

Original

No. 36455-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

BY: *Cmm*

STATE OF WASHINGTON,

Respondent,

vs.

MICHAEL TORRES,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 04-1-01976-3
The Honorable Vicki Hogan, Judge

OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR..... 1

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

III. STATEMENT OF THE CASE 1

IV. ARGUMENT 3

THE TRIAL COURT ERRED BY SENTENCING TORRES TO A LIFE TERM OF COMMUNITY CUSTODY WHEN THE LAW OF THE CASE REQUIRED THE COURT TO APPLY THE STATUTE IN EFFECT AT THE BEGINNING OF THE CHARGING PERIOD, WHICH AUTHORIZED ONLY 36 MONTHS 3

V. CONCLUSION..... 6

APPENDIX A (STATE V. TORRES, 2006 WASH. APP. LEXIS 1114)

APPENDIX B (FORMER RCW 9.94A.120 (1999))

TABLE OF AUTHORITIES

TABLE OF CASES

Washington Cases

<i>Hendrix v. Seattle</i> , 76 Wn.2d 142, 157, 456 P.2d 696 (1969)	4
<i>In re Carle</i> , 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).....	3
<i>In re Lund</i> , 57 Wn. App. 668, 789 P.2d 325 (1990).....	3
<i>In re Williams</i> , 111 Wn.2d 353, 362-63, 759 P.2d 436 (1988).....	4
<i>State ex rel. Scaggs v. Superior Court</i> , 169 Wash. 292, 297, 13 P.2d 1086 (1932).....	4
<i>State v. Edwards</i> , 104 Wn.2d 63, 70-71, 701 P.2d 508 (1985)	4
<i>State v. Nass</i> , 76 Wn.2d 368, 370, 456 P.2d 347 (1969)	3
<i>Seattle v. Pullman</i> , 82 Wn.2d 794, 797, 514 P.2d 1059 (1973).....	4
<i>State v. Shipp</i> , 93 Wn.2d 510, 516, 610 P.2d 1322 (1980)	4
<i>State v. Skillman</i> , 60 Wn. App. 837, 841, 809 P.2d 756 (1991)	4
<i>State v. Theroff</i> , 33 Wn. App. 741, 744, 657 P.2d 800, <i>review denied</i> , 99 Wn.2d 1015 (1983)	3

STATUTES

Former RCW 9.94A.120(10)(a) (1999).....	5
RCW 9.94A.712(5).....	5

I. ASSIGNMENTS OF ERROR

1. The trial court erred by sentencing Mr. Torres to a life term of community custody without authority of law.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by sentencing Torres to a life term of community custody when the law of the case required the court to apply the statute in effect at the beginning of the charging period, which authorized only 36 months?

III. STATEMENT OF THE CASE

This appeal arises from the resentencing after remand of Michael Torres. Mr. Torres was convicted on March 18, 2005, of two counts of Rape of Child in the first degree and two counts of Child Molestation in the first degree. CP 10. The State's initial information alleged that the crimes had occurred between November 1, 1999, and December 1, 2000. CP 1-2.

On January 11, 2005, the first day of trial, the State amended the information, over defense objection, extending the charging period on each of the counts to June 30, 2002. CP 4-5, *State v. Torres*, 2006 Wn. App. LEXIS 1114, 5 (Attached in Appendix A). The trial court's instructions did not ask the jury to

decide when during this charging period the crimes were committed. *State v. Torres*, at 8.

At sentencing, the trial court concluded that the evidence at trial proved that two of the offenses occurred after January 2002, and applied the statute in effect for that offense date, sentencing Mr. Torres to 160 months to life, with community custody for life. *State v. Torres*, at 10. Mr. Torres appealed his conviction and sentence.

Reversing his sentence, the court of appeals held:

The ex post facto clause of the state and federal constitutions prohibits the State from increasing the punishment for a crime after its commission. U.S. Const. art. I, §9 ("No bill of attainder or ex post facto law shall be passed."); *Wash. Const. art. I, §23* ("No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed."); *Parker*, 132 Wn.2d at 191. To avoid an ex post facto violation, the State must prove that the criminal conduct occurred after the effective date of a statute elevating the penalty for the crime charged. A jury must decide the factual question of when the crime occurred. *State v. Parker*, 132 Wn.2d 182, 192 n.14, 937 P.2d 575 (1997).

State v. Torres, at 14-15. Therefore, the appellate court held that it was error for the trial court to apply RCW 9.94A.712 when the jury had not found that the crimes were committed after September 1, 2001, the statute's effective date. *State v. Torres*, at 16. The

appellate court remanded the case for resentencing. *State v. Torres*, at 16.

Resentencing was held on June 1, 2007. CP 52. The same four crimes are noted, with a date of crime of 11/1/99 through 12/1/00.¹ CP 52. The court ordered 160 months on counts I and IV, and 89 months on counts II and III. CP 56. The trial court also ordered a lifetime term of community custody on all four counts. CP 57. This appeal timely follows.

IV. ARGUMENT

THE TRIAL COURT ERRED BY SENTENCING TORRES TO A LIFE TERM OF COMMUNITY CUSTODY WHEN THE LAW OF THE CASE REQUIRED THE COURT TO APPLY THE STATUTE IN EFFECT AT THE BEGINNING OF THE CHARGING PERIOD, WHICH AUTHORIZED ONLY 36 MONTHS.

A trial court's sentencing authority is limited to that expressed in the statutes. *In re Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980); *State v. Theroff*, 33 Wn. App. 741, 744, 657 P.2d 800, review denied, 99 Wn.2d 1015 (1983); *In re Lund*, 57 Wn. App. 668, 789 P.2d 325 (1990); see also *State v. Nass*, 76 Wn.2d 368, 370, 456 P.2d 347 (1969). If this were not true, a defendant would

¹ Interestingly, the judgment and sentence erroneously lists the charging period as initially charged (November 1, 1999, through December 1, 2000) rather than consistent with the amended information (November 1, 1999, through June 30, 2002). See CP 1-2, 4-5. The first judgment and sentence carried the same error, which was later corrected by order. See CP 26-27.

