

---

HOUSE BILL 1856

---

State of Washington

55th Legislature

1997 Regular Session

By Representatives Dickerson, Costa, Constantine, Scott, Mason, Ogden, Conway, Tokuda, Cody, Kenney, Romero, H. Sommers, Cooper, Linville, Butler, Wolfe, Murray, Voloria, Fisher, Regala, Gardner, Quall, O'Brien, Doumit, Anderson, Morris, Kessler, Hatfield, Grant, Appelwick, Chopp, Kastama, Lisk, Gombosky, Wood and Blalock

Read first time 02/11/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to offenders; amending RCW 9.94A.040, 9A.04.050,  
2 13.40.010, 13.40.0357, 13.40.040, 13.40.045, 13.40.050, 13.40.060,  
3 13.40.070, 13.40.077, 13.40.080, 13.40.100, 13.40.125, 13.40.130,  
4 13.40.135, 13.40.150, 13.40.160, 13.40.190, 13.40.193, 13.40.200,  
5 13.40.230, 13.40.250, 13.40.265, 13.40.320, 13.50.010, 13.50.050,  
6 9A.36.045, 9A.36.050, 9.41.010, 9.41.040, 9.94A.103, 9.94A.105,  
7 9.94A.310, 10.99.020, 10.99.040, and 10.99.050; reenacting and amending  
8 RCW 9.94A.030, 9.94A.120, 9.94A.360, 13.04.030, 13.40.020, 9.94A.320,  
9 and 9A.46.060; adding a new section to chapter 13.40 RCW; creating a  
10 new section; repealing RCW 9.94A.045, 13.40.025, 13.40.0354, and  
11 13.40.075; and prescribing penalties.

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

13 **Sec. 1.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are  
14 each reenacted and amended to read as follows:

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

17 (1) "Collect," or any derivative thereof, "collect and remit," or  
18 "collect and deliver," when used with reference to the department of  
19 corrections, means that the department is responsible for monitoring

1 and enforcing the offender's sentence with regard to the legal  
2 financial obligation, receiving payment thereof from the offender, and,  
3 consistent with current law, delivering daily the entire payment to the  
4 superior court clerk without depositing it in a departmental account.

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

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

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

15 (5) "Community placement" means that period during which the  
16 offender is subject to the conditions of community custody and/or  
17 postrelease supervision, which begins either upon completion of the  
18 term of confinement (postrelease supervision) or at such time as the  
19 offender is transferred to community custody in lieu of earned early  
20 release. Community placement may consist of entirely community  
21 custody, entirely postrelease supervision, or a combination of the two.

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

25 (7) "Community supervision" means a period of time during which a  
26 convicted offender is subject to crime-related prohibitions and other  
27 sentence conditions imposed by a court pursuant to this chapter or RCW  
28 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
29 may include crime-related prohibitions and other conditions imposed  
30 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
31 for out-of-state supervision of parolees and probationers, RCW  
32 9.95.270, community supervision is the functional equivalent of  
33 probation and should be considered the same as probation by other  
34 states.

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

37 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
38 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
39 acceptance of a plea of guilty.

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

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

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

27 ~~((b) "Criminal history" shall always include juvenile convictions  
28 for sex offenses and serious violent offenses and shall also include a  
29 defendant's other prior convictions in juvenile court if: (i) The  
30 conviction was for an offense which is a felony or a serious traffic  
31 offense and is criminal history as defined in RCW 13.40.020(9); (ii)  
32 the defendant was fifteen years of age or older at the time the offense  
33 was committed; and (iii) with respect to prior juvenile class B and C  
34 felonies or serious traffic offenses, the defendant was less than  
35 twenty-three years of age at the time the offense for which he or she  
36 is being sentenced was committed.))~~

37 (13) "Day fine" means a fine imposed by the sentencing judge that  
38 equals the difference between the offender's net daily income and the

1 reasonable obligations that the offender has for the support of the  
2 offender and any dependents.

