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STATE OF WASHINGTON

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Court of Appeals of Washington
Division II

In the Matter of Release
From Personal Restraint
of:
Mark Lee Miller

Personal Restraint Petition

Mark Lee Miller
265210
Petitioner, Pro se
PO Box 900
Shelton WA 98584

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Court of Appeals of Washington
Division II

In the matter of the Application for release from Personal Restraint of: Mark Lee Miller, Petitioner.	Personal Restraint Petition RAP 16.3

A. Status of Petitioner

1. Mark Lee Miller, petitioner, pro se, 2321 Dayton Airport Rd., PO Box 900, Shelton, WA, 98584, Applies for release from confinement.

2. Petitioner is now in custody pursuant to an order of the Indeterminate Sentence Review Board (ISRB) revoking the parole granted on 3 February 2010 - for Clark County 79-1-00126-1.

3. Petitioner was sentenced after plea of Guilty to 40-years on Robbery 1st degree on 11-11-79.

4. The Judge who imposed sentence was the honorable J. Dean Morgan [Former A.C.J. of Div. II].

5. Petitioner's Lawyer at trial was Darrell E. Lee.

6. Petitioner did not appeal from the Decision of the trial Court.

7. In 2009, Petitioner asked the Washington Supreme Court for Relief based upon actions committed by the ISRB in 2008. The petition was dismissed after the ISRB agreed to provide Petitioner with a New hearing.

8. Petitioner prosecuted the personal Restraint Petition pro se.

9. For a complete Statement of facts relevent to the petition, see Part B, infra.

B. Grounds for Relief

Petitioner claims Seven (7) Grounds upon which this court should grant Relief.

B.1 First Ground:

Does the repeal of the Termination Provision of the ISRB [RCW 9.95.0011] contained in 3ESSB 6151 [Laws of 2001, 2d Sp. Sess, c 12] violate Art II, Sec 19, Washington Constitution?

B2 Second Ground:

Is the ISRB required to provide a parolee minimal due process before revoking a CDFS at the request of the Department?

B3 Third Ground:

Does the Department have Legal Authority to request the ISRB to revoke the CDFS of an offender not under the jurisdiction of the Department?

B4 Fourth Ground:

Does the ISRB's failure to hear charged violations within thirty days constitute a denial of due process.

B.5 Fifth Ground:

Did the Department have Legal Authority to Require Petitioner to Provide a urine specimen Directly to the Department on 27 December 2012?

B.6 Sixth Ground:

Does an uncorroborated result from an on-site drug screen violate the hearsay prohibition of WAC 381-70-400?

B.7. Seventh Ground:

Does an uncorroborated result from an on-site drug screen ~~violate~~ constitute "Some Evidence"

Facts Relevant to Petition

1. On 31 December 2009, the Indeterminate Sentence Review Board (ISRB) paroled Petitioner to a Conditional Discharge from Supervision (CDFS) effective 3 February 2010. [See Appendix-A-, Ex #1].

2. Over the next eighteen months Petitioner had several encounters with officers of the Goldendale Police Department (GPD); to date all charges have resolved favorably to petitioner.

3. On 9 December 2011, Petitioner was arrested by GPD officer Chris Wyzkowski on the charge of "Unlawful Harboring of a Minor", because Petitioner refused to allow Wyzkowski to enter the residence to search for his daughter without a warrant.

4. Under the facts alleged Petitioner was at least immune from prosecution - and at most the offense was legally impossible for Petitioner to commit.

5. The charge of "Unlawful harboring of a Minor" was later dismissed on Petitioner's Pro se motion.

6. Prior to the dismissal of the charge, officer Wyzkowski contacted Community Corrections Officer (CCO) Ronda Nielsen, of the Department of Corrections (Department) and requested the Department's assistance against Petitioner.

7. On 20 December 2011, Nielsen submitted what is recorded as "Board Special", requesting the ISRB revoke Petitioner's CDFS and return Petitioner to active supervision under the jurisdiction of the Department, and Nielsen.

8. On 29 December 2012, the ISRB revoked Petitioner's CDFS and imposed conditions of supervision. Condition number three (3) provides as follows:

9. "You will submit to periodic and random drug and/or Alcohol monitoring through an agency approved by your CCO and sign a full release of information permitting the monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB).

10. At no time during this process did Nielsen, the Department, GPD, or the ISRB notify Petitioner of any allegations of misconduct, or apprise Petitioner of the requested sanctions.

11. At no time prior to the ISRB actually revoking Petitioner's parole was Petitioner permitted to present evidence or testimony on his own behalf.

12. The ISRB has never provided petitioner a statement of the allegations charged against him in support of the Department's request to revoke Petitioner's CDFS. Neither has the ISRB provided Petitioner a written statement of the evidence relied upon and the reason for the Decision revoking his CDFS.

13. On 26 October 2012, Petitioner was arrested on a warrant of the ISRB and charged with the following three (3) violations:

14. #1) failing to report to DOC as directed since 8/29/2012 in Goldendale, WA.

15. #2) failing to report a change of residence on or about 09/12/2012; and,

16. #3) failing to obtain a drug/Alcohol evaluation as directed on 07/26/12 [see Appendix-A- Ex#3 and Ex#7, pg 1].

17. Petitioner was served with the foregoing violations on 30 October 2012 [See Appendix-A-, Ex#3]

18. On 7 December 2012, the ISRB ordered Petitioner's conditional release from the Klickitat County Jail pending an on-site revocation hearing of 8 January 2013. [see Appendix-A-, Ex#6]. On the date of Petitioner's release from Jail thirty-eight days had elapsed since service of the charged allegations. A total of seventy (70) days would elapse before the hearing scheduled.

19. On 27 December 2012, Petitioner reported to the Department field office in Goldendale, WA., as instructed. CCO3 Nielsen then ordered Petitioner to provide a urine specimen to the Department for on-site testing.

20. Petitioner complied with the order despite its being in direct contravention of the order

of the ISRB. Petitioner further reminded Nielsen he was taking prescribed medications. Nielsen next informed Petitioner the test indicated a positive result for both opiates and methamphetamine.

2.1 Petitioner requested to see the test results. After personally viewing the result strip, Petitioner indicated that a visible line was apparent in each of the requisite slots—Thus, the result was negative.

2.2. Both Department employees argue for a Result contrary for that apparently indicated, so petitioner asked to have confirmatory retesting done to the specimen using GC/MS.

2.3 Nielsen stated it did not meet Departmental Policy criteria for retesting. Nielsen further indicated that because she had an abiding belief in the result of the test, policy allowed her to deny confirmatory retesting. [Appendix-A-, Ex#9, DOC 420.380, Attachment 1].

2.4 Nielsen further failed to inform Petitioner that policy did permit him to provide a second specimen on-site for immediate testing if he was not in accord with the accuracy or results of the first test. [DOC 420.380, VIII (2)].

25. Nielsen then ordered Petitioner's arrest, and the destruction of both the initial specimen, as well as the resultant test strip.

26. On 8 January 2013, Petitioner appeared before ISRB member Thomas Sahlberg on all five charged violations.

27. Defense Counsel Christopher Lonz motioned to have counts #4 and #5 (relating to the alleged U/A results) dismissed under WAC 381-70-400 - As the allegations were based entirely on uncorroborated hearsay that would not be admissible in a superior court proceeding.

28. Sahlberg denied the motion, but declared any finding would not be based upon hearsay. [See Appendix-A-, Ex #7, Rulings].

29. At the conclusion of the hearing Sahlberg found Petitioner in violation of all allegations except #2 (Changing Residence), and on 17 January 2013 Revoked Petitioner's Parole and ordered his return to prison.

** Facts Relevant to Art II, Sec 19 **

30. Article II, Section 19, of the Washington Constitution provides that:

31. "No bill shall embrace more than one subject, and that shall be expressed in its title."

32. In 1997, our Legislature amended RCW 9.95.0011 pursuant to HB 1646 [See Laws of 1997, c 350 s 1, attached as appendix -D-].

33. In relevant part the Amendment provides:

34. "The indeterminate sentence review board shall cease to exist on June 30, 2008"

[Hereinafter "the termination provision"].

35. The ISRB exerts authority and jurisdiction over all persons convicted of offenses committed prior to July 1, 1984.

36. Petitioner is subject to the jurisdiction of the ISRB based upon his conviction for Robbery in the first Degree: a non-sex offense.

37. In 2001, our Legislature enacted third Engrossed Substitute Senate Bill 6151 [3ESSB 6151]: "An Act Relating to the Management of Sex Offenders in the Civil Commitment and Criminal Justice Systems."

38. Section 501(1) of the act repealed the termination provision of the ISRB [See Appendix-E-, p 91, sec 501].

39. Other sections of the Act Amended the entire Indeterminate Sentencing System, which affect all NON-sex offenders still serving indeterminate sentences.

40. Petitioner is not a sex offender, and is a member of the class of offenders whose rights and liabilities are affected by the Act.

41. A Personal Restraint Petition is the proper vehicle for an inmate to challenge the Constitutionality of a Legislative Act.

42. This Petition follows.

First Ground

1.1 Does the Repeal of the termination Provision of the ISRB [RCW 9.95.0011 (1997)] Contained in ESSB 6151 [2001, ch 12, 2d special sess] violate Article II, Section 19, Washington Const?

Argument

1.2 Article II, Section 19 of the Washington Constitution provides: "No bill shall embrace more than one subject, and that shall be expressed in its title." State v. Thomas, 103 Wn App 800, 806, 14 P3d 854 (2000, Div 2).

1.3 Our Supreme Court has interpreted art. II, sec. 19 as two separate prohibitions: (1) No bill shall embrace more than one subject; and (2) The Subject of every bill shall be expressed in its title. Thomas, supra, citing Patrice v. Murphy, 136 Wn 2d 845, 852, 966 P2d 1271 (1998).

1.4 Legislative titles may be either general or restrictive. A general title is constitutionally sufficient if it gives such notice as should reasonably lead to an inquiry into the body of the act itself, or indicates to an inquiring mind the scope and purpose of the Law. Thomas, supra.

1.5 A restrictive title, on the other hand, "is one where a particular part or branch of legislation is carved

out and selected as the subject of the legislation. A restrictive title is "narrow" as opposed to "broad", and it is of specific rather than general import. Thomas, 103 Wn App at 808. A restrictive title will not be liberally regarded and provisions not within its subject are not given force. Id.

1.6 In the matter now presented, it is clear that "An Act Relating to the Management of Sex Offenders in the Civil Commitment and Criminal Justice Systems" [Appendix -E-] carves out the narrow subject of "the management of sex offenders." The question then to be decided is whether any part of this act can constitutionally affect the rights and liabilities of non-sex offenders under the state's indeterminate sentencing laws?

1.7 In search of the answer to this question, Petitioner asks this court to closely review its reasoning described in Thomas (103 Wn App at 812). There, this court reasoned that "if the legislature attempted to include the entire Criminal Profiteering Act in this bill, that would have plainly violated the constitutional mandate."

1.8 Likewise, if the Legislature attempted to include the entire indeterminate sentencing system in Chapter 12, laws of 2001, 2d special session, this would

clearly violate the constitutional mandate - would it not? Nonetheless, in effect, this is exactly what the Legislature did. [See Appendix - E -, Ch 12, Laws of 2001, 2d sp sess].

1.9 Washington Laws, title 9, chapter 95, are entitled "Indeterminate Sentences," and impact all persons convicted of offenses committed before July 1, 1984. The Indeterminate Sentence Review Board (ISRB) [formerly the Board of Prison terms and Paroles] oversees the sentences of all offenders under the Indeterminate Sentencing System - regardless of the Catagory of offense.

1.10 Pursuant to RCW 9.95.0011 [Laws of 1997, ch 350, sec 1] The ISRB would "cease to exist on June 30, 2008."]. In accord with this provision, indeterminate sentences and sentencing provisions would pass into history on that date for all offenders convicted of committing offenses before July 1, 1984. [See Appendix - D -].

1.11 Petitioner directs this courts attention to sections 307 through 353 (inclusive); Amending RCW 9.95.005 through 9.95.900, and adding new sections to RCW 9.95. As well as section 501(1) [the Repealer]. (See Appendix - E -, pp 1, 38-42, 55-73]. These provisions affect the rights and liabilities of all persons convicted of offenses committed before July 1, 1984.

1.12 The foregoing amendments are not restricted to sex offenders, but affect and impact the rights and liabilities of all persons serving sentences for crimes committed before July 1, 1984 [see Appendix-E-].

1.13 The Act is entitled "An Act Relating to the management of sex offenders in the Civil Commitment and criminal Justice Systems." That title carves out a very narrow "niche" or subject: i.e., the Management of Sex offenders.

1.14 Two questions must therefore be answered by this court:

1.15 (1) Does the Repeal of the Termination provision of the ISRB and the Amendments to provisions of all indeterminate sentencing statutes fall within the penumbra of the narrow title of the Act; and,

1.16 (2) If the first question is answered in the negative, this court must decide if the act authorizes the

independent creation of a "Community custody board" to over-see the remaining constitutional Provisions.

1.17 Petitioner believes the termination provision is clearly outside the narrow scope of subject matter carved out by the title, and therefore should be deemed a nullity. [See Thomas, 103 Wn App at 807, "A restrictive title will not be generally regarded and provisions not within its subject will not be given force or effect"].

1.18 However, Petitioner does not argue that, due to this clear and apparent constitutional deficiency the entire act must fail. [See Thomas, 103 Wn App at 807, citing Wash. Fed'n of State Employees v. State, 127 Wn 2d 544, 555, 901 P2d 1028 (1995) A court will liberally construe Article II, section 19, so as to sustain the validity of the legislative enactment.]

1.19 First, section 504 of the act provides:

1.20 "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." [See Appendix-E-, p 91, Sec 504].

1.21 The intent of the legislature was to create a "Community Custody Board" separate and distinct from a "Parole Board". [See RCW 9.95.0001 - Definitions - (2) "Community Custody" and (5) "Parole"]. See also RCW 9.95.002, providing that this "Community Custody Board", in fulfilling its duties under the provisions of Chapter 12, Laws of 2001, 2d sp. sess., shall be considered a parole board as that concept was treated in law under the state's indeterminate sentencing statutes.

1.22 Petitioner will argue that, as in Thomas, the Act can survive due to its severability clause. The ISRB can cease to exist as a "Parole Board" having jurisdiction over pre-1984 offenders, and yet remain as

a constitutional "community custody board" having jurisdiction over today's sexually violent predators, as the legislature intended.

Summary

1.23 The question before this court is whether an Act strictly related to the management of sex offenders can modify, alter, amend, or repeal statutes and provisions affecting the rights and liabilities of all persons serving indeterminate sentences — without regard to their offense of conviction.

1.24 Our courts have repeatedly held that a restrictive title will not be generally regarded and provisions not within its subject will not be given force or effect.

1.25 Declaring the relevant sections void does not prevent the remainder of the act from remaining constitutional due to its severability clause.

II - Second Ground

2.1 Is the ISRB Required to Provide a Parolee minimal Due Process before revoking a CDFS at the request of the Department?

Argument

2.2 "For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and that they may enjoy that right they must first be notified." Fuentes v. Shevin, 407 U.S. 67, 80, 92 S. CT 1983, 32 L. ed 2d 556 (1972), citing Baldwin v. Hale, 1 Wall 223, 233, 17 L. ed. 531 (1863).

2.3 "A meaningful opportunity to be heard means 'at a meaningful time and in a meaningful manner.' Mathews v. Eldridge, 424 U.S. 319, 333, (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 85 S.CT. 1187 (1965)). The United States Supreme Court has consistantly held that some form of hearing is required Before an individual is deprived of a [Protected] interest. Downey v. Pierce County, 165 Wn App 152, 165 at ¶ 20 (2011, Div II) citing Mathews, 424 U.S. at 333 (emphesis in Downey)

2.4 Determining what process is due in a given situation requires consideration of (1) the private

interest involved; (2) the risk that the current procedures will erroneously deprive a party of that interest; and (3) the governmental interest involved. Downey, supra. (internal citations omitted).

2.5 Department of Corrections CCO Ronda Nielsen (through e-mail correspondence with ISRB hearing officer Richard P. LaRose) submitted numerous allegations of misconduct to the ISRB, and on 20 December 2012 formally requested the ISRB to revoke Petitioner's COFS. [See Appendix -A-, Ex #4, Pg 1; and Ex #7, page 5].

2.6 At no time throughout this process did either the ISRB or Department notify Petitioner of allegations charged, or of requested sanctions. [this Court may take judicial notice of the dismissal of the allegation underlying the Department's request on Defendant's Pro se motion]. In addition, Nielsen had full knowledge of the unfounded nature of the charge at the time she initiated the "Board Special" request.

2.7 Without regard to the baseless nature of the Allegations charged against Petitioner - both

the Department and ISRB denied Petitioner the two most fundamental and bedrock elements we find essential to the concept of legal process: (1) Notice of the allegations charged (as well as the requested sanctions); and (2) A meaningful opportunity to be heard Before governmental action can deprive Petitioner of a protected interest in both life and liberty. (See Downey, supra; and also Restraint of Adams, 132 Wn App 640, at ¶ 39 (2006, Div 1) holding inmates are entitled to minimal due process before Department may cancel established release date).

2.8 The function of legal process, as that concept is embodied in the constitution and in the realm of fact finding, is to minimize the risk of erroneous decisions. Greenholtz v. Nebraska Penal and Correctional Complex, 99 S. Ct 2100, 442 U.S. 1, 13 (1979).

2.9 Petitioner does not argue that he is necessarily entitled to the full panoply of rights as set forth in RCW 9.95.120-.125 and WAC 381-70 (see also Gagnon v. Scarpelli, 411 U.S. 778 (1973). However, Petitioner does maintain that he must at least be entitled to the minimal due process accorded

inmates accused of misconduct. (Accord Wolff v. McDonnell, 418 U.S. 539 (1974)).

2.10 Minimal due process means the [person] must:

(1) Receive notice of the alleged violations;
(2) Be provided an opportunity to present documentary evidence and call witnesses;
(3) Receive a written statement of the evidence relied upon and the reason for the ~~decision~~ disciplinary action.

2.11 [In re Burton, 80 Wn App 573, 582 (1996) citing Dawson v. Hearing Comm., 92 Wn 2d 391, 397, 597 P2d 1353 (1979) citing Wolff, 418 U.S. at 563-66].

2.12 Petitioner would like to point out that our Supreme Court has held these protections apply for actions as minor and tenuous as changing a tentative parole release date [see Adams, 132 Wn App at ¶ 45, citing Monohan v. Budman, 84 Wn 2d 922, 923, 814 P2d 635 (1991)].

2.13 The question being presented is simple: can the ISRB revoke petitioner's CDFS based

entirely upon bold assertions and conclusory allegations of Department officers without providing Notice of the allegations to the Petitioner, as well as providing him an opportunity to present evidence and testimony to challenge the accuracy and veracity of the charges levied against him?

2.14 The rule is that Before governmental action can deprive a citizen of a life, liberty, or property interest, "Some form of hearing is required." (Downey, supra). "And that they may enjoy that right, they must first be notified." Fuentes, 407 U.S. at 80.

2.15 In application to the facts now presented, the incontrovertible truth clearly establishes Petitioner was denied every fundamental element essential to the principle of due process, and the concept of ordered liberty.

2.16 Petitioner was Denied Notice of the Allegations and requested disciplinary Action.

2.17 Petitioner was Denied an opportunity to present evidence and testimony

to challenge the accuracy and veracity of the allegations charged against him; and,

2.18 Petitioner was denied a written statement of the evidence relied upon, and the reason for the decision.

2.19 These are the minimum procedural protections our constitutions provide to the most heinous offender, secreted in the darkest recesses of our institutions, when accused of violating the simplest of rules. [See Burton, supra]. Our Constitution does not afford less to a Parolee - and it expressly forbids the kind of Star Chamber proceedings undertaken here.

2.20 If the court examins RCW 9.95.080 [see Appendix -E-, sec 328] (authorizing the board to revoke "any order theretofore made...," based upon an offender's misconduct, it will discover that - even here - "such revocation and redetermination shall not be had except upon a hearing before the [board]. At such hearing the convicted person shall be present and entitled to be heard and may present evidence and witnesses in his or her behalf." (my emphasis).

2.21 Our Constitution, statutes, and regulations protect petitioner from the specific actions undertaken here.

III - Third Ground

3.1 Does the Department have Legal Authority to Request the ISRB to revoke the CDFS of an offender not under the jurisdiction of the Department?

Argument

3.2 On 31 December 2009, the ISRB entered an order of parole to CDFS effective 3 February 2010. Pursuant to that order and CDFS, the Department was divested of authority or jurisdiction over petitioner. (Accord RCW 9.95.0001(5) "Parole" means that portion of a person's sentence for a crime committed before July 1, 1984, served on conditional release in the community subject to board controls and revocation and under Supervision of the Department. (Emphasis added); see also WAC 381-70-040, which provides that if a parolee is arrested the CCO shall notify the ISRB and state whether an order of suspension, arrest and detention has been (1) issued with approval of a supervisor; issued without the supervisor's approval; (3) requested and not approved; or (4) not requested [See Appendix-C-, pg 2].

3.3 In accord with the foregoing provisions, Petitioner was not being supervised by the Department - thus,

Petitioner is not subject to the Authority or jurisdiction of the Department.

3.4 Nonetheless, if a Parolee is arrested on other criminal allegations, WAC 381-70-040 authorizes the Department to issue an Order of Suspension, arrest, and detention. This action has the following two effects:

3.5 (1) It authorizes the Department to request modifications in the Supervision conditions (including a CDFS); and,

3.6 (2) It invokes all of the rights and procedural protections found in RCW 9.95.120-.126, and WAC 381-70.

3.7 The rights of Petitioner are encapsulated in the foregoing statutes, regulations, and board orders. [See Appendix -A-, Ex #1; Appendices -B- and -C-]. Absent a breach by petitioner, the Department lacks authority to request the ISRB to modify Petitioner's CDFS, and unless the Department

submits a request for modification of a Parolee's supervision status in accord with the governing statutes and Board rules, the ISRB is divested of the legal authority to modify, alter, or amend those release conditions. See Young v. Harper, 117 S. Ct. 1148, 1152, 520 U.S. 143 (1997) "... The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions. "[Citing Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. ed 2d 484 (1972)].