not have the opportunity to know in advance the legal consequences of his or her conduct. See *Seattle v. Pullman*, 82 Wn.2d 794, 797, 514 P.2d 1059 (1973) (due process requires fair notice, so that person of ordinary intelligence need not guess at what the law requires); *State v. Shipp*, 93 Wn.2d 510, 516, 610 P.2d 1322 (1980); *In re Williams*, 111 Wn.2d 353, 362-63, 759 P.2d 436 (1988) (ex post facto clause prohibits more severe punishment than was allowed when crime was committed); *State v. Edwards*, 104 Wn.2d 63, 70-71, 701 P.2d 508 (1985). The judiciary would be able to intrude into the realm of legislative power, in violation of the doctrine of separation of powers. *Hendrix v. Seattle*, 76 Wn.2d 142, 157, 456 P.2d 696 (1969) (power of Legislature “to define crimes and prescribe punishment is virtually exclusive, nearly unlimited, and leaves practically no correlative power to do the same in the courts”), *cert. denied*, 397 U.S. 948 (1970), *overruled on other grounds in McInturf v. Horton*, 85 Wn.2d 704, 707, 538 P.2d 499 (1975); *State ex rel. Scaggs v. Superior Court*, 169 Wn. 292, 297, 13 P.2d 1086 (1932).

Community placement may be added to a sentence only when it is authorized by statute. *State v. Skillman*, 60 Wn. App. 837, 841, 809 P.2d 756 (1991).

Here, the law of the case, set out in *State v. Torres*, 2006 Wash. App. LEXIS 1114, requires the trial court to apply the law in effect at the beginning of the charging period for this case—November 1, 1999. *Id.*, at 16.

Former RCW 9.94A.120(10)(a) (1999) provides:

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, but before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer.

(Attached in Appendix B) Therefore, the law permitted the trial court to sentence Mr. Torres to three years of community custody, not the life term he was sentenced to.

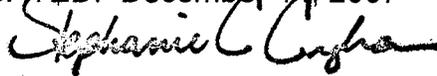
Presumably, the trial court's sentence was once again based on RCW 9.94A.712(5), which provides for community custody for the entire term of the maximum sentence. But *State v. Torres* clearly held that it is error to apply RCW 9.94A.712 to this case.

Consequently, the trial court acted without the authority of law in sentencing Mr. Torres to a lifetime term of community custody on his four convictions and therefore the case must be remanded for resentencing.

V. CONCLUSION

The trial court erroneously sentenced Mr. Torres to a life term of community custody on his four convictions. According to the appellate court's decision in *State v. Torres*, the trial court was to use the law in effect at the beginning of the charging period. That law authorized only 3 years of community custody. Therefore, Mr. Torres' sentence must be reversed and the case remanded for resentencing.

DATED: December 14, 2007



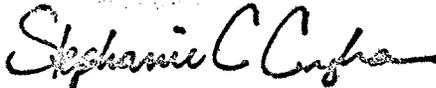
STEPHANIE C. CUNNINGHAM
WSBA No. 26436
Attorney for Michael Torres

CERTIFICATE OF MAILING

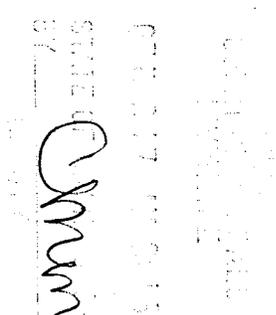
I certify that on 12/14/2007, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to:

Kathleen Proctor, DPA
Prosecuting Attorney's Office
930 Tacoma Ave. S., Rm. 946
Tacoma, WA 98402

Michael Torres, DOC#879132
Washington Corrections Center
P.O. Box 900
Shelton, WA 98584



STEPHANIE C. CUNNINGHAM
WSBA No. 26436



POSTAGE METER
BY [Signature]
DEC 17 2007
10:15 AM
TACOMA, WA 98402

APPENDIX A

STATE V. TORRES, 2006 WASH. APP. LEXIS 1114

1 of 2 DOCUMENTS



Analysis
As of: Dec 11, 2007

STATE OF WASHINGTON, *Respondent*, v. MICHAEL TORRES, *Appellant*.

No. 33141-1-II

COURT OF APPEALS OF WASHINGTON, DIVISION TWO

2006 Wash. App. LEXIS 1114

June 6, 2006, Filed

NOTICE: [*1] RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

PRIOR HISTORY: *State v. Torres*, 133 Wn. App. 1013, 2006 Wash. App. LEXIS 1575 (2006)

OPINION BY: HOUGHTON, P.J.

OPINION

HOUGHTON, P.J. -- Michael Torres appeals his convictions of two counts of first degree child rape and two counts of first degree child molestation, arguing ineffective assistance of counsel and trial court sentencing error. Pro se, he raises multiple additional arguments.¹

¹ Statement of Additional Grounds, *RAP 10.10*.

We affirm the convictions but vacate the sentence and remand for resentencing.

FACTS

Torres was A.L.'s stepfather. In 1994, he married A.L.'s mother, Miriam, and they had a son, T.T. Torres separated from Miriam in November 1999 when A.L. (born September 9, 1992) was seven years old. Afterward, Torres occasionally took A.L. to his apartment during weekend visitations with T.T. When A.L. was in fifth grade, she disclosed that Torres sexually abused her at his apartment on two separate occasions. The sexual abuse [*2] occurred sometime while A.L. was in first, second, or third grade.

According to A.L., during one weekend visitation during those years, Torres challenged her to a staring contest. Whoever lost would have to be the other's "maid" and do whatever the winner wanted. II Report of Proceedings (RP) at 171. A.L. lost. Torres undressed and entered the shower. After showering, he lay down on the bed, naked, and told her to rub lotion on his body.

As A.L. did so, Torres got an erection. He told A.L. that "guys have milk too" and that when his penis gets big like that it needed to be rubbed so that the milk will come out. II RP at 169. He had A.L. rub his penis up and down with both her hands. Then he told her it would be faster if she did it with her mouth. She complied. After a while, "white stuff" came out. II RP at 169. He asked her if she wanted to taste it, but she declined.

A.L. said that the second incident occurred as she and Torres watched a movie, *American Pie II*. II RP at 175. He told her that his penis was getting bigger again and that he "needed the milk to come out." II RP at 178. Then he asked her to "milk" it. II RP at 179. Like the first time, he had A.L. touch and perform [*3] oral sex on him until he ejaculated. Then he wiped himself with a towel, put his finger in his semen, and offered it to her to taste. She tasted it but it was bitter, not sweet like he had said, and she spit it out.