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

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

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

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

29 (18) "Drug offense" means:

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

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

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

39 (19) "Escape" means:

1 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
2 second degree (RCW 9A.76.120), willful failure to return from furlough  
3 (RCW 72.66.060), willful failure to return from work release (RCW  
4 72.65.070), or willful failure to be available for supervision by the  
5 department while in community custody (RCW 72.09.310); or

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

9 (20) "Felony traffic offense" means:

10 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
11 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
12 and-run injury-accident (RCW 46.52.020(4)); or

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

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

18 (22)~~((a))~~ "First-time offender" means any person who is convicted  
19 of a felony ~~((i))~~ (a) not classified as a violent offense or a sex  
20 offense under this chapter, or ~~((ii))~~ (b) that is not the  
21 manufacture, delivery, or possession with intent to manufacture or  
22 deliver a controlled substance classified in schedule I or II that is  
23 a narcotic drug, nor the manufacture, delivery, or possession with  
24 intent to deliver methamphetamine, its salts, isomers, and salts of its  
25 isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit  
26 of any controlled substance or counterfeit substance classified in  
27 schedule I, RCW 69.50.204, except leaves and flowering tops of  
28 marihuana, ~~((and except as provided in (b) of this subsection,))~~ who  
29 previously has never been convicted of a felony in this state, federal  
30 court, or another state, and who has never participated in a program of  
31 deferred prosecution for a felony offense.

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

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

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;

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

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

26 (t) Any other felony with a deadly weapon verdict under RCW  
27 9.94A.125;

28 (u) Any felony offense in effect at any time prior to December 2,  
29 1993, that is comparable to a most serious offense under this  
30 subsection, or any federal or out-of-state conviction for an offense  
31 that under the laws of this state would be a felony classified as a  
32 most serious offense under this subsection.

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

35 (25) "Offender" means a person who has committed a felony  
36 established by state law and is eighteen years of age or older or is  
37 less than eighteen years of age but whose case is under superior court  
38 jurisdiction under RCW 13.04.030 or has been transferred by the  
39 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and  
2 "defendant" are used interchangeably.

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

11 (27) "Persistent offender" is an offender who:

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

14 (ii) Has, before the commission of the offense under (a) of this  
15 subsection, been convicted as an offender on at least two separate  
16 occasions, whether in this state or elsewhere, of felonies that under  
17 the laws of this state would be considered most serious offenses and  
18 would be included in the offender score under RCW 9.94A.360; provided  
19 that of the two or more previous convictions, at least one conviction  
20 must have occurred before the commission of any of the other most  
21 serious offenses for which the offender was previously convicted; or

22 (b)(i) Has been convicted of (A) rape in the first degree, rape in  
23 the second degree, or indecent liberties by forcible compulsion; (B)  
24 murder in the first degree, murder in the second degree, kidnapping in  
25 the first degree, kidnapping in the second degree, assault in the first  
26 degree, assault in the second degree, or burglary in the first degree,  
27 with a finding of sexual motivation; or (C) an attempt to commit any  
28 crime listed in this subsection (27)(b)(i); and

29 (ii) Has, before the commission of the offense under (b)(i) of this  
30 subsection, been convicted as an offender on at least one occasion,  
31 whether in this state or elsewhere, of an offense listed in (b)(i) of  
32 this subsection.

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

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

39 (30) "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 (31) "Serious violent offense" is a subcategory of violent offense  
10 and means:

11 (a) Murder in the first degree, homicide by abuse, murder in the  
12 second degree, assault in the first degree, kidnapping in the first  
13 degree, or rape in the first degree, assault of a child in the first  
14 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
15 commit one of these felonies; or

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

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

21 (33) "Sex offense" means:

22 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
23 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
24 criminal attempt, criminal solicitation, or criminal conspiracy to  
25 commit such crimes;

26 (b) A felony with a finding of sexual motivation under RCW  
27 9.94A.127 or 13.40.135; or

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

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

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

38 (36) "Transition training" means written and verbal instructions  
39 and assistance provided by the department to the offender during the



1 two weeks prior to the offender's successful completion of the work  
2 ethic camp program. The transition training shall include instructions  
3 in the offender's requirements and obligations during the offender's  
4 period of community custody.

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

8 (38) "Violent offense" means:

9 (a) Any of the following felonies, as now existing or hereafter  
10 amended: Any felony defined under any law as a class A felony or an  
11 attempt to commit a class A felony, criminal solicitation of or  
12 criminal conspiracy to commit a class A felony, manslaughter in the  
13 first degree, manslaughter in the second degree, indecent liberties if  
14 committed by forcible compulsion, kidnapping in the second degree,  
15 arson in the second degree, assault in the second degree, assault of a  
16 child in the second degree, extortion in the first degree, robbery in  
17 the second degree, drive-by shooting, vehicular assault, and vehicular  
18 homicide, when proximately caused by the driving of any vehicle by any  
19 person while under the influence of intoxicating liquor or any drug as  
20 defined by RCW 46.61.502, or by the operation of any vehicle in a  
21 reckless manner;

