

INITIATIVE 861

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 861 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to violent sex offenses; amending RCW 9.94A.030,
2 9.94A.540, 9.94A.570, 9.94A.650, 9.94A.700, 9.94A.710, 9.94A.712,
3 9.94A.800, and 9A.76.115; reenacting and amending RCW 9.94A.660; and
4 prescribing penalties.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
7 as follows:

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

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

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

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

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

6 (5) "Community custody" means that portion of an offender's
7 sentence of confinement in lieu of earned release time or imposed
8 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
9 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
10 community subject to controls placed on the offender's movement and
11 activities by the department. For offenders placed on community
12 custody for crimes committed on or after July 1, 2000, the department
13 shall assess the offender's risk of reoffense and may establish and
14 modify conditions of community custody, in addition to those imposed by
15 the court, based upon the risk to community safety.

16 (6) "Community custody range" means the minimum and maximum period
17 of community custody included as part of a sentence under RCW
18 9.94A.715, as established by the commission or the legislature under
19 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

30 (9) "Community supervision" means a period of time during which a
31 convicted offender is subject to crime-related prohibitions and other
32 sentence conditions imposed by a court pursuant to this chapter or RCW
33 16.52.200(6) or 46.61.524. Where the court finds that any offender has
34 a chemical dependency that has contributed to his or her offense, the
35 conditions of supervision may, subject to available resources, include
36 treatment. For purposes of the interstate compact for out-of-state
37 supervision of parolees and probationers, RCW 9.95.270, community
38 supervision is the functional equivalent of probation and should be
39 considered the same as probation by other states.

1 (10) "Confinement" means total or partial confinement.

2 (11) "Conviction" means an adjudication of guilt pursuant to Titles
3 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
4 acceptance of a plea of guilty.

5 (12) "Crime-related prohibition" means an order of a court
6 prohibiting conduct that directly relates to the circumstances of the
7 crime for which the offender has been convicted, and shall not be
8 construed to mean orders directing an offender affirmatively to
9 participate in rehabilitative programs or to otherwise perform
10 affirmative conduct. However, affirmative acts necessary to monitor
11 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
13 convictions and juvenile adjudications, whether in this state, in
14 federal court, or elsewhere.

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

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

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

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

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

37 (16) "Department" means the department of corrections.

38 (17) "Determinate sentence" means a sentence that states with
39 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the
2 number of actual hours or days of community restitution work, or
3 dollars or terms of a legal financial obligation. The fact that an
4 offender through earned release can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

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

19 (19) "Drug offender sentencing alternative" is a sentencing option
20 available to persons convicted of a felony offense other than a violent
21 offense or a sex offense and who are eligible for the option under RCW
22 9.94A.660.

23 (20) "Drug offense" means:

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

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

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

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

35 (22) "Escape" means:

36 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
37 first degree (RCW 9A.76.110), escape in the second degree (RCW
38 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
39 willful failure to return from work release (RCW 72.65.070), or willful

1 failure to be available for supervision by the department while in
2 community custody (RCW 72.09.310); or

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

6 (23) "Felony traffic offense" means:

7 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
8 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
9 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

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

4 (b) Assault in the second degree;

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

6 (d) Child molestation in the second degree;

7 (e) Controlled substance homicide;

8 (f) Extortion in the first degree;

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

10 (h) Indecent liberties;

11 (i) Kidnapping in the second degree;

12 (j) Leading organized crime;

13 (k) Manslaughter in the first degree;

14 (l) Manslaughter in the second degree;

15 (m) Promoting prostitution in the first degree;

16 (n) Rape in the third degree;

17 (o) Robbery in the second degree;

18 (p) Sexual exploitation;

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

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

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

29 (t) Any other felony with a deadly weapon verdict under RCW
30 9.94A.602;

31 (u) Any felony offense in effect at any time prior to December 2,
32 1993, that is comparable to a most serious offense under this
33 subsection, or any federal or out-of-state conviction for an offense
34 that under the laws of this state would be a felony classified as a
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
38 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as

1 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
2 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
3 (ii) A prior conviction for indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
5 if: (A) The crime was committed against a child under the age of
6 fourteen; or (B) the relationship between the victim and perpetrator is
7 included in the definition of indecent liberties under RCW
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
9 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
10 through July 27, 1997.