A.L. did not immediately tell anyone about the incidents. But from late 2001 or early 2002, she resisted going to Torres's apartment. She did not realize that he had done "something wrong" until she was in fourth grade. II RP at 182. That year, she described what happened to a classmate, who responded by telling her it was "a nasty

thing to do." II RP at 183. Other classmates heard about it and began teasing her and calling her names.

On March 29, 2004, A.L. tearfully disclosed the sexual abuse to her best friend, C.B., as they rode home on the school bus. As soon as C.B. got home, she told her mother, Christina, who then called A.L. and asked her if it was true. When A.L. said that it was, Christina brought A.L. to her house. Then Christina called Hector Rolon-Hernandez, who lives with A.L. and her mother. Hector went to Christina's house. The two questioned A.L. about the incidents while Christina took extensive notes.

Hector drove to Miriam's workplace to tell her [*4] about A.L.'s disclosures. The two returned home and called the Pierce County Sheriff's Department, which began an investigation.

On April 20, 2004, the State charged Torres with two counts of first degree child rape, *RCW 9A.44.073*,² and two counts of first degree child molestation, *RCW 9A.44.083*.³ The information alleged that the criminal conduct underlying each of the charges occurred "during the period between the 1st day of November, 1999 and the 1st day of December, 2000." Clerk's Papers (CP) at 1-2.

² "A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim." *RCW 9A.44.073(1)*.

³ "A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim." *RCW 9A.44.083(1)*.

[*5] On January 11, 2005, the first day of trial, the State amended the information, extending the charging period on each of the counts to June 30, 2002. The State noted that A.L. said the alleged incidents occurred sometime after Torres moved out of her home, while she was in first, second, or third grade. Torres moved out in November 1999, and A.L. completed third grade in June 2002.

Torres's defense counsel objected to the amended information. He claimed that the amended information prejudiced Torres because of a plan to impeach A.L.'s testimony with evidence that *American Pie II* was not released until January 2002. Defense counsel argued that

the State should have amended the information months earlier, rather than waiting until the day of trial. Defense counsel stated:

My preparation for opening, for jury voir dire, for every aspect of this trial has been about the credibility of someone who is going to be asked to provide specific details. Yet, one of the details couldn't possibly have occurred in the time frame that it is alleged, so we believe that the Defendant is absolutely prejudiced at this point in this late moment to have the prosecutor amend the complaint [*6] prior to trial.

I RP (Motions) at 7.

Defense counsel asked the trial court to wait until after the State presented its evidence before permitting the amended information. Defense counsel reasoned that this would permit Torres to cast doubt on A.L.'s credibility during trial, lessening the prejudicial effect of the amended information.

The trial court granted the State's motion to amend. Defense counsel did not request a continuance. The parties stipulated that *American Pie II* was released to the public in January 2002.

Torres served as a City of Tacoma police officer at the time of trial. The case received substantial pretrial publicity, in conjunction with ongoing press coverage of the tragic murder/suicide involving former Tacoma Police Chief David Brame, which had occurred about a year before the State filed charges against Torres. Torres believed that the publicity likely prejudiced the public toward police officers accused of crimes involving domestic violence. Thus, he moved to exclude any reference to his employment as a Tacoma police officer both during voir dire and at trial.

The trial court ruled that during voir dire the attorneys could question [*7] jurors about their attitudes toward "law enforcement officers" but without mentioning the Tacoma Police Department. Before approving a questionnaire for use during voir dire, the trial court asked the State to remove a reference to the Tacoma Police Department. The trial court deferred ruling on the admissibility of testimony on Torres's status as a Tacoma police officer, stating that it would make a case by case determination as the issue arose during trial.

Before trial began, the trial court told the jury: "You must not discuss this case with each other, or with anyone else. You should not allow anyone to discuss it in your presence. And you are admonished not to read any-

thing in the newspaper, listen to anything on the radio, the television, or search out the internet with regard to the law or this case." II RP at 35.

During breaks in the trial proceedings, the trial court repeatedly admonished the jury not to discuss the case with anyone and to avoid any media reports. And again, before the jurors began their deliberations, the trial court told them: "You are not to read anything in the newspaper, listen to anything on the radio, television. You are not to research the law or [*8] the internet regarding this case." V RP at 595.

Detective Michael Portmann of the Pierce County Sheriff's Department investigated the case. When asked to explain how he became involved in the investigation, he testified: "The incident occurred in the City of Tacoma and involved a member of their city police force, and it was referred to my supervisor, Roger Gouch, who is a lieutenant in charge of the major crime section who gave it to me to handle." IV RP at 467. Torres did not object to the testimony.

In instructing the jury at the close of trial, the court included "to-convict" instructions on each of the counts stating that the criminal conduct occurred "during the period between the 1st day of November, 1999, and the 30th day of June, 2002." CP at 53-54, 57-58. The trial court's instructions did not ask the jury to decide when during this charging period any of the criminal conduct occurred. The jury returned a guilty verdict on all four counts.

In sentencing on such convictions, under *RCW 9.94A.712*, the court must impose an indeterminate sentence for convictions of first degree rape and first degree child molestation, consisting of a minimum term [*9] within the standard sentencing range and a maximum term of the statutory maximum for the offense. *RCW 9.94A.712(1)(a)(i), (3)*. In addition, the court must sentence the offender to community custody for the maximum statutory sentence. *RCW 9.94A.712(5)*. *RCW 9.94A.712* applies to crimes committed on or after September 1, 2001. *RCW 9.94A.712(1)*. For crimes committed before that date, a trial court must impose a determinate sentence within the standard sentencing range, absent cause for an exceptional sentence. *RCW 9.94A.589*.

At the sentencing hearing, the State argued that the trial court should impose an indeterminate sentence on the two counts relating to the second sexual abuse incident. The State reasoned that the jury must have found that the second incident occurred after September 1, 2001, because A.L. testified that she watched *American Pie II* while the abuse occurred, and the parties stipulated to the movie's January 2002 release date.

Torres argued that because the jury verdict indicated only that the criminal conduct occurred sometime [*10] between November 1, 1999, and June 30, 2002, both *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and the rule of lenity required the court to impose a determinate sentence under *RCW 9.94A.589*.