3.8 Petitioner does not argue that the ISRB cannot alter, amend, or modify release conditions. Nor does Petitioner argue that the Department can never request modification of a Parolee's release conditions. Petitioner argues that Department's requests to the ISRB must be in accord with statutes and regulations that authorize the request and provide procedural protections to the rights of the Parolee.

3.9 Petitioner further argues that before the ISRB may implement modifications

or amendments to a Parolee's release conditions that substantially impact his liberty, he must be provided minimal procedural protections.

3.10 There exists a natural and well-regulated system by which the Department makes recommendations to the ISRB (see WAC 381-70-040, and RCW 9.95.120-.125, Appendices -B- and -C-). [See also RCW 9.95.080]. These statutes and Regulations provide a small system of checks and balances, with an overall purpose to afford some procedural protections to the rights of those persons under the jurisdiction of the ISRB. More specifically, once the Department issues the order of suspension, a parolee has an incontrovertible right to a hearing.

3.11 The question is whether the Department may legally request the ISRB to revoke the CDFS of a person not under the authority or jurisdiction of the Department.

3.12 The rule is that where regulations exist, they must be followed; Failure to abide by these protocols denies a person due process of law.

IV - Fourth Ground

4.1 Is it a Denial of Due Process when the ISRB fails to hear charged violations within thirty days?

Argument

4.2 "Due Process" - as that constitutional term of art is employed in the legal Fact-finding context - means "the process due," in a given circumstance. With regard to the rights and privileges afforded to persons accused of violating conditions of parole, that process is defined at RCW 9.95.120 and WAC 381-70-160. [See Appendices -B- and -C- (respectively)].

4.3 In relevant part, RCW 9.95.120, provides:

> "Whenever a paroled prisoner is accused of a violation of his or her parole, ... he or she shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he or she is served with charges of the violations of Conditions of Parole after his or her arrest and detention ...." [See Appendix -B-, pg 1] (Emphasis Added).

4.4 In accord with the foregoing provision, Petitioner's right to a hearing within thirty

days of service of the charged violations is without question. The language is mandatory, and identicle language is reiterated at WAC 381-70-160 (1) - the Board's own rule respecting a parolee's rights.

4.5 The record is clear and incontrovertible - Petitioner was served with violations one through three on 30 October 2012. [See Appendix -A-, Exhibit #'s 3, 4, and 7]. The Board's own rules require these to be heard within thirty days. It is an essential element to the rule making process of administrative regulations that, once an agency adopts a rule, it must then abide by that rule.

4.6 It is abundantly apparent that these matters were not heard until 8 January 2013 - A total of seventy days from the date of service. Moreover, the record is devoid of Rhyme or reason for this in-ordinate delay.

4.7 At this juncture, the Board may now attempt to argue the thirty-day limitation of action as inapplicable based upon the board's issuance of its conditional release from custody on 5 December 2012 (effective 7 December 2012).

4.8 The fallacy inherent in this argument is three-fold:

4.9 (1) Thirty-eight days had already elapsed at the time of petitioner's release;

4.10 (2) Nothing in statute or rule requires the parolee to be in custody. The right inheres in "<u>When</u>" the notice is served — Not "Where" Notice is served.

4.11 (3) An additional thirty-two days elapsed <u>after</u> petitioner's release from custody.

4.12 It should be arguably clear that both statute and rule are to be considered "limitations of action", and (absent some form of justifiable tolling appearing in the record) the Board lost jurisdiction to hear these allegations on 29 November 2012.

4.13 Without jurisdiction to hear the allegations the board should be impotent to do anything other than enter an order of dismissal.

4.14 Petitioner asks this Court to vacate Allegations one, two, and three with prejudice.

V - Fifth Ground

5.1 Did the Department have Legal Authority to Require Petitioner to Provide a urine specimen Directly to the Department on 27 December 2012?

Argument

5.2 Condition #3 of the Order revoking COPS and imposing conditions of supervision provides:

5.3 "You must submit to periodic and random drug and/or alcohol monitoring through an agency approved by your CCO and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO, and the Indeterminate Sentence Review Board (ISRB)"

5.4 This document is signed by Thomas Sahlberg (ISRB), counter-signed by Mark L. Miller (Petitioner) and Witnessed by Debie R. Gerner (Department).

5.5 This instrument of agreement further contains an "understanding clause," which provides (in relevent part) "I fully understand and agree, in consideration of granting parole, to observe and abide by said conditions." These provisions combine to demonstrate the intent of

these parties is that in exchange for granting Petitioner parole, he agrees to submit to drug and/or alcohol monitoring through an agency approved by his CCO. [Appendix -A-, [x #2].

5.6 Petitioner is only subject to those conditions of supervision authorized by the Board. Furthermore, the Department may only enforce those conditions authorized by the Board, and in the manner provided for in the order.

5.7 Under a plain and simple reading of the condition, the Department lacked legal authority to: (1) require Petitioner provide a urine specimen directly to the Department; and (2) If (assuming arguendo) the Department possessed transient authority to obtain the specimen directly from Petitioner in order to transmit the specimen to the approved agency for testing, the Department lacked legal authority to directly perform testing on the specimen obtained from petitioner.

5.8 "We impute an intention corresponding to the reasonable meaning of the words used, and give words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent." Wright v. Dove

Johnson Insurance, Inc, 167 Wn App 758, ¶ 15, 275 P3d 335, 346 (2012, Div 2). citing Hearst Communications, Inc. v. Seattle Times Co., 154 Wn 2d 493, 503-04, 115 P3d 262 (2005), as cited by Oliver v. Flow International Corp., 137 Wn App 655, 659, 155 P3d 140 (2006, Div 1).

5.9 It is clearly apparent under the terms memorialized in writing as condition #3, Petitioner must submit to drug and/or alcohol monitoring through a third-party agency approved by Petitioner's CCO. No amount of etimological parsing can convey to the Department the legal authority to contravene these written mandates.

5.10 A court does "not interpret what was intended to be written, but what was written." Wright 167 Wn App at ¶ 18, citing Oliver, 137 Wn App at 659, citing Hearst, 154 Wn 2d at 504.

5.11 To prove the intent of contracting parties, a party may offer extrinsic evidence of the context surrounding an instrument's execution. But extrinsic evidence is relevent only to determine the meaning of specific words and terms used, not to show an intention independent of the instrument or to vary, contradict, or modify the written word. Wright, supra;

5.12 It is manifestly evident that condition #3 requires petitioner "to submit to periodic and random drug and/or alcohol monitoring through an agency approved by [Petitioner's] CCO...." It is further evident that because Petitioner must sign a full release of information allowing the treatment or monitoring agency to release information to Petitioner's CCO (and the ISRB) this agency <u>cannot</u> be the Department.

5.13 A fundamental principle of Washington Contract Law is that a party to a contract which he has voluntarily signed will not be heard to declare that he did not read it, or was ignorant of its contents. <u>Washington Federal Savings and Loan v. Alsager</u>, 165 Wn App 10, 15, ¶ 9, 266 P3d 905 (2011, Div 1). The whole panoply of contract law rests on the principle that one is bound by the contract which he voluntarily and knowingly signs. Id.

5.14 The uncontestible fact that the Department lacked the "authority of law" ~~required~~ necessary in order to require Petitioner to provide a specimen directly to the Department for testing, lays the entire matter on the doorstep of Article 1, Section 7, of our State Const.,

(as well as Amendment IV, U.S. Constitution). Absent the legal authority to obtain and test Petitioner's specimen, the Department's actions clearly constitute an illegal search and seizure under both constitutional provisions. (Accord State v. Ladson, 138 Wn 2d 343, 979 P2d 833 (1999) Holding that pretextual stops are "seizures" made "without authority of Law" and thus are prohibited by our State Constitution).

5.15 The question now before this court is whether the Department had legal authority to require Petitioner provide a urine specimen directly to the Department on 27 December 2012?

5.16 The rule is that where rights and duties are memorialized in writing, a court does not interpret what was intended to be written, but what was written. Wright, 167 Wn App at ¶18.

5.17 The entire panoply of contract law rests on the principle that one is bound by the contract which he voluntarily signs. Wash Fed'L Savings & Loan, 165 Wn App at ¶9.

5.18 The terms of the condition drafted by the Board - at the behest of the Department - to be

enforced upon Petitioner, expressly require all drug and/or alcohol monitoring to be performed by a third-party agency approved by Petitioner's CCO.

5.19 Under these same terms the Department is clearly and incontrovertibly prohibited from: (1) Requiring Petitioner to provide specimens directly to the Department; and/or (2) Directly testing any specimen provided by petitioner.

5.20 Because the Department lacked legal authority to either obtain, or directly test any specimen of Petitioner's — the actions of the Department not only violate the conditions of Supervision, they violate Article 1, Section 7, of our State Constitution.

5.21 Because the actions of the Department ~~are~~ are repugnant to our Constitution, as well as the intent of the parties as expressed in Condition #3, this Court should reverse and vacate violations #4 and #5.

VI - Sixth Ground

6.1 Does an uncorroborated result from an on-site drug screen violate the hearsay prohibition of WAC 381-70-400?

Argument

6.2 WAC 381-70-400, provides in relevant Part:

6.3 "... If the sole evidence to support the allegation is hearsay that would be inadmissible in a superior court proceeding, and is not substantiated or corroborated, the board shall not enter a finding of guilt...." (Emphasis Added). See Appendix -C-.

6.4 "Hearsay" is defined as an out of court statement offered as proof of the matter in issue.

6.5 Under the facts now being reviewed, there exists not the least scintilla of evidence in support of the allegations charged as #4 and #5 - Relating to allegations of using drugs.

6.6 As a preliminary matter, the alleged result of the on-site drug screen has been contested from the outset. Only the declarations and testimony of the Department are offered in support of the allegation — both the specimen and test strip were destroyed at the direction of CCO 3 Ronda Nielsen.

6.7 The question presented to the ISRB is whether Petitioner used drugs, thereby violating conditions of his parole. In support of the Department's proposition that Petitioner violated this condition, the Department provides testimony indicating that an on-site drug screen [that is not admitted into evidence] provided a positive indication.

6.8 Even, assuming arguendo, the on-site test did return a positive result, the evidentiary deficiency is two-fold: (1) There exists nothing in the record aside from the Department's testimony to support that allegation; and (2) No evidence or testimony was offered to establish the reliability of the testing procedure.

6.9 Department officers have no special knowledge, education, or training respecting the tests accuracy, reliability, or margin for error. See Daubert v. Merrill Dow Pharmaceuticals, Inc., 113 S. CT 2786, 2797 509 U.S. 598 (1993) "... In the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error...."

6.10 Not an iota of testimony was offered at the hearing with respect to determining at what point a specimen is: (1) Determined to be positive under Department policy; (2) at what point the subject specimen was determined to have a positive result for each alleged substance; (3) No evidence or testimony was offered or presented that the test unit was in proper working order or properly calibrated; and (4) No testimony or evidence was presented with regard to the accuracy or error rate for the specified testing system.

6.11 In a nutshell, the only "evidence" offered in support of the Department's allegation

was an unsupported, arbitrary conclusion that the test produced a positive result, and that the result was accurate, without providing a foundational support to either claim. The Department then destroyed the single piece of evidence that would support their claim and lay Petitioner's challenges to rest: the testing unit itself.

6.12 This court should take special note of the Department's recent modifications to DOC 420.380 - Drug + Alcohol testing. This Policy ~~[illegible]~~ previously permitted confirmatory retesting using Gas Chromotography/Mass Spectometry (GC/MS) as well as the National Institute of Drug Abuse (NIDA) cut-off standards (250 ng/mL for opiate class compounds, and 500 ng/mL for Amphetamine class compounds) anytime an offender challenged test results. This court may also take judicial notice of the fact that confirmatory retesting has exonerated Petitioner of similar allegations on numerous prior occasions. [See Appendix-A-, Ex#7, page 3 of 6; and Ex#4, page 1 of 5, VR report ~~[illegible]~~

Submitted on 01-12-2006; VR dismissed on 01-19-2006 after confirmatory retests established no violation was committed, parole was reinstated].

6.13 The only evidence that was admitted at the hearing - or is available for judicial review - are the bold assertions of the Department that the test result was positive, without a scintilla of factual evidence on which to rest that assertion.

6.14 No court of record would allow the conclusory testimony of the Department, Nor admit the results of the Testing process, absent at least minimal scientific and foundational safeguards. Not the least of which is establishing the test's accuracy and margin for error regarding each substance tested for.

6.15 Pursuant to the Board's own Rules, WAC 381-70-400 these violations must be dismissed.

VII - Seventh Ground

7.1 Does the uncorroborated result of an on-site drug screen constitute "some evidence"

Argument

7.2 It has long been determined that prisoners are not stripped of their constitutional rights at the prison gates. Wolff v. McDonnell, 418 U.S. 539, 574 (1974). See also In re Reismiller, 101 Wn 2d 324 (1984).

7.3 Paroled offenders are entitled to even greater protections and evidentiary standards. See RCW 9.95.120; WAC 381-70-160 [Appendices -B- and -C-]; Gagnon v. Scarpelli, 411 U.S. 778 (1973).

7.4 Though closely related in principle, there are two diverse evidentiary standards applicable to these disciplinary proceedings. Parole revocation proceedings utilize a preponderence of the evidence standard [RCW 9.95.120]; and Prison disciplinary proceedings utilize the "some evidence" standard.

7.5 Petitioner addresses the issue presented under the lesser standard to establish the fallacy of the Board's reasoning.

7.6 This courts review under the "some evidence" standard is limited to determining whether an action is so arbitrary and capricious as to deny Petitioner a fair hearing. In re Burton, 80 Wn App 573, 582 (1996).

7.7 The clear and incontrovertible facts of record demonstrate precisely how arbitrary and capricious the decision of the Board is.

7.8 First, the result of the on-site test has been contested and disputed from the outset. No evidence or testimony was offered with respect to the accuracy, reliability, or margin for error of the testing unit.

7.9 No evidence or testimony was offered to establish at what point a specimen was/is considered positive for any given substance.

7.10 No evidence or testimony was offered to establish at what point the specific test utilized returned a positive result for a specific substance.

7.11 No evidence or testimony was presented to establish the testing unit used was properly calibrated and/or functioning.

7.12 Department personnel Destroyed both the specimen tested and the unit purported to give the positive result.

7.13 The Department withheld the fact that DOC 420.380 permits an offender to provide a second specimen for testing on-site if he contests the accuracy or result of the first test. [420.380 - VIII (a)].

7.14 The Department denied confirmatory retesting based upon Nielsen's abiding belief the test was accurate. Nielsen has no special knowledge, education, or training, such that her opinion as to the test's accuracy is less arbitrary or capricious than a randomly selected person. [See Appendix-A-, Ex#9, DOC 420.380 Attachment []

7.15 Evidentiary standards must be founded upon more than arbitrary speculation, or the ever-changing vagaries of Departmental Policy.

Conclusions

Under both the state and federal due process provisions of our constitutions, Petitioner is entitled to some kind of hearing before the ISRB may revoke his CDFS at the request of the Department. (Downey, supra; Fuentes; supra).

Petitioner is also entitled to a written statement of the evidence relied upon, and the reason for the disciplinary action. Burton, supra.

The Department's request to the ISRB to revoke Petitioner's CDFS was made outside of the procedural protocols set forth in WAC 381-70-040, and thus, lacked legal authority.

Violations one, two, and three were not heard for seventy days after service of the Notice of Violation; In accord with both RCW 9.95.120 and WAC 381-70-160 the ISRB lacked jurisdiction and authority to hear these allegations and they must be dismissed.

Under the express terms of Petitioner's conditions of supervision, the Department lacked legal authority

to; (1) Obtain a urine specimen from Petitioner for testing; or (2) Submit for testing any specimen provided. Because the Department lacked legal authority to obtain the specimen, the requisition of Petitioner's specimen constitutes an illegal search and seizure in violation of Article 1, Section 7, and U.S. Const., Amend. IV

WAC 381-70-400 prohibits the Board from entering a finding of guilt based solely on uncorroborated hearsay.

The only evidence admitted at the hearing in support of allegations four and five is the hearsay testimony of Department officer's.

Department officers have no special knowledge, education or training regarding the accuracy, reliability, or error margin of the utilized test.

Department officers then ordered both the specimen and test strip destroyed - and denied Petitioner confirmatory retesting using GC/MS, or the less accurate but immediately available secondary on-site test.

(Which is ~~permitted~~ permitted to an offender under current DOC 420.380 Drug testing policy).

Finally, the repeal of the termination provision of the ISRB [RCW 9.95.0011] by an act relating to the management of sex offenders violated art II, sec 19, Washington Constitution and should be deemed a nullity. [Thompson, supra].

The remainder of the act as it relates to sex offenders remains constitutional.

Relief Requested

1) Declare the repeal of the termination provision void and of no force or effect;

2) Reverse and vacate all orders of the board related to revoking/rescinding Petitioner's CDFS, and all subsequent orders.

3) Declare the ISRB is required to provide a parolee minimal due process before revoking a CDFS.

4) Declare the Department has a duty to utilize protocols established by statute and regulation when making requests to the ISRB to modify, amend, or revoke release conditions of a Parolee.

5) Declare the Department was not authorized to obtain a urine specimen from petitioner, or to test any specimen obtained.

6) Declare the on-site testing system - as used and applied - inadmissible as lacking a scientific foundation.

7) Declare WAC 381-70-400 requires a verdict of Not guilty where the only evidence offered to support the allegation is uncorroborated hearsay.

8) Order Petitioner's immediate release from custody and order the ISRB to issue a Certificate of Final Discharge.

Date: 25 March 2013

Mark L. Miller
PO Box 900
Shelton WA 98584

C. Statement of finances

1. Petitioner does ask the court to file this without requiring prepayment of the filing fee because I am so poor I cannot pay the fee.

2. Petitioner has .38¢ in his prison account.

3. I do not ask the court to appoint a lawyer for me.

4. Petitioner is not currently employed.

5. During the past twelve months Petitioner received a total of $4,700.00 as wages as a carpenter.

6. During the past 12 months, Petitioner

Did not: Get Rent payments;
Get Any Interest;
Get any Dividends;
Get Any other money.

7. During the past 12 months, Petitioner:

Did not: Have any cash except as said in answer 2.

Have any savings accounts or checking accounts.

Own Stocks, Bonds, or Notes.

8. Petitioner does not own any other property or things of value.

9. Petitioner is not married.

10. All Persons who need Petitioner to support them are listed here:

i) Cheyenne R. Miller, 17y/o, daughter

ii) Leroy A. Miller, 13y/o, son.

11. All of the bills Petitioner owes are Listed here:

a) Clark County P.O. Box 5000 Vancouver WA 98666 $5,000.00

b) Office of Support Enforcement Tacoma, WA $5,000.00

c) Verizon Communications $1,700.00

d) Sprint Communications $1,100

e) Klickitat Valley Hospital $17,000.00

D. Relief Requested

Petitioner asks this court to grant all of the Relief request at pp 49-50 infra, as well as the following declaratory and injunctive relief:

1) Declare that all persons subjected to on-site drug screening by the Department have a Right to have any suspected positive result confirmed prior to the Department issuing or Recommending sanctions.

2) Enjoin the Department from sanctioning offenders based solely on the unconfirmed result of an on-site drug screen.

PLRA IN FORMA PAUPERIS STATUS REPORT
FOR DEFINED PERIOD : 02/04/2013 TO 02/25/2013

DOC# :	0000265210	**NAME :**	MILLER MARK	**ADMIT DATE :**	02/04/2013
DOB :	12/10/1961			**ADMIT TIME :**	07:00

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
30.00	6.00	0.45	0.09

NOTE: The Average Balances are Calculated on LESS than 6 Months of Data due to Admission on 02/04/2013

E. **Oath of Petitioner**

THE STATE OF WASHINGTON)
) SS
COUNTY OF Mason **)**

After being first duly sworn, on oath, I dispose and say, that I am the petitioner, that I have read the petition. I know it's contents, and believe that the petition is true.

5 March 2013
Date

Signature of petitioner

SUBSCRIBED AND SWORN to me this 5 day of March, 2013.

JOHN S. THOMPSON
COMMISSION EXPIRES
NOTARY
PUBLIC
6-06-14
STATE OF WASHINGTON

NOTARY PUBLIC in and for the State of Washington
Residing at Mason County

My commission expires: 6/6/14

If a Notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary:

_____
_____
_____

Then sign below:
I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

Dated at _____ on this _____ day of _____, _____.
(City and State)

_____
Signature of Petitioner

_____
Print/Type Name

Pay

Appendix -A-

Exhibit #:

1 - order of Parole to CDFS, 1-pg, 12-31-09

2 - Order revoking CDFS and imposing conditions of Supervision, 1-pg, 12-29-11

3 - Request for Appointment of Counsel, 1-pg 10-30-12

4 - Notice of violation (5-pg) 11-09-12

5 - Supplemental Notice of violation (2-pg) 12-31-12

6 - Order of Conditional release 1-pg 12-05-12

7 - Findings and conclusions 6-pg 1-17-13

8 - Declaration of Mark lee Miller, 6-pg 2-25-13

9 - DOC 420.380 Attachment 1

10 - DOC 420.380 Attachment 2

RECEIVED

JAN 28 2010

INDETERMINATE SENTENCE REVIEW BOARD

STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

ADDITIONAL CONDITIONS
RCW 72.04A.070 and RCW 9.95.120

MILLER, Mark
Offender Name:

265210
DOC#:

Additional Specific Condition(s):

A. Parole to Conditional Discharge From Supervision
B. Pursuant to RCW 9.96.050, as amended by SB 5060 (1993), you will be issued a Final Discharge and Restoration of Civil Rights only when you have completed three years of parole in the community. Time spent in total confinement on a subsequent condition while on parole does not apply toward the three year dates. Should your parole be revoked prior to completion of three years in the community, a Final Discharge will not be granted. If your sentence expires before you have spent three years on parole in the community, you may request a Final Discharge. In these cases, granting a Final Discharge remains discretionary with the Board.