11 (29) "Nonviolent offense" means an offense which is not a violent
12 offense.

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

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

28 (32) "Persistent offender" is an offender who:

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

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

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
2 of a child in the first degree, child molestation in the first degree,
3 rape in the second degree, rape of a child in the second degree, or
4 indecent liberties by forcible compulsion; (B) any of the following
5 offenses with a finding of sexual motivation: Murder in the first
6 degree, murder in the second degree, homicide by abuse, kidnapping in
7 the first degree, kidnapping in the second degree, assault in the first
8 degree, assault in the second degree, assault of a child in the first
9 degree, or burglary in the first degree; or (C) an attempt to commit
10 any crime listed in this subsection (32)(b)(i); and

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

23 (c) Has been convicted of a violent sex offense.

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

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

30 (35) "Risk assessment" means the application of an objective
31 instrument supported by research and adopted by the department for the
32 purpose of assessing an offender's risk of reoffense, taking into
33 consideration the nature of the harm done by the offender, place and
34 circumstances of the offender related to risk, the offender's
35 relationship to any victim, and any information provided to the
36 department by victims. The results of a risk assessment shall not be
37 based on unconfirmed or unconfirmable allegations.

38 (36) "Serious traffic offense" means:

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

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

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

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

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) (~~Kidnapping in the first degree;~~

17 ~~Rape in the first degree;~~

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

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

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

24 (38) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
26 RCW 9A.44.130(11);

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

28 (iii) A felony that is a violation of chapter 9.68A RCW other than
29 RCW 9.68A.070 or 9.68A.080; or

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

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

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

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

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

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

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

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

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

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

23 (45) "Violent offense" means:

24 (a) Any of the following felonies:

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

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

29 (iii) Manslaughter in the first degree;

30 (iv) Manslaughter in the second degree;

31 (~~(v) (Indecent liberties if committed by forcible compulsion;~~

32 ~~(vi))~~) Kidnapping in the second degree;

33 (~~(vii))~~) (vi) Arson in the second degree;

34 (~~(viii))~~) (vii) Assault in the second degree;

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

36 (~~(x))~~) (ix) Extortion in the first degree;

37 (~~(xi))~~) (x) Robbery in the second degree;

38 (~~(xii))~~) (xi) Drive-by shooting;

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

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

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

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

15 (46) "Violent sex offense" means:

16 (a) Any of the following felonies:

17 (i) Rape in the first degree;

18 (ii) Rape in the second degree;

19 (iii) Rape of a child in the first degree;

20 (iv) Rape of a child in the second degree;

21 (v) Child molestation in the first degree;

22 (vi) Kidnapping in the first degree; and

23 (vii) Indecent liberties by forcible compulsion;

24 (b) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
25 criminal solicitation, or criminal conspiracy to commit a crime listed
26 in (a) of this subsection;

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

30 (d) Any felony with a finding of sexual motivation under RCW
31 9.94A.835 or 13.40.135; or any federal or out-of-state conviction for
32 an offense that under the laws of this state would be a felony
33 classified as a violent sex offense under (a) or (b) of this
34 subsection.

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

38 (~~(47)~~) (48) "Work ethic camp" means an alternative incarceration
39 program as provided in RCW 9.94A.690 designed to reduce recidivism and

1 lower the cost of corrections by requiring offenders to complete a
2 comprehensive array of real-world job and vocational experiences,
3 character-building work ethics training, life management skills
4 development, substance abuse rehabilitation, counseling, literacy
5 training, and basic adult education.

6 ~~((48))~~ (49) "Work release" means a program of partial confinement
7 available to offenders who are employed or engaged as a student in a
8 regular course of study at school.

9 **Sec. 2.** RCW 9.94A.540 and 2001 2nd sp.s. c 12 s 315 are each
10 amended to read as follows:

11 (1) The following minimum terms of total confinement are mandatory
12 and shall not be varied or modified under RCW 9.94A.535:

13 (a) An offender convicted of the crime of murder in the first
14 degree shall be sentenced to a term of total confinement not less than
15 twenty years.

16 (b) An offender convicted of the crime of assault in the first
17 degree or assault of a child in the first degree where the offender
18 used force or means likely to result in death or intended to kill the
19 victim shall be sentenced to a term of total confinement not less than
20 five years.