The trial court agreed with the State, noting that it determines the applicable statute for sentencing purposes. The trial court concluded that the evidence at trial showed that the second sexual abuse incident occurred after January 2002. It then imposed a determinate sentence on the two counts relating to the first sexual abuse incident and an indeterminate sentence on the two counts relating to the second sexual abuse incident. But according to the judgment and sentence, the "date of crime" on all four counts is "11/01/99 - 12/01/00." + CP at 67.

4 On remand, the trial court should review this part of the judgment and sentence as well.

The trial court sentenced Torres at the top of the standard range on all counts. On counts I and II, [*11] the trial court sentenced him to 160 months and 89 months, respectively, under *RCW 9.94A.589*. On counts III and IV, it sentenced him to 160 months to life, and 89 months to life, respectively, under *RCW 9.94A.712*. It ordered all the sentences to run concurrently. The trial court also sentenced Torres to community custody for life.

Torres appeals.

ANALYSIS

INEFFECTIVE ASSISTANCE OF COUNSEL

Torres first contends that he received ineffective assistance of counsel when his attorney failed to move for a continuance after the State amended the information on the first day of trial.

The state and federal constitutions guarantee a defendant the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). To prevail in an ineffective assistance claim, a defendant must show both deficient performance and resulting prejudice. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). To establish deficient performance, a defendant must show that the attorney's [*12] performance fell below an objective standard of reasonableness. *McNeal*, 145 Wn.2d at 362.

To establish prejudice, a defendant must demonstrate that, but for the deficient representation, the trial outcome would have differed. *McNeal*, 145 Wn.2d at

362. We presume that the defendant received adequate representation. *Strickland*, 466 U.S. at 689; *McFarland*, 127 Wn.2d at 335. If defense counsel's performance can be characterized as a legitimate trial strategy or tactic, an ineffective assistance claim fails. *McNeal*, 145 Wn.2d at 362.

Torres attempts to establish deficient performance through his counsel's vigorous opposition to the State's motion to amend the information. But in doing so, Torres showcases his attorney's skillful and well-reasoned advocacy. His counsel argued that Torres would be prejudiced by the amended information because he based his "preparation for opening, for jury voir dire, for every aspect of this trial" on challenging A.L.'s credibility. I RP (Motions) at 7. As part of that strategy, he intended to present evidence that *American Pie II* was not available for home viewing [*13] during the period charged, so that the second incident could not have occurred as A.L. described. By extending the charging period, the State undercut Torres's defense strategy.

Torres asserts that, by his own words, his counsel was unprepared to go forward and should have moved for a continuance in order to prepare a new defense. But the defense strategy of impeaching A.L.'s credibility remained viable even though the amended information undercut its force. The amended information eliminated only one means of undermining her credibility. His counsel still had several other ways to cast doubt on her testimony and he did so. Torres does not show how additional preparation could have improved his counsel's performance.

Significantly, Torres does not suggest an alternate defense strategy. The record shows that his counsel aggressively cross-examined the State's witnesses and made effective opening remarks and closing argument. During cross-examination, defense counsel elicited testimony highlighting A.L.'s inability to remember many details, showing alternate ways that she could have acquired sexual knowledge, and suggesting that her disclosures may have been fabricated. The amended [*14] information did not affect Torres's counsel's ability to cast doubt on A.L.'s credibility by these other means.

Because Torres fails to establish his counsel's deficient performance, his ineffective assistance claim fails.

SENTENCING

Torres next contends that the trial court erred when it sentenced him to an indeterminate sentence on counts III and IV, relating to the second sexual abuse incident. He asserts that the evidence is insufficient to support the trial court's conclusion that the second incident occurred after September 1, 2001, the triggering date for the indeterminate sentencing statute. Alternately, he argues that

the rule of lenity requires us to apply *RCW 9.94A.589*, which imposes a less severe penalty for the charged crimes if committed before September 1, 2001.⁵

5 Because we agree with and accept the State's concession, we do not address Torres's alternate argument.

The ex post facto clause of the state and federal constitutions prohibits the State from increasing [*15] the punishment for a crime after its commission. U.S. Const. art. I, §9 ("No bill of attainder or ex post facto law shall be passed."); *Wash. Const. art. I, §23* ("No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed."); *Parker*, 132 Wn.2d at 191. To avoid an ex post facto violation, the State must prove that the criminal conduct occurred after the effective date of a statute elevating the penalty for the crime charged. A jury must decide the factual question of when the crime occurred. *State v. Parker*, 132 Wn.2d 182, 192 n.14, 937 P.2d 575 (1997).

The State concedes the sentencing error, citing *Parker*, 132 Wn.2d at 191, as controlling authority. We accept the State's concession.

RCW 9.94A.712 elevated the penalties for first degree rape and first degree child molestation by requiring a trial court to impose an indeterminate sentence, with the statutory maximum as the upper end of the sentencing range. Under that statute, the mandatory statutory maximum sentence for Torres's crimes is life imprisonment. The statute previously in effect required the [*16] trial court to impose a determinate sentence within the standard sentencing range, absent justification for an exceptional sentence. Based on his offender score, the maximum standard range sentences for his crimes are 160 months (first degree child rape) and 89 months (first degree child molestation).

The State alleged, and the jury found, that each of the four crimes occurred between November 1, 1999 and June 30, 2002. At sentencing, the State argued that the only reasonable conclusion from the evidence was that the second incident occurred after September 1, 2001, because A.L. testified that it happened while she and Torres watched *American Pie II*, released in January 2002. But the jury need not have believed that A.L. correctly recalled watching that movie with Torres to believe that the second incident occurred.

Because the State did not prove that any of the charged offenses occurred after September 1, 2001, the trial court erred in sentencing Torres under *RCW 9.94A.712*. The remedy is to remand for resentencing.⁶

6 We note that the imposition of an indeterminate sentence here raises additional due process

concerns because the State did not advise Torres in advance of trial that he could be subject to imprisonment for the remainder of his natural life. *See State v. Crawford*, 128 Wn. App. 376, 384, 115 P.3d 387 (2005) (it is "fundamentally unfair" not to provide advance notice of the possibility of a life sentence without parole because a person needs such information in evaluating the risks of trial versus guilty plea and other strategic decisions), *review granted*, 156 Wn.2d 1012, 133, P.3d 473, 2006 Wash. LEXIS 313 (2006). Torres only became subject to the possibility of life imprisonment without parole when the State extended the charging period on the first day of trial.