INDETERMINATE SENTENCE REVIEW BOARD

December 31, 2009
Date:

Member's signature

Member's signature

I have read, or have had read to me, the foregoing conditions of my community custody and have been given a copy; I fully understand and I agree, in consideration of granting of community custody, to observe and abide by such conditions. I FURTHER UNDERSTAND THAT I AM ALSO ON SUPERVISION FOR THE FOLLOWING CONVICTION(S): County Cause#

22 Jan 2010
Date:

Offender's signature:
Mark MILLER
Offender's name:
Rachel Jones, CCO
Witness's signature:

Exhibit #1 Page 1 of 1

DocuSign Envelope ID: 454C36A7-EC50-408D-9494-195C2C31F507

STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9287

ORDER OF PAROLE CONDITIONS

PRE Offenders

ADDENDUM #1

RCW 9.95.120
RCW 72.04A.070

IN THE MATTER OF:

Name: MILLER, Mark Lee
DOC#: 265210
Sent: 3/12/1991
County: Clark Cause #: 79-1-00126-1
Maximum Term: 40 years
Max Expiration Date: 12-14-2030

You are under the jurisdiction of the ISRB and on parole for the length of your statutory maximum term, or until the ISRB issues your Final Discharge. ALL CONDITIONS, EXCEPT CONDITION "A", LISTED ON THE ORDER OF PAROLE DATED 12-31-2009 REMAIN IN FULL FORCE AND EFFECT. NOTE: Conditional Discharge from Supervision has been RESCINDED. The following conditions have been added to your parole conditions:

1. You must not use, possess or control any mind or mood-altering substances, drugs, narcotics, controlled substances, or drug paraphernalia without a valid prescription from a licensed physician.
2. You must not use, possess or control any alcohol.
3. You must submit to periodic and random drug and/or alcohol monitoring through an agency approved by your CCO and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB).
4. You will not have contact with known felons without PRIOR permission of your CCO, and then only in the context of a treatment group or employment.

INDETERMINATE SENTENCE REVIEW BOARD

A98CE2CC34EA4E0
Thomas N. Sahlberg
DocuSigned By: Thomas N. Sahlberg

12-29-2011
Date of Decision:

Member's signature:

I have read, or have had read to me, the foregoing conditions of my parole and have been given a copy; I fully understand and I agree, in consideration of granting parole, to observe and abide by such conditions. I FURTHER UNDERSTAND THAT I AM ALSO ON SUPERVISION FOR THE FOLLOWING CONVICTION(S): Enter Conviction Enter Cause #

18 April 2012
Date Served on Offender:

Offender's signature:

Mark Lee MILLER
Offender's name:

Witness's signature:

Page 1 of 1

Exhibit #2

STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. * P.O. Box 40907 * Olympia, Washington 98504-0907 * (360) 493-9266
(TDD Relay 1-800-833-6388)

In the Matter of	)	REQUEST FOR APPOINTMENT OF COUNSEL
	)	
MILLER, Mark Lee	)	
	)	
No. 265210	)	
	)	
A Parolee/Community Custody Releasee	)	

I hereby request that the Indeterminate Sentence Review Board appoint counsel to assist me in my defense during the revocation hearing process.

I am indigent and cannot afford to hire an attorney to assist me.

SIGNED

DATE

The Community Corrections Officer confirms the above named offender is not able to pay for private counsel.

CCO SIGNATURE

10/30/12
DATE

PB 409 (Revised 4/2010)

Exhibit #3

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

BOARD NOTICE OF VIOLATION

REPORT TO:	Indeterminate Sentence Review Board	DATE:	11/09/12
		DOC NUMBER:	265210
OFFENDER NAME:	MILLER, Mark Lee		
AKA:	Cochise, Karate Kid	DOB:	12/10/1961
CRIME:	Robbery 1st Degree	Clark COUNTY CAUSE #:	79-1-00126-1
SENTENCE:	40 years	DATE OF PAROLE:	02/03/2010
Last Known Address:	Klickitat County Jail Goldendale, WA 98620	TERMINATION DATE:	12/14/2030
MAILING ADDRESS:	PO Box 345 Goldendale, WA 98620	STATUS:	Active
		CLASSIFICATION:	High Violent

PREVIOUS ACTION:

01/12/2006 – VR submitted.
01/19/2006 – Violation was dismissed and reinstated on Parole.
03/09/2006 – VR submitted.
10/16/2007 – Order of Reinstatement of Parole/Community Custody.
03/05/2008 – VR submitted.
03/25/2008 – Order of Reinstatement of Parole/Community Custody.
04/22/2008 – VR submitted.
05/07/2008 – Order of Parole/Community Custody Revocation and Return to State Custody.
12/17/2009 – Parole Revocation Hearing: Findings and Conclusions.
02/03/2010 – Conditional Discharge From Supervision (CDFS).
07/30/2010 - Order of Parole Suspension.
11/30/2010 - VR submitted.
12/09/2010 - CDFS reinstated.
12/20/2011 - Board-Special submitted.

Exhibit #4 Page 1 of 5

12/29/2011 - CDFS rescinded.
01/06/2012 - Order of Parole Suspension / Warrant Issued.
01/14/2012 – Mr. Miller was arrested on the warrant issued on 01/06/2012.
01/23/2012 – Violation Report submitted.
04/12/2012 – Order of Reinstatement of Parole.
06/27/2012 – Board Order for Arrest and Detention Served.
07/05/2012 – Violation report submitted.
07/13/2012 – Order of Reinstatement of Parole signed.
07/20/2012 – Board Order for Arrest and Detention served.
07/25/2012 – Violation report submitted.
07/26/2012 – Order of Reinstatement of Parole signed.
08/08/2012 – Board Order for Arrest and Detention served.
08/20/2012 – Order of Reinstatement of Parole signed.
09/06/2012 – Secretary's Warrant issued.
10/26/2012 – Arrested and served with Board Order for Arrest and Detention.

VIOLATION(S) SPECIFIED: The above-named offender has violated conditions of supervision by:

Violation 1:

Failing to report to DOC as directed since 08/29/12 in Goldendale, WA.

Violation 2:

Failing to report a change of residence on or about 09/10/12.

Violation 3:

Failing to obtain a drug/alcohol evaluation as directed on 07/26/12.

SUPPORTING EVIDENCE:

Violation 1:

On 07/26/12 the ISRB signed an Order of Parole Conditions instructing Mr. Miller to report to DOC in Goldendale on a weekly basis as directed for a period of 8 weeks. On 07/27/12 Mr. Miller signed this Order of Parole Conditions acknowledging his understanding and agreement to comply. Due to failing to report as directed on 08/08/12 Mr. Miller was served a Board Order of Arrest and Detention in the Klickitat County Jail. On 08/20/12 the Board signed an Order of Reinstatement of Parole for Mr. Miller and he was released from the Klickitat County Jail on 08/21/12. He was instructed to report to DOC on 08/28/12. He failed to report as directed thus I called his emergency contact person, his sister Angel. She indicated she didn't know where he

Exhibit #4 Page 2 of 5

was at nor how to get a hold of him. However she would stop by his house that night, I asked her to tell him to report to DOC on 08/29/12 if she saw him. She promised to give him the message. On 08/29/12 Mr. Miller did report to the DOC office as directed. When I asked why he failed to report on 08/28/12 he stated he was looking for another place to live that was cheaper than the place in Goldendale plus he wanted to get out of Goldendale and was going to Klickitat to look at a place there however his ride broke down and he never made it to Klickitat and was stuck at the bottom of the grade at a small park for a couple of nights. He stated he did not have a cell phone to call DOC. At that time I gave him a business card instructing him to report to DOC in Goldendale on 09/04/12. He agreed to do so. Mr. Miller failed to report to DOC as directed on 09/04/12. Thus on 09/05/12 I prepared a Board Order of Arrest and Detention and e-mailed it to the Klickitat County Sheriff's Office dispatch for service on Mr. Miller. On 09/06/12 I was informed by Goldendale Police Department that they could not locate Mr. Miller at his last known address thus I issued a Wanted Persons Entry Request issuing a Secretary's Warrant for Mr. Miller's arrest.

Violation 2:

On 12/29/11 an Order of Parole Conditions was signed by the ISRB indicating "all conditions except A listed on the Order of Parole dated 12/31/09 remain in full force and effect." As such he was ordered to abide by any special conditions imposed by the ISRB or any written instructions issued by a CCO. On 04/18/12 he signed a DOC Consent for Drug/Alcohol Testing form indicating that he was to report any changes in his address or telephone number to his CCO immediately.

Due to Mr. Miller's failing to report as directed and unknown whereabouts, on 09/10/12 CCS LeCompte, CCO Conrad and I attempted to contact Mr. Miller at his last listed residence. We noticed that two males where in front of the property. One was a Goldendale City Works Employee and another male who appeared to be having a severe water leak at the residence. The other male saw us pull up and went into the residence. When we knocked on the door no one came to the door. The male was not Mr. Miller and didn't look familiar to DOC. DOC also noticed a lot of materials that had not been at this residence in the past. It appeared to DOC that Mr. Miller was no longer living at that residence.

Violation 3:

On 07/26/12 an Order of Parole Conditions was signed by the ISRB ordering Mr. Miller to obtain a drug/alcohol evaluation within 15 days of release from confinement and follow all recommended treatment. He was released from confinement on 07/27/12. On 08/08/12 he was arrested for failing to report to DOC. On 08/20/12 his parole was reinstated and he was again released from confinement and reminded that he was still to obtain a drug/alcohol evaluation as previously directed on 07/26/12. To date he yet to abide by this condition of his parole.

ADJUSTMENT:

Exhibit #4 Page 3 of 5

Mr. Miller's adjustment while on parole continues to be extremely poor. He continues to fail to report as directed and has obviously changed his residence without notifying DOC and he has yet to obtain the drug/alcohol evaluation which was ordered by ISRB on the Order of Parole Conditions addendum dated 07/13/12 and 07/26/12.

It should be noted that on 10/26/12 Mr. Miller was spotted by Goldendale Police Department Officer Wyzykowski behind the IGA Market in Goldendale. When Officer Wyzykowski attempted to apprehend Mr. Miller on the outstanding DOC warrant Mr. Miller allegedly jumped out of the vehicle and started running South bound away from the officer. The officer indicated that he gave chase and yelled for Mr. Miller to stop and he did not comply and continued to run. According to Officer Wyzykowski's report he was finally able to apprehend Mr. Miller and Mr. Miller was cited for Resisting Arrest and given a court appearance of 11/08/12. Mr. Miller was then taken into custody on the outstanding DOC warrant. Furthermore, on 11/07/12 I received a telephone call from Officer Wyzykowski informing me that he would be charging Mr. Miller with Possession of Stolen Property 2nd Degree as it appeared at the time he was arrested on 10/26/12 he was in possession of jewelry that has been reported stolen to the Skamania County Sheriff's Office. Officer Wyzykowski stated that he would be providing DOC with an addendum to his previously received police report.

Mr. Miller continues to disregard directions given to him by DOC and now it appears that he is being charged with a new felony for Possession of Stolen Property 2nd Degree. Thus the following recommendation appears appropriate.

RECOMMENDATION:

I recommend that the ISRB schedule a hearing. At that hearing I recommend that Mr. Miller's parole be revoked and he be returned to state custody for a period to be determined by the ISRB.

I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.

Submitted By:

11/9/12
DATE

Ronda L. Nielsen
COMMUNITY CORRECTIONS OFFICER 3
Goldendale Field Office
228 S. Columbus, Suite 103
Goldendale, Washington 98620
Telephone (509) 773 – 5608

Approved By:

11-9-12
DATE

Catherine LeCompte
Community Corrections Supervisor

08/17/12 BJD/ RLN

Distribution: ORIGINAL - Board COPY - Attorney General, Defense Attorney, File

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Exhibit #4 page 5 of 5

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

BOARD-SUPPLEMENTAL NOTICE OF VIOLATION

DATE: 12/31/12
DOC NUMBER: 265210

REPORT TO: Indeterminate Sentence Review Board

OFFENDER NAME: MILLER, Mark Lee
AKA: Cochise, Karate Kid
CRIME: Robbery 1st Degree
SENTENCE: 40 years

DOB: 12/10/1961
Clark COUNTY CAUSE #: 79-1-00126-1
DATE OF PAROLE: 02/03/2010

CHOOSE ONE:

Current Location:
Klickitat County Jail
Goldendale, WA 98620

Last Known Residence:
1045 Knotty Pine Rd.
Goldendale, WA 98620

TERMINATION DATE: 12/13/2030

MAILING ADDRESS:

STATUS: Active
CLASSIFICATION: High Violent

This report supplements the Notice of Violation Report dated 11/09/12, a copy of which is attached.

ADDITIONAL ACTION:

12/05/12 – Order of Conditional Release from Custody Pending On-site Parole Revocation hearing signed.
12/27/12 – Served with Board Order of Arrest and Detention.

ADDITIONAL VIOLATION(S) SPECIFIED: The above-named offender has violated conditions of supervision by:

Exhibit #5 Page 1 of 2

Violation 4:
Using illegal drugs, Methamphetamine on or about 12/27/12.

Violation 5:
Using a controlled substance, Opiates without valid prescription on or about 12/27/12.

SUPPORTING EVIDENCE:

Supporting evidence for allegations 4 and 5 will be combined for purposes of brevity.

Violations 4 and 5:

On 04/18/12, Mr. Miller signed an Order of Parole Conditions acknowledging his responsibility not to use, possess, or control any mind or mood altering substance, drugs, narcotics, controlled substances, or drug paraphernalia without a valid prescription from a licensed physician. He was further ordered to submit to periodic and random drug and/or alcohol monitoring as directed.

On 12/27/12 Mr. Miller reported to the DOC in Goldendale. A urine sample was collected from Mr. Miller, witnessed by CCO Nathaniel Conrad. When CCO Conrad brought Mr. Miller back into the UA room for testing, I observed the instant test was testing positive for Methamphetamine and Opiates. I asked him why the cup was testing positive and he denied using any illegal drugs. He requested the cup be sent into the laboratory for confirmation however I informed him that per new DOC policy the cup could not be sent in to the laboratory for confirmation unless it met certain criteria. I called my supervisor CCS Cathy LeCompte and indicated to her that I believed that the cup was accurate and that Mr. Miller had been using illegal drugs, we discussed the criteria for sending cup to lab for confirmation and agreed it did not meet the criteria per DOC policy, thus the cup was not mailed into the laboratory. I again confronted Mr. Miller with the results from the instant test and he stated he had been thinking that it might be due to finding one of his purses yesterday in his belongings that had been stored in his mother's residence. He stated he saw some white powdery substance in the bottom of the purse and stuck his finger into it to taste it to see what it was. He indicated it tasted bitter and thought it could be the Opiates but did not taste like Methamphetamine. Due to the positive UA result Mr. Miller was taken into custody and transported to the Klickitat County Jail for these violations. While at the jail I served Mr. Miller with the Board Order of Arrest and Detention which he signed on 12/27/12.

SUBSEQUENT DEVELOPMENTS:

On 12/05/12 the Board issued an Order of Conditional Release from Custody Pending an On-site Parole Revocation hearing and Mr. Miller was released from the Klickitat County Jail with the following special conditions, "any violations of conditions of this order or any violations of conditions of parole would result in immediately being returned to custody under the authority of the above specified Order of Parole." He was also directed to report to his CCO as directed. Mr.

Exhibit #5 Page 2 of 2

State of Washington

Parolee ☑

INDETERMINATE SENTENCE REVIEW BOARD

CCB ☐

In the Matter of Mark L. MILLER DOC#265210 A Parolee/Community Custodee	)))))	ORDER OF CONDITIONAL RELEASE FROM CUSTODY PENDING ON-SITE PAROLE/ COMMUNITY CUSTODY REVOCATION HEARING

Mark MILLER, having been paroled/released to community custody on the 3rd day of February, 2010, and having thereafter, to-wit, on the 5th day of September, 2012, the ORDER OF PAROLE/COMMUNITY CUSTODY SUSPENSION having been duly entered, IT NOW APPEARS that it would be for the best interest of this parolee/community custodee and society that said parolee/community custodee be CONDITIONALLY RELEASED FROM CUSTODY PENDING the Parole/Community Custody Revocation Hearing. NOW, THEREFORE, under the authority of the Indeterminate Sentence Review Board, and with the concurrence of Tom Sahlberg, Member, IT IS HEREBY ORDERED that Mark MILLER, be conditionally released from custody as of the 7th day of December, 2012, under the conditions of your parole/community custody and the following special conditions:

(1) Said parolee/community custodee will appear at the time and place designated by the Board for the Parole/Community Custody Revocation Hearing

(2) Upon any violation of the conditions of this order, or any violation of the conditions of the parole/community custody order, said parolee/community custodee will immediately, without further hearing or order, be revoked, and said parolee/community custodee will be immediately returned to custody under authority of the above-specified ORDER OF PAROLE/COMMUNITY CUSTODY SUSPENSION.

(3) Do not leave Klickitat County without prior permission from your CCO.
(4) Report to your CCO as directed.

DONE at Olympia, Washington this 5th day of December, 2012.

Presiding Officer
Indeterminate Sentence Review Board

cc: Community Corrections Officer
County/City Jail
Assistant Attorney General
File

PB 406 (6/04)

Exhibit #6 page 1 of 1

STATE OF WASHINGTON
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504 • (360) 493-9266 FAX (360) 493-9257

FINDINGS AND CONCLUSIONS

NAME:	MILLER, Mark	
DOC#:	265210	
MEETING TYPE:	Violation Hearing	☒ **Pre-84**
DATE:	January 8, 2013	☐ **CCB**
LOCATION:	Klickitat County Jail	
BOARD MEMBER:	Tom Sahlberg	
FINAL DECISION DATE:	January 17, 2013	

This matter came before the above named Presiding Board Member of the Indeterminate Sentence Review Board (ISRB or the Board) on the above date for a parole violation hearing. Mr. Miller appeared in person and was represented by attorney Chris Lanz. Present for the Department of Corrections was Community Corrections Officer Ronda Nielsen. The Board Member, having heard all evidence and testimony of witnesses and considering arguments of counsel and documents submitted by all parties, makes the following:

FINDINGS:

I. Mr. Miller was convicted of Robbery in the First Degree under Clark #79-1-00126-1

II. Mr. Miller was released from custody on February 3, 2010, subject to the rules and conditions of parole custody and under the supervision of a Community Correction Officer (CCO).

III. On September 5, 2012, parole was suspended for allegedly committing the following violations of supervision:

1. Failing to report to DOC in Goldendale as directed since 8/29/2012.
2. Failing to report a change of residence on or about 9/10/2012.
3. Failing to obtain a drug/alcohol evaluation as directed on 7/26/2012.
4. Using illegal drugs, Methamphetamine on or about 12/27/12.
5. Using a controlled substance, Opiates without valid prescription on or about 12/27/12.

* Violations 4 and 5 were added on January 2, 2013.

IV. The above violations are in connection with the Order of Release issued by the Board on December 31, 2009.

V. At the hearing on January 8, 2013 Mr. Miller entered a plea of Guilty to violations 1 and 3; and Not Guilty to violations 2, 4, and 5 as charged. The Presiding Member findings Mr. Miller Guilty of violations 1, 3, 4 and 5, and Not Guilty of violation 2 as charged. Violations 4 and 5 were combined and considered as one violation by agreement.

Exhibit #7 Page 1 of 6

CONCLUSIONS:

I. Mr. Miller has violated the conditions of parole as stated above.

II. It would be in the best interest of the public and for the best welfare of Mr. Miller that an Order of Parole Revocation be issued and Mr. Miller be returned to the Washington Corrections Center at Shelton, Washington, or other institution as determined by the Department of Corrections. The Indeterminate Sentence Review Board (ISRB) will administratively set a new minimum term within 30 days of this decision.

EVIDENCE RELIED UPON:

On January 8, 2013, the Presiding Member heard the testimony of CCOs Ronda Nielsen and Nathaniel Conrad (telephonic), Cecile Miller, Julie Scherf, and Mr. Miller.

The Board Order for Arrest and Detention, Rights and Privileges relating to Parole Revocation Procedures, Violations Specified, Board Notice of Violation and Request for Appointment of Counsel served on October 30, 2012 AND the Board Order for Arrest and Detention, Rights and Privileges Relating to Parole Revocation Procedures, Violations Specified, Board Notice of Violation and Request for Appointment of Counsel served on December 27, 2012 were found to have been properly served.

REASONS FOR DECISION:

Mr. Miller's parole was suspended on September 5, 2012 as an absconder. He was subsequently arrested on October 26, 2012. On December 5, 2012, an Order of Conditional Release from Custody pending the Onsite Parole Revocation hearing was issued and the parole violation hearing was scheduled for January 8, 2013, to be held out of custody in the Goldendale Field Office. On December 27, 2012, the ISRB was notified that Mr. Miller had been arrested and was back in custody with additional violations. The location of the parole violation hearing was changed to the Klickitat County Jail, but the date and time for the hearing was maintained.

CCO Nielsen read each violation and Mr. Miller pled Not Guilty to alleged violations 2, 4 and 5. He pled Guilty to alleged violation 1 and 3 with explanation. Mr. Miller explained that he was in custody during some of the period of time he did not report to his CCO as ordered. He also alleged that another offender had threatened him, that he became stranded and without a phone, and he was "working up the courage" to turn himself in, knowing that he had an outstanding warrant for his arrest. Regarding not having completed a drug/alcohol evaluation as ordered by the Board, he explained that he refused to have the evaluation done locally as his CCOs "fingers run deeply" in the community. He claimed to have gone to Vancouver where tribal resources were available, but that they required more information from DOC to conduct the evaluation and then he got arrested and lost their contact information.

Regarding violation 2, CCO Nielsen testified that Mr. Miller had told her in an August 29, 2012 conversation that he was looking for a new residence. When he did not report she and two other CCOs attempted to contact him at his listed address on September 10, 2012. They observed City Water employees making repairs to a water leak and observed a male enter the residence as they arrived. The male was not Mr. Miller. When they knocked on the door no one answered. Materials that were not present in the past were observed at the residence and it appeared that Mr. Miller no longer lived there.

Mr. Miller testified that he had been at his residence on September 10, 2012 and that he lived there until his arrest in December. He did not answer the door because he knew that he had an outstanding warrant for his arrest and did not want to go to jail.

