

NO. 35169-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

LOUIS ARMIJO,

Appellant.

FILED
COURT OF APPEALS
07 JAN 12 PM 12:28
STATE OF WASHINGTON
BY [Signature]

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Stephanie A. Arend

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT.

Appellant Louis Armijo was charged and convicted of offenses spanning four years. During the charging period, the punishment for his offenses increased. At sentencing, the court imposed the greater confinement and community custody terms that were applicable only at the end of the charging period. Mr. Armijo appeals, arguing the court must impose the lesser sentence in place at the beginning of the charging period in the absence of a jury finding he committed the offense after the punishment was increased.

B. ASSIGNMENTS OF ERROR.

1. The sentencing court erred in imposing a 318-month term of incarceration as there is no clear indication of when the alleged incidents occurred, a necessary component of proper sentencing.

2. The sentencing court erred in imposing 36 months of community custody as there is no clear indication of when the alleged incidents occurred, a necessary component of proper sentencing.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR.

A defendant is entitled to a proper sentence based on the law in effect on the date the offense occurred. Where the charges

and the resulting verdicts spanned periods of four years, during which significant revisions to sentencing laws occurred, and evidence shows the offenses may have been committed before the increased punishment took effect, must the court impose a sentence in accord with the laws in place at the earliest possible time the offenses could have occurred? (Assignments of Error 1 and 2)

D. STATEMENT OF THE CASE.

1. Procedural History. On November 27, 2000, thirteen-year-old J.H. disclosed to her parents and her brother that her grandfather, Louis Armijo, had raped and molested her between the ages of 8 and 12. CP 4. On January 18, 2002, the Pierce County Office of Prosecuting Attorney filed an amended information, charging Mr. Armijo with the following five counts: rape of a child in the first degree, rape of a child in the second degree, child molestation in the first degree, and two counts of child molestation in the second degree. CP 5-7.

Following a jury trial, Mr. Armijo was found guilty as charged. 3/22/02RP at 4.¹ At the sentencing hearing, Mr. Armijo's offender score was calculated as a 12, with a standard range sentence for each count calculated as follows:

1. rape of a child in the first degree = 240 to 318 months;
2. rape of a child in the second degree = 210-280 months;
3. child molestation in the first degree = 149-198 months;
4. child molestation in the second degree = 87-116 months;
5. child molestation in the second degree = 87-116 months.

CP 15. The State sought an exceptional sentence above the standard range of 400 months for Count 1, based on an "abuse of trust" aggravating factor under Former RCW 9.94A.210(4).

3/22/02RP at 4-5. The State sought the exceptional sentence for 53-year-old Mr. Armijo, because it would ensure Mr. Armijo would be out of the community for the rest of his life. 3/22/02RP at 7.

The court imposed an exceptional sentence above the standard range of 400 months on each count to be served concurrently, based on the abuse of trust aggravating factor. CP 8, 9, 15, 18; 3/22/02RP at 18.

¹ The Verbatim Report of Proceedings consists of one volume, comprising both the March 22, 2002, sentencing and July 14, 2006, resentencing hearings. The transcripts will be referred to by their date, followed by "RP" and the page number.

In his first appeal, Mr. Armijo argued the trial court erroneously admitted testimony from a stepdaughter about his molestation of her when she was the same age as J.H., contrary to ER 404(b). CP 29. Mr. Armijo also argued his bail was excessive and the trial court erroneously imposed an exceptional sentence. CP 37-38. Finally, Mr. Armijo argued a 400-month sentence for a 53-year-old man constituted a life sentence, and was therefore clearly excessive. CP 38. This Court affirmed his conviction and sentence in an unpublished decision on September 30, 2003. CP 29, 37-39. The appeal was mandated on February 14, 2005. CP 27.

On June 24, 2004, the United States Supreme Court held Washington's sentencing scheme, which allowed a judge rather than a jury to find facts beyond the verdict to impose an exceptional sentence, violated a defendant's Sixth Amendment right to a jury trial. Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).

Mr. Armijo filed a personal restraint petition, arguing his restraint was unlawful because the sentencing judge, rather than a jury, found an aggravating factor when it imposed an exceptional sentence in violation of his Sixth Amendment right to a jury. CP 42.

Mr. Armijo also argued his right to confrontation was violated when he was not allowed to confront J.H. during his trial. CP 43, citing Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

This Court granted Mr. Armijo's personal restraint petition, ruling his exceptional sentence violated Blakely and was unconstitutional, requiring remand for resentencing. CP 43. This Court denied his Crawford claim, ruling Mr. Armijo failed to properly cite the record and make legal arguments to support his claim. CP 43.