[*17] STATEMENT OF ADDITIONAL GROUNDS (SAG) ISSUES ⁷

⁷ We include additional facts necessary to discuss the SAG issues.

INEFFECTIVE ASSISTANCE OF COUNSEL

Failing to Move for a Continuance

In his SAG, Torres first repeats his appellate counsel's argument that he received ineffective assistance when his counsel failed to move for a continuance. We addressed this issue as raised by counsel and we do not discuss it further.

Reference to Torres's Affiliation with Tacoma Police Department

Torres further argues that his attorney provided ineffective assistance in failing to object and to move for a mistrial when the lead investigator identified Torres as a member of the Tacoma Police Department. As it could be considered a legitimate trial tactic to avoid amplifying the detective's statement, *see State v. Gladden*, 116 Wn. App. 561, 568, 66 P.3d 1095 (2003) (failure to object to reference to defendant's prior criminal history to avoid drawing further attention), Torres's argument fails.

Moreover, [*18] because the trial court had reserved any ruling on the admissibility of references to Torres's employment status, Portman's statement violated no preliminary ruling. Thus, defense counsel could have reasonably believed there was no basis to move for a mistrial.

Sequestering the Jury

Torres next argues that his attorney gave ineffective assistance when he failed to move the trial court to sequester the jury. Torres's argument fails because the trial court took proper steps to assure an untainted jury.

The record shows that both defense counsel and the trial court took several measures to ensure that publicity surrounding the case did not prejudice the jury. Counsel devoted a substantial portion of voir dire to assessing the effect, if any, that the pretrial publicity had on jurors' attitudes toward police officers accused of domestic violence. At defense counsel's request, the trial court instructed counsel to refer to Torres only as a "law enforcement officer," not a member of the Tacoma Police Department, in an effort to minimize any prejudicial effect of adverse publicity. At the start of and throughout trial, the court repeatedly instructed the jury to avoid any exposure to media [*19] reports. Although the case received substantial publicity before and during trial, nothing in the record shows that it had any effect on the jury.

JURY SELECTION

Juror No. 22

Torres next contends that he did not receive a fair trial because the trial court permitted a Pierce County Sheriff's Office detective to serve on the jury. He argues that an investigator on the crimes charged worked next door to juror No. 22 (who eventually served as presiding juror) and that juror No. 22 may have prejudiced the jury. SAG at 4.

Counsel and the trial court agreed that, based on questionnaires submitted to the venire, some jurors would be questioned individually without the full venire present. During that examination, defense counsel assertively inquired about juror No. 22's ability to be fair. Juror No. 22 maintained that he would be fair. Defense counsel moved to excuse the juror for cause. The court denied the motion. It did not err in doing so where the juror expressed his ability to be fair. *See State v. Noltie*, 116 Wn.2d 831, 839, 809 P.2d 190 (1991) (trial court is in the best position to evaluate a juror's ability to be fair, and a party challenging the decision must [*20] show more than the mere possibility of bias).

Moreover, during general examination of the venire, defense counsel only asked juror No. 22 one further question. Defense counsel did not use a peremptory challenge to excuse juror No. 22. Nothing in the record shows that counsel had used all his peremptory challenges. *See State v. Tharp*, 42 Wn.2d 494, 500, 256 P.2d 482 (1953) (defendant must show the use of all his peremptory challenges to establish prejudice arising from trial court's refusal to dismiss a juror for cause). The record fails to establish support for Torres's claims.

Juror Named "Brame"

Torres also claims that his counsel provided ineffective assistance in failing to thoroughly investigate a juror with the surname "Brame." SAG at 6.

Torres claims that counsel ineffectively questioned a juror, whose name Torres later learned was Mose Brame. He claims prejudice due to the jury's "pressure to convict" because of pretrial publicity about Chief Brame's murder/suicide. SAG at 6.

In reviewing the record, it appears that prospective jurors completed a questionnaire calling for them to disclose any relationships with law enforcement personnel. As the juror [*21] did not disclose any, Torres's argument fails.⁸

8 Torres's prejudice argument is otherwise too attenuated to persuade us.

CROSS-EXAMINATION

Torres next contends that the trial court abused its discretion when it prevented his counsel from effectively cross-examining A.L. We review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *State v. Darden*, 145 Wn.2d 612, 619, 41 P.3d 1189 (2002). Similarly, we will not reverse a court's decision to limit cross-examination absent a manifest abuse of discretion. *Darden*, 145 Wn.2d at 619. A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. *State v. Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002).

During cross-examination, Torres used the child interviewer's handwritten notes to impeach A.L.'s testimony. The State objected, arguing that counsel improperly used extrinsic evidence because Torres failed to show any inconsistency between A.L.'s [*22] testimony and the notes.

Because of the late hour, the trial court dismissed the jury before hearing argument on the objection. Defense counsel reviewed the notes and admitted that he had asked A.L. about the wrong page. The trial court sustained the objection and directed the defense counsel to "start over" with the line of questioning when the trial resumed the next day. II RP at 215. The trial court also agreed with the State that defense counsel should lay a proper foundation before impeaching A.L. with the notes by identifying what portion of her testimony was inconsistent with the notes.

The trial court did not improperly interfere with Torres's cross-examination of A.L. but, rather, it followed the rules of evidence in requiring Torres to identify an inconsistency before impeaching A.L.'s testimony with extrinsic evidence of a prior inconsistent statement. *See ER 613*.

HEARSAY TESTIMONY

Torres next contends that the trial court erred in admitting Hector's and C.B.'s hearsay testimony. Hector

gave the police a handwritten statement describing A.L.'s disclosures. During cross-examination, Torres used the statement to impeach Hector's testimony, asking: [*23] "But there is nothing in here that would indicate that he ever placed his hands on her body in any location, is there?" II RP at 115. On redirect, the State asked Hector to identify the sex acts that he had described in the statement. Torres objected on hearsay grounds, but the trial court overruled the objection.

The trial court did not abuse its discretion in overruling Torres's objection. Under *ER 613(b)*, when a party offers extrinsic evidence of a witness's prior inconsistent statement, the opposing party may ask questions to help the witness explain or deny any apparent inconsistency. The trial court properly permitted the State to show that Hector's statement was consistent with his testimony at trial, in response to Torres's suggestion to the contrary.

