A.230 , and 9.94A.250 and 9.94A.260 shall take effect on July 1, 1984. The sentences required under this chapter shall be prescribed in each sentence which occurs for a felony committed after June 30, 1984.

[1981 c 137 § 28.]

**Notes:**

***Reviser's note:** The majority of chapter 9.94A RCW was recodified by 2001 c 10 § 6. See Comparative Table for chapter 9.94A RCW in the Table of Disposition of Former RCW Sections, Volume 0.

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### 9.94A.910
### Severability — 1981 c 137.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1981 c 137 § 41.]

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### 9.94A.920
### Headings and captions not law — 2000 c 28.

Part headings and section captions used in this act do not constitute any part of the law.

[2000 c 28 § 43.]

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### 9.94A.921
### Effective date — 2000 c 28.

Sections 1 through 42 of this act take effect July 1, 2001.

[2000 c 28 § 46.]

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### 9.94A.922
### Severability — 2000 c 28.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2000 c 28 § 47.]

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### 9.94A.923
### Nonentitlement.

Nothing in chapter 290, Laws of 2002 creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment.

[2002 c 290 § 26.]

**Notes:**

**Effective date -- 2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27:** See note following RCW 70.96A.350.

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

**Severability -- 2002 c 290:** See RCW 9.94A.924.

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### 9.94A.924
### Severability — 2002 c 290.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2002 c 290 § 28.]

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### 9.94A.925
### Application — 2003 c 379 §§ 13-27.

The provisions of sections 13 through 27, chapter 379, Laws of 2003 apply to all offenders currently, or in the future, subject to sentences with unsatisfied legal financial obligations. The provisions of sections 13 through 27, chapter 379, Laws of 2003 do not change the amount of any legal financial obligation or the maximum term for which any offender is, or may be, under the jurisdiction of the court for collection of legal financial obligations.

[2003 c 379 § 24.]

**Notes:**

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

**Intent -- Purpose -- 2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

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### 9.94A.926
### Application to registered domestic partnerships.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement this act, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[2009 c 521 § 21.]

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### 9.94A.930
### Recodification.

The code reviser shall recodify sections within chapter 9.94A RCW, and correct any cross-references to any such recodified sections, as necessary to simplify the organization of chapter 9.94A RCW.

[2001 c 10 § 6.]

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**9.94B.010**
**Application of chapter. (Effective August 1, 2009.)**

(1) This chapter codifies sentencing provisions that may be applicable to sentences for crimes committed prior to July 1, 2000.

(2) This chapter supplements chapter 9.94A RCW and should be read in conjunction with that chapter.

[2008 c 231 § 51.]

**Notes:**

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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**9.94B.020**
**Definitions. (Effective August 1, 2009.)**

In addition to the definitions set out in RCW 9.94A.030, the following definitions apply for purposes of this chapter:

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

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

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

[2008 c 231 § 52.]

**Notes:**

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

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

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**9.94B.030**
**Postrelease supervision — Violations — Expenses. (Effective August 1, 2009.)**

If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94B.040. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

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

[2009 c 28 § 18; 1988 c 153 § 8. Formerly RCW 9.94A.628, 9.94A.175.]

**Notes:**

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

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**9.94B.040**
**Noncompliance with condition or requirement of sentence — Procedure — Penalty. (Effective August 1, 2009.)**

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

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

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

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

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

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

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

noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, or (iii) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