2. Resentencing Hearing. On July 14, 2006, a resentencing hearing was held before the Honorable Stephanie A. Arend. The State requested a high end sentence for each count, to be served concurrently. 7/14/06RP at 7-8. Mr. Armijo requested a low end sentence. 7/14/06RP at 11. The court imposed a high end sentence for each count with 1,632 days credit for time served. CP 53, 56-57; 7/14/06RP at 14.

Mr. Armijo timely appealed. CP 70.

E. ARGUMENT.

THE COURT ERRONEOUSLY USED THE GREATER SENTENCING RANGE IN THE ABSENCE OF ANY SPECIFIC FINDING AS TO WHEN THE OFFENSES OCCURRED

1. The law in effect at the time an offense is committed controls disposition of the case. Under amendments to the Sentencing Reform Act of 1981 (SRA), the Washington Legislature has made clear that a sentence must be imposed for a crime from the date the offense was committed:

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

RCW 9.94A.345; Laws of 2000, ch. 26, § 2; State v. Schmidt, 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001) (the law in effect at the time the criminal offense occurs controls the disposition); In re the Personal Restraint of Hartzell, 108 Wn.App. 934, 944, 33 P.3d 1096 (2001).

A statute that inflicts greater punishment than the law annexed to the crime when the crime was committed violates either the ex post facto clauses of the Washington and federal constitutions or a defendant's constitutional right to due process. The Washington Supreme Court has ruled that a law violates the

ex post facto clauses of the state and federal constitutions if it inflicts a greater punishment than authorized by the law annexed to the crime when the crime was committed. State v. Ward, 123 Wn.2d 488, 497, 869 P.2d 1062 (1994), citing Calder v. Bull, 3 U.S. 386, 1 L.Ed. 648, 3 Dall. 386 (1798).

However, a judicial error, based on a proper statute enacted prospectively only, violates due process but not violate ex post facto provisions. State v. Aho, 137 Wn.2d 736, 975 P.2d 512 (1999) is instructive. In Aho, a unanimous Supreme Court ruled the constitutional prohibition of ex post facto laws relates to cases where the Legislature attempts to pass a law retrospectively that would alter the definition of crimes or increase the punishment for crimes:

The enactment of ex post facto laws is prohibited by the federal and state constitutions. U.S. Const. art. I, § 10, cl. 1 (“no state shall . . . pass any . . . ex post facto law”); Const. art. I, § 23 (“no . . . ex post facto law . . . shall ever be passed . . .”). The ex post facto clauses prohibit the Legislature from enacting laws that alter the definition of criminal conduct or increase the punishment for a crime. Lynce v. Mathis, 519 U.S. 433, 441, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997); In re Personal Restraint of Stanphill, 134 Wn.2d 165, 169, 949 P.2d 365 (1998). “To fall within the *ex post facto* prohibition, a law must be retrospective – that is ‘it must apply to events occurring before its enactment’” Lynce, 519 U.S. at 441 (quoting Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981)).

Aho, 137 Wn.2d at 741-42. But when the Legislature enacts a statute to apply only prospectively, ex post facto prohibitions are not at issue. Id. at 742.

Instead of an ex post facto violation, when a defendant is wrongly charged with a crime not yet enacted at the time of the offense or the court imposes a newly increased sentence enacted by statute after the date of the commission of the crime, retrospective application of the law produces a due process violation based upon similar underlying principles. Aho, 137 Wn.2d at 742.² Accordingly, whenever a defendant receives greater punishment than the law allowed at the time of the offense, a constitutional violation occurs – a due process violation if the legislature intended only prospective application of a statute but a judge erroneously imposes a sentence or an ex post facto violation if the legislature changes a statute and intends to apply it retroactively and a person receives greater punishment than

² Because erroneous application of a statute is a court action and not a legislative action, ex post facto is not at issue and the error is a due process violation. Aho, 137 Wn.2d at 742-43, citing Marks v. United States, 430 U.S. 188, 191, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977) (“the *Ex Post Facto* Clause is a limitation upon the powers of the Legislature . . . and does not of its own force apply to the Judicial Branch of government”).

authorized by the statute in place at the time of the commission of the crime.