21 (c) An offender convicted of the crime of rape in the first degree
22 shall be sentenced to a term of ~~((total confinement not less than five
23 years))~~ life in prison without the possibility of parole.

24 (d) An offender convicted of the crime of sexually violent predator
25 escape shall be sentenced to a ~~((minimum))~~ term of ~~((total confinement
26 not less than sixty months))~~ life in prison without the possibility of
27 parole.

28 (2) During such minimum terms of total confinement, no offender
29 subject to the provisions of this section is eligible for community
30 custody, earned release time, furlough, home detention, partial
31 confinement, work crew, work release, or any other form of early
32 release authorized under RCW 9.94A.728, or any other form of authorized
33 leave of absence from the correctional facility while not in the direct
34 custody of a corrections officer. The provisions of this subsection
35 shall not apply: (a) In the case of an offender in need of emergency
36 medical treatment; or (b) ~~((for the purpose of commitment to an
37 inpatient treatment facility in the case of an offender convicted of~~

1 ~~the crime of rape in the first degree; or (c))~~ for an extraordinary
2 medical placement when authorized under RCW 9.94A.728(4).

3 **Sec. 3.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read
4 as follows:

5 Notwithstanding the statutory maximum sentence or any other
6 provision of this chapter, a persistent offender shall be sentenced to
7 a term of total confinement for life without the possibility of release
8 or, when authorized by RCW 10.95.030 for the crime of aggravated murder
9 in the first degree, sentenced to death. In addition, no offender
10 subject to this section may be eligible for community custody, earned
11 release time, furlough, home detention, partial confinement, work crew,
12 work release, or any other form of release as defined under RCW
13 9.94A.728 (1), (2), (3), (4), (6), (8), or (9), or any other form of
14 authorized leave from a correctional facility while not in the direct
15 custody of a corrections officer or officers, ~~except((:(1))~~ in the
16 case of an offender in need of emergency medical treatment ~~((; or (2)~~
17 ~~for the purpose of commitment to an inpatient treatment facility in the~~
18 ~~case of an offender convicted of the crime of rape in the first~~
19 ~~degree)).~~

20 **Sec. 4.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read
21 as follows:

22 (1) This section applies to offenders who have never been
23 previously convicted of a felony in this state, federal court, or
24 another state, and who have never participated in a program of deferred
25 prosecution for a felony, and who are convicted of a felony that is
26 not:

27 (a) Classified as a violent offense ~~((or a)),~~ sex offense, or
28 violent sex offense under this chapter;

29 (b) Manufacture, delivery, or possession with intent to manufacture
30 or deliver a controlled substance classified in Schedule I or II that
31 is a narcotic drug or flunitrazepam classified in Schedule IV;

32 (c) Manufacture, delivery, or possession with intent to deliver a
33 methamphetamine, its salts, isomers, and salts of its isomers as
34 defined in RCW 69.50.206(d)(2); or

35 (d) The selling for profit of any controlled substance or
36 counterfeit substance classified in Schedule I, RCW 69.50.204, except
37 leaves and flowering tops of marihuana.

1 (2) In sentencing a first-time offender the court may waive the
2 imposition of a sentence within the standard sentence range and impose
3 a sentence which may include up to ninety days of confinement in a
4 facility operated or utilized under contract by the county and a
5 requirement that the offender refrain from committing new offenses.
6 The sentence may also include a term of community supervision or
7 community custody as specified in subsection (3) of this section,
8 which, in addition to crime-related prohibitions, may include
9 requirements that the offender perform any one or more of the
10 following:

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

12 (b) Undergo available outpatient treatment for up to the period
13 specified in subsection (3) of this section, or inpatient treatment not
14 to exceed the standard range of confinement for that offense;

15 (c) Pursue a prescribed, secular course of study or vocational
16 training;

17 (d) Remain within prescribed geographical boundaries and notify the
18 community corrections officer prior to any change in the offender's
19 address or employment;

20 (e) Report as directed to a community corrections officer; or

21 (f) Pay all court-ordered legal financial obligations as provided
22 in RCW 9.94A.030 and/or perform community restitution work.