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

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

28 (39) "Work crew" means a program of partial confinement consisting  
29 of civic improvement tasks for the benefit of the community of not less  
30 than thirty-five hours per week that complies with RCW 9.94A.135. The  
31 civic improvement tasks shall have minimal negative impact on existing  
32 private industries or the labor force in the county where the service  
33 or labor is performed. The civic improvement tasks shall not affect  
34 employment opportunities for people with developmental disabilities  
35 contracted through sheltered workshops as defined in RCW 82.04.385.  
36 Only those offenders sentenced to a facility operated or utilized under  
37 contract by a county or the state are eligible to participate on a work  
38 crew. Offenders sentenced for a sex offense as defined in subsection  
39 (33) of this section are not eligible for the work crew program.

1 (40) "Work ethic camp" means an alternative incarceration program  
2 designed to reduce recidivism and lower the cost of corrections by  
3 requiring offenders to complete a comprehensive array of real-world job  
4 and vocational experiences, character-building work ethics training,  
5 life management skills development, substance abuse rehabilitation,  
6 counseling, literacy training, and basic adult education.

7 (41) "Work release" means a program of partial confinement  
8 available to offenders who are employed or engaged as a student in a  
9 regular course of study at school. Participation in work release shall  
10 be conditioned upon the offender attending work or school at regularly  
11 defined hours and abiding by the rules of the work release facility.

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

15 **Sec. 2.** RCW 9.94A.040 and 1996 c 232 s 1 are each amended to read  
16 as follows:

17 (1) A sentencing guidelines commission is established as an agency  
18 of state government.

19 (2) The legislature finds that the commission, having accomplished  
20 its original statutory directive to implement this chapter, and having  
21 expertise in sentencing practice and policies, shall:

22 (a) Evaluate state sentencing policy, to include whether the  
23 sentencing ranges and standards are consistent with and further:

24 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

25 (ii) The intent of the legislature to emphasize confinement for the  
26 violent offender and alternatives to confinement for the nonviolent  
27 offender.

28 The commission shall provide the governor and the legislature with  
29 its evaluation and recommendations under this subsection not later than  
30 December 1, 1996, and every two years thereafter;

31 (b) Recommend to the legislature revisions or modifications to the  
32 standard sentence ranges, state sentencing policy, prosecuting  
33 standards, and other standards. If implementation of the revisions or  
34 modifications would result in exceeding the capacity of correctional  
35 facilities, then the commission shall accompany its recommendation with  
36 an additional list of standard sentence ranges which are consistent  
37 with correction capacity;

1 (c) Study the existing criminal code and from time to time make  
2 recommendations to the legislature for modification;

3 (d)(i) Serve as a clearinghouse and information center for the  
4 collection, preparation, analysis, and dissemination of information on  
5 state and local adult and juvenile sentencing practices; (ii) develop  
6 and maintain a computerized adult and juvenile sentencing information  
7 system by individual superior court judge consisting of offender,  
8 offense, history, and sentence information entered from judgment and  
9 sentence forms for all adult felons; and (iii) conduct ongoing research  
10 regarding adult and juvenile sentencing guidelines, use of total  
11 confinement and alternatives to total confinement, plea bargaining, and  
12 other matters relating to the improvement of the adult criminal justice  
13 system and the juvenile justice system;

14 (e) Assume the powers and duties of the juvenile disposition  
15 standards commission after June 30, 1996;

16 (f) Evaluate the effectiveness of existing disposition standards  
17 and related statutes in implementing policies set forth in RCW  
18 13.40.010 generally, specifically review the guidelines relating to the  
19 confinement of minor and first offenders as well as the use of  
20 diversion, and review the application of current and proposed juvenile  
21 sentencing standards and guidelines for potential adverse impacts on  
22 the sentencing outcomes of racial and ethnic minority youth;

23 (g) Solicit the comments and suggestions of the juvenile justice  
24 community concerning disposition standards, and make recommendations to  
25 the legislature regarding revisions or modifications of the standards  
26 (~~in accordance with RCW 9.94A.045~~). The evaluations shall be  
27 submitted to the legislature on December 1 of each odd-numbered year.  
28 The department of social and health services shall provide the  
29 commission with available data concerning the implementation of the  
30 disposition standards and related statutes and their effect on the  
31 performance of the department's responsibilities relating to juvenile  
32 offenders, and with recommendations for modification of the disposition  
33 standards. The office of the administrator for the courts shall  
34 provide the commission with available data on diversion and  
35 dispositions of juvenile offenders under chapter 13.40 RCW; and

36 (h) Not later than December 1, 1997, and at least every two years  
37 thereafter, based on available information, report to the governor and  
38 the legislature on:

39 (i) Racial disproportionality in juvenile and adult sentencing;

1 (ii) The capacity of state and local juvenile and adult facilities  
2 and resources; and

3 (iii) Recidivism information on adult and juvenile offenders.