Regarding violations 4 and 5, Mr. Miller's attorney objected to the violations being considered. He argued that the sole evidence was hearsay and would not be admissible in Superior Court citing WAC 381.70.140. The Presiding Member ruled that the violations would be heard and that any finding would not be made based on uncorroborated hearsay.

CCO Nielsen testified that Mr. Miller reported to the DOC office on December 27, 2012 and a urine sample was collected. CCO Conrad was present in the men's bathroom and he witnessed Mr. Miller urinate into the sample cup. Both CCOs and Mr. Miller then went to the UA room and observed that the sample indicated positive for the presence of Methamphetamine and Opiates. Mr. Miller requested that the sample cup be sent to a laboratory for confirmation. CCO Nielsen spoke with her supervisor and it was determined that the necessary criteria for additional testing as required by new DOC policy had not been met. When asked, Mr. Miller denied using any illegal drugs, then said that it was possible the test was positive because he saw some white powdery substance in the bottom of his purse and that he stuck his finger into it to see what it was. He indicated that it tasted bitter and that it could be Opiates but that it did not taste like Methamphetamine. Mr. Miller was arrested and has been in custody since this occurred.

CCO Nathaniel Conrad was contacted telephonically and sworn in. He testified that the UA sample cup was sealed when he accompanied Mr. Miller in the bathroom. Mr. Miller took off his jacket and laid it aside. CCO Conrad then unsealed the cup and Mr. Miller urinated into it. CCO Conrad took possession of the cup and it was in his control as they walked to the UA room. He observed the sample results to test positive for Methamphetamine and Opiates and negative for 4 other substances. After it was decided that the sample cup would not be sent to the lab, it was discarded.

Mr. Miller's attorney asked both CCOs if they asked Mr. Miller if he was on prescription medications. Neither CCO recalled asking Mr. Miller about prescriptions at that time. CCO Nielsen asked Mr. Miller if he remembered signing a consent form requiring him to advise the CCO if he was on any prescription or other medications and Mr. Miller admitted that he did remember signing forms but was uncertain of the exact wording of the forms. Mr. Miller stated that UA tests administered in 2006 had been positive but that the results were thrown out after further testing. This is why he asked the sample be tested further. He testified that he is certain that the white powder he tasted was not Methamphetamine and insisted that he had taken no illegal drugs.

The Presiding Member did not find that there was sufficient proof that Mr. Miller had changed his residency and found him Not Guilty of Violation 2. The Presiding Member found Mr. Miller Guilty of the remaining violations and combined 4 and 5 into one violation. The testimony of CCOs Nielsen and Conrad were first-hand observations and directly related to the alleged violation and are not hearsay. In addition, Mr. Miller's testimony regarding tasting the white powder corroborates the likelihood that he ingested a substance which later tested positive in his urine.

In the dispositional phase, Cecile Miller (Mr. Miller's Mother) testified that her son's recent behavior was "very good, better than ever" and that he had been helpful repairing items at her home. She allowed him to stay in her home which she had not done in the past. She asked for her son to be reinstated and released from supervision, saying; "...punishment no longer works on him" and that he would "flourish" if he was given the opportunity to start over in another community. Regarding the instant violations, she said that her son "has only hurt himself" and that the community was not in danger from his actions.

Julie Scherf (Mr. Miller's ex-wife and Mother of children they have in common) testified that they had spent a lot of time together during the past 6 months and that he was a good worker who sometimes "took on too much trying to help others". In the past he had been "mean and aggressive" but now "he has conducted himself well". She believed that "supervision has held him back" from employment opportunities and asked that he be reinstated without active supervision.

Attorney Christopher Lanz said that he has represented Mr. Miller since 1998. He argued that in an "equitable and fair" comparable SRA sentence his client would have been dealt with much differently and that Mr. Miller's 34 years under the jurisdiction under the Board were excessive. He also characterized past and recent violations as more technical in nature and not a risk to public safety. He and recommended that Mr. Miller be reinstated and that a Conditional Discharge from Supervision (CDFS) be granted as it had in the past. If Mr. Miller is convicted of a felony, the Board could again revoke his parole.

This brought up discussion of the current charge of Possession of Stolen Property 2nd Degree out of Lynnwood, WA for which Mr. Lanz is representing Mr. Miller. The status of this charge has not yet been determined and there is a conference date set for January 22, 2013, with a trial date set for February 6, 2013. Mr. Lanz agreed to keep the Board informed of the outcome of these proceedings.

Mr. Miller asked the Board to return him to the community and to grant a Conditional Discharge From Supervision (CDFS). He said that he had been under the jurisdiction of the ISRB for a robbery conviction since he was 17 years old and was a "good part of the community". He described himself as a 51 year old man with "a fantastic reputation and work record" who has lost jobs due to being supervised by DOC, and arrested for violations he did not commit. He said that he prevailed on all appeals that he has brought against his CCO and DOC and characterized the past and current violations as more technical than criminal.

CCO Nielsen testified that Mr. Miller had been granted a CDFS, but that shortly thereafter he was arrested numerous times. This caused DOC to request a "Board Special" asking the ISRB for guidance as he was not demonstrating rehabilitation in the community. After the Board rescinded the CDFS Mr. Miller continued to violate conditions of parole and now has a felony charge pending trial. In addition, he was found Guilty in Linwood of Giving a False Statement, a misdemeanor. She described actions against Mr. Miller since 2006 which includes the submission of at least 8 Violation Reports, Mr. Miller's parole revocation in 2008, his CDFS being rescinded in 2011 and his recent violations while on active supervision. Mr. Miller would not report when ordered creating concern for his whereabouts and activity. CCO Nielsen said that "I do not know what he is capable of" especially if/when is using drugs and she disputed that his violations and arrests were merely technical in nature. She observed that Mr. Miller has not shown that he can live in the community without breaking the law and violating conditions of parole and is therefore not rehabilitated and should be returned to prison where he can participate in CD treatment which he has been unwilling to do.

Mr. Miller said that he "does not have a problem with alcohol or drugs" and that he does not need treatment. He admitted that he needed to take care of "legal issues" and then has a possible job in Arizona. He begged for the Board to allow him to see "the light at the end of the tunnel" again.

The Board has tried repeatedly to work with Mr. Miller, recognizing the length of time he has served in prison and under supervision in the community. However, when paroled and especially while not under active supervision he has continually demonstrated an ongoing disregard for appropriate behavior and rule following. His attitude and actions clearly do not meet the statutory standard of being totally rehabilitated and as a result the Board has the responsibility to return him to prison.

Exhibit #7 page 5 of 6

Mr. Miller is encouraged to invest his time in prison towards positive programming, activities and employment opportunities and to complete CD treatment. The Board will also consider the outcome of his pending felony charge.

TS:is

CC: Mark Miller/Offender
Chris Lanz/Attorney
Rhonda Nielsen/CCO/Goldendale
File

Exhibit # 7 Page 6 of 6

In the Court of Appeals of Washington
Division II

The matter of the Personal Restraint of: Mark Lee Miller, Petitioner.	No. Declaration of Mark Lee Miller

I, Mark Lee Miller, declare the following to be true and correct:

1. I am the Petitioner named above.

2. On January 12, 2006, CCO3 Ronda Nielsen had me arrested after she alleged an on-site drug screen provided a positive result.

3. On January 19, 2006, Nielsen had me released from custody after confirmatory testing established the specimen was negative.

4. On 20 March 2006, Petitioner serves Nielsen with a subpoena Duces Tecum. Fifteen minutes after Nielsen is served the subpoena, Nielsen requests a warrant for ~~[illegible]~~ My arrest.

5. According to Nielsen, urine specimens collected from myself on 21 March 2006 and on 25 March 2006 are positive for methamphetamine.

6. I am arrested on Nielsen's requested warrant and serve a two year sanction based upon Nielsen's allegations.

7. In 2009 I submit public disclosure requests to both the Department and ISRB. In those records I discover GC/MS testing established the specimens were actually Negative.

8. I further discover that Nielsen, the Department, and the ISRB knew of these results and withheld them from me.

9. December 31, 2009, the ISRB issues orders paroling me to a CDFS on 3 February 2010. The board's only covect to me is that any criminal conviction prior to my receiving final Discharge may result in a parole revocation hearing.

10. 29 December 2011, I receive a Phone call from the Goldendale field office informing me that my CDFS has been revoked, and I have until 2 January 2012 to report to that office.

11. I call the ISRB and complain that I was not advised of any action to revoke my CDFS, and that I was not provided any form of hearing.

12 ISRB informs me that they are not required to notify me or provide me a hearing. the Board tells me my CDFS may be revoked at its pleasure - but I am encouraged to submit a written statement for them to consider.

13 On 18 April 2012, I sign the Orders revoking my CBFS and imposing Conditions of Supervision.

14. Condition #3 requires me to submit to periodic and random Drug/Alcohol monitoring through an agency approved by my CCO.

15. On 26 October 2012, I am arrested on order of the Board.

16. On 30 October 2012, I am served with the Advice of Rights and Notice of Alleged Violations.

17. On 7 December 2012, I am released from custody on order of the Board pending an on-site hearing scheduled for 8 January 2013.

18. On 27 December 2012, I report to the Department field office as instructed by CCO3 Nielsen.

19. Nielsen requires me to provide a urine specimen directly to the Department.

RCW 9.95.120
Suspension, revision of parole — Community corrections officers — Hearing — Retaking violators — Reinstatement.

Whenever the board or a community corrections officer of this state has reason to believe a person convicted of a crime committed before July 1, 1984, has breached a condition of his or her parole or violated the law of any state where he or she may then be or the rules and regulations of the board, any community corrections officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the board by the community corrections officer, with recommendations. The board, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state community corrections officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the community corrections officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal, which order shall be sufficient warrant for all peace officers to take into custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the board for his or her return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his or her parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he or she may then be, he or she shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he or she is served with charges of the violation of conditions of parole after his or her arrest and detention. The hearing shall be held before one or more members of the board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the board suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the board shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the board may determine advisable. Before the board shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a correctional institution.

[2003 c 218 § 5; 2001 2nd sp.s. c 12 § 333; 1999 c 143 § 22; 1981 c 136 § 37; 1979 c 141 § 2; 1969 c 98 § 2; 1961 c 106 § 2; 1955 c 133 § 13. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Notes:

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

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

Effective date -- 1981 c 136: See RCW 72.09.900.

Severability -- 1969 c 98: "If any provision of this act, or its application to any person or circumstance is invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 98 § 10.]

Effective date -- 1969 c 98: "This act shall take effect on July 1, 1969." [1969 c 98 § 11.]

Violations of parole or probation -- Revision of parole conditions -- Rearrest -- Detention: RCW 72.04A.090.

20. I comply, despite the directive being in contravention to the Board's order.

21. Nielsen next informs me the specimen is indicating positive for both opiates and methomphetamine.

22. I ask to see the specimen strip - then state that there is a faint, but visible line in each respective slot. Thus, under policy, the test is negative.

23. CCOs Nielsen and Conrad inform me it is their call and non-negotiable.

24 I request confirmatory retesting - and Nielsen tells me it does not meet Departmental Policy Requirements for confirmatory Retesting.

25. I ask what those entail, and Nielsen replies that her abiding belief that the test is accurate is enough to deny retesting.

26. I remind Nielsen that she knows I am taking five (5) prescriptions, and

DRUG TESTING METHODS AND OCCASIONS OF USE

Systems	When to Use	Confirmation
Urinalysis - On-Site *Through Regional Business Office*	• As outlined in policy	• Send urine specimen to contracted lab for GC/MS confirmation when determined appropriate or necessary and approved by ***Superintendent/ Drug Testing Coordinator***
Urinalysis - Off-Site *Through contracted lab for screen or confirmation*	• For random testing of 2% of Prison population • When determined appropriate or necessary for additional substances or confirmation, as outlined in policy	• Send urine specimen to contracted lab for GC/MS screening/confirmation
Oral Fluids *Through Regional Business Office*	• When there is no same sex officer available • Documented major medical issues that may preclude urination • Imminent threat to public safety • Marijuana is <u>not</u> suspected • Record of suspicious flushing or adulteration of urine • At the collector's discretion when the offender is unable to provide a urine sample within the allotted time	• Send oral fluid kit on positive tests to contracted lab for GC/MS confirmation to lab when determined appropriate or necessary

APPENDIX -B-

<u>statutes</u>

RCW 9.95.120 suspension-Revision of Parole

RCW 9.95.121 on-site revocation Hearing

RCW 9.95.122
on-site Revocation Hrg-Representation

RCW 9.95.123
on-site Revocation Hrg- Conduct

RCW 9.95.124
On-site Revocation Hearing
Attorney General's Recommendation

RCW 9.95.125
On-site Revocation Hearing
Board's Decision

RCW 9.95.121
On-site revocation hearing — Procedure when waived.

(1) For offenders convicted of crimes committed before July 1, 1984, within fifteen days from the date of notice to the department of corrections of the arrest and detention of the alleged parole violator, he or she shall be personally served by a state community corrections officer with a copy of the factual allegations of the violation of the conditions of parole, and, at the same time shall be advised of his or her right to an on-site parole revocation hearing and of his or her rights and privileges as provided in RCW 9.95.120 through 9.95.126. The alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights may waive the on-site parole revocation hearing as provided in RCW 9.95.120, and admit one or more of the alleged violations of the conditions of parole. If the board accepts the waiver it shall either, (a) reinstate the parolee on parole under the same or modified conditions, or (b) revoke the parole of the parolee and enter an order of parole revocation and return to state custody. A determination of a new minimum sentence shall be made within thirty days of return to state custody which shall not exceed the maximum sentence as provided by law for the crime of which the parolee was originally convicted or the maximum fixed by the court.

If the waiver made by the parolee is rejected by the board it shall hold an on-site parole revocation hearing under the provisions of RCW 9.95.120 through 9.95.126.

(2) Offenders sentenced under RCW 9.94A.507 are subject to the violation hearing process established in RCW 9.95.435.

[2009 c 28 § 27; 2001 2nd sp.s. c 12 § 334; 1981 c 136 § 38; 1979 c 141 § 3; 1969 c 98 § 3.]

Notes:

Effective date -- 2009 c 28: See note following RCW 2.24.040.

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

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

Effective date -- 1981 c 136: See RCW 72.09.900.

Severability -- Effective date -- 1969 c 98: See notes following RCW 9.95.120.

RCW 9.95.122
On-site revocation hearing — Representation for alleged violators — Compensation.

(1) At any on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, the alleged parole violator shall be entitled to be represented by an attorney of his or her own choosing and at his or her own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: PROVIDED, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the board.

(2) The rights of offenders sentenced under RCW 9.94A.507 are defined in RCW 9.95.435.

[2009 c 28 § 28; 2001 2nd sp.s. c 12 § 335; 1999 c 143 § 23; 1969 c 98 § 4.]

Notes:

Effective date -- 2009 c 28: See note following RCW 2.24.040.

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

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

Severability -- Effective date -- 1969 c 98: See notes following RCW 9.95.120.

RCW 9.95.123
On-site parole or community custody revocation or violations hearings — Conduct — Witnesses — Subpoenas, enforcement.

In conducting on-site parole hearings or community custody revocation or violations hearings, the board shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole or community custody revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW. If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the board may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: PROVIDED, That an offer to pay statutory fees and mileage has been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey the order, the witness shall be dealt with as for contempt of court.

[2008 c 231 § 43; 2001 2nd sp.s. c 12 § 336; 1999 c 143 § 24; 1969 c 98 § 5.]

Notes:

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

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

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

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

Severability -- Effective date -- 1969 c 98: See notes following RCW 9.95.120.

RCW 9.95.124
On-site revocation hearing — Attorney general's recommendations — Procedural rules.

At all on-site parole revocation hearings for offenders convicted of crimes committed before July 1, 1984, the community corrections officers of the department of corrections, having made the allegations of the violations of the conditions of parole, may be represented by the attorney general. The attorney general may make independent recommendations to the board about whether the violations constitute sufficient cause for the revocation of the parole and the return of the parolee to a state correctional institution for convicted felons. The hearings shall be open to the public unless the board for specifically stated reasons closes the hearing in whole or in part. The hearings shall be recorded either manually or by a mechanical recording device. An alleged parole violator may be requested to testify and any such testimony shall not be used against him or her in any criminal prosecution. The board shall adopt rules governing the formal and informal procedures authorized by this chapter and make rules of practice before the board in on-site parole revocation hearings, together with forms and instructions.

[2001 2nd sp.s. c 12 § 337; 1999 c 143 § 25; 1983 c 196 § 2; 1981 c 136 § 39; 1979 c 141 § 4; 1969 c 98 § 6.]

Notes:

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

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

Effective date -- 1981 c 136: See RCW 72.09.900.

Severability -- Effective date -- 1969 c 98: See notes following RCW 9.95.120.

RCW 9.95.125
On-site parole revocation hearing — Board's decision — Reinstatement or revocation of parole.

After the on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, has been concluded, the members of the board having heard the matter shall enter their decision of record within ten days, and make findings and conclusions upon the allegations of the violations of the conditions of parole. If the member, or members having heard the matter, should conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of the evidence, or, those which have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions of parole. For parole violations not resulting in new convictions, modified conditions of parole may include sanctions according to an administrative sanction grid. If the member or members having heard the matter should conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then such member or members shall enter an order of parole revocation and return the parole violator to state custody. Within thirty days of the return of such parole violator to a state correctional institution the board shall enter an order determining a new minimum term not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court.

[2001 2nd sp.s. c 12 § 338; 1993 c 140 § 2; 1969 c 98 § 7.]

Notes:

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

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

Severability -- Effective date -- 1969 c 98: See notes following RCW 9.95.120.

Appendix -C-

WAC 381-70-030
through 381-70-160 — 12-pgs

WAC 381-70-230
Board to Schedule Hearings — 1-pg

WAC 381-70-340
Conducting a Hearing — 1-pg

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Rules of Evidence — 1-pg

WAC 381-70-030
Scope.

(1) The provisions of this chapter shall apply to adult felony offenders granted parole from a Washington prison sentence who are alleged to have violated the terms of their order of parole, those state officials charged with the supervision of such parolees, and parties to parole revocation hearings.

(2) The indeterminate sentence review board will exercise its authority over parolees in a manner that:

(a) Places a high priority on public safety.

(b) Facilitates sentencing system transition consistent with the purposes of the Sentencing Reform Act.

(c) Imposes only those reasonable and enforceable conditions of parole necessary to encourage responsibility, and to assist the offender's lawful reintegration into the community.

(d) Supports the role and responsibility of the community corrections officer to assist offenders to reenter the community in a law abiding manner.

(3) The indeterminate sentence review board, as the successor agency to the board of prison terms and paroles, was directed by the legislature to facilitate the transition to the determinate sentencing system and to implement a gradual phase out of the indeterminate system. Violations of parole, including felony behavior being prosecuted under the Sentencing Reform Act, shall be considered.

(4) In making a parole revocation or reinstatement decision, the indeterminate sentence review board will consider the following factors in addition to factors that are case specific:

(a) Whether or not the parole violation behavior also resulted in an SRA conviction;

(b) The relationship of the parole violations behavior to the committing offense and the nature of the violation;

(c) The length of time the parolee has been on parole as well as time previously served on the conviction;

(d) The perspective and recommendation of the victim;

(e) The recommendation and supporting reasons offered by the community corrections officer, the parolee, and the assistant attorney general;

(f) The level of risk to the community posed by the parolee;

(g) The previous board action during the period of parole;

(h) Purposes and ranges of the SRA as well as the original judge and prosecutor's recommendations;

(i) The sanction range under the administrative sanction grid.

[98-09-045, § 381-70-030, filed 4/15/98, effective 4/13/98. 92-22-008 § 381-70-030, filed 10/21/92, effective 10/19/92. 91-14-029, § 381-70-030, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-040
Notice of arrest.

Whenever a community corrections officer is notified of a parolee's arrest, he shall submit a notice of arrest to the board (and the attorney general) within twenty-four hours, excluding weekends and holidays. Such notice shall include a concise but complete statement concerning the circumstances of the arrest, reason for arrest, and the date the community corrections officer found there is probable cause to believe that the parolee violated one or more conditions of parole. The community corrections officer shall state whether or not an order of suspension, arrest, and detention has been:

(1) Issued, with the approval of a supervisor;

(2) Issued without the supervisor's approval;

(3) Requested but not approved; or

(4) Not requested.

The community corrections officer shall state reasons for subsection (2), (3), or (4) of this section.

[91-14-029, § 381-70-040, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-050
Notice of suspension.

The community corrections officer shall notify the board on-site desk of the suspension of parole by telephone within twenty-four hours of service of the suspension order.

[93-23-077, § 381-70-050, filed 11/17/93, effective 11/15/93. 91-14-029, § 381-70-050, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-060
Notice of suspension and request for arrest.

Whenever a community corrections officer requests the arrest and detention of a parolee, he shall issue an order suspending said parolee's parole, and submit a copy of the order to the board and the attorney general within twenty-four hours of service.

[91-14-029, § 381-70-060, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-080
Board to reinstate.

Whenever a community corrections officer suspends, arrests, or detains a parolee, such parolee shall not be reinstated on parole or released from custody on bail or personal recognizance, except by the board and the issuance by the board of an order of reinstatement on parole to the same or modified conditions of parole.

[91-14-029, § 381-70-080, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-090
Administrative reinstatements.

Whenever a community corrections officer has suspended a parole and after investigation determines:

(1) That the alleged violations are unfounded;

(2) That the seriousness of the alleged violations is mitigated by new information; or

(3) Otherwise believes that further custody is deemed unwarranted and a parole revocation hearing is unnecessary;

he shall submit a written request or report with recommendations to the board. The board will accept and act on telephonic reports of the community corrections officer or supervisory personnel pending receipt of the officer's written report within ten working days. The board may exercise the option of administrative reinstatement when not recommended by the supervising community corrections officer, when such reinstatement is consistent with criteria identified within WAC 381-70-030.

[91-14-029, § 381-70-090, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-100
Conditional release pending hearing.