Torres asserts further trial court evidentiary error when it allowed the State to ask C.B. to relate her conversation with A.L. on the school bus. Torres objected on hearsay grounds. The State argued that the testimony fell within the hearsay exception for then existing mental and emotional condition. *ER 803(a)(3)*. The trial court overruled the objection. C.B. then described A.L. [*24] 's reluctant disclosures to her on the bus. Because the defense suggested that A.L. fabricated her disclosures, the trial court did not abuse its discretion in overruling Torres's objection. *See ER 801(d)(1)(ii)* (prior consistent statements not hearsay when declarant testifies at trial and is subject to cross-examination).

CLOSING ARGUMENT

Torres further argues that the prosecutor committed misconduct in summarizing A.L.'s testimony during closing argument.

To prevail in a prosecutorial misconduct claim, the defendant must show that the prosecutor's comments were improper, resulting in prejudice. *State v. Reed*, 102 Wn.2d 140, 145, 684 P.2d 699 (1984). A prosecutor has wide latitude to draw reasonable inferences from the evidence. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 716, 101 P.3d 1 (2004).

The following colloquy took place during Torres's cross-examination of A.L.:

Q: Now, according to what I believe that you have said, Michael didn't force you, in other words, physically hold you or force you to do anything; isn't that true?

A.: No.

Q: That is not true?

A: Yes.

Q: It is true that [*25] he didn't force you to do anything?

A: No.

Q: And you claimed that Michael put his penis in your mouth; isn't that correct?

A: Well, he had told me that it would work faster.

Q: So, did you put your mouth on his penis?

A: Yes.

III RP at 245-46.

In summarizing A.L.'s testimony during closing argument, the prosecutor said:

Now, there is one key part of this testimony, and it wasn't when I was asking the questions. It was when the defense attorney was asking the questions. And she responded to a very particular question from [defense counsel]. He was asking, and she was taking about the oral sex. And he phrased this question, and I am not going to get it exactly. The words he used or the phrasing that he used was, and then he told you to put your mouth on his penis, and she corrected him. She said, that's not what happened. And she repeated what she had said on Thursday the week before. He told me it would go faster if I use my mouth. Now that testimony, that's about a real event. That's a kid having a picture in her mind of what happened to her, and telling you this is how it happened. That's real testimony about the real event. [*26]

V RP at 555-56.

Torres takes issue with the prosecutor's words "that's not what happened," arguing that they "add an emotion to A.L.'s [testimony] that simply was not there." SAG at 14. The argument fails. The prosecutor fairly summarized A.L.'s testimony. The colloquy shows that A.L. particularly stated what did and did not occur; that was the point of the prosecutor's argument--that in testifying, she provided precise response to questions, suggesting that she related facts, not fabrication. Finally, the court

instructed the jury that closing argument was not evidence. We presume that the jury follows such instructions. *State v. Stein*, 144 Wn.2d 236, 247, 27 P.3d 184 (2001).

JURY DELIBERATIONS

Finally, Torres contends that the trial court erred in denying the jury's request to review a transcript of A.L.'s interview during jury deliberations.

Keri Arnold-Harms works as a child interviewer with the Pierce County Prosecutor's Office. She interviewed A.L. Arnold-Harms taped the interview and also made extensive handwritten notes. The State entered both the tape and the handwritten notes into evidence. Arnold-Harms referred to her notes to [*27] refresh her memory during testimony. The State asked Arnold-Harms to describe the interview techniques she used with A.L. But the State did not play the tape-recorded interview to the jury.

During jury deliberations, the jury sent a handwritten note to the trial court, asking: "Can we have access to exhibits other than pictures? Specifically, the written statements from Carrie [sic] Arnold Harms and/or the tape recording of [A.L.'s] disclosure. Can we see [A.L.'s] testimony transcripts?" CP at 62.

The trial court returned a note stating: "You have all the exhibits admitted into evidence. Please re-read your jury instructions." CP at 62.

The trial court did not abuse its discretion in denying the jury's request. The State offered the interview notes, tape recording, and interview transcript for the limited purpose of rebutting the implication that A.L. fabricated the disclosures. ER 801(d)(1)(ii). Although their existence was in evidence, the contents of the exhibits were not read into evidence. Thus, the trial court properly denied the jury's request. If the exhibits had impeachment value, as Torres contends, his defense counsel could have used them to [*28] impeach A.L.'s testimony at trial.

We affirm the convictions and vacate the sentence and remand for resentencing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to *RCW 2.06.040*, it is so ordered.

Houghton, P.J.

We concur:

Armstrong, J.

Penoyar, J.

APPENDIX B
FORMER RCW 9.94A.120 (1999)

5 of 50 DOCUMENTS

ANNOTATED REVISED CODE OF WASHINGTON
Copyright © 2000-2001 by Matthew Bender & Company, Inc.
one of the LEXIS Publishing companies.
All rights reserved.

*** ARCHIVE DATA ***

*** CURRENT THROUGH THE 2000 REGULAR SESSION ***
*** (ANNOTATIONS CURRENT THROUGH MAY 2001 ACS) ***

TITLE 9. CRIMES AND PUNISHMENTS
CHAPTER 9.94A. SENTENCING REFORM ACT OF 1981

Rev. Code Wash. (ARCW) § 9.94A.120 (2000)

FIRST OF TWO VERSIONS OF THIS SECTION

§ 9.94A.120. Sentences (as amended by 2000 c 43 and c 226)

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 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), (6), (8), or (9)*, 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: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under *RCW 9.94A.150(4)*.

(5) (a) 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 a term of community supervision or community custody as specified in (b) of this subsection, which, in

addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Undergo available outpatient treatment for up to the period specified in (b) of this subsection, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (iii) Pursue a prescribed, secular course of study or vocational training;
- (iv) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;
- (v) Report as directed to a community corrections officer; or
- (vi) Pay all court-ordered legal financial obligations as provided in *RCW 9.94A.030* and/or perform community service work.

(b) The terms and statuses applicable to sentences under (a) of this subsection are:

(i) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and

(ii) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this subsection (5) is subject to conditions and sanctions as authorized in this subsection (5) and in subsection (11)(b) and (c) of this section.

(c) The department shall discharge from community supervision any offender sentenced under this subsection (5) before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.