4 (3) Each of the commission's recommended standard sentence ranges  
5 shall include one or more of the following: Total confinement, partial  
6 confinement, community supervision, community service, and a fine.

7 (4) The standard sentence ranges of total and partial confinement  
8 under this chapter are subject to the following limitations:

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

14 (b) If the maximum term in the range is greater than one year, the  
15 minimum term in the range shall be no less than seventy-five percent of  
16 the maximum term in the range; and

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

19 (5) The commission shall exercise its duties under this section in  
20 conformity with chapter 34.05 RCW.

21 **Sec. 3.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c  
22 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as  
23 follows:

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

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

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

33 (3) Whenever a sentence outside the standard range is imposed, the  
34 court shall set forth the reasons for its decision in written findings  
35 of fact and conclusions of law. A sentence outside the standard range  
36 shall be a determinate sentence.

37 (4) A persistent offender shall be sentenced to a term of total  
38 confinement for life without the possibility of parole or, when

1 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
2 first degree, sentenced to death, notwithstanding the maximum sentence  
3 under any other law. An offender convicted of the crime of murder in  
4 the first degree shall be sentenced to a term of total confinement not  
5 less than twenty years. An offender convicted of the crime of assault  
6 in the first degree or assault of a child in the first degree where the  
7 offender used force or means likely to result in death or intended to  
8 kill the victim shall be sentenced to a term of total confinement not  
9 less than five years. An offender convicted of the crime of rape in  
10 the first degree shall be sentenced to a term of total confinement not  
11 less than five years. The foregoing minimum terms of total confinement  
12 are mandatory and shall not be varied or modified as provided in  
13 subsection (2) of this section. In addition, all offenders subject to  
14 the provisions of this subsection shall not be eligible for community  
15 custody, earned early release time, furlough, home detention, partial  
16 confinement, work crew, work release, or any other form of early  
17 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
18 or any other form of authorized leave of absence from the correctional  
19 facility while not in the direct custody of a corrections officer or  
20 officers during such minimum terms of total confinement except in the  
21 case of an offender in need of emergency medical treatment or for the  
22 purpose of commitment to an inpatient treatment facility in the case of  
23 an offender convicted of the crime of rape in the first degree.

24 (5) In sentencing a first-time offender the court may waive the  
25 imposition of a sentence within the sentence range and impose a  
26 sentence which may include up to ninety days of confinement in a  
27 facility operated or utilized under contract by the county and a  
28 requirement that the offender refrain from committing new offenses.  
29 The sentence may also include up to two years of community supervision,  
30 which, in addition to crime-related prohibitions, may include  
31 requirements that the offender perform any one or more of the  
32 following:

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

34 (b) Undergo available outpatient treatment for up to two years, or  
35 inpatient treatment not to exceed the standard range of confinement for  
36 that offense;

37 (c) Pursue a prescribed, secular course of study or vocational  
38 training;

1 (d) Remain within prescribed geographical boundaries and notify the  
2 court or the community corrections officer prior to any change in the  
3 offender's address or employment;

4 (e) Report as directed to the court and a community corrections  
5 officer; or

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

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

10 (i) The offender is convicted of the manufacture, delivery, or  
11 possession with intent to manufacture or deliver a controlled substance  
12 classified in Schedule I or II that is a narcotic drug or a felony that  
13 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
14 criminal solicitation, or criminal conspiracy to commit such crimes,  
15 and the violation does not involve a sentence enhancement under RCW  
16 9.94A.310 (3) or (4);

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

19 (iii) The offense involved only a small quantity of the particular  
20 controlled substance as determined by the judge upon consideration of  
21 such factors as the weight, purity, packaging, sale price, and street  
22 value of the controlled substance.