An administrative review of the parole violation report and of information submitted by the alleged violator or his attorney shall be conducted by the board after the parolee has been arrested, to determine probable cause for suspension. If probable cause is found then a determination is made whether the violation requires a revocation hearing, and to determine whether there is reason to allow the parolee to be conditionally released on parole pending the revocation hearing. Such administrative review shall take place within fifteen days after the service of the order of parole suspension, arrest, and detention.

[91-14-029, § 381-70-100, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-120
Service of factual allegations.

Whenever a community corrections officer is notified of the arrest and detention of an alleged parole violator and such alleged parole violator's parole has been suspended, or is suspended by the community corrections officer, the community corrections officer shall personally serve the parolee with a copy of the factual allegations within three working days of the suspension of parole. Such allegations of violation shall be submitted to the board with a copy to the attorney general within twenty-four hours of service.

If, after service of alleged violations as set forth above, additional alleged violations are brought forth by the community corrections officer, the CCO shall personally serve the parolee with a copy of those allegations. The parolee will have ten calendar days from the date of service of those allegations before the board will consider those additional allegations at an on-site parole revocation hearing. The parolee may waive the ten calendar days notice and proceed with those allegations at an already scheduled on-site parole revocation hearing. Such allegations of violation shall be submitted to the board with a copy to the attorney general within twenty-four hours of service.

[91-14-029, § 381-70-120, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-130
Contents of factual allegations.

The factual allegations of the violations of each condition shall include:

(1) The circumstances of violation;

(2) Date of violation or approximation thereof; and

(3) Location or place where violation occurred.

Whenever a parolee is accused of a violation of his parole which includes the commission of, and conviction for, a felony or misdemeanor, the community corrections officer shall request that verification of such conviction be forwarded from the court of conviction to the board.

[91-14-029, § 381-70-130, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-140
Parolee to be advised of rights.

Whenever an alleged parole violator is served with the factual allegation of the violation of the conditions of parole and with an order suspending parole, the community corrections officer shall advise the parolee orally and in writing of his right to an administrative review to determine probable cause and whether there is reason to allow the parolee to be conditionally released pending the revocation hearing. The community corrections officer shall also advise the parolee of his right to an on-site parole revocation hearing, and of his rights and privileges pertaining to each proceeding.

[91-14-029, § 381-70-140, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-150
Rights and privileges relating to administrative review.

The parolee's rights and privileges pertaining to an administrative review are as follows:

(1) An administrative review shall be conducted by a board hearing officer within fifteen days of service of the order of parole suspension, arrest, and detention.

(2) The parolee shall be advised at the time of service of the order of suspension, arrest, and detention that he and his attorney may submit information in writing to the board which shall be considered by the board. Proper forms shall be given the parolee to allow the parolee to submit information concerning family stability, job situation, etc., as well as the opportunity to add whatever additional comments or information that is deemed appropriate.

[91-14-029, § 381-70-150, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-160
Rights and privileges relating to revocation hearings.

(1) An alleged parole violator shall be entitled to a fair and impartial hearing of the charges of the parole violation within thirty days of service of suspension in the state of Washington, reasonably near the site of the alleged violation(s).

(2) The alleged parole violator shall be entitled to be represented by an attorney of his own choosing and at his own expense and shall have the right to present evidence and witnesses.

Upon satisfactory evidence of indigency and upon request, the board may cause the appointment of an attorney to represent the parolee at an on-site parole revocation hearing. In such cases, the cost of representation shall be paid by the board at a rate determined by legislative appropriation.

Counsel may ask, in writing, for exception to the established rate. Such requests should be directed to the executive secretary, indeterminate sentence review board.

(3) Discovery. The community corrections officer shall provide, within ten days of suspension of parole, the parolee's defense attorney with a copy of the violations specified, the violation report, and all evidence relating to the violations charged intended for introduction at the hearing, either as factual evidence or in support of a dispositional recommendation.

Such documents, materials, and information may include, but not be limited to, copies of the parole order and addenda, copies of prior violation reports submitted to the board, and copies of all board actions or hearing findings issued during the current parole.

In addition, the CCO must provide to the parolee's attorney any material or information within the CCO's knowledge or possession which tends to negate the parolee's guilt as to the violations charged.

(4) The board shall have the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence, provided that an offer has been made to pay the statutory fees and mileage.

(5) The alleged parole violator may be requested to testify during the on-site hearing and any such testimony shall not be used against him in any criminal prosecution (RCW 9.95.124).

(6) The allegations of violations of the conditions of parole must be proven by a preponderance of evidence. At the conclusion of the hearing, or within ten days thereafter, the board shall make written findings and conclusions concerning the allegations.

(7) If the member, having heard the matter, should conclude that the allegations of violations of conditions of parole have not been proven by a preponderance of evidence or those that have been proven by a preponderance of evidence are not sufficient cause for revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions.

(8) If the member or members, having heard the matter, should conclude that the allegations of violations of conditions of parole have been proven by a preponderance of evidence and constitute sufficient cause for revocation of parole, then such member or members shall enter an order of parole revocation and return to state custody. Within thirty days of the return of such parole violator to a state correctional institution for convicted felons, the board shall enter an order determining a new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court.

(9) A parolee who has been convicted and sentenced to prison on a new felony charge will have the right to a hearing pertaining to disposition only pursuant to *In Re Akridge,* 90 Wn.2d 350 (1978), and the hearing will be held at the institution of confinement. Chapter 98, Laws of 1969 provides that an alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights, may admit to one or more of the alleged violations and waive the on-site hearing. If the board accepts the waiver, it shall either:

(a) Reinstate the parolee on parole under the same or modified conditions; or

(b) Revoke the parole of the parolee and enter an order of parole revocation and return to state custody for determination of a new minimum sentence. Such determination shall be made within thirty days of the return of such parole violator to a state correctional institution for convicted felons, and the board shall enter an order determining the new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was convicted or the maximum fixed by the court.

[91-14-029, § 381-70-160, filed 6/26/91, effective 7/27/91.]

WAC 381-70-230
Board to schedule hearings.

The board shall schedule all on-site parole revocation hearings and shall provide notice to the alleged parole violator of the time and place of the hearing. Such notice shall also be provided to the department of corrections, the attorney general, and to counsel for the parolee, if known, at least seven days prior to the hearing. The board reserves the right to select and change the place of the on-site parole revocation hearing.

[91-14-029, § 381-70-230, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-340
Conducting a hearing — Presiding officer.

All hearings conducted under this chapter shall be heard by a member of the indeterminate sentence review board. It shall be the duty of the member to conduct hearings in cases assigned in an impartial and orderly manner, and he or she shall have the authority, subject to the other provisions of these rules, to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas on request of any party;

(3) Rule on all procedural matters, objections, and motions;

(4) Rule on offers of proof and receive relevant evidence;

(5) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter; and

(6) Take any other action necessary and authorized by these rules and the law.

[91-14-029, § 381-70-340, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WAC 381-70-400
Rules of evidence — Admissibility.

All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness.

"Relevant evidence" means evidence having a tendency to make the determination of the action more or less probable than it would be without the evidence. In passing upon admissibility of evidence, the presiding officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior courts in the state of Washington. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The presiding officer may, in his or her discretion, either with or without objection, exclude inadmissible evidence, or order accumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. If the sole evidence to support the allegation is hearsay that would be inadmissible in a superior court proceeding and is not substantiated or corroborated, the board shall not enter a finding of guilt. If the sole evidence presented to substantiate the allegation is the result of a polygraph examination, a finding of guilty shall not be made.

The results of polygraph examinations shall not be admissible into evidence at parole revocation hearings unless the following circumstances are present:

(1) The parties have stipulated that the polygraph examination be conducted and the results be admissible in a parole revocation hearing. Such stipulation may be evidenced by showing that the parolee has submitted to a condition of parole that he or she submit himself or herself to polygraph examination at the request of the community corrections officer and that the results of said examination(s) shall be admissible at a subsequent parole revocation hearing. Other stipulations shall be in writing, signed by the community corrections officer or his agent and by the parolee; and

(2) The board panel or member specifically finds that the polygraph examiner is qualified and the proper conditions existed during administration of the test; and

(3) The parties have been afforded an opportunity to confrontation of the examiner, unless good cause for nonconfrontation is specifically found or confrontation is waived.

The board will require polygraph examinations in appropriate cases. Polygraphs will be provided to indigent parolees at state expense, through the department of corrections. Parolees who are not indigent will be required to obtain a polygraph at his/her own expense.

[95-06-008, § 381-70-400, filed 2/16/95, effective 2/13/95. 91-14-029, § 381-70-400, filed 6/26/91, effective 7/27/91.]

Notes:

Reviser's note: Under RCW RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

APPENDIX - D -

Laws of 1997, Ch 350

Sec 1: RCW 9.95.0011

Sec 2: RCW 9.95.003

PROCESSING SPECIMENS FOR CONTRACTED LAB
CHAIN OF CUSTODY ASSURANCE

1. If the specimen is being preserved as evidence, ensure the identification numbers on the adhesive label matches the offender name and DOC number.

2. In the presence of the offender, ensure that the container lid is secure.

   a. For urine tests, apply the adhesive label to the specimen cup.

   b. For oral fluid tests, ensure the cap is secure over the absorbent pad.

3. Have the offender initial the tamper evident tape and place the tape over the container lid in the offender's presence.

4. To send specimens to the lab:

   a. Ensure the specimen is placed in the sealable plastic bag along with the moisture-absorbent packet.

   b. Place the original requisition form in the outer pouch and seal the bag.

   c. Ensure the bag remains in his/her direct visual supervision until secured in the designated location.

   d. Place all bagged specimens in the mailer provided and send to contracted lab through the U.S. Postal Service.

5. Complete DOC 14-038 Drug Test Log Chain of Custody Assurance with the names and numbers of all offender specimens that will be sent to the contracted laboratory.

6. Retain DOC 14-038 Drug Test Log Chain of Custody Assurance.

   a. In Prison, attach all receipts left by couriers to the respective DOC 14-038 Drug Test Log Chain of Custody Assurance.

Exhibit #10
Page 1 of 1

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1646

Chapter 350, Laws of 1997

55th Legislature
1997 Regular Session

INDETERMINATE SENTENCE REVIEW BOARD--MODIFICATIONS AND EXTENSION

EFFECTIVE DATE: 7/27/97

Passed by the House April 19, 1997
Yeas 92 Nays 0

CLYDE BALLARD
Speaker of the House of Representatives

Passed by the Senate April 10, 1997
Yeas 46 Nays 0

BRAD OWEN
President of the Senate

Approved May 13, 1997

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1646** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 13, 1997 - 2:35 p.m.

Secretary of State
State of Washington

HOUSE BILL 1646

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington 55th Legislature 1997 Regular Session

By Representatives Quall, Ballasiotes, Dickerson and Sullivan

Read first time 02/04/97. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to the indeterminate sentence review board; and
2 amending RCW 9.95.0011 and 9.95.003.

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

4 **Sec. 1.** RCW 9.95.0011 and 1989 c 259 s 4 are each amended to read
5 as follows:
6 (1) The indeterminate ((~~sentencing~~)) sentence review board shall
7 cease to exist on June 30, ((~~1998~~)) 2008. Prior to June 30, ((~~1998~~))
8 2008, the board shall review each inmate convicted of crimes committed
9 before July 1, 1984, and prepare a report. This report shall include
10 a recommendation regarding the offender's suitability for parole,
11 appropriate parole conditions, and, for those persons committed under
12 a mandatory life sentence, duration of confinement.
13 (2) The governor, through the office of financial management, shall
14 recommend to the legislature alternatives for carrying out the duties
15 of the board. In developing recommendations, the office of financial
16 management shall consult with the indeterminate sentence review board,
17 Washington association of prosecuting attorneys, Washington defender
18 association, department of corrections, and administrator for the
19 courts. Recommendations shall include a detailed fiscal analysis and

recommended formulas and procedures for the reimbursement of costs to local governments if necessary. Recommendations shall be presented to the ((~~1997~~)) 2007 legislature.

Sec. 2. RCW 9.95.003 and 1986 c 224 s 3 are each amended to read as follows:

The board shall consist of a chairman and ((~~six~~)) two other members, each of whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a term of five years, and until his or her successor is appointed and qualified. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled by appointment by the governor with the consent of the senate. In the event of the inability of any member to act, the governor shall appoint some competent person to act in his stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chairman at the governor's pleasure.

The members of the board and its officers and employees shall not engage in any other business or profession or hold any other public office without the prior approval of the executive ethics board indicating compliance with RCW 42.52.020, 42.52.030, 42.52.040 and 42.52.120; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

The board may employ, and fix, with the approval of the governor, the compensation of and prescribe the duties of a secretary and such officers, employees, and assistants as may be necessary, and provide necessary quarters, supplies, and equipment.

Passed the House April 19, 1997.
Passed the Senate April 10, 1997.
Approved by the Governor May 13, 1997.
Filed in Office of Secretary of State May 13, 1997.

APPENDIX -E-

Third Engrossed Substitute
Senate Bill 6151

An Act Relating to the
Management of Sex offenders
in the Civil Commitment and
Criminal Justice Systems.

Laws of 2001, 2d sp. Sess.

Chapter 12

CERTIFICATION OF ENROLLMENT

THIRD ENGROSSED SUBSTITUTE SENATE BILL 6151

Chapter 12, Laws of 2001

57th Legislature
2001 Second Special Session

SEX OFFENDERS--CIVIL COMMITMENT

EFFECTIVE DATE: 6/26/01 - Except sections 301 through 363, 501, and 503, which become effective 9/1/01.

Passed by the Senate June 21, 2001
YEAS 26 NAYS 13

BRAD OWEN
President of the Senate

Passed by the House June 21, 2001
YEAS 67 NAYS 14

FRANK CHOPP
Speaker of the House of Representatives

CLYDE BALLARD
Speaker of the House of Representatives

Approved June 26, 2001

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **THIRD ENGROSSED SUBSTITUTE SENATE BILL 6151** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

June 26, 2001 - 11:51 a.m.

Secretary of State
State of Washington

THIRD ENGROSSED SUBSTITUTE SENATE BILL 6151

AS AMENDED BY THE HOUSE

Passed Legislature - 2001 2nd Special Session

State of Washington 57th Legislature 2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Long and Hargrove)

READ FIRST TIME 04/06/01.

AN ACT Relating to the management of sex offenders in the civil commitment and criminal justice systems; amending RCW 71.09.020, 36.70A.103, 36.70A.200, 9.94A.715, 9.94A.060, 9.94A.120, 9.94A.190, 9.94A.390, 9.94A.590, 9.94A.670, 9.95.005, 9.95.010, 9.95.011, 9.95.017, 9.95.020, 9.95.032, 9.95.052, 9.95.055, 9.95.064, 9.95.070, 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121, 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140, 9.95.190, 9.95.250, 9.95.280, 9.95.290, 9.95.300, 9.95.310, 9.95.320, 9.95.340, 9.95.350, 9.95.360, 9.95.370, 9.95.900, 9A.28.020, 9A.36.021, 9A.40.030, 9A.44.093, 9A.44.096, 9A.44.100, 9A.76.---, and 72.09.370; reenacting and amending RCW 9.94A.030, 9.94A.320, 18.155.020, and 18.155.030; adding new sections to chapter 71.09 RCW; adding new sections to chapter 72.09 RCW; adding new sections to chapter 9.94A RCW; adding new sections to chapter 9.95 RCW; adding a new section to chapter 4.24 RCW; creating new sections; repealing RCW 9.95.0011 and 9.95.145; prescribing penalties; providing an effective date; providing expiration dates; and declaring an emergency.

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

PART I
GENERAL PROVISIONS

NEW SECTION. **Sec. 101.** The legislature intends the following omnibus bill to address the management of sex offenders in the civil commitment and criminal justice systems for purposes of public health, safety, and welfare. Provisions address siting of and continued operation of facilities for persons civilly committed under chapter 71.09 RCW and sentencing of persons who have committed sex offenses. Other provisions address the need for sex offender treatment providers with specific credentials. Additional provisions address the continued operation or authorized expansion of criminal justice facilities at McNeil Island, because these facilities are impacted by the civil facilities on McNeil Island for persons committed under chapter 71.09 RCW.

Sec. 102. RCW 71.09.020 and 2001 c 286 s 4 are each amended to read as follows:

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

(1) ((~~"Sexually violent predator" means any person who has been convicted or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.~~

~~(2) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.~~)) "Department" means the department of social and health services.

(2) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.

(3) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(4) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(5) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

((~~(5)~~)) (6) "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

((~~(6)~~)) (7) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, and public libraries.

(8) "Secretary" means the secretary of social and health services or the secretary's designee.

(9) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(10) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facilities established pursuant to section 201 of this act and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(11) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as

rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter ((~~71.09 RCW~~)), has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

((~~(7) "Less restrictive alternative" means court ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.~~

~~(8) "Secretary" means the secretary of social and health services or his or her designee.~~))

(12) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(13) "Total confinement facility" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

PART II

SITING AND OPERATION OF SECURE COMMUNITY TRANSITION FACILITIES

NEW SECTION. **Sec. 201.** A new section is added to chapter 71.09 RCW to read as follows:

(1)(a) The secretary is authorized to site, construct, occupy, and operate a secure community transition facility on McNeil Island for persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released and a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of transitional beds shall be limited to fifteen. The residents occupying these beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than fifteen residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the fifteen residents so designated, along with their photographs and physical descriptions, and it shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for residents in halfway house status who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2)(a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is

projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of the effective date of this section, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001;

(b) In consultation with the joint select committee established in section 225 of this act, develop and publish policy guidelines for the siting and operation of secure community transition facilities by October 1, 2001; and

(c) Provide a status report to the appropriate committees of the legislature by December 1, 2002, on the development of facilities under the incentive program established in section 204 of this act. The report shall include a projection of the anticipated number of secure community transition facility beds that will become operational between May 2004 and May 2007. If it appears that an insufficient number of beds will be operational, the department's report shall recommend a progression of methods to facilitate siting in counties and cities including, if necessary, preemption of local land use planning process and other laws.

(7)(a) The total number of secure community transition facility beds that may be required to be sited in a county between the effective date of this section and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in section 204 of this act. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site additional secure community transition facilities and shall be eligible under the incentive provisions of section 204 of this act for any additional facilities meeting the requirements of that section.

(8) In identifying potential sites within a county for the location of a secure community transition facility, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(9)(a) "Equitable distribution" means siting or locating secure community transition facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which district political or judicial authority may be exercised.

NEW SECTION. **Sec. 202.** A new section is added to chapter 72.09 RCW to read as follows:

The secretary is authorized to operate a correctional facility on McNeil Island for the confinement of sex offenders and other offenders sentenced by the courts, and to make necessary repairs, renovations, additions, and improvements to state property for that purpose, notwithstanding any local comprehensive plans, development regulations, permitting requirements, or any other local laws. Operation of the correctional facility and other state facilities authorized by this section and other law includes access to adequate docking facilities on state-owned tidelands at the town of Steilacoom.

Sec. 203. RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended to read as follows:

State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter except as otherwise provided in sections 201 (1) through (3) and 202 of this act.

The provisions of this act do not affect the state's authority to site any other essential public facility under RCW 36.70A.200 in conformance with local comprehensive plans and development regulations adopted pursuant to chapter 36.70A RCW.

NEW SECTION. **Sec. 204.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Upon receiving the notification required by section 201 of this act, counties must promptly notify the cities within the county of the

maximum number of secure community transition facility beds that may be required and the projected number of beds to be needed in that county.

(2) The incentive grants provided under this section are subject to the following provisions:

(a) Counties and the cities within the county must notify each other of siting plans to promote the establishment and equitable distribution of secure community transition facilities;

(b) Development regulations, ordinances, plans, laws, and criteria established for siting must be consistent with statutory requirements and rules applicable to siting and operating secure community transition facilities;

(c) The minimum size for any facility is three beds; and

(d) The department must approve any sites selected.

(3) Any county or city that makes a commitment to initiate the process to site one or more secure community transition facilities by February 1, 2002, shall receive a planning grant as proposed and approved by the department of community, trade, and economic development.

(4) Any county or city that has issued all necessary permits by May 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive an incentive grant in the amount of fifty thousand dollars for each bed sited.

(5) To encourage the rapid permitting of sites, any county or city that has issued all necessary permits by January 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive a bonus in the amount of twenty percent of the amount provided under subsection (4) of this section.

(6) Any county or city that establishes secure community transition facility beds in excess of the maximum number that could be required to be sited in that county shall receive a bonus payment of one hundred thousand dollars for each bed established in excess of the maximum requirement.

(7) No payment shall be made under subsection (4), (5), or (6) of this section until all necessary permits have been issued.

Sec. 205. RCW 36.70A.200 and 1998 c 171 s 3 are each amended to read as follows:

(1) The comprehensive plan of each county and city that is planning under ((~~this chapter~~)) RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, ((~~and~~)) group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than the deadline specified in RCW 36.70A.130, establish a process, or amend its existing process, for identifying and siting essential public facilities, and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than the deadline specified in RCW 36.70A.130, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

NEW SECTION. **Sec. 206.** A new section is added to chapter 71.09 RCW to read as follows:

The provisions of this act shall not be construed to limit siting of secure community transition facilities to residential neighborhoods.

NEW SECTION. **Sec. 207.** Beginning on the effective date of this section, the state shall immediately enter into negotiations for a mitigation agreement with: (1) The county in which the secure community transition facility established pursuant to section 201(1) of

this act is located; (2) each community in which the persons from that facility will reside or regularly spend time in pursuant to court orders for regular work or education, or to receive social services, or will regularly be transported through to reach those other communities; and (3) educational institutions in the communities identified in subsections (1) and (2) of this section. The negotiations must be toward an agreement that will provide state funding, as appropriated for this purpose, in an amount adequate to mitigate anticipated or realized increased costs resulting from any increased risks to public safety brought about by the presence of sexually violent predators in those communities due to the siting of the secure community transition facility established pursuant to section 201(1) of this act. This section expires June 30, 2003.

NEW SECTION. **Sec. 208.** A new section is added to chapter 71.09 RCW to read as follows:

(1) The department shall make reasonable efforts to distribute the impact of the employment, education, and social services needs of the residents of the secure community transition facility established pursuant to section 201(1) of this act among the adjoining counties and not to concentrate the residents' use of resources in any one community.