23 (3) The terms and statuses applicable to sentences under subsection
24 (2) of this section are:

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

30 (b) For crimes committed on or after July 1, 2000, up to one year
31 of community custody unless treatment is ordered, in which case the
32 period of community custody may include up to the period of treatment,
33 but shall not exceed two years. Any term of community custody imposed
34 under this section is subject to conditions and sanctions as authorized
35 in this section and in RCW 9.94A.715 (2) and (3).

36 (4) The department shall discharge from community supervision any
37 offender sentenced under this section before July 25, 1999, who has
38 served at least one year of community supervision and has completed any
39 treatment ordered by the court.

1 **Sec. 5.** RCW 9.94A.660 and 2002 c 290 s 20 and 2002 c 175 s 10 are
2 each reenacted and amended to read as follows:

3 (1) An offender is eligible for the special drug offender
4 sentencing alternative if:

5 (a) The offender is convicted of a felony that is not a violent
6 offense ~~((or))~~, sex offense, or violent sex offense and the violation
7 does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

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

11 (c) For a violation of the Uniform Controlled Substances Act under
12 chapter 69.50 RCW or a criminal solicitation to commit such a violation
13 under chapter 9A.28 RCW, the offense involved only a small quantity of
14 the particular controlled substance as determined by the judge upon
15 consideration of such factors as the weight, purity, packaging, sale
16 price, and street value of the controlled substance; and

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

21 (2) If the standard sentence range is greater than one year and the
22 sentencing court determines that the offender is eligible for this
23 alternative and that the offender and the community will benefit from
24 the use of the alternative, the judge may waive imposition of a
25 sentence within the standard sentence range and impose a sentence that
26 must include a period of total confinement in a state facility for one-
27 half of the midpoint of the standard sentence range. During
28 incarceration in the state facility, offenders sentenced under this
29 subsection shall undergo a comprehensive substance abuse assessment and
30 receive, within available resources, treatment services appropriate for
31 the offender. The treatment services shall be designed by the division
32 of alcohol and substance abuse of the department of social and health
33 services, in cooperation with the department of corrections.

34 The court shall also impose:

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

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

3 (c) A requirement to submit to urinalysis or other testing to
4 monitor that status; and

5 (d) A term of community custody pursuant to RCW 9.94A.715 to be
6 imposed upon failure to complete or administrative termination from the
7 special drug offender sentencing alternative program.

8 The court may prohibit the offender from using alcohol or
9 controlled substances and may require that the monitoring for
10 controlled substances be conducted by the department or by a treatment
11 alternatives to street crime program or a comparable court or agency-
12 referred program. The offender may be required to pay thirty dollars
13 per month while on community custody to offset the cost of monitoring.
14 In addition, the court shall impose three or more of the following
15 conditions:

16 (i) Devote time to a specific employment or training;

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

20 (iii) Report as directed to a community corrections officer;

21 (iv) Pay all court-ordered legal financial obligations;

22 (v) Perform community restitution work;

23 (vi) Stay out of areas designated by the sentencing court;

24 (vii) Such other conditions as the court may require such as
25 affirmative conditions.

26 (3) If the offender violates any of the sentence conditions in
27 subsection (2) of this section or is found by the United States
28 attorney general to be subject to a deportation order, a violation
29 hearing shall be held by the department unless waived by the offender.

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

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

37 (4) The department shall determine the rules for calculating the
38 value of a day fine based on the offender's income and reasonable
39 obligations which the offender has for the support of the offender and

1 any dependents. These rules shall be developed in consultation with
2 the administrator for the courts, the office of financial management,
3 and the commission.

4 (5) An offender who fails to complete the special drug offender
5 sentencing alternative program or who is administratively terminated
6 from the program shall be reclassified to serve the unexpired term of
7 his or her sentence as ordered by the sentencing court and shall be
8 subject to all rules relating to earned release time. An offender who
9 violates any conditions of supervision as defined by the department
10 shall be sanctioned. Sanctions may include, but are not limited to,
11 reclassifying the offender to serve the unexpired term of his or her
12 sentence as ordered by the sentencing court. If an offender is
13 reclassified to serve the unexpired term of his or her sentence, the
14 offender shall be subject to all rules relating to earned release time.