23 (b) If the midpoint of the standard range is greater than one year  
24 and the sentencing judge determines that the offender is eligible for  
25 this option and that the offender and the community will benefit from  
26 the use of the special drug offender sentencing alternative, the judge  
27 may waive imposition of a sentence within the standard range and impose  
28 a sentence that must include a period of total confinement in a state  
29 facility for one-half of the midpoint of the standard range. During  
30 incarceration in the state facility, offenders sentenced under this  
31 subsection shall undergo a comprehensive substance abuse assessment and  
32 receive, within available resources, treatment services appropriate for  
33 the offender. The treatment services shall be designed by the division  
34 of alcohol and substance abuse of the department of social and health  
35 services, in cooperation with the department of corrections. If the  
36 midpoint of the standard range is twenty-four months or less, no more  
37 than three months of the sentence may be served in a work release  
38 status. The court shall also impose one year of concurrent community  
39 custody and community supervision that must include appropriate

1 outpatient substance abuse treatment, crime-related prohibitions  
2 including a condition not to use illegal controlled substances, and a  
3 requirement to submit to urinalysis or other testing to monitor that  
4 status. The court may require that the monitoring for controlled  
5 substances be conducted by the department or by a treatment  
6 alternatives to street crime program or a comparable court or agency-  
7 referred program. The offender may be required to pay thirty dollars  
8 per month while on community custody to offset the cost of monitoring.  
9 In addition, the court shall impose three or more of the following  
10 conditions:

- 11 (i) Devote time to a specific employment or training;
- 12 (ii) Remain within prescribed geographical boundaries and notify  
13 the court or the community corrections officer before any change in the  
14 offender's address or employment;
- 15 (iii) Report as directed to a community corrections officer;
- 16 (iv) Pay all court-ordered legal financial obligations;
- 17 (v) Perform community service work;
- 18 (vi) Stay out of areas designated by the sentencing judge.

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

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

1 (7) If a sentence range has not been established for the  
2 defendant's crime, the court shall impose a determinate sentence which  
3 may include not more than one year of confinement, community service  
4 work, a term of community supervision not to exceed one year, and/or  
5 other legal financial obligations. The court may impose a sentence  
6 which provides more than one year of confinement if the court finds,  
7 considering the purpose of this chapter, that there are substantial and  
8 compelling reasons justifying an exceptional sentence.

9 (8)(a)(i) When an offender is convicted of a sex offense other than  
10 a violation of RCW 9A.44.050 or a sex offense that is also a serious  
11 violent offense and has no prior convictions for a sex offense or any  
12 other felony sex offenses in this or any other state, the sentencing  
13 court, on its own motion or the motion of the state or the defendant,  
14 may order an examination to determine whether the defendant is amenable  
15 to treatment.

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

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

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

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

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

32 (D) Anticipated length of treatment; and

33 (E) Recommended crime-related prohibitions.

34 The court on its own motion may order, or on a motion by the state  
35 shall order, a second examination regarding the offender's amenability  
36 to treatment. The evaluator shall be selected by the party making the  
37 motion. The defendant shall pay the cost of any second examination  
38 ordered unless the court finds the defendant to be indigent in which  
39 case the state shall pay the cost.



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

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

15 (B) The court shall order treatment for any period up to three  
16 years in duration. The court in its discretion shall order outpatient  
17 sex offender treatment or inpatient sex offender treatment, if  
18 available. A community mental health center may not be used for such  
19 treatment unless it has an appropriate program designed for sex  
20 offender treatment. The offender shall not change sex offender  
21 treatment providers or treatment conditions without first notifying the  
22 prosecutor, the community corrections officer, and the court, and shall  
23 not change providers without court approval after a hearing if the  
24 prosecutor or community corrections officer object to the change. In  
25 addition, as conditions of the suspended sentence, the court may impose  
26 other sentence conditions including up to six months of confinement,  
27 not to exceed the sentence range of confinement for that offense,  
28 crime-related prohibitions, and requirements that the offender perform  
29 any one or more of the following:

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

31 (II) Remain within prescribed geographical boundaries and notify  
32 the court or the community corrections officer prior to any change in  
33 the offender's address or employment;

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

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

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

3 (iii) The sex offender therapist shall submit quarterly reports on  
4 the defendant's progress in treatment to the court and the parties.  
5 The report shall reference the treatment plan and include at a minimum  
6 the following: Dates of attendance, defendant's compliance with  
7 requirements, treatment activities, the defendant's relative progress  
8 in treatment, and any other material as specified by the court at  
9 sentencing.