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

(i) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under *RCW 9.94A.310 (3)* or (4);

(ii) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;

(iii) For a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and

(iv) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.

(b) If 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.

The court shall also impose:

(i) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(ii) Crime-related prohibitions including a condition not to use illegal controlled substances;

(iii) A requirement to submit to urinalysis or other testing to monitor that status; and

(iv) A term of community custody pursuant to subsection (11) of this section to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

The court may prohibit the offender from using alcohol or controlled substances and 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:

(A) Devote time to a specific employment or training;

(B) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

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

(D) Pay all court-ordered legal financial obligations;

(E) Perform community service work;

(F) Stay out of areas designated by the sentencing judge;

(G) Such other conditions as the court may require such as affirmative conditions.

(c) If the offender violates any of the sentence conditions in (b) of this subsection or is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department unless waived by the offender.

(i) If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

(ii) If the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(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.

(e) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to community custody and earned early release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned early release time.

(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; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in subsection (11)(b) and (c) of this section; 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 sex 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 eleven 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 (15) of this section;

(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;

and

(C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned release time while serving a suspended sentence.

(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.

(ix) For purposes of this subsection (8), "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.

(x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.

(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.

(d) Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.

(9) (a) (i) 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, but before July 25, 1999, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with *RCW 9.94A.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.

(ii) Except for persons sentenced under (b) of this subsection or subsection (10)(a) of this section, when a court sentences a person to a term of total confinement to the custody of the department of corrections for a violent offense, any crime against a person under *RCW 9.94A.440(2)*, 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 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with *RCW 9.94A.150 (1) and (2)*. When the court sentences the offender under this subsection (9)(a)(ii) 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, or a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, but before July 1, 2000, 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 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 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 por-

tion 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/r community service;

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

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

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

(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.

(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, but before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to *RCW 9.94A.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 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 (15) 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) (a) When a court sentences a person to the custody of the department of corrections for a sex offense, a violent offense, any crime against a person under *RCW 9.94A.440(2)*, or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range or up to the period of earned release awarded pursuant to *RCW 9.94A.150 (1)* and (2), whichever is longer. The community custody shall begin: (i) Upon completion of the term of confinement; (ii) at such time as the offender is transferred to community custody in lieu of earned release in accordance with *RCW 9.94A.150 (1)* and (2); or (iii) with regard to offenders sentenced under subsection (6) of this section, upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(b) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in subsection (9)(b)(i) through (vi) of this section. The conditions may also include those provided for in subsection (9)(c)(i) through (vi) of this section. The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to (f) of this subsection. 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 (15) of this section. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(c) If an offender violates conditions imposed by the court or the department pursuant to this subsection during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in *RCW 9.94A.205* and *9.94A.207*.

(d) Except for terms of community custody under subsection (8) of this section, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(e) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of *RCW 9.94A.195* and may be punishable as contempt of court as provided for in *RCW 7.21.040*. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(f) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (11)(f).

(g) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (i) The crime of conviction; (ii) the offender's risk of reoffending; or (iii) the safety of the community.

(12) 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.

(13) (a) 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.

(b) For an offense committed prior to July 1, 2000, the offender's compliance with payment of legal financial obligations shall be supervised by the department for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement, whichever period ends later. 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 unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years as provided in *RCW 9.94A.140, 9.94A.142, and 9.94A.145*. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period.

(c) For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department of corrections shall supervise the offender's compliance with payment of the legal financial obligations for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement, whichever period ends later. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction.

(d) 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.

(14) 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, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(15) All offenders sentenced to terms involving community supervision, community service, community placement, community custody, 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. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(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 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. For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may additionally require the offender to participate in rehabilitative programs or otherwise perform affirmative conduct, and to obey all laws.

The conditions authorized under this subsection (15)(b) may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to 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 an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) or (11) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) or (11)(e) 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.

(16) All offenders sentenced to terms involving community supervision, community service, community custody, 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.

(17) 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.

(18) 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).

(19) 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 supervision, 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.

(20) 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.

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

(22) 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.

(23) 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.

(24) In sentencing an offender convicted of a crime of domestic violence, as defined in *RCW 10.99.020*, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, order the offender to participate in a domestic violence perpetrator program approved under *RCW 26.50.150*.

(25) (a) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this section shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified providers are available for treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; (iii) the evaluation and treatment plan comply with the rules adopted by the department of health; or (iv) the treatment provider is employed by the department. A treatment provider selected by an offender who is not certified by the department of health shall consult with a certified provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified provider.

(b) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

HISTORY: 2000 c 226 B 2; 2000 c 43 B 1. Prior: 1999 c 324 B 2; 1999 c 197 B 4; 1999 c 196 B 5; 1999 c 147 B 3; 1998 c 260 B 3; prior: 1997 c 340 B 2; 1997 c 338 B 4; 1997 c 144 B 2; 1997 c 121 B 2; 1997 c 69 B 1; prior: 1996 c 275 B 2; 1996 c 215 B 5; 1996 c 199 B 1; 1996 c 93 B 1; 1995 c 108 B 3; prior: 1994 c 1 B 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 B 3; prior: 1992 c 145 B 7; 1992 c 75 B 2; 1992 c 45 B 5; prior: 1991 c 221 B 2; 1991 c 181 B 3; 1991 c 104 B 3; 1990 c 3 B 705; 1989 c 252 B 4; prior: 1988 c 154 B 3; 1988 c 153 B 2; 1988 c 143 B 21; prior: 1987 c 456 B 2; 1987 c 402 B 1; prior: 1986 c 301 B 4; 1986 c 301 B 3; 1986 c 257 B 20; 1984 c 209 B 6; 1983 c 163 B 2; 1982 c 192 B 4; 1981 c 137 B 12.

NOTES:

REVISER'S NOTE: * (1) *RCW 9.94A.030* was amended by 2000 c 28 B 2 which dropped the modifier "court-ordered" from the remaining definition of "legal financial obligations."

** (2) *RCW 9.94A.140(1)* and *9.94A.142(1)* were further divided by 2000 c 28 B 32 and 33, respectively.

(3) This section was amended by 2000 c 43 B 1 and by 2000 c 226 B 2, each without reference to the other. Both amendments are incorporated in the publication of this section under *RCW 1.12.025(2)*. For rule of construction, see *RCW 1.12.025(1)*.

(4) See also the amendment by 2000 c 28 B 5, effective July 1, 2001.