(2) The department shall develop policies to ensure that, to the extent possible, placement of persons eligible in the future for conditional release to a setting less restrictive than the facility established pursuant to section 201(1) of this act will be equitably distributed among the counties and within jurisdictions in the county.

NEW SECTION. **Sec. 209.** The department of social and health services shall, by August 1, 2001, and prior to operating the secure community transition facility established pursuant to section 201(1) of this act, hold at least three public hearings in the affected communities within the county where the facility is located.

The purpose of the public hearings is to seek input from county and city officials, local law enforcement officials, and the public regarding operations and security measures needed to adequately protect the community from any increased risk to public safety brought about by the presence of persons conditionally released from the special commitment center in these communities due to the siting of the

facility. The department shall ensure that persons have a full opportunity to speak to the issues to be addressed during each hearing.

NEW SECTION. **Sec. 210.** The secretary of social and health services shall coordinate with the secretary of corrections and the appropriate local or state law enforcement agency or agencies to establish a twenty-four-hour law enforcement presence on McNeil Island before any person is admitted to the secure community transition facility established under section 201(1) of this act. Law enforcement shall coordinate with the emergency response team for McNeil Island to provide planning and coordination in the event of an escape from the special commitment center or the secure community transition facility.

In addition, or if no law enforcement agency will provide a law enforcement presence on the island, not more than ten correctional employees, as selected by the secretary of corrections, who are members of the emergency response team for the McNeil Island correctional facility, shall have the powers and duties of a general authority peace officer while acting in a law enforcement capacity. If there is no law enforcement agency to provide the law enforcement presence, those correctional employees selected as peace officers shall provide a twenty-four-hour presence and shall not have correctional duties at the correctional facility in addition to the emergency response team while acting in a law enforcement capacity.

NEW SECTION. **Sec. 211.** A new section is added to chapter 71.09 RCW to read as follows:

(1) By August 1, 2001, the department must provide the appropriate committees of the legislature with a transportation plan to address the issues of coordinating the movement of residents of the secure community transition facility established pursuant to section 201(1) of this act between McNeil Island and the mainland with the movement of others who must use the same docks or equipment within the funds appropriated for this purpose.

(2) If the department does not provide a separate vessel for transporting residents of the secure community transition facility established in section 201(1) of this act between McNeil Island and the mainland, the plan shall include at least the following components:

(a) The residents shall be separated from minors and vulnerable adults, except vulnerable adults who have been found to be sexually violent predators.

(b) The residents shall not be transported during times when children are normally coming to and from the mainland for school.

(3) The department shall designate a separate waiting area at the points of debarkation, and residents shall be required to remain in this area while awaiting transportation.

(4) The department shall provide law enforcement agencies in the counties and cities in which residents of the secure community transition facility established pursuant to section 201(1) of this act regularly participate in employment, education, or social services, or through which these persons are regularly transported, with a copy of the court's order of conditional release with respect to these persons.

NEW SECTION. **Sec. 212.** A new section is added to chapter 71.09 RCW to read as follows:

When considering whether a person civilly committed under this chapter and conditionally released to a secure community transition facility is appropriate for release to a placement that is less restrictive than that facility, the court shall comply with the procedures set forth in RCW 71.09.090 through 71.09.096. In addition, the court shall consider whether the person has progressed in treatment to the point that a significant change in the person's routine, including but not limited to a change of employment, education, residence, or sex offender treatment provider will not cause the person to regress to the point that the person presents a greater risk to the community than can reasonably be addressed in the proposed placement.

NEW SECTION. **Sec. 213.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Except with respect to the secure community transition facility established pursuant to section 201 of this act, the secretary shall develop policy guidelines that balance the average response time of emergency services to the general area of a proposed secure community transition facility against the proximity of the proposed site to risk potential activities and facilities in existence at the time the site is listed for consideration.

(2) In balancing the competing criteria of proximity and response time the policy guidelines shall endeavor to achieve an average law enforcement response time not greater than five minutes and in no case shall the policy guidelines permit location of a facility adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(3) The policy guidelines shall require that great weight be given to sites that are the farthest removed from any risk potential activity.

(4) The policy guidelines shall specify how distance from the location is measured and any variations in the measurement based on the size of the property within which a proposed facility is to be located.

(5) The policy guidelines shall establish a method to analyze and compare the criteria for each site in terms of public safety and security, site characteristics, and program components. In making a decision regarding a site following the analysis and comparison, the secretary shall give priority to public safety and security considerations. The analysis and comparison of the criteria are to be documented and made available at the public hearings prescribed in section 219 of this act.

(6) Policy guidelines adopted by the secretary under this section shall be considered by counties and cities when providing for the siting of secure community transition facilities as required under RCW 36.70A.200.

NEW SECTION. **Sec. 214.** A new section is added to chapter 71.09 RCW to read as follows:

The secretary shall establish policy guidelines for the siting of secure community transition facilities, other than the secure community transition facility established pursuant to section 201 of this act, which shall include at least the following minimum requirements:

(1) The following criteria must be considered prior to any real property being listed for consideration for the location of or use as a secure community transition facility:

(a) The proximity and response time criteria established under section 213 of this act;

(b) The site or building is available for lease for the anticipated use period or for purchase;

(c) Security monitoring services and appropriate back-up systems are available and reliable;

(d) Appropriate mental health and sex offender treatment providers must be available within a reasonable commute; and

(e) Appropriate permitting for a secure community transition facility must be possible under the zoning code of the local jurisdiction.

(2) For sites which meet the criteria of subsection (1) of this section, the department shall analyze and compare the criteria in subsections (3) through (5) of this section using the method established in section 213 of this act.

(3) Public safety and security criteria shall include at least the following:

(a) Whether limited visibility between the facility and adjacent properties can be achieved prior to placement of any person;

(b) The distance from, and number of, risk potential activities and facilities, as measured using the rules adopted under section 213 of this act;

(c) The existence of or ability to establish barriers between the site and the risk potential facilities and activities;

(d) Suitability of the buildings to be used for the secure community transition facility with regard to existing or feasibly modified features; and

(e) The availability of electronic monitoring that allows a resident's location to be determined with specificity.

(4) Site characteristics criteria shall include at least the following:

(a) Reasonableness of rental, lease, or sale terms including length and renewability of a lease or rental agreement;

(b) Traffic and access patterns associated with the real property;

(c) Feasibility of complying with zoning requirements within the necessary time frame; and

(d) A contractor or contractors are available to install, monitor, and repair the necessary security and alarm systems.

(5) Program characteristics criteria shall include at least the following:

(a) Reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities;

(b) Suitability of the location for programming, staffing, and support considerations;

(c) Proximity to employment, educational, vocational, and other treatment plan components.

(6) For purposes of this section "available" or "availability" of qualified treatment providers includes provider qualifications and willingness to provide services, average commute time, and cost of services.

NEW SECTION. **Sec. 215.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Security systems for all secure community transition facilities shall meet the following minimum qualifications:

(a) The security panel must be a commercial grade panel with tamper-proof switches and a key-lock to prevent unauthorized access.

(b) There must be an emergency electrical supply system which shall include a battery back-up system and a generator.

(c) The system must include personal panic devices for all staff.

(d) The security system must be capable of being monitored and signaled either by telephone through either a land or cellular telephone system or by private radio network in the event of a total dial-tone failure or through equivalent technologies.

(e) The department shall issue photo-identification badges to all staff which must be worn at all times.

(2) Security systems for the secure community transition facility established pursuant to section 201(1) of this act shall also include a fence and provide the maximum protection appropriate in a civil facility for persons in less than total confinement.

NEW SECTION. **Sec. 216.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Secure community transition facilities shall meet the following minimum staffing requirements:

(a) At any time the census of a facility is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff per three residents during normal sleeping hours.

(b) At any time the census of a facility is six or fewer residents, all staff shall be classified as residential rehabilitation counselor II or have a classification that indicates a higher level of skill, experience, and training.

(c) Before being assigned to a facility, all staff shall have training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.

(d) All staff must pass a departmental background check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a resident of the facility.

(2) With respect to the facility established pursuant to section 201(1) of this act, the department shall, no later than December 1, 2001, provide a staffing plan to the appropriate committees of the legislature that will cover the growth of that facility to its full capacity.

NEW SECTION. **Sec. 217.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Unless otherwise ordered by the court:

(a) Residents of a secure community transition facility shall wear electronic monitoring devices at all times. To the extent that electronic monitoring devices that employ global positioning system technology are available and funds for this purpose are appropriated by the legislature, the department shall use these devices.

(b) At least one staff member, or other court-authorized and department-approved person must escort each resident when the resident leaves the secure community transition facility for appointments, employment, or other approved activities. Escorting persons must supervise the resident closely and maintain close proximity to the resident. The escort must immediately notify the department of any serious violation, as defined in section 221 of this act, by the resident and must immediately notify law enforcement of any violation of law by the resident.

(2) Staff members of the special commitment center and any other total confinement facility and any secure community transition facility

must be trained in self-defense and appropriate crisis responses including incident de-escalation. Prior to escorting a person outside of a facility, staff members must also have training in the offense pattern of the offender they are escorting. The escort may not be a relative of the resident.

(3) Any escort must carry a cellular telephone or a similar device at all times when escorting a resident of a secure community transition facility.

(4) The department shall require training in offender pattern, self-defense, and incident response for all court-authorized escorts who are not employed by the department or the department of corrections.

NEW SECTION. **Sec. 218.** A new section is added to chapter 71.09 RCW to read as follows:

Notwithstanding the provisions of section 217 of this act, residents of the secure community transition facility established pursuant to section 201(1) of this act must be escorted at any time the resident leaves the facility.

NEW SECTION. **Sec. 219.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Whenever the department operates, or the secretary enters into a contract to operate, a secure community transition facility except the secure community transition facility established pursuant to section 201(1) of this act, the secure community transition facility may be operated only after the public notification and opportunities for review and comment as required by this section.

(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating secure community transition facilities. The process shall include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a secure community transition facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in

each community where a secure community transition facility may be sited.

(b) When the secretary or service provider has determined the secure community transition facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the secure community transition facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days' advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the secure community transition facility would be sited or whose boundary is within two miles of a proposed secure community transition facility, any library district in which the secure community transition facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed secure community transition facility. Before initiating this process, the department of social and health services shall contact local government planning agencies in the communities containing the proposed secure community transition facility. The department of social and health services shall coordinate with local government agencies to ensure that opportunities are provided for effective citizen input and to reduce the duplication of notice and meetings.

(3) If local government land use regulations require that a special use or conditional use permit be submitted and approved before a secure community transition facility can be sited, and the process for obtaining such a permit includes public notice and hearing requirements similar to those required under this section, the requirements of this section shall not apply to the extent they would duplicate requirements under the local land use regulations.

(4) This section applies only to secure community transition facilities sited after the effective date of this section.

NEW SECTION. **Sec. 220.** A new section is added to chapter 71.09 RCW to read as follows:

(1) The secretary shall develop a process with local governments that allows each community in which a secure community transition facility is located to establish operational advisory boards of at least seven persons for the secure community transition facilities. The department may conduct community awareness activities to publicize this opportunity. The operational advisory boards developed under this section shall be implemented following the decision to locate a secure community transition facility in a particular community.

(2) The operational advisory boards may review and make recommendations regarding the security and operations of the secure community transition facility and conditions or modifications necessary with relation to any person who the secretary proposes to place in the secure community transition facility.

(3) The facility management must consider the recommendations of the community advisory boards. Where the facility management does not implement an operational advisory board recommendation, the management must provide a written response to the operational advisory board stating its reasons for its decision not to implement the recommendation.

(4) The operational advisory boards, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its recommendations unless the advisory board acts with gross negligence or bad faith in making a recommendation.

NEW SECTION. **Sec. 221.** A new section is added to chapter 71.09 RCW to read as follows:

(1) The secretary shall adopt a violation reporting policy for persons conditionally released to less restrictive alternative placements. The policy shall require written documentation by the department and service providers of all violations of conditions set by the department, the department of corrections, or the court and establish criteria for returning a violator to the special commitment center or a secure community transition facility with a higher degree of security. Any conditionally released person who commits a serious violation of conditions shall be returned to the special commitment center, unless arrested by a law enforcement officer, and the court shall be notified immediately and shall initiate proceedings under RCW

71.09.098 to revoke or modify the less restrictive alternative placement. Nothing in this section limits the authority of the department to return a person to the special commitment center based on a violation that is not a serious violation as defined in this section. For the purposes of this section, "serious violation" includes but is not limited to:

(a) The commission of any criminal offense;

(b) Any unlawful use or possession of a controlled substance; and

(c) Any violation of conditions targeted to address the person's documented pattern of offense that increases the risk to public safety.

(2) When a person is conditionally released to a less restrictive alternative under this chapter and is under the supervision of the department of corrections, notice of any violation of the person's conditions of release must also be made to the department of corrections.

(3) Whenever the secretary contracts with a service provider to operate a secure community transition facility, the contract shall include a requirement that the service provider must report to the department of social and health services any known violation of conditions committed by any resident of the secure community transition facility.

(4) The secretary shall document in writing all violations, penalties, actions by the department of social and health services to remove persons from a secure community transition facility, and contract terminations. The secretary shall compile this information and submit it to the appropriate committees of the legislature on an annual basis. The secretary shall give great weight to a service provider's record of violations, penalties, actions by the department of social and health services or the department of corrections to remove persons from a secure community transition facility, and contract terminations in determining whether to execute, renew, or renegotiate a contract with a service provider.

NEW SECTION. **Sec. 222.** A new section is added to chapter 71.09 RCW to read as follows:

Whenever the secretary contracts with a provider to operate a secure community transition facility, the secretary shall include in the contract provisions establishing intermediate contract enforcement remedies.

NEW SECTION. **Sec. 223.** A new section is added to chapter 71.09 RCW to read as follows:

A conditional release from a total confinement facility to a less restrictive alternative is a release that subjects the conditionally released person to the registration requirements specified in RCW 9A.44.130 and to community notification under RCW 4.24.550.

When a person is conditionally released to the secure community transition facility established pursuant to section 201(1) of this act, the sheriff must provide each household on McNeil Island with the community notification information provided for under RCW 4.24.550.

NEW SECTION. **Sec. 224.** A new section is added to chapter 71.09 RCW to read as follows:

An employer who hires a person who has been conditionally released to a less restrictive alternative must notify all other employees of the conditionally released person's status. Notification for conditionally released persons who enroll in an institution of higher education shall be made pursuant to the provisions of RCW 9A.44.130 related to sex offenders enrolled in institutions of higher education and RCW 4.24.550. This section applies only to conditionally released persons whose court approved treatment plan includes permission or a requirement for the person to obtain education or employment and to employment positions or educational programs that meet the requirements of the court-approved treatment plan.

NEW SECTION. **Sec. 225.** (1) A joint select committee on the equitable distribution of secure community transition facilities is established.

(2) The joint select committee shall consist of the following persons:

(a) One member from each of the two largest caucuses of the senate, appointed by the president of the senate, at least one member being a member of the senate human services and corrections committee;

(b) One member from each of the two largest caucuses of the house of representatives, appointed by the co-speakers of the house of representatives, at least one member being a member of the house criminal justice and corrections committee;

(c) One member from the department of social and health services;

(d) One member from the Washington state association of counties;

(e) One member from the association of Washington cities;

(f) One member representing crime victims, appointed jointly by the president of the senate and the co-speakers of the house of representatives;

(g) One person selected by the governor; and

(h) Two persons representing local law enforcement, one representing cities and one representing counties.

(3) The chair of the joint select committee shall be a legislative member chosen by the joint select committee members.

(4) The joint select committee shall review and make recommendations regarding:

(a) Any necessary specifications or revisions to ensure equitable distribution of secure community transition facilities throughout the state;

(b) Any necessary revisions to the provisions related to siting and operating secure community transition facilities in sections 213 through 218 and 222 of this act; and

(c) Except with respect to the facility established pursuant to section 201(1) of this act, a method for determining possible mitigation measures for compensating communities for any increased risks to public safety brought about by the siting of a secure community transition facility in a community.

(5) The joint select committee shall present a report of its findings and recommendations to the governor and the appropriate committees of the legislature, including any proposed legislation, not later than November 15, 2001.

(6) The joint select committee may, where feasible, consult with individuals from the public and private sector in carrying out its duties under this section.

(7) Nonlegislative members of the joint select committee shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members of the joint select committee shall be reimbursed for travel expenses as provided in RCW 44.04.120.

(8) Staff of senate committee services and the office of program research of the house of representatives shall provide support to the joint select committee.

(9) This section expires March 1, 2002.

NEW SECTION. **Sec. 226.** A new section is added to chapter 71.09 RCW to read as follows:

Nothing in this act shall operate to restrict a court's authority to make less restrictive alternative placements to a committed person's individual residence or to a setting less restrictive than a secure community transition facility. A court-ordered less restrictive alternative placement to a committed person's individual residence is not a less restrictive alternative placement to a secure community transition facility.

PART III
SENTENCING STRUCTURE

Sec. 301. RCW 9.94A.030 and 2001 c 287 s 4 and 2001 c 95 s 1 are each reenacted and amended to read as follows:

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

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

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.145, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

((~~(2)~~)) (3) "Commission" means the sentencing guidelines commission.

((~~(3)~~)) (4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

((~~(4)~~)) (5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670, 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

((~~(5)~~)) (6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

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

((~~(8)~~)) (9) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

((~~(9)~~)) (10) "Confinement" means total or partial confinement.

((~~(10)~~)) (11) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

((~~(11)~~)) (12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform

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

((~~(12)~~)) (13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.

((~~(13)~~)) (14) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

((~~(14)~~)) (15) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

((~~(15)~~)) (16) "Department" means the department of corrections.

((~~(16)~~)) (17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

((~~(17)~~)) (18) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

((~~(18)~~)) (19) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

((~~(19)~~)) (20) "Drug offense" means:

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

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

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

((~~(20)~~)) (21) "Earned release" means earned release from confinement as provided in RCW 9.94A.150.

((~~(21)~~)) (22) "Escape" means:

(a) ((~~Escape by a~~)) Sexually violent predator escape (RCW 9A.76.---(section 1, chapter 287, Laws of 2001, as amended by section 360, chapter ... (this act), Laws of 2001 2nd sp. sess.)), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

((~~(22)~~)) (23) "Felony traffic offense" means:

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

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

((~~(23)~~)) (24) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

((~~(24)~~)) (25) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

((~~(25)~~)) (26) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

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

((~~(27)~~)) (28) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault;

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

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

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

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

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

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

((~~(28)~~)) (29) "Nonviolent offense" means an offense which is not a violent offense.

((~~(29)~~)) (30) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

((~~(30)~~)) (31) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under

contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

((~~(31)~~)) (32) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree((~~, with a finding of sexual motivation~~)); or (C) an attempt to commit any crime listed in this subsection ((~~(31)~~)) (32)(b)(i); and

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

((~~(32)~~)) (33) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

((~~(33)~~)) (34) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

((~~(34)~~)) (35) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

((~~(35)~~)) (36) "Serious traffic offense" means:

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

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

((~~(36)~~)) (37) "Serious violent offense" is a subcategory of violent offense and means:

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

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

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

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

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

((~~(37)~~)) (38) "Sex offense" means:

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

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

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

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

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

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

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

((~~(38)~~)) (39) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

((~~(39)~~)) (40) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

((~~(40)~~)) (41) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

((~~(41)~~)) (42) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

((~~(42)~~)) (43) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

((~~(43)~~)) (44) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

((~~(44)~~)) (45) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault; and

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

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

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

((~~(45)~~)) (46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.135.

((~~(46)~~)) (47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.137 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

((~~(47)~~)) (48) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 302. RCW 9.94A.715 and 2001 c 10 s 5 are each amended to read as follows:

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under section 303 of this act, a violent offense, any crime against persons 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 established under RCW 9.94A.040 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: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). 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 subsection (6) of this section.

(b) 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 under RCW 9.94A.720. 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. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(c) 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.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section 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.

(4) Except for terms of community custody under RCW 9.94A.670, 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.

(5) 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.

(6) 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.

(7) 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: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

NEW SECTION. **Sec. 303.** A new section is added to chapter 9.94A RCW to read as follows:

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

(a) Is convicted of:

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

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

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

committed on or after the effective date of this section; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and is convicted of any sex offense which was committed after the effective date of this section.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

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

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.390, if the offender is otherwise eligible for such a sentence.

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

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody

under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). 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 and the board shall enforce such conditions pursuant to sections 304, 307, and 308 of this act.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under sections 304 and 306 through 309 of this act.

NEW SECTION. **Sec. 304.** A new section is added to chapter 9.94A RCW to read as follows:

(1) When an offender is sentenced under section 303 of this act, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions of the offender's community custody based upon the risk to community safety. In addition, the department shall make a recommendation with regard to, and the board may require the offender to participate in, rehabilitative programs, or otherwise perform affirmative conduct, and obey all laws. The board must consider and may impose department-recommended conditions.

(2) The department may not recommend and the board may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions. The board shall notify the offender in writing of any such conditions or modifications.

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

(4) If an offender violates conditions imposed by the court, the department, or the board during community custody, the board or the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in section 309 of this act.

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

(a) The crime of conviction;

(b) The offender's risk of reoffending; or

(c) The safety of the community.

(6) An offender released by the board under section 306 of this act shall be subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board shall be subject to the provisions of sections 307 through 310 of this act.

(7) If the department finds that an emergency exists requiring the immediate imposition of conditions of release in addition to those set by the board under section 306 of this act and subsection (1) of this section in order to prevent the offender from committing a crime, the department may impose additional conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board under subsection (1) of this section within seven working days.

NEW SECTION. **Sec. 305.** A new section is added to chapter 72.09 RCW to read as follows:

The department shall provide offenders sentenced under section 303 of this act with the opportunity for sex offender treatment during incarceration.

NEW SECTION. **Sec. 306.** A new section is added to chapter 9.95 RCW to read as follows:

(1)(a) Before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and

where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.720. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3) No later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term, not to exceed an additional two years.

NEW SECTION. **Sec. 307.** A new section is added to chapter 9.95 RCW to read as follows:

(1) Whenever the board or a community corrections officer of this state has reason to believe an offender released under section 306 of this act has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board whether sanctions should be imposed or the offender's community custody should be revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board, with recommendations.