15 **Sec. 6.** RCW 9.94A.700 and 2003 c 379 s 4 are each amended to read
16 as follows:

17 When a court sentences an offender to a term of total confinement
18 in the custody of the department for any of the offenses specified in
19 this section other than a violent sex offense, the court shall also
20 sentence the offender to a term of community placement as provided in
21 this section. Except as provided in RCW 9.94A.501, the department
22 shall supervise any sentence of community placement imposed under this
23 section.

24 (1) The court shall order a one-year term of community placement
25 for the following:

26 (a) A sex offense or a serious violent offense committed after July
27 1, 1988, but before July 1, 1990; or

28 (b) An offense committed on or after July 1, 1988, but before July
29 25, 1999, that is:

30 (i) Assault in the second degree;

31 (ii) Assault of a child in the second degree;

32 (iii) A crime against persons where it is determined in accordance
33 with RCW 9.94A.602 that the offender or an accomplice was armed with a
34 deadly weapon at the time of commission; or

35 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
36 sentenced under RCW 9.94A.660.

1 (2) The court shall sentence the offender to a term of community
2 placement of two years or up to the period of earned release awarded
3 pursuant to RCW 9.94A.728, whichever is longer, for:

4 (a) An offense categorized as a sex offense committed on or after
5 July 1, 1990, but before June 6, 1996, including those sex offenses
6 also included in other offense categories;

7 (b) A serious violent offense other than a sex offense committed on
8 or after July 1, 1990, but before July 1, 2000; or

9 (c) A vehicular homicide or vehicular assault committed on or after
10 July 1, 1990, but before July 1, 2000.

11 (3) The community placement ordered under this section shall begin
12 either upon completion of the term of confinement or at such time as
13 the offender is transferred to community custody in lieu of earned
14 release. When the court sentences an offender to the statutory maximum
15 sentence then the community placement portion of the sentence shall
16 consist entirely of the community custody to which the offender may
17 become eligible. Any period of community custody actually served shall
18 be credited against the community placement portion of the sentence.

19 (4) Unless a condition is waived by the court, the terms of any
20 community placement imposed under this section shall include the
21 following conditions:

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

24 (b) The offender shall work at department-approved education,
25 employment, or community restitution, or any combination thereof;

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

28 (d) The offender shall pay supervision fees as determined by the
29 department; and

30 (e) The residence location and living arrangements shall be subject
31 to the prior approval of the department during the period of community
32 placement.

33 (5) As a part of any terms of community placement imposed under
34 this section, the court may also order one or more of the following
35 special conditions:

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

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

1 (c) The offender shall participate in crime-related treatment or
2 counseling services;

3 (d) The offender shall not consume alcohol; or

4 (e) The offender shall comply with any crime-related prohibitions.

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

10 (7) Prior to or during community placement, upon recommendation of
11 the department, the sentencing court may remove or modify any
12 conditions of community placement so as not to be more restrictive.

13 **Sec. 7.** RCW 9.94A.710 and 2000 c 28 s 24 are each amended to read
14 as follows:

15 (1) When a court sentences a person to the custody of the
16 department for an offense categorized as a sex offense other than a
17 violent sex offense, including those sex offenses also included in
18 other offense categories, committed on or after June 6, 1996, and
19 before July 1, 2000, the court shall, in addition to other terms of the
20 sentence, sentence the offender to community custody for three years or
21 up to the period of earned release awarded pursuant to RCW 9.94A.728,
22 whichever is longer. The community custody shall begin either upon
23 completion of the term of confinement or at such time as the offender
24 is transferred to community custody in lieu of earned release.

25 (2) Unless a condition is waived by the court, the terms of
26 community custody imposed under this section shall be the same as those
27 provided for in RCW 9.94A.700(4) and may include those provided for in
28 RCW 9.94A.700(5). As part of any sentence that includes a term of
29 community custody imposed under this section, the court shall also
30 require the offender to comply with any conditions imposed by the
31 department under RCW 9.94A.720.

32 (3) At any time prior to the completion of a sex offender's term of
33 community custody, if the court finds that public safety would be
34 enhanced, the court may impose and enforce an order extending any or
35 all of the conditions imposed pursuant to this section for a period up
36 to the maximum allowable sentence for the crime as it is classified in
37 chapter 9A.20 RCW, regardless of the expiration of the offender's term
38 of community custody. If a violation of a condition extended under

1 this subsection occurs after the expiration of the offender's term of
2 community custody, it shall be deemed a violation of the sentence for
3 the purposes of RCW 9.94A.631 and may be punishable as contempt of
4 court as provided for in RCW 7.21.040.