In Aho, the defendant was charged with first degree child molestation occurring between January 1987 and December 1992 for one victim, and between January 1987 and August 1995 for a second victim. Id. at 739. The criminal prohibition on “child molestation” did not take effect until July 1, 1988. Id. The jury convicted Aho of three counts of first degree child molestation: two counts on the first victim and one count on the second. Id. Importantly, however, “[t]he jury was not asked to identify when the acts giving rise to the child molestation occurred.” Id. Thus, the Aho Court concluded:

[b]ecause the jury did not identify when the acts that it found constituted the offenses occurred, it is possible that Aho has been illegally convicted based upon an act or acts occurring before the effective date of the child molestation statute.

Id. at 744. Finding defense counsel ineffective for proposing faulty jury instructions and for failing to object to the charging document, the Court reversed Aho’s convictions as they violated due process, and remanded the case. Id. at 746.

Following Aho, in In re Hartzell, the Court of Appeals found that when the Legislature increases the sentence for an offense during the period of the alleged offense and the evidence suggests the crime was committed before the effective date of the increase, due process requires the lesser sentence be imposed. 108 Wn. App. at 945, citing State v. Parker, 132 Wn.2d 182, 191-92, 937 P.2d 575 (1997) (where jury not asked to determine when offenses were committed, and statute spanned charging period, application of standard range to offenses committed at end of charging period was erroneous). The Hartzell Court found the evidence supporting Hartzell's Alford³ plea sufficient to establish he committed child molestation in the first degree after the effective date of the statute at issue in Aho. Id. at 943. The evidence, however, was not sufficient to show he committed the offenses after July 1, 1990, the effective date of the changes made to community placement provisions. Id. at 945. Because the evidence could not establish he committed his offenses at the latest date in the charging period, apparently the policy of the Department of Corrections, the Court remanded for resentencing based on the assumption the crimes

³ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

occurred before the July 1, 1990 changes to the Sentencing Reform Act (SRA) took effect. Id. at 944-47.

Critical to both Hartzell and Aho was a determination of actual offense dates. As in Aho, since the jury made no determination as to when Mr. Armijo's offenses occurred, it is impossible to now establish the dates of the offenses. Accordingly, Mr. Armijo requests resentencing under the appropriate earlier provisions of the SRA.

2. Applicable provisions of the SRA were revised during the charging period of Mr. Armijo's offenses. The State charged, and the jury convicted Mr. Armijo of first degree rape of a child (Count 1) and first degree child molestation (Count 3) occurring sometime between September 29, 1995, and September 29, 1999. CP 5, 6, 99, 101. The SRA was revised during these years, concerning both the term of incarceration and with regard to community placement and community custody following release from incarceration.

In 1995, with an offender score of 9 or over, a criminal defendant's standard range would be 210 to 280 months. Wash. Sentencing Guidelines Comm'n, Adult Sentencing Guidelines Manual 1995, at III-131 (attached as Appendix A.) The same

standard range applied for all of 1996 and through July 26, 1997, when Laws of 1997, ch. 340, § 1 transferred First Degree Rape of a Child from a seriousness level of 11 to a seriousness level of 12, increasing the standard range to 240 to 318 months effective July 27, 1997.⁴ Wash. Sentencing Guidelines Comm'n, Adult Sentencing Guidelines Manual 1997, at III-140. Accordingly, for one half of the charging period of September 29, 1995, through September 29, 1999, the standard range for Count 1 was 210 to 280 months, which was increased to 240 to 318 months for the second half of the charging period.

Moreover, the community placement period changed between 1995 to 1999 as well. The 1995 SRA Guidelines Manual states:

There is a mandatory two-year community placement sentence in addition to other terms of sentence for the following offenses if they were committed after June 30, 1990: Any sex offense.

Sentencing Guidelines Commission, Implementation Manual, 1995, at I-29. Consistent with this provision, the 1997 Manual provides:

⁴ A copy of Laws of 1997, ch. 340 is attached as Appendix B.

There is a mandatory two-year community placement sentence in addition to other terms of sentence for the following offenses if they were committed after June 30, 1990: Any sex offense committed before June 6, 1996.

Sentencing Guidelines Commission, Adult Sentencing Guidelines Manual 1997, at I-22 (emphasis added). The 1997 Manual further explains, however:

There is a mandatory three-year community custody sentence in addition to other terms of sentence for the following offenses if they were committed on or after June 6, 1996: Any sex offense committed on or after June 6, 1996.

Id. at I-23 (emphasis added).