(2) If the board or the department causes the arrest or detention of an offender for a violation that does not amount to a new crime and the offender is arrested or detained by local law enforcement or in a local jail, the board or department, whichever caused the arrest or detention, shall be financially responsible for local costs. Jail bed costs shall be allocated at the rate established under RCW 9.94A.207(3).

NEW SECTION. **Sec. 308.** A new section is added to chapter 9.95 RCW to read as follows:

Any offender released under section 306 of this act who is arrested and detained in physical custody by the authority of a community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order reinstating the offender's release on the same or modified conditions. All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

NEW SECTION. **Sec. 309.** A new section is added to chapter 9.95 RCW to read as follows:

(1) If an offender released by the board under section 306 of this act violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend or revoke the release to community custody whenever an offender released by the board under section 306 of this act violates any condition or requirement of community custody.

(3) If an offender released by the board under section 306 of this act is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.205. The board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.205;

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

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

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing examiner if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody is a possible sanction for the violation; and

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

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

NEW SECTION. **Sec. 310.** A new section is added to chapter 9.95 RCW to read as follows:

In the event the board suspends release status of an offender released under section 306 of this act by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board determines advisable. Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement.

Sec. 311. RCW 9.94A.060 and 1996 c 232 s 3 are each amended to read as follows:

(1) The commission consists of twenty voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, subject to confirmation by the senate.

(2) The voting membership consists of the following:

(a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;

(b) The director of financial management or designee, as an ex officio member;

(c) ((~~Until the indeterminate sentence review board ceases to exist pursuant to RCW 9.95.0011,~~)) The chair of the indeterminate sentence review board, as an ex officio member;

(d) The head of the state agency, or the agency head's designee, having responsibility for juvenile corrections programs, as an ex officio member;

(e) Two prosecuting attorneys;

(f) Two attorneys with particular expertise in defense work;

(g) Four persons who are superior court judges;

(h) One person who is the chief law enforcement officer of a county or city;

(i) Four members of the public who are not prosecutors, defense attorneys, judges, or law enforcement officers, one of whom is a victim of crime or a crime victims' advocate;

(j) One person who is an elected official of a county government, other than a prosecuting attorney or sheriff;

(k) One person who is an elected official of a city government;

(l) One person who is an administrator of juvenile court services.

In making the appointments, the governor shall endeavor to assure that the commission membership includes adequate representation and expertise relating to both the adult criminal justice system and the juvenile justice system. In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the defense attorney members, of the association of superior court judges in respect to the members who are judges, of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer, of the Washington state association of counties in respect to the member who is a county official, of the association of Washington cities in respect to the member who is a city official, of the office of crime victims advocacy and other organizations of crime victims in respect to the member who is a victim of crime or a crime victims' advocate, and of the Washington association of juvenile court administrators in respect to the member who is an administrator of juvenile court services.

(3)(a) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed.

(b) The governor shall stagger the terms of the members appointed under subsection (2)(j), (k), and (l) of this section by appointing one

of them for a term of one year, one for a term of two years, and one for a term of three years.

(4) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(5) The members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed by their respective houses as provided under RCW 44.04.120((~~, as now existing or hereafter amended~~)). Members shall be compensated in accordance with RCW 43.03.250.

Sec. 312. RCW 9.94A.120 and 2001 c 10 s 2 are each amended to read as follows:

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

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

(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.310;

(ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

(iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

(iv) RCW 9.94A.383, relating to community custody for offenders whose term of confinement is one year or less;

(v) RCW 9.94A.560, relating to persistent offenders;

(vi) RCW 9.94A.590, relating to mandatory minimum terms;

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

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

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

(x) Section 303 of this act, relating to certain sex offenses;

(xi) RCW 9.94A.390, relating to exceptional sentences;

((~~(xi)~~)) (xii) RCW 9.94A.400, relating to consecutive and concurrent sentences.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community 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 RCW 9.94A.710 (2) and (3); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.390.

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

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145.

(5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), 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.

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

(7) The court shall order restitution as provided in RCW 9.94A.140 and 9.94A.142.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An

order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

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

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

Sec. 313. RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read as follows:

(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial

management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400.

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

(5) Sentences imposed pursuant to section 303 of this act shall be served in a facility or institution operated, or utilized under contract, by the state.

Sec. 314. RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence unless it is imposed on an offender sentenced under section 303 of this act. An exceptional sentence imposed on an offender sentenced under section 303 of this act shall be to a minimum term set by the court and a maximum term equal to the statutory maximum sentence for the offense of conviction under chapter 9A.20 RCW.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.210(4).

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

this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.210 (2) through (6).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(1) Mitigating Circumstances

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(j) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(k) The offense resulted in the pregnancy of a child victim of rape.

(l) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

Sec. 315. RCW 9.94A.590 and 2000 c 28 s 7 are each amended to read as follows:

(1) The following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.390:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced to a minimum term of total confinement not less than sixty months.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.150, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.150(4).

Sec. 316. RCW 9.94A.670 and 2000 c 28 s 20 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider as defined in RCW 18.155.020.

(b) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state; and

(c) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

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

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

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

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

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to section 303 of this act, a minimum term of sentence, within the standard sentence range. If the

sentence imposed is less ((~~then [than]~~)) 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 offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to section 303 of this act, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(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. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Up to six months of confinement, not to exceed the sentence range of confinement for that offense;

(b) Crime-related prohibitions;

(c) Require the offender to devote time to a specific employment or occupation;

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

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

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(g) Perform community service work; or

(h) Reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) 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.

(7) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(8) Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. Either party may request, and the court may order, another evaluation regarding the advisability of termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender 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.

(9) 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 subsections (6) and (8) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) 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 unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

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

NEW SECTION. **Sec. 317.** A new section is added to chapter 9.95 RCW to read as follows:

(1) "Board" means the indeterminate sentence review board.

(2) "Community custody" means that portion of an offender's sentence subject to controls including crime-related prohibitions and affirmative conditions from the court, the board, or the department of corrections based on risk to community safety, that is served under supervision in the community, and which may be modified or revoked for violations of release conditions.

(3) "Crime-related prohibition" has the meaning defined in RCW 9.94A.030.

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

(5) "Parole" means that portion of a person's sentence for a crime committed before July 1, 1984, served on conditional release in the community subject to board controls and revocation and under supervision of the department.

(6) "Secretary" means the secretary of the department of corrections or his or her designee.

Sec. 318. RCW 9.95.005 and 1986 c 224 s 4 are each amended to read as follows:

The board shall meet at ((~~the penitentiary and the reformatory~~)) major state correctional institutions at such times as may be necessary for a full and complete study of the cases of all convicted persons whose durations of confinement are to be determined by it ((~~or~~)); whose community custody supervision is under the board's authority; or whose applications for parole come before it. Other times and places of meetings may also be fixed by the board.

The superintendents of the different institutions shall provide suitable quarters for the board and assistants while in the discharge of their duties.

Sec. 319. RCW 9.95.010 and 1955 c 133 s 2 are each amended to read as follows:

When a person, whose crime was committed before July 1, 1984, is convicted of any felony, except treason, murder in the first degree, or carnal knowledge of a child under ten years, and a new trial is not granted, the court shall sentence such person to the penitentiary, or, if the law allows and the court sees fit to exercise such discretion, to the reformatory, and shall fix the maximum term of such person's sentence only.

The maximum term to be fixed by the court shall be the maximum provided by law for the crime of which such person was convicted, if the law provides for a maximum term. If the law does not provide a maximum term for the crime of which such person was convicted the court shall fix such maximum term, which may be for any number of years up to and including life imprisonment but in any case where the maximum term is fixed by the court it shall be fixed at not less than twenty years.

Sec. 320. RCW 9.95.011 and 1993 c 144 s 3 are each amended to read as follows:

(1) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.040, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

(2) Not less than ninety days prior to the expiration of the minimum term of a person sentenced under section 303 of this act, for a sex offense committed on or after July 1, 2001, less any time credits permitted by statute, the board shall review the person for conditional release to community custody as provided in section 306 of this act. If the board does not release the person, it shall set a new minimum term not to exceed an additional two years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

Sec. 321. RCW 9.95.017 and 1986 c 224 s 11 are each amended to read as follows:

(1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release. These proposed criteria shall be submitted for consideration by the 1987 legislature.

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after July 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in sections 303 through 310 of this act.

Sec. 322. RCW 9.95.020 and 1955 c 133 s 3 are each amended to read as follows:

If the sentence of a person so convicted is not suspended by the court, the superintendent of ((~~the penitentiary or the superintendent of the reformatory~~)) a major state correctional institution shall receive such person, if committed to his or her institution, and imprison ((~~him~~)) the person until released under the provisions of this chapter, under section 306 of this act, upon the completion of the statutory maximum sentence, or through the action of the governor.

Sec. 323. RCW 9.95.032 and 1984 c 114 s 3 are each amended to read as follows:

Such statement shall be signed by the prosecuting attorney and approved by the judge by whom the judgment was rendered and shall be delivered to the sheriff, traveling guard, department of corrections personnel, or other officer executing the sentence, and a copy of such statement shall be furnished to the defendant or his or her attorney. Such officer shall deliver the statement, at the time of the prisoner's commitment, to the superintendent of the institution to which such prisoner has been ((~~sentenced and~~)) committed. The superintendent shall make such statement available for use by the board ((~~of prison terms and paroles~~)).

Sec. 324. RCW 9.95.052 and 1986 c 224 s 10 are each amended to read as follows:

At any time after the board (or the court after July 1, 1986) has determined the minimum term of confinement of any person subject to confinement in a state correctional institution for a crime committed before July 1, 1984, the board may request the superintendent of such correctional institution to conduct a full review of such person's prospects for rehabilitation and report to the board the facts of such review and the resulting findings. Upon the basis of such report and such other information and investigation that the board deems appropriate, the board may redetermine and refix such convicted person's minimum term of confinement whether the term was set by the board or the court.

The board shall not reduce a person's minimum term of confinement unless the board has received from the department of corrections all institutional conduct reports relating to the person.

Sec. 325. RCW 9.95.055 and 1992 c 7 s 25 are each amended to read as follows:

The indeterminate sentence review board is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate under the jurisdiction of the board confined in a state correctional facility, who will be accepted by and inducted into the armed services: PROVIDED, That a reduction downward shall not

be made under this section for those inmates who are confined for treason, murder in the first degree or carnal knowledge of a female child under ten years: AND PROVIDED FURTHER, That no such inmate shall be released under this section who is ((~~found to be a sexual psychopath under the provisions of and as defined by chapter 71.12 RCW~~)) being considered for civil commitment as a sexually violent predator under chapter 71.09 RCW or was sentenced under section 303 of this act for a crime committed on or after July 1, 2001.

Sec. 326. RCW 9.95.064 and 1989 c 276 s 4 are each amended to read as follows:

(1) In order to minimize the trauma to the victim, the court may attach conditions on release of ((~~a defendant~~)) an offender under RCW 9.95.062, convicted of a crime committed before July 1, 1984, regarding the whereabouts of the defendant, contact with the victim, or other conditions.

(2) Offenders released under section 306 of this act are subject to crime-related prohibitions and affirmative conditions established by the court, the department of corrections, or the board pursuant to RCW 9.94A.715 and sections 303 through 310 of this act.

Sec. 327. RCW 9.95.070 and 1999 c 143 s 19 are each amended to read as follows:

(1) Every prisoner, convicted of a crime committed before July 1, 1984, who has a favorable record of conduct at the penitentiary or the reformatory, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him or her to the satisfaction of the superintendent of the penitentiary or reformatory, and in whose behalf the superintendent of the penitentiary or reformatory files a report certifying that his or her conduct and work have been meritorious and recommending allowance of time credits to him or her, shall upon, but not until, the adoption of such recommendation by the indeterminate sentence review board, be allowed time credit reductions from the term of imprisonment fixed by the board.

(2) Offenders sentenced under section 303 of this act for a crime committed on or after July 1, 2001, are subject to the earned release provisions for sex offenders established in RCW 9.94A.150.

Sec. 328. RCW 9.95.080 and 1992 c 7 s 26 are each amended to read as follows:

In case any ((~~convicted~~)) person convicted of a crime committed before July 1, 1984, and under the jurisdiction of the indeterminate sentence review board undergoing sentence in a state correctional ((~~facility~~)) institution commits any infractions of the rules and regulations of the institution, the board may revoke any order theretofore made determining the length of time such convicted person shall be imprisoned, including the forfeiture of all or a portion of credits earned or to be earned, pursuant to the provisions of RCW 9.95.110, and make a new order determining the length of time the person shall serve, not exceeding the maximum penalty provided by law for the crime for which the person was convicted, or the maximum fixed by the court. Such revocation and redetermination shall not be had except upon a hearing before the indeterminate sentence review board. At such hearing the convicted person shall be present and entitled to be heard and may present evidence and witnesses in his or her behalf.

Sec. 329. RCW 9.95.090 and 1999 c 143 s 20 are each amended to read as follows:

(1) The board shall require of every able bodied ((~~convicted person imprisoned in the penitentiary or the reformatory~~)) offender confined in a state correctional institution for a crime committed before July 1, 1984, as many hours of faithful labor in each and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the institution in which he or she is confined.

(2) Offenders sentenced under section 303 of this act for crimes committed on or after July 1, 2001, shall perform work or other programming as required by the department of corrections during their term of confinement.

Sec. 330. RCW 9.95.100 and 1955 c 133 s 11 are each amended to read as follows:

Any ((~~convicted~~)) person convicted of a felony committed before July 1, 1984, and undergoing sentence in ((~~the penitentiary or the reformatory~~)) a state correctional institution, not sooner released under the provisions of this chapter, shall, in accordance with the provisions of law, be discharged from custody on serving the maximum punishment provided by law for the offense of which such person was

convicted, or the maximum term fixed by the court where the law does not provide for a maximum term. The board shall not, however, until his or her maximum term expires, release a prisoner, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release.

Sec. 331. RCW 9.95.110 and 1999 c 143 s 21 are each amended to read as follows:

(1) The board may permit ((~~a convicted person~~)) an offender convicted of a crime committed before July 1, 1984, to leave the buildings and enclosures of ((~~the penitentiary or the reformatory~~)) a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which ((~~a convicted person~~)) an offender may be allowed to leave the confines of ((~~the penitentiary or the reformatory~~)) a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after July 1, 2001, and sentenced under section 303 of this act, to leave a state correctional institution on community custody according to the provisions of sections 303 through 310 of this act. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of section 309 of this act.

Sec. 332. RCW 9.95.115 and 1989 c 259 s 3 are each amended to read as follows:

The indeterminate sentence review board is hereby granted authority to parole any person sentenced to the custody of the department of corrections, under a mandatory life sentence for a crime committed ((~~prior to~~)) before July 1, 1984, except those persons sentenced to life without the possibility of parole. No such person shall be granted parole unless the person has been continuously confined therein for a period of twenty consecutive years less earned good time: PROVIDED, That no such person shall be released under parole who is

((~~found to be a sexual psychopath under the provisions of and as defined by chapter 71.06 RCW~~)) subject to civil commitment as a sexually violent predator under chapter 71.09 RCW.

Sec. 333. RCW 9.95.120 and 1999 c 143 s 22 are each amended to read as follows:

Whenever the board or a ((~~probation and parole~~)) community corrections officer of this state has reason to believe a ((~~convicted~~)) person convicted of a crime committed before July 1, 1984, has breached a condition of his or her parole or violated the law of any state where he or she may then be or the rules and regulations of the board, any ((~~probation and parole~~)) community corrections officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the board by the ((~~probation and parole~~)) community corrections officer, with recommendations. The board, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state ((~~probation and parole~~)) community corrections officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the ((~~probation and parole~~)) community corrections officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal, which order shall be sufficient warrant for all peace officers to take into custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the board for his or her return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state ((~~probation and parole~~)) community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of

the board and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his or her parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he or she may then be, he or she shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he or she is served with charges of the violation of conditions of ((~~his~~)) parole after his or her arrest and detention. The hearing shall be held before one or more members of the board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the board suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the board shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the board may determine advisable. Before the board shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a penal institution.

Sec. 334. RCW 9.95.121 and 1981 c 136 s 38 are each amended to read as follows:

(1) For offenders convicted of crimes committed before July 1, 1984, within fifteen days from the date of notice to the department of corrections of the arrest and detention of the alleged parole violator, he or she shall be personally served by a state ((~~probation and parole~~)) community corrections officer with a copy of the factual allegations of the violation of the conditions of parole, and, at the same time shall be advised of his or her right to an on-site parole revocation hearing and of his or her rights and privileges as provided in RCW 9.95.120 through 9.95.126. The alleged parole violator, after service of the allegations of violations of the conditions of parole

and the advice of rights may waive the on-site parole revocation hearing as provided in RCW 9.95.120, and admit one or more of the alleged violations of the conditions of parole. If the board accepts the waiver it shall either, (1) reinstate the parolee on parole under the same or modified conditions, or (2) revoke the parole of the parolee and enter an order of parole revocation and return to state custody. A determination of a new minimum sentence shall be made within thirty days of return to state custody which shall not exceed the maximum sentence as provided by law for the crime of which the parolee was originally convicted or the maximum fixed by the court.

If the waiver made by the parolee is rejected by the board it shall hold an on-site parole revocation hearing under the provisions of RCW 9.95.120 through 9.95.126.

(2) Offenders sentenced under section 303 of this act are subject to the violation hearing process established in section 309 of this act.

Sec. 335. RCW 9.95.122 and 1999 c 143 s 23 are each amended to read as follows:

(1) At any on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, the alleged parole violator shall be entitled to be represented by an attorney of his or her own choosing and at his or her own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: PROVIDED, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the board.

(2) The rights of offenders sentenced under section 303 of this act are defined in section 309 of this act.

Sec. 336. RCW 9.95.123 and 1999 c 143 s 24 are each amended to read as follows:

In conducting on-site parole or community custody revocation hearings or community custody violations hearings, the board shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole or community custody revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW ((~~as now or hereafter amended~~)). If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the board may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: PROVIDED, That an offer to pay statutory fees and mileage has been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey ((~~said~~)) the order, the witness shall be dealt with as for contempt of court.

Sec. 337. RCW 9.95.124 and 1999 c 143 s 25 are each amended to read as follows:

At all on-site parole revocation hearings for offenders convicted of crimes committed before July 1, 1984, the ((~~probation and parole~~)) community corrections officers of the department of corrections, having

made the allegations of the violations of the conditions of parole, may be represented by the attorney general. The attorney general may make independent recommendations to the board about whether the violations constitute sufficient cause for the revocation of the parole and the return of the parolee to a state correctional institution for convicted felons. The hearings shall be open to the public unless the board for specifically stated reasons closes the hearing in whole or in part. The hearings shall be recorded either manually or by a mechanical recording device. An alleged parole violator may be requested to testify and any such testimony shall not be used against him or her in any criminal prosecution. The board shall adopt rules governing the formal and informal procedures authorized by this chapter and make rules of practice before the board in on-site parole revocation hearings, together with forms and instructions.

Sec. 338. RCW 9.95.125 and 1993 c 140 s 2 are each amended to read as follows:

After the on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, has been concluded, the members of the board having heard the matter shall enter their decision of record within ten days, and make findings and conclusions upon the allegations of the violations of the conditions of parole. If the member, or members having heard the matter, should conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of the evidence, or, those which have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions of parole. For parole violations not resulting in new convictions, modified conditions of parole may include sanctions according to an administrative sanction grid. If the member or members having heard the matter should conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then such member or members shall enter an order of parole revocation and return the parole violator to state custody. Within thirty days of the return of such parole violator to a state correctional institution ((~~for convicted felons~~)) the board shall enter an order determining a new minimum term not exceeding the maximum penalty provided by law for the crime for which

the parole violator was originally convicted or the maximum fixed by the court.

Sec. 339. RCW 9.95.126 and 1969 c 98 s 8 are each amended to read as follows:

All officers and employees of the state, counties, cities and political subdivisions of this state shall cooperate with the board ((~~of prison terms and paroles~~)) in making available suitable facilities for conducting parole or community custody revocation hearings.

Sec. 340. RCW 9.95.130 and 1993 c 140 s 3 are each amended to read as follows:

From and after the suspension, cancellation, or revocation of the parole of any ((~~convicted person~~)) offender convicted of a crime committed before July 1, 1984, and until his or her return to custody the ((~~convicted person~~)) offender shall be deemed an escapee and a fugitive from justice. The indeterminate sentence review board may deny credit against the maximum sentence any time during which he or she is an escapee and fugitive from justice.

Sec. 341. RCW 9.95.140 and 1992 c 7 s 27 are each amended to read as follows:

(1) The ((~~indeterminate sentence review~~)) board shall cause a complete record to be kept of every prisoner under the jurisdiction of the board released on parole or community custody. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. Subject to information sharing provisions related to mentally ill offenders, the end of sentence review committee, and the department of corrections, the board may make rules as to the privacy of such records and their use by others than the board and its staff. ((~~In determining the rules regarding dissemination of information regarding convicted~~)) Sex offenders convicted of crimes committed before July 1, 1984, who are under the board's jurisdiction((~~,~~)) shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification. The board ((~~shall consider the provisions of section 116, chapter 3, Laws of 1990~~

~~and RCW 4.24.550 and~~)) shall be immune from liability for the release of information concerning sex offenders as provided in RCW 4.24.550.

The superintendents of state correctional facilities and all officers and employees thereof and all other public officials shall at all times cooperate with the board and furnish to the board, its officers, and employees such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the board, its officers, and employees free access to all prisoners confined in the state correctional facilities.

(2) Offenders sentenced under section 303 of this act shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification.

(3) The end of sentence review committee shall make law enforcement notifications for offenders under board jurisdiction on the same basis that it notifies law enforcement regarding offenders sentenced under chapter 9.94A RCW for crimes committed after July 1, 1984.

Sec. 342. RCW 9.95.190 and 1992 c 7 s 28 are each amended to read as follows:

The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall apply to all convicted persons serving time in a state correctional facility for crimes committed before July 1, 1984, to the end that at all times the same provisions relating to sentences, imprisonments, and paroles of prisoners shall apply to all inmates thereof.