5 **Sec. 8.** RCW 9.94A.712 and 2001 2nd sp.s. c 12 s 303 are each
6 amended to read as follows:

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

9 (a) Is convicted of:

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

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

20 ~~((iii))) (ii) An attempt to commit any crime listed in this
21 subsection (1)(a);
22 committed on or after September 1, 2001; or~~

23 (b) Has a prior conviction for an offense listed in RCW
24 9.94A.030(32)(b), and is convicted of any sex offense which was
25 committed after September 1, 2001.

26 For purposes of this subsection (1)(b), failure to register is not
27 a sex offense.

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

32 (3) Upon a finding that the offender is subject to sentencing under
33 this section, the court shall impose a sentence to a maximum term
34 consisting of the statutory maximum sentence for the offense and a
35 minimum term either within the standard sentence range for the offense,
36 or outside the standard sentence range pursuant to RCW 9.94A.535, if
37 the offender is otherwise eligible for such a sentence.

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

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

10 (6)(a) Unless a condition is waived by the court, the conditions of
11 community custody shall include those provided for in RCW 9.94A.700(4).
12 The conditions may also include those provided for in RCW 9.94A.700(5).
13 The court may also order the offender to participate in rehabilitative
14 programs or otherwise perform affirmative conduct reasonably related to
15 the circumstances of the offense, the offender's risk of reoffending,
16 or the safety of the community, and the department and the board shall
17 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
18 9.95.430.

19 (b) As part of any sentence under this section, the court shall
20 also require the offender to comply with any conditions imposed by the
21 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

22 **Sec. 9.** RCW 9.94A.800 and 2000 c 28 s 34 are each amended to read
23 as follows:

24 (1) When an offender commits any felony sex offense on or after
25 July 1, 1987, and on or before July 1, 1990, and is sentenced to a term
26 of confinement of more than one year but less than six years, the
27 sentencing court may, on its own motion or on the motion of the
28 offender or the state, request the department to evaluate whether the
29 offender is amenable to treatment and the department may place the
30 offender in a treatment program within a correctional facility operated
31 by the department.

32 Except for an offender who has been convicted of a violation of RCW
33 9A.44.040 or 9A.44.050 or a violent sex offense, if the offender
34 completes the treatment program before the expiration of his or her
35 term of confinement, the department may request the court to convert
36 the balance of confinement to community supervision and to place
37 conditions on the offender including crime-related prohibitions and

1 requirements that the offender perform any one or more of the
2 following:

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

4 (b) Remain within prescribed geographical boundaries and notify the
5 court or the community corrections officer prior to any change in the
6 offender's address or employment;

7 (c) Report as directed to the court and a community corrections
8 officer;

9 (d) Undergo available outpatient treatment.

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

14 Nothing in this subsection shall confer eligibility for such
15 programs for offenders convicted and sentenced for a sex offense
16 committed prior to July 1, 1987.

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

24 **Sec. 10.** RCW 9A.76.115 and 2001 2nd sp.s. c 12 s 360 are each
25 amended to read as follows:

26 (1) A person is guilty of sexually violent predator escape if:

27 (a) Having been found to be a sexually violent predator and
28 confined to the special commitment center or another secure facility
29 under court order, the person escapes from the secure facility;

30 (b) Having been found to be a sexually violent predator and being
31 under an order of conditional release, the person leaves or remains
32 absent from the state of Washington without prior court authorization;
33 or

34 (c) Having been found to be a sexually violent predator and being
35 under an order of conditional release, the person: (i) Without
36 authorization, leaves or remains absent from his or her residence,
37 place of employment, educational institution, or authorized outing;

1 (ii) tampers with his or her electronic monitoring device or removes it
2 without authorization; or (iii) escapes from his or her escort.

3 (2) Sexually violent predator escape is a class A felony (~~with a~~
4 ~~minimum sentence of sixty months,~~) and shall be sentenced (~~under RCW~~
5 ~~9.94A.712~~) to a term of life in prison without the possibility of
6 parole.

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