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

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) If the violation involves failure to pay legal financial obligations, the following provisions apply:
(a) The department and the offender may enter into a stipulated agreement that the failure to pay was willful noncompliance, according to the provisions and requirements of subsection (3)(a) of this section;
(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in a stipulated agreement under (a)of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;
(c)The state has the burden of showing noncompliance by a preponderance of the evidence. The court may not sanction the offender for failure to pay legal financial obligations unless the court finds, after a hearing and on the record, that the failure to pay is willful. A failure to pay is willful if the offender has the current ability to pay but refuses to do so. In determining whether the offender has the current ability to pay, the court shall inquire into and consider: (i)The offender's income and assets; (ii) the offender's basic living costs as defined by RCW 10.101.010 and other liabilities including child support and other legal financial obligations; and (iii) the offender's bona fide efforts to acquire additional resources. An offender who is indigent as defined by RCW 10.101.010(3)(a) through (c) is presumed to lack the current ability to pay;
(d) If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties;
(e)If the court finds that the failure to pay is willful noncompliance, the court may order the offender to be confined for a period not to exceed sixty days for each violation or order one or more of the penalties authorized in subsection (3)(a)(i) of this section; and
(f) If the court finds that the violation was not willful, the court may, and if the court finds that the defendant is indigent as defined in RCW 10.101.010(3)(a) through (c), the court shall modify the terms of payment of the legal financial obligations, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. The crime victim penalty assessment under RCW 7.68.035 may not be reduced, waived, or converted to community restitution hours.

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

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

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

[2018 c 269 § 15; 2002 c 175 § 8; 1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20. Formerly RCW 9.94A.634, 9.94A.200.]

**Notes:**

**Effective date -- 2002 c 175:** See note following RCW 7.80.130.

**Intent -- 1998 c 260:** See note following RCW 9.94A.500.

**Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252:** See notes following RCW 9.94A.030.

**Effective date -- Application of increased sanctions -- 1988 c 153:** See notes following RCW 9.94A.030.

**Effective dates -- 1984 c 209:** See note following RCW 9.92.150.

**Effective date -- 1981 c 137:** See RCW 9.94A.905.

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**9.94B.050**
**Community placement. (Effective August 1, 2009.)**

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.825 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence. The community placement shall run concurrently to any period of probation, parole, community supervision, community placement, or community custody previously imposed by any court in any jurisdiction, unless the court pronouncing the current sentence expressly orders that they be served consecutively to each other.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

[2020 c 276 § 2; 2003 c 379 § 4; 2002 c 175 § 13; 2000 c 28 § 22. Formerly RCW 9.94A.700.]

**Notes:**

**Severability -- Effective dates -- 2003 c 379:** See notes following RCW 9.94A.728.

**Effective date -- 2002 c 175:** See note following RCW 7.80.130.

**Technical correction bill -- 2000 c 28:** See note following RCW 9.94A.015.

**9.94B.060**
**Community placement for specified offenders. (Effective August 1, 2009.)**

Except for persons sentenced under RCW 9.94B.050 or 9.94B.070, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.411(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or 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). When the court sentences the offender under this section to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.728 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement or community custody imposed under this section.

[2009 c 28 § 19; 2003 c 379 § 5; 2000 c 28 § 23. Formerly RCW 9.94A.705.]

**Notes:**

**Severability -- Effective dates -- 2003 c 379:** See notes following RCW 9.94A.728.

**Technical correction bill -- 2000 c 28:** See note following RCW 9.94A.015.

**9.94B.070**
**Community custody for sex offenders. (Effective August 1, 2009.)**

(1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release.

(2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in RCW 9.94B.050(4) and may include those provided for in *RCW 9.94B.050(5). As part of any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.704.

(3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

[2009 c 28 § 20; 2000 c 28 § 24. Formerly RCW 9.94A.710.]

**Notes:**

**Technical correction bill -- 2000 c 28:** See note following RCW 9.94A.015.

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**9.94B.080**
**Mental status evaluations.**

The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment may be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

[2015 c 80 § 1; 2008 c 231 § 53.]

**Notes:**

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

**Severability -- 2008 c 231:** See note following RCW 9.94A.500.

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**9.94B.090**
**Transfer to community custody status in lieu of earned release. (Effective August 1, 2009.)**

A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.825 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to RCW 9.94A.728(1).

[2008 c 231 § 54.]

**Notes:**

**Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231:** See notes following RCW 9.94A.701.

**Severability -- 2008 c 231:** See note following RCW 9.94A.500.