In the instant case, if Mr. Armijo committed his offenses involving J.H. in 1995, he would have received a “mandatory two-year [period of] community placement.” Sentencing Guidelines Commission, Adult Sentencing Guidelines Manual 1997, at I-22. However, if he committed the offense after June 6, 1996, but before July 1, 2000, he would have received a “mandatory three-year community custody” period. Id. at I-23. But at both the first and second sentencing, the court imposed community custody of 36 to 48 months for each offense. CP 17, 57. Finally, following a motion and order correcting judgment and sentence, the Court reduced the community custody term to 36 months. CP 72. But if

the rape of a child in the first degree offense occurred at any time in 1995 and up to June 6, 1996, the proper community placement term was 24 months. Sentencing Guidelines Commission, Adult Sentencing Guidelines Manual 1997, at I-22.

The above provisions demonstrate the evolution of the SRA during the charging periods involved in Mr. Armijo's case, which, based on the failure to determine more precise offense dates, mandates remand for resentencing.

3. The jury made no finding as to when Mr. Armijo committed the charged offenses, requiring remand for resentencing with instruction to impose the appropriate lesser sentences. In Mr. Armijo's Judgment and Sentence, the court imposed 318 months for Count 1, rape of a child in the first degree. CP 56. The sentence was calculated as the high end of the standard range sentence of 240 to 318 months, based on an offender score of 12 and a seriousness level of 12. CP 53.

Similarly, the court imposed community placement of 36 months for each offense because the offenses occurred prior to July 1, 2000. CP 71-73. But for Counts 1 and 3, the charging period spanned from September 29, 1995, to September 29, 1999. CP 71-73.

Under the SRA, a defendant convicted of a sex offense committed between June 6, 1996, and July 1, 2000, must be given 3 years of community custody. RCW 9.94A.710. But if a defendant commits the sex offense before June 6, 1996, the community placement term was 2 years under Former RCW 9.94A.120.

In the instant case, the failure of the jury (based on the failure of the parties) to establish the time period of the alleged offenses is a critical error, requiring remand for compliance with the appropriate statutes. First, because the Judgment and Sentence provides a 1995 to pre-June 1996 term combined with a 36 month term of community custody, it is invalid on its face. In the original judgment and sentence, the court listed the "date of crime" for each offense as "September 29, 1995 through September 29, 1999." CP 13. In the second Judgment and Sentence, following the resentencing, the court listed the dates of the crimes as follows: for Counts 1, 4 and 5 the "date of crime" was listed as "9/29/1995 – 9/29/1999," while for Counts 2 and 3, the "date of crime" was listed as "9/29/1995 – 9/29/1995." CP 52. But even the second judgment and sentence fails to reflect the correct charging period and jury finding.

The actual charging document listed the charging periods as follows:

Count 1	September 29, 1995 to September 29, 1999;
Count 2	September 29, 1999 to September 29, 2000;
Count 3	September 29, 1995 to September 29, 1999;
Count 4	September 29, 1999 to September 29, 2000;
Count 5	September 29, 1999 to September 29, 2000.

CP 5-6. The "to-convict" jury instructions for each count were consistent with the charging document. CP 88, 90, 92, 94, 95 (Jury Instructions 11, 13, 15, 17 and 17B).

Accordingly, with regard to Counts 1 (rape of a child in the first degree) and 3 (child molestation in the first degree), the State alleged the incidents happened between September 29, 1995 and September 29, 1999, and the jury agreed. CP 5, 6, 99, 101 (verdict forms). The verdict forms make no further mention of the offense date. CP 99, 101.

Since, as in Aho, there is no jury finding as to when the acts occurred in relation to the statutory amendments, the court's sentence, which assumes Mr. Armijo's offenses were committed between September 29, 1995, and September 29, 1999, violates due process. Mr. Armijo asks this Court to remand for resentencing, requiring imposition of the sentence and community

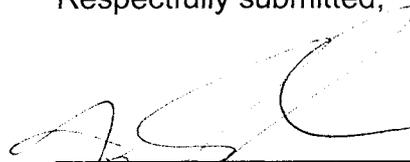
custody or placement provisions in effect in 1995, providing him the appropriate "lesser sentence" required by Hartzell and Parker.

F. CONCLUSION.

For the reasons stated herein, Mr. Armijo respectfully requests this Court remand for resentencing.

DATED this 10th day of January 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "JBS", is written over a horizontal line.