Sec. 343. RCW 9.95.250 and 1981 c 136 s 43 are each amended to read as follows:

In order to carry out the provisions of this chapter 9.95 RCW the parole officers working under the supervision of the secretary of corrections shall be known as ((~~probation and parole~~)) community corrections officers.

Sec. 344. RCW 9.95.280 and 1999 c 143 s 31 are each amended to read as follows:

The board may deputize any person (regularly employed by another state) to act as an officer and agent of this state in effecting the return of any person convicted of a crime committed before July 1, 1984, who has violated the terms and conditions of parole or probation as granted by this state. In any matter relating to the return of such a person, any agent so deputized shall have all the powers of a police officer of this state.

Sec. 345. RCW 9.95.290 and 1955 c 183 s 2 are each amended to read as follows:

Any deputization pursuant to this statute with regard to an offender convicted of a crime committed before July 1, 1984, shall be in writing and any person authorized to act as an agent of this state pursuant hereto shall carry formal evidence of his or her deputization and shall produce the same upon demand.

Sec. 346. RCW 9.95.300 and 1999 c 143 s 32 are each amended to read as follows:

The board may enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole ((~~or~~)), probation, or community custody as granted by this state.

Sec. 347. RCW 9.95.310 and 1986 c 125 s 1 are each amended to read as follows:

The purpose of RCW 9.95.310 through 9.95.370 is to provide necessary assistance, other than assistance which is authorized to be provided under the vocational rehabilitation laws, Title 28A RCW, under the public assistance laws, Title 74 RCW or the ((~~department of~~)) employment security department or other state agency, for parolees, inmates assigned to work/training release facilities, discharged prisoners and persons convicted of a felony committed before July 1, 1984, and granted probation in need and whose capacity to earn a living under these circumstances is impaired; and to help such persons attain self-care and/or self-support for rehabilitation and restoration to independence as useful citizens as rapidly as possible thereby reducing the number of returnees to the institutions of this state to the benefit of such person and society as a whole.

Sec. 348. RCW 9.95.320 and 1986 c 125 s 2 are each amended to read as follows:

The secretary of corrections or his or her designee may provide to any parolee, inmate assigned to a work/training release facility, discharged prisoner and persons convicted of a felony committed before July 1, 1984, and granted probation in need and without necessary means, from any funds legally available therefor, such reasonable sums as he or she deems necessary for the subsistence of such person and his or her family until such person has become gainfully employed. Such aid may be made under such terms and conditions, and through local parole or probation officers if necessary, as the secretary of corrections or his or her designee may require and shall be supplementary to any moneys which may be provided under public assistance or from any other source.

Sec. 349. RCW 9.95.340 and 1986 c 125 s 3 are each amended to read as follows:

Any funds in the hands of the department of corrections, or which may come into its hands, which belong to discharged prisoners, inmates assigned to work/training release facilities, parolees or persons convicted of a felony and granted probation who absconded, or whose whereabouts are unknown, shall be deposited in the community services revolving fund. Said funds shall be used to defray the expenses of clothing and other necessities and for transporting discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation who are without means to secure the same. All payments disbursed from these funds shall be repaid, whenever possible, by discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation for whose benefit they are made. Whenever any money belonging to such persons is so paid into the revolving fund, it shall be repaid to them in accordance with law if a claim therefor is filed with the department of corrections within five years of deposit into said fund and upon a clear showing of a legal right of such claimant to such money. This section applies to persons convicted of a felony committed before July 1, 1984.

Sec. 350. RCW 9.95.350 and 1986 c 125 s 4 are each amended to read as follows:

All money or other property paid or delivered to a ((~~probation or parole~~)) community corrections officer or employee of the department of corrections by or for the benefit of any discharged prisoner, inmate assigned to a work/training release facility, parolee or persons convicted of a felony and granted probation shall be immediately transmitted to the department of corrections and it shall enter the same upon its books to his or her credit. Such money or other property shall be used only under the direction of the department of corrections.

If such person absconds, the money shall be deposited in the revolving fund created by RCW 9.95.360, and any other property, if not called for within one year, shall be sold by the department of corrections and the proceeds credited to the revolving fund.

If any person, files a claim within five years after the deposit or crediting of such funds, and satisfies the department of corrections that he or she is entitled thereto, the department may make a finding to that effect and may make payment to the claimant in the amount to which he or she is entitled.

This section applies to persons convicted of a felony committed before July 1, 1984.

Sec. 351. RCW 9.95.360 and 1986 c 125 s 5 are each amended to read as follows:

The department of corrections shall create, maintain, and administer outside the state treasury a permanent revolving fund to be known as the "community services revolving fund" into which shall be deposited all moneys received by it under RCW 9.95.310 through 9.95.370 and any appropriation made for the purposes of RCW 9.95.310 through 9.95.370. All expenditures from this revolving fund shall be made by check or voucher signed by the secretary of corrections or his or her designee. The community services revolving fund shall be deposited by the department of corrections in such banks or financial institutions as it may select which shall give to the department a surety bond executed by a surety company authorized to do business in this state, or collateral eligible as security for deposit of state funds in at least the full amount of deposit.

This section applies to persons convicted of a felony committed before July 1, 1984.

Sec. 352. RCW 9.95.370 and 1981 c 136 s 50 are each amended to read as follows:

The secretary of corrections or his or her designee shall enter into a written agreement with every person receiving funds under RCW 9.95.310 through 9.95.370 that such person will repay such funds under the terms and conditions in said agreement. No person shall receive funds until such an agreement is validly made. This section applies to persons convicted of a felony committed before July 1, 1984.

Sec. 353. RCW 9.95.900 and 1981 c 137 s 32 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW ((~~9.95.003, 9.95.005, 9.95.007,~~)) 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, ((~~9.95.020, 9.95.030, 9.95.031, 9.95.032,~~)) 9.95.040, 9.95.045, 9.95.047, 9.95.052, ((~~9.95.070,~~)) 9.95.080, ((~~9.95.090,~~)) 9.95.100, ((~~9.95.110,~~)) 9.95.115, 9.95.116, 9.95.120, ((~~9.95.121, 9.95.122, 9.95.123,~~)) 9.95.124, 9.95.125, ((~~9.95.126,~~)) 9.95.130, ((~~9.95.140, 9.95.150, 9.95.160, 9.95.170,~~)) 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212, 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350, ((~~and~~)) 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

(2) The following sections apply to any felony offense committed before July 1, 1984, and to any offense sentenced under section 303 of this act and committed on or after July 1, 2001: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055, 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110, 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160, 9.95.170, 9.95.300, and 9.96.050.

Sec. 354. RCW 9A.28.020 and 1994 c 271 s 101 are each amended to read as follows:

(1) A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.

(3) An attempt to commit a crime is a:

(a) Class A felony when the crime attempted is murder in the first degree, murder in the second degree, ((~~or~~)) arson in the first degree, child molestation in the first degree, indecent liberties by forcible compulsion, rape in the first degree, rape in the second degree, rape of a child in the first degree, or rape of a child in the second degree;

(b) Class B felony when the crime attempted is a class A felony other than ((~~murder in the first degree, murder in the second degree, or arson in the first degree~~)) an offense listed in (a) of this subsection;

(c) Class C felony when the crime attempted is a class B felony;

(d) Gross misdemeanor when the crime attempted is a class C felony;

(e) Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.

Sec. 355. RCW 9A.36.021 and 1997 c 196 s 2 are each amended to read as follows:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture.

(2) Assault in the second degree is a class B felony, except that assault in the second degree with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135 is a class A felony.

Sec. 356. RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are each amended to read as follows:

(1) A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(3) Kidnapping in the second degree is a class B felony, except that kidnapping in the second degree with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135 is a class A felony.

Sec. 357. RCW 9A.44.093 and 1994 c 271 s 306 are each amended to read as follows:

(1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; or (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

(3) For the purposes of this section, "school employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

Sec. 358. RCW 9A.44.096 and 1994 c 271 s 307 are each amended to read as follows:

(1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; or (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

(3) For the purposes of this section, "school employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

Sec. 359. RCW 9A.44.100 and 1997 c 392 s 515 are each amended to read as follows:

(1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

(2) Indecent liberties is a class B felony, except that indecent liberties by forcible compulsion is a class A felony.

Sec. 360. RCW 9A.76.--- and 2001 c 287 s 1 are each amended to read as follows:

(1) A person is guilty of ((~~escape by a~~)) sexually violent predator escape if((~~, having been committed to the department of social and health services as a sexually violent predator under chapter 71.09 RCW, he or she:~~

~~(a) Escapes from custody;~~

~~(b) Escapes from a commitment facility;~~

~~(c) Escapes from a less restrictive alternative facility; or~~

~~(d) While on conditional release and residing in a location other than at a commitment center or less restrictive alternative facility, leaves or remains absent from the state of Washington without prior court authorization~~)):

(a) Having been found to be a sexually violent predator and confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;

(b) Having been found to be a sexually violent predator and being under an order of conditional release, the person leaves or remains absent from the state of Washington without prior court authorization; or

(c) Having been found to be a sexually violent predator and being under an order of conditional release, the person: (i) Without authorization, leaves or remains absent from his or her residence, place of employment, educational institution, or authorized outing; (ii) tampers with his or her electronic monitoring device or removes it without authorization; or (iii) escapes from his or her escort.

(2) ((~~Escape by a~~)) Sexually violent predator escape is a class ((~~B~~)) A felony with a minimum sentence of sixty months, and shall be sentenced under section 303 of this act.

Sec. 361. RCW 9.94A.320 and 2001 c 310 s 4, 2001 c 287 s 3, 2001 c 224 s 3, 2001 c 222 s 24, and 2001 c 207 s 3 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) ((~~Escape by a~~)) Sexually Violent Predator Escape (RCW 9A.76.--- (section 1, chapter 287, Laws of 2001, as amended

by section 360, chapter ... (this act), Laws of 2001 2nd sp. sess.))

Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))

Kidnapping 1 (RCW 9A.40.020)

Leading Organized Crime (RCW 9A.82.060(1)(a))

Malicious explosion 3 (RCW 70.74.280(3))

Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))

Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)

IX

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

Controlled Substance Homicide (RCW 69.50.415)

Explosive devices prohibited (RCW 70.74.180)

Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)

Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

Malicious placement of an explosive 2 (RCW 70.74.270(2))

Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

Robbery 1 (RCW 9A.56.200)

Sexual Exploitation (RCW 9.68A.040)

Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)

VIII

Arson 1 (RCW 9A.48.020)

Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))

Hit and Run--Death (RCW 46.52.020(4)(a))

Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)

Manslaughter 2 (RCW 9A.32.070)

Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))

Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))

Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (RCW 69.50.440)

Promoting Prostitution 1 (RCW 9A.88.070)

Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)

Theft of Anhydrous Ammonia (RCW 69.55.010)

Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)

VII

Burglary 1 (RCW 9A.52.020)

Child Molestation 2 (RCW 9A.44.086)

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

Drive-by Shooting (RCW 9A.36.045)

Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)

Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))

Introducing Contraband 1 (RCW 9A.76.140)

Involving a minor in drug dealing (RCW 69.50.401(f))
Malicious placement of an explosive 3 (RCW 70.74.270(3))
Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)

VI Bail Jumping with Murder 1 (RCW 9A.76.170((~~(2)~~)) (3)(a))
Bribery (RCW 9A.68.010)
Incest 1 (RCW 9A.64.020(1))
Intimidating a Judge (RCW 9A.72.160)
Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i))
Rape of a Child 3 (RCW 9A.44.079)
Theft of a Firearm (RCW 9A.56.300)
Unlawful Storage of Anhydrous Ammonia (RCW 69.55.020)

V Abandonment of dependent person 1 (RCW 9A.42.060)
Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
Bail Jumping with class A Felony (RCW 9A.76.170((~~(2)~~)) (3)(b))

Child Molestation 3 (RCW 9A.44.089)
Criminal Mistreatment 1 (RCW 9A.42.020)
Custodial Sexual Misconduct 1 (RCW 9A.44.160)
Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
Extortion 1 (RCW 9A.56.120)
Extortionate Extension of Credit (RCW 9A.82.020)
Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
Incest 2 (RCW 9A.64.020(2))
Kidnapping 2 (RCW 9A.40.030)
Perjury 1 (RCW 9A.72.020)
Persistent prison misbehavior (RCW 9.94.070)
Possession of a Stolen Firearm (RCW 9A.56.310)
Rape 3 (RCW 9A.44.060)
Rendering Criminal Assistance 1 (RCW 9A.76.070)
Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
Sexually Violating Human Remains (RCW 9A.44.105)
Stalking (RCW 9A.46.110)

IV Arson 2 (RCW 9A.48.030)
Assault 2 (RCW 9A.36.021)
Assault by Watercraft (RCW 79A.60.060)
Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
Commercial Bribery (RCW 9A.68.060)
Counterfeiting (RCW 9.16.035(4))
Escape 1 (RCW 9A.76.110)

Hit and Run--Injury (RCW 46.52.020(4)(b))
Hit and Run with Vessel--Injury Accident (RCW 79A.60.200(3))
Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
Influencing Outcome of Sporting Event (RCW 9A.82.070)
Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
Malicious Harassment (RCW 9A.36.080)
Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(a)(1)(iii) through (v))
Residential Burglary (RCW 9A.52.025)
Robbery 2 (RCW 9A.56.210)
Theft of Livestock 1 (RCW 9A.56.080)
Threats to Bomb (RCW 9.61.160)
Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
Vehicular Assault (RCW 46.61.522)
Willful Failure to Return from Furlough (RCW 72.66.060)

III Abandonment of dependent person 2 (RCW 9A.42.070)
Assault 3 (RCW 9A.36.031)
Assault of a Child 3 (RCW 9A.36.140)
Bail Jumping with class B or C Felony (RCW 9A.76.170((~~(2)~~)) (3)(c))
Burglary 2 (RCW 9A.52.030)
Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
Criminal Gang Intimidation (RCW 9A.46.120)
Criminal Mistreatment 2 (RCW 9A.42.030)
Custodial Assault (RCW 9A.36.100)

Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
Escape 2 (RCW 9A.76.120)
Extortion 2 (RCW 9A.56.130)
Harassment (RCW 9A.46.020)
Intimidating a Public Servant (RCW 9A.76.180)
Introducing Contraband 2 (RCW 9A.76.150)
Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))
Malicious Injury to Railroad Property (RCW 81.60.070)
Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
Patronizing a Juvenile Prostitute (RCW 9.68A.100)
Perjury 2 (RCW 9A.72.030)
Possession of Incendiary Device (RCW 9.40.120)
Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
Promoting Prostitution 2 (RCW 9A.88.080)
Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
Securities Act violation (RCW 21.20.400)
Tampering with a Witness (RCW 9A.72.120)
Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
Theft of Livestock 2 (RCW 9A.56.080)
Unlawful Imprisonment (RCW 9A.40.040)
Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))

Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
Willful Failure to Return from Work Release (RCW 72.65.070)

II Computer Trespass 1 (RCW 9A.52.110)
Counterfeiting (RCW 9.16.035(3))
Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
Escape from Community Custody (RCW 72.09.310)
Health Care False Claims (RCW 48.80.030)
Malicious Mischief 1 (RCW 9A.48.070)
Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(d))
Possession of phencyclidine (PCP) (RCW 69.50.401(d))
Possession of Stolen Property 1 (RCW 9A.56.150)
Theft 1 (RCW 9A.56.030)
Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
Trafficking in Insurance Claims (RCW 48.30A.015)
Unlawful Practice of Law (RCW 2.48.180)
Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))

I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
False Verification for Welfare (RCW 74.08.055)
Forged Prescription (RCW 69.41.020)
Forged Prescription for a Controlled Substance (RCW 69.50.403)

Forgery (RCW 9A.60.020)
Malicious Mischief 2 (RCW 9A.48.080)
Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam) (RCW 69.50.401(d))
Possession of Stolen Property 2 (RCW 9A.56.160)
Reckless Burning 1 (RCW 9A.48.040)
Taking Motor Vehicle Without Permission (RCW 9A.56.070)
Theft 2 (RCW 9A.56.040)
Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))
Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 362. RCW 72.09.370 and 1999 c 214 s 2 are each amended to read as follows:

(1) The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of mentally ill offenders and shall include consideration of an offender's chemical dependency or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the division of mental health, and, as necessary, the indeterminate sentence review board, other divisions or administrations within the department of social and health services, specifically including the

division of alcohol and substance abuse and the division of developmental disabilities, the appropriate regional support network, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 9.94A.155 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the county designated mental health professional, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or chemical dependency or abuse treatment.

(3) Prior to release of an offender identified under this section, the team shall determine whether or not an evaluation by a county designated mental health professional is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate county designated mental health professional. The supporting documentation shall include the offender's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a county designated mental health professional is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a county designated mental health professional shall occur on the day of release if requested by the team, based upon new information or a change in the offender's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the county designated mental health professional determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the offender only to a state hospital or to a

consenting evaluation and treatment facility. The department shall arrange transportation of the offender to the hospital or facility.

(7) If the county designated mental health professional believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the offender to appear at an evaluation and treatment facility. If a summons is issued, the offender shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified evaluation and treatment facility.

(8) The secretary shall adopt rules to implement this section.

NEW SECTION. **Sec. 363.** A new section is added to chapter 9.95 RCW to read as follows:

The indeterminate sentence review board, in fulfilling its duties under the provisions of this act, shall be considered a parole board as that concept was treated in law under the state's indeterminate sentencing statutes.

PART IV
SEX OFFENDER TREATMENT PROVIDERS

Sec. 401. RCW 18.155.020 and 2000 c 171 s 33 and 2000 c 28 s 38 are each reenacted and amended to read as follows:

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

(1) "Certified sex offender treatment provider" means a licensed, certified, or registered health professional who is certified to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW ((~~9.94A.670 and 13.40.160~~)) and sexually violent predators under chapter 71.09 RCW.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health.

(4) "Sex offender treatment provider" means a person who counsels or treats sex offenders accused of or convicted of a sex offense as defined by RCW 9.94A.030.

Sec. 402. RCW 18.155.030 and 2000 c 171 s 34 and 2000 c 28 s 39 are each reenacted and amended to read as follows:

(1) No person shall represent himself or herself as a certified sex offender treatment provider without first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to RCW 9.94A.670 and 13.40.160;

(b) Treatment of convicted sex offenders who are sentenced and ordered into treatment pursuant to ((~~RCW 9.94A.670~~)) chapter 9.94A RCW and adjudicated juvenile sex offenders who are ordered into treatment pursuant to ((~~RCW 13.40.160~~)) chapter 13.40 RCW;

(c) Except as provided under subsection (3) of this section, treatment of sexually violent predators who are conditionally released to a less restrictive alternative pursuant to chapter 71.09 RCW.

(3) A certified sex offender treatment provider may not perform or provide treatment of sexually violent predators under subsection (2)(c) of this section if the certified sex offender treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

NEW SECTION. **Sec. 403.** A new section is added to chapter 4.24 RCW to read as follows:

(1) A certified sex offender treatment provider, acting in the course of his or her duties, providing treatment to a person who has been released to a less restrictive alternative under chapter 71.09 RCW or to a level III sex offender on community custody as a court or department ordered condition of sentence is not negligent because he or she treats a high risk offender; sex offenders are known to have a risk of reoffense. The treatment provider is not liable for civil damages resulting from the reoffense of a client unless the treatment provider's acts or omissions constituted gross negligence or willful or wanton misconduct. This limited liability provision does not eliminate the treatment provider's duty to warn of and protect from a client's

threatened violent behavior if the client communicates a serious threat of physical violence against a reasonably ascertainable victim or victims. In addition to any other requirements to report violations, the sex offender treatment provider is obligated to report an offender's expressions of intent to harm or other predatory behavior, whether or not there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment. This limited liability provision applies only to the conduct of certified sex offender treatment providers and not the conduct of the state.

(2) Sex offender treatment providers who provide services to the department of corrections by identifying risk factors and notifying the department of risks for the subset of high risk offenders who are not amenable to treatment and who are under court order for treatment or supervision are practicing within the scope of their profession.

NEW SECTION. **Sec. 404.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Examinations and treatment of sexually violent predators who are conditionally released to a less restrictive alternative under this chapter shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court or the department of social and health services finds that: (a) The court-ordered less restrictive alternative placement is located in another state; (b) the treatment provider is employed by the department; or (c)(i) all certified treatment providers become unavailable to provide treatment within a reasonable geographic distance of the person's home, as determined in rules adopted by the department of social and health services; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of social and health services.

A treatment provider approved by the department of social and health services under (c) of this subsection, who is not certified by the department of health, shall consult with a certified provider during the person'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.

(2) A treatment provider, whether or not he or she is employed or approved by the department of social and health services under subsection (1) of this section or otherwise certified, may not perform or provide treatment of sexually violent predators under this section if the treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(3) Nothing in this section prohibits a qualified expert from examining or evaluating a sexually violent predator who has been conditionally released for purposes of presenting an opinion in court proceedings.

PART V
TECHNICAL PROVISIONS

NEW SECTION. **Sec. 501.** The following acts or parts of acts are each repealed:

(1) RCW 9.95.0011 (Indeterminate sentence review board--Report--Recommendation of governor) and 1997 c 350 s 1, 1989 c 259 s 4, & 1986 c 224 s 12; and

(2) RCW 9.95.145 (Sex offenders--Release of information--Classification of offenders) and 1997 c 364 s 5 & 1990 c 3 s 127.

NEW SECTION. **Sec. 502.** The secretary of corrections, the secretary of social and health services, and the indeterminate sentence review board may adopt rules to implement this act.

NEW SECTION. **Sec. 503.** (1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after the effective date of this section.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after the effective date of this section.

NEW SECTION. **Sec. 504.** 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.

NEW SECTION. **Sec. 505.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately, except for sections 301 through 363, 501, and 503 of this act which take effect September 1, 2001.

Passed the Senate June 21, 2001.
Passed the House June 21, 2001.
Approved by the Governor June 26, 2001.
Filed in Office of Secretary of State June 26, 2001.

No. _____

Court of Appeals of Washington
Division II

In the matter of the Personal
Restraint of:

Mark Lee Miller

OPENING Brief of Petitioner
[Petition]

Mark L. Miller
Petitioner, Pro Se
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