FINDING -- INTENT -- 2000 C 226: "The legislature finds that supervision of offenders in the community and an offender's payment of restitution enhances public safety, improves offender accountability, is an important component of providing justice to victims, and strengthens the community. The legislature intends that all terms and conditions of an offender's supervision in the community, including the length of supervision and payment of legal financial obligations, not be curtailed by an offender's absence from supervision for any reason including confinement in any correctional institution. The legislature, through this act, revises the results of *In re Sappenfield, 980 P.2d 1271 (1999)* and declares that an offender's absence from supervision or subsequent incarceration acts to toll the jurisdiction of the court or department over an offender for the purpose of enforcing legal financial obligations." [2000 c 226 B 1.]

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

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

SEVERABILITY -- 1999 C 197: See note following *RCW 9.94A.030*.

CONSTRUCTION -- SHORT TITLE -- 1999 C 196: See *RCW 72.09.904* and *72.09.905*.

SEVERABILITY -- 1999 C 196: See note following *RCW 9.94A.010*.

INTENT -- 1998 C 260: See note following *RCW 9.94A.110*.

FINDING -- EVALUATION -- REPORT -- 1997 C 338: See note following *RCW 13.40.0357*.

SEVERABILITY -- EFFECTIVE DATES -- 1997 C 338: See notes following *RCW 5.60.060*.

FINDING -- 1996 C 275: "The legislature finds that improving the supervision of convicted sex offenders in the community upon release from incarceration is a substantial public policy goal, in that effective supervision accomplishes

many purposes including protecting the community, supporting crime victims, assisting offenders to change, and providing important information to decision makers." [1996 c 275 B 1.]

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

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

EFFECTIVE DATE -- 1995 C 108: See note following *RCW 9.94A.030*.

SEVERABILITY -- SHORT TITLE -- CAPTIONS -- 1994 C 1: See notes following *RCW 9.94A.392*.

SEVERABILITY -- APPLICATION -- 1992 C 45: See notes following *RCW 9.94A.151*.

INDEX, PART HEADINGS NOT LAW -- SEVERABILITY -- EFFECTIVE DATES -- APPLICATION -- 1990 C 3: See *RCW 18.155.900* through *18.155.902*.

PURPOSE -- PROSPECTIVE APPLICATION -- EFFECTIVE DATES -- SEVERABILITY -- 1989 C 252: See notes following *RCW 9.94A.030*.

EFFECTIVE DATE -- APPLICATION OF INCREASED SANCTIONS -- 1988 C 153: See notes following *RCW 9.94A.030*.

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

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

EFFECTIVE DATE -- 1986 C 301 B 4: "Section 4 of this act shall take effect July 1, 1987." [1986 c 301 B 8.]

SEVERABILITY -- 1986 C 257: See note following *RCW 9A.56.010*.

EFFECTIVE DATE -- 1986 C 257 B 17-35: See note following *RCW 9.94A.030*.

EFFECTIVE DATES -- 1984 C 209: See note following *RCW 9.94A.030*.

EFFECTIVE DATE -- 1983 C 163: "Sections 1 through 5 of this act shall take effect on July 1, 1984." [1983 c 163 B 7.]

EFFECTIVE DATE -- 1981 C 137: See *RCW 9.94A.905*.

EFFECT OF AMENDMENTS.

2000 c 226 B 2, effective June 8, 2000, in (4), substituted "*RCW 9.94A.150(1)*, (2), (3), (6), (8), or (9)" for "*RCW 9.94A.150(1)*, (2), (3), (5), (7), or (8)"; and in (13), added (c), redesignating the existing provisions as (13)(a), (13)(b), and (13)(d), and in (13)(b) adding "For an offense committed prior to July 1, 2000" at the beginning and "whichever period ends later" at the end of the first sentence.

2000 c 43 B 1, effective June 8, 2000, substituted "(6), (8), or (9)" for "(5), (7), or (8)" in last sentence of (4); added language beginning with "and" in (6)(a)(iv); added (6)(b)(iv); inserted language pertaining to being found subject to a deportation order in (6)(c); added (6)(c)(ii); inserted "community custody and" preceding "earned early release" in (6)(e); deleted "not sentenced under subsection (6) of this section" following "69.52 RCW" in (11)(a); added (11)(a)(iii); and made stylistic changes.

1999 c 324 § 2, effective July 25, 1999, in (4), designated the former first and second paragraphs as (a) and (b) respectively, and added (c).

1999 c 197 § 4, effective July 25, 1999, substituted "a felony that is not a violent offense or sex offense" for "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" in (6)(a)(i); in (6)(a)(ii), inserted "current or" and substituted "sex offense or violent offense" for "felony"; added "For a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW" to the beginning of (6)(a)(iii); added (6)(a)(iv); in (6)(b), deleted "midpoint of the" preceding "standard" in the first sentence, and deleted the former last sentence; deleted "one year of concurrent community custody and community supervision that" following "impose" in the language following the first paragraph; redesignated (6)(b)(i) through (6)(b)(iii); rewrote present (6)(b)(i); inserted "may prohibit the offender from using alcohol or controlled substances and" in the second undesignated paragraph of (6)(b)(iii); added (6)(b)(iii)(G); and rewrote (6)(c) and (e).

1999 c 196 § 5, effective July 25, 1999, redesignated the internal provisions of (5); substituted "a term of community supervision or community custody as specified in (b) of this subsection" for "up to two years of community supervision" in (5)(a); substituted "the period specified in (b) of this subsection" for "two years" in (5)(a)(ii); deleted "the court and" following "directed to" in (5)(a)(v); added (5)(b) and (c); in (7), inserted "until July 1, 2000" and "and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in subsection (11)(b) and (c) of this section"; added (8)(d); redesignated the internal provisions of (9)(a), inserting "but before July 25, 1999" following the second occurrence of "July 1, 1988," in (a)(i) and inserting (a)(ii); in (9)(b), inserted "but before July 1, 2000" following the second occurrence of "July 1, 1999," and deleted "early" following "earned" in the second sentence; inserted "but before July 1, 2000" in (10)(a); inserted (11) and redesignated the remaining subsections; added the last sentence in present (15)(b); inserted "community custody" in the first sentence of (16); and added present (25).

1999 c 147 § 3, effective July 25, 1999, added present (24).