JASON B. SAUNDERS (24963)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX A

RAPE OF A CHILD, FIRST DEGREE
(RCW 9A.44.073)
CLASS A FELONY
VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.360 (17))

ADULT HISTORY:

(If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of sex offense convictions $\underline{\hspace{2cm}}$ x 3 = $\underline{\hspace{2cm}}$
 Enter number of other serious violent and violent felony convictions $\underline{\hspace{2cm}}$ x 2 = $\underline{\hspace{2cm}}$
 Enter number of other nonviolent felony convictions $\underline{\hspace{2cm}}$ x 1 = $\underline{\hspace{2cm}}$

JUVENILE HISTORY:

(Adjudications entered on the same date count as one offense except for violent offenses with separate victims)

Enter number of sex offense adjudications $\underline{\hspace{2cm}}$ x 3 = $\underline{\hspace{2cm}}$
 Enter number of other serious violent and violent felony adjudications $\underline{\hspace{2cm}}$ x 2 = $\underline{\hspace{2cm}}$
 Enter number of other nonviolent felony adjudications $\underline{\hspace{2cm}}$ x 1/2 = $\underline{\hspace{2cm}}$

OTHER CURRENT OFFENSES:

(Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions $\underline{\hspace{2cm}}$ x 3 = $\underline{\hspace{2cm}}$
 Enter number of other serious violent and violent felony convictions $\underline{\hspace{2cm}}$ x 2 = $\underline{\hspace{2cm}}$
 Enter number of other nonviolent felony convictions $\underline{\hspace{2cm}}$ x 1 = $\underline{\hspace{2cm}}$

STATUS:

Was the offender on community placement on the date the current offense was committed? (if yes),

$\underline{\hspace{2cm}}$ + 1 = $\underline{\hspace{2cm}}$

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:
STANDARD RANGE
(LEVEL XI)

0	1	2	3	4	5	6	7	8	9 or more
78 - 102	86 - 114	95 - 125	102 - 136	111 - 147	120 - 158	146 - 194	159 - 211	185 - 245	210 - 280
months	months	months	months	months	months	months	months	months	months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
- C. Twenty-four months community placement must be served following release from state prison (RCW 9.94A.120).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-17 or III-18 to calculate the enhanced sentence.

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eight years: Special Sex Offender Sentencing Alternative (RCW 9A.20.120).

APPENDIX B

LEXSEE 1997 WA CH 340

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STATENET
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WASHINGTON 55TH FIRST REGULAR SESSION

HOUSE BILL 1924

CHAPTER 340

1997 Wa. ALS 340; 1997 Wa. Ch. 340; 1997 Wa. HB 1924

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT Relating to sex offenses; amending RCW 9A.44.130; reenacting and amending RCW 9.94A.320, 9.94A.120, and 9.94A.030; and prescribing penalties.

NOTICE: [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]
[D> Text within these symbols is deleted <D]

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

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

[*1] Section 1. RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and 1996 c 36 s 2 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- XV Aggravated Murder 1 (RCW 10.95.020)
- XIV Murder 1 (RCW 9A.32.030)
Homicide by abuse (RCW 9A.32.055)
- XIII Murder 2 (RCW 9A.32.050)
- XII Assault 1 (RCW 9A.36.011)
Assault of a Child 1 (RCW 9A.36.120)
[A> RAPE 1 (RCW 9A.44.040)
RAPE OF A CHILD 1 (RCW 9A.44.073) <A]
- XI [D> Rape 1 (RCW 9A.44.040)
Rape of a Child 1 (RCW 9A.44.073) <D]
[A> RAPE 2 (RCW 9A.44.050)
RAPE OF A CHILD 2 (RCW 9A.44.076) <A]

- X Kidnapping 1 (RCW 9A.40.020)
 [D] Rape 2 (RCW 9A.44.050)
 Rape of a Child 2 (RCW 9A.44.076) <D]
 Child Molestation 1 (RCW 9A.44.083)
 Damaging building, etc., by explosion with
 threat to human being (RCW
 70.74.280(1))
 Over 18 and deliver heroin or narcotic from
 Schedule I or II to someone under 18
 (RCW 69.50.406)
 Leading Organized Crime (RCW
 9A.82.060(1)(a))
 [A] INDECENT LIBERTIES (WITH FORCIBLE
 COMPULSION) (RCW 9A.44.100(1)(A)) <A]
- IX Assault of a Child 2 (RCW 9A.36.130)
 Robbery 1 (RCW 9A.56.200)
 Manslaughter 1 (RCW 9A.32.060)
 Explosive devices prohibited (RCW
 70.74.180)
 [D] Indecent Liberties (with forcible
 compulsion) (RCW 9A.44.100(1)(a)) <D]
 Endangering life and property by explosives
 with threat to human being (RCW
 70.74.270)
 Over 18 and deliver narcotic from Schedule
 III, IV, or V or a nonnarcotic from
 Schedule I-V to someone under 18 and 3
 years junior (RCW 69.50.406)
 Controlled Substance Homicide (RCW
 69.50.415)
 Sexual Exploitation (RCW 9.68A.040)
 Inciting Criminal Profiteering (RCW
 9A.82.060(1)(b))
 Vehicular Homicide, by being under the
 influence of intoxicating liquor or
 any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 Promoting Prostitution 1 (RCW 9A.88.070)
 Selling for profit (controlled or
 counterfeit) any controlled substance
 (RCW 69.50.410)
 Manufacture, deliver, or possess with
 intent to deliver heroin or cocaine
 (RCW 69.50.401(a)(1)(i))
 Manufacture, deliver, or possess with
 intent to deliver methamphetamine (RCW
 69.50.401(a)(1)(ii))
 Possession of ephedrine or pseudoephedrine
 with intent to manufacture
 methamphetamine (RCW 69.50.440)
 Vehicular Homicide, by the operation of any
 vehicle in a reckless manner (RCW

- 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
Vehicular Homicide, by disregard for the
safety of others (RCW 46.61.520)
Introducing Contraband 1 (RCW 9A.76.140)
Indecent Liberties (without forcible
compulsion) (RCW 9A.44.100(1) (b) and
(c))
Child Molestation 2 (RCW 9A.44.086)
Dealing in depictions of minor engaged in
sexually explicit conduct (RCW
9.68A.050)
Sending, bringing into state depictions of
minor engaged in sexually explicit
conduct (RCW 9.68A.060)
Involving a minor in drug dealing (RCW
69.50.401(f))
Reckless Endangerment 1 (RCW 9A.36.045)
Unlawful Possession of a Firearm in the
first degree (RCW 9.41.040(1)(a))
- VI Bribery (RCW 9A.68.010)
Manslaughter 2 (RCW 9A.32.070)
Rape of a Child 3 (RCW 9A.44.079)
Intimidating a Juror/Witness (RCW
9A.72.110, 9A.72.130)
Damaging building, etc., by explosion with
no threat to human being (RCW
70.74.280(2))
Endangering life and property by explosives
with no threat to human being (RCW
70.74.270)
Incest 1 (RCW 9A.64.020(1))
Manufacture, deliver, or possess with
intent to deliver narcotics from
Schedule I or II (except heroin or
cocaine) (RCW 69.50.401(a)(1)(i))
Intimidating a Judge (RCW 9A.72.160)
Bail Jumping with Murder 1 (RCW
9A.76.170(2)(a))
Theft of a Firearm (RCW 9A.56.300)
- V Persistent prison misbehavior (RCW
9.94.070)
Criminal Mistreatment 1 (RCW 9A.42.020)
Abandonment of dependent person 1 (RCW
9A.42.060)
Rape 3 (RCW 9A.44.060)
Sexual Misconduct with a Minor 1 (RCW
9A.44.093)
Child Molestation 3 (RCW 9A.44.089)
Kidnapping 2 (RCW 9A.40.030)
Extortion 1 (RCW 9A.56.120)
Incest 2 (RCW 9A.64.020(2))

- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Sexually Violating Human Remains (RCW 9A.44.105)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Possession of a Stolen Firearm (RCW 9A.56.310)

- IV Residential Burglary (RCW 9A.52.025)
- Theft of Livestock 1 (RCW 9A.56.080)
- Robbery 2 (RCW 9A.56.210)
- Assault 2 (RCW 9A.36.021)
- Escape 1 (RCW 9A.76.110)
- Arson 2 (RCW 9A.48.030)
- Commercial Bribery (RCW 9A.68.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Malicious Harassment (RCW 9A.36.080)
- Threats to Bomb (RCW 9.61.160)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- Hit and Run -- Injury Accident (RCW 46.52.020(4))
- Hit and Run with Vessel -- Injury Accident (RCW 88.12.155(3))
- Vehicular Assault (RCW 46.61.522)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(iii) through (v))
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))

- III Criminal Mistreatment 2 (RCW 9A.42.030)
- Abandonment of dependent person 2 (RCW 9A.42.070)
- Extortion 2 (RCW 9A.56.130)

- Unlawful Imprisonment (RCW 9A.40.040)
 - Assault 3 (RCW 9A.36.031)
 - Assault of a Child 3 (RCW 9A.36.140)
 - Custodial Assault (RCW 9A.36.100)
 - Unlawful possession of firearm in the
second degree (RCW 9.41.040(1)(b))
 - Harassment (RCW 9A.46.020)
 - Promoting Prostitution 2 (RCW 9A.88.080)
 - Willful Failure to Return from Work Release
(RCW 72.65.070)
 - Burglary 2 (RCW 9A.52.030)
 - Introducing Contraband 2 (RCW 9A.76.150)
 - Communication with a Minor for Immoral
Purposes (RCW 9.68A.090)
 - Patronizing a Juvenile Prostitute (RCW
9.68A.100)
 - Escape 2 (RCW 9A.76.120)
 - Perjury 2 (RCW 9A.72.030)
 - Bail Jumping with class B or C Felony (RCW
9A.76.170(2)(c))
 - Intimidating a Public Servant (RCW
9A.76.180)
 - Tampering with a Witness (RCW 9A.72.120)
 - Manufacture, deliver, or possess with
intent to deliver marijuana (RCW
69.50.401(a)(1)(iii))
 - Delivery of a material in lieu of a
controlled substance (RCW
69.50.401(c))
 - Manufacture, distribute, or possess with
intent to distribute an imitation
controlled substance (RCW
69.52.030(1))
 - Recklessly Trafficking in Stolen Property
(RCW 9A.82.050(1))
 - Theft of livestock 2 (RCW 9A.56.080)
 - Securities Act violation (RCW 21.20.400)
- II
- Unlawful Practice of Law (RCW 2.48.180)
 - Malicious Mischief 1 (RCW 9A.48.070)
 - Possession of Stolen Property 1 (RCW
9A.56.150)
 - Theft 1 (RCW 9A.56.030)
 - Trafficking in Insurance Claims (RCW
48.30A.015)
 - Unlicensed Practice of a Profession or
Business (RCW 18.130.190(7))
 - Health Care False Claims (RCW 48.80.030)
 - Possession of controlled substance that is
either heroin or narcotics from
Schedule I or II (RCW 69.50.401(d))
 - Possession of phencyclidine (PCP) (RCW
69.50.401(d))
 - Create, deliver, or possess a counterfeit
controlled substance (RCW

- 69.50.401(b)
Computer Trespass 1 (RCW 9A.52.110)
Escape from Community Custody (RCW 72.09.310)
- I Theft 2 (RCW 9A.56.040)
Possession of Stolen Property 2 (RCW 9A.56.160)
Forgery (RCW 9A.60.020)
Taking Motor Vehicle Without Permission (RCW 9A.56.070)
Vehicle Prowl 1 (RCW 9A.52.095)
Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
Malicious Mischief 2 (RCW 9A.48.080)
Reckless Burning 1 (RCW 9A.48.040)
Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
False Verification for Welfare (RCW 74.08.055)
Forged Prescription (RCW 69.41.020)
Forged Prescription for a Controlled Substance (RCW 69.50.403)
Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

[*2] Section 2. RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard 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 range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. 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. 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. 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. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections

officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or 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.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the 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. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) 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;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of the 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 a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(iii) 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.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

- (i) Devote time to a specific employment or training;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;
- (iii) Report as directed to a community corrections officer;
- (iv) Pay all court-ordered legal financial obligations;

(v) Perform community service work;

(vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision 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 if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(8)(a)(i) When an offender is 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 and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(A) Frequency and type of contact between offender and therapist;

(B) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(D) Anticipated length of treatment; and

(E) Recommended crime-related prohibitions.

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 evaluator shall be selected by the party making the motion. The defendant 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.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than [D] eight [D] [A] ELEVEN [A] years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section; and

(B) The court shall order treatment for any period up to three 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, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) 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;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant'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, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) 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. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.

(v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.

(vi) 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 defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant 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.

(vii) Except as provided in (a) (viii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if 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; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

For purposes of this subsection, "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.

(b) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) 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;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

(c) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(9)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant 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 not sentenced under subsection (6) of this section, committed on or after July 1, 1988, 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 early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection 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.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement 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 early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the

sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

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

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions:

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

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

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The offender shall comply with any crime-related prohibitions; or

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

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, 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 early release awarded pursuant to RCW 9.94A.150 (1) and (2), 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 early release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section.

(c) 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.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(11) 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.

(12) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(13) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(14) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections.

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

(b) For sex offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. The conditions authorized under this subsection (14)(b) may be imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of a sex offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) of this section.

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

(15) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(16) 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.

(17) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(18) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community su-

pervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(19) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(20) In any sentence of partial confinement, the court may require the defendant 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.

(21) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

[*3] Section 3. RCW 9A.44.130 and 1996 c 275 s 11 are each amended to read as follows:

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense, shall register with the county sheriff for the county of the person's residence.

(2) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

(3)(a) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

(i) **SEX OFFENDERS IN CUSTODY.** Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) **SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders, who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **SEX OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(iii) as of July 23, 1995, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990. Sex offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) SEX OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released prior to July 23, 1995, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify offenders who were released prior to July 23, 1995. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff at least fourteen days before moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. If any person required to register pursuant to this section moves out of Washington state, the person must also send written notice within ten days of moving to the new state or a foreign country to the county sheriff with whom the person last registered in Washington state.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex offense by RCW 9.94A.030 and any violation of RCW 9.68A.090 or 9A.44.096 as well as any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030.

(7) A person who knowingly fails to register or who moves without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a [D] class A [D] felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a [D] class A [D] felony. If the crime was other than a [D] class A [D] felony or a federal or out-of-state conviction for an offense that under the laws of this state would be [A] OTHER THAN [A] a [D] class A [D] felony, violation of this section is a gross misdemeanor.

[*4] Section 4. RCW 9.94A.030 and 1996 c 289 s 1 are each amended to read as follows:

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

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department 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.

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

(3) "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.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time or imposed pursuant to RCW 9.94A.120 (6), (8), or (10) served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "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 early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

(7) "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. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). 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.

(8) "Confinement" means total or partial confinement as defined in this section.

(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) "Court-ordered 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 the provisions in RCW 38.52.430.

(11) "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.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. 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) "Criminal history" shall always include juvenile convictions for sex offenses and serious violent offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(9); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Day fine" means a fine imposed by the sentencing judge 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.

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

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

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

(17) "Disposable earnings" means that part of the earnings of an individual 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.

(18) "Drug offense" means:

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

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

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

(19) "Escape" means:

(a) 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.

(20) "Felony traffic offense" means:

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

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

(21) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(22)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor 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, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses and serious violent offenses.

(23) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault;

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

(s) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;

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

[A> (V)(I) A PRIOR CONVICTION FOR INDECENT LIBERTIES UNDER RCW 9A.88.100(1) (A), (B), AND (C), CHAPTER 260, LAWS OF 1975 1ST EX. SESS. AS IT EXISTED UNTIL JULY 1, 1979, RCW 9A.44.100(1) (A), (B), AND (C) AS IT EXISTED FROM JULY 1, 1979, UNTIL JUNE 11, 1986, AND RCW 9A.44.100(1) (A), (B), AND (D) AS IT EXISTED FROM JUNE 11, 1986, UNTIL JULY 1, 1988; <A]

[A> (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 THE EFFECTIVE DATE OF THIS SECTION OR RCW 9A.44.100(1) (D) OR (E) AS IT EXISTED FROM JULY 25, 1993, THROUGH THE EFFECTIVE DATE OF THIS SECTION <A].

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

(25) "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 has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

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

(27) "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.360; 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 in the second degree, or indecent liberties by forcible compulsion; (B) murder in the first degree, murder in the second degree, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, or burglary in the first degree, with a finding of sexual motivation; or (C) an attempt to commit any crime listed in this subsection (27)(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.

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

(29) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(30) "Serious traffic offense" means:

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

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

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

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or 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.

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

(33) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135; or

(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 sex offense under (a) of this subsection.

(34) "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.

(35) "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.

(36) "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.

(37) "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.

(38) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and 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.

(39) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. 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. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (33) of this section are not eligible for the work crew program.

(40) "Work ethic camp" means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experi-

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ences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(41) "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. 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.

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

HISTORY:

Approved by the Governor May 13, 1997

Effective July 27, 1997

SPONSOR: Representatives Ballasiotes, Sheahan, Dickerson, Radcliff, Sheldon, Chopp, Mason, Conway, Costa, Mitchell, K. Schmidt, Buck, Wensman, Schoesler, Parlette, Hankins, Backlund, Johnson, D. Schmidt, Sterk, Sump, Cooke, Mastin, Scott, O'Brien, Cooper, Hatfield, Blalock, Kessler, Mulliken, Cole, Kenney, Gardner, McMorris and Tokuda

NOTES:

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