10 (iv) At the time of sentencing, the court shall set a treatment  
11 termination hearing for three months prior to the anticipated date for  
12 completion of treatment. Prior to the treatment termination hearing,  
13 the treatment professional and community corrections officer shall  
14 submit written reports to the court and parties regarding the  
15 defendant's compliance with treatment and monitoring requirements, and  
16 recommendations regarding termination from treatment, including  
17 proposed community supervision conditions. Either party may request  
18 and the court may order another evaluation regarding the advisability  
19 of termination from treatment. The defendant shall pay the cost of any  
20 additional evaluation ordered unless the court finds the defendant to  
21 be indigent in which case the state shall pay the cost. At the  
22 treatment termination hearing the court may: (A) Modify conditions of  
23 community custody, and either (B) terminate treatment, or (C) extend  
24 treatment for up to the remaining period of community custody.

25 (v) If a violation of conditions occurs during community custody,  
26 the department shall either impose sanctions as provided for in RCW  
27 9.94A.205(2)(a) or refer the violation to the court and recommend  
28 revocation of the suspended sentence as provided for in (a)(vi) of this  
29 subsection.

30 (vi) The court may revoke the suspended sentence at any time during  
31 the period of community custody and order execution of the sentence if:  
32 (A) The defendant violates the conditions of the suspended sentence, or  
33 (B) the court finds that the defendant is failing to make satisfactory  
34 progress in treatment. All confinement time served during the period  
35 of community custody shall be credited to the offender if the suspended  
36 sentence is revoked.

37 (vii) Except as provided in (a) (viii) of this subsection, after  
38 July 1, 1991, examinations and treatment ordered pursuant to this

1 subsection shall only be conducted by sex offender treatment providers  
2 certified by the department of health pursuant to chapter 18.155 RCW.

3 (viii) A sex offender therapist who examines or treats a sex  
4 offender pursuant to this subsection (8) does not have to be certified  
5 by the department of health pursuant to chapter 18.155 RCW if the court  
6 finds that: (A) The offender has already moved to another state or  
7 plans to move to another state for reasons other than circumventing the  
8 certification requirements; (B) no certified providers are available  
9 for treatment within a reasonable geographical distance of the  
10 offender's home; and (C) the evaluation and treatment plan comply with  
11 this subsection (8) and the rules adopted by the department of health.

12 (ix) For purposes of this subsection (8), "victim" means any person  
13 who has sustained emotional, psychological, physical, or financial  
14 injury to person or property as a result of the crime charged.  
15 "Victim" also means a parent or guardian of a victim who is a minor  
16 child unless the parent or guardian is the perpetrator of the offense.

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

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

27 Except for an offender who has been convicted of a violation of RCW  
28 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
29 before the expiration of his or her term of confinement, the department  
30 of corrections may request the court to convert the balance of  
31 confinement to community supervision and to place conditions on the  
32 offender including crime-related prohibitions and requirements that the  
33 offender perform any one or more of the following:

34 (i) Devote time to a specific employment or occupation;

35 (ii) Remain within prescribed geographical boundaries and notify  
36 the court or the community corrections officer prior to any change in  
37 the offender's address or employment;

38 (iii) Report as directed to the court and a community corrections  
39 officer;

1 (iv) Undergo available outpatient treatment.

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

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

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

18 (9)(a) When a court sentences a person to a term of total  
19 confinement to the custody of the department of corrections for an  
20 offense categorized as a sex offense or a serious violent offense  
21 committed after July 1, 1988, but before July 1, 1990, assault in the  
22 second degree, assault of a child in the second degree, any crime  
23 against a person where it is determined in accordance with RCW  
24 9.94A.125 that the defendant or an accomplice was armed with a deadly  
25 weapon at the time of commission, or any felony offense under chapter  
26 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
27 committed on or after July 1, 1988, the court shall in addition to the  
28 other terms of the sentence, sentence the offender to a one-year term  
29 of community placement beginning either upon completion of the term of  
30 confinement or at such time as the offender is transferred to community  
31 custody in lieu of earned early release in accordance with RCW  
32 9.94A.150 (1) and (2). When the court sentences an offender under this  
33 subsection to the statutory maximum period of confinement then the  
34 community placement portion of the sentence shall consist entirely of  
35 such community custody to which the offender may become eligible, in  
36 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
37 custody actually served shall be credited against the community  
38 placement portion of the sentence.

1 (b) When a court sentences a person to a term of total confinement  
2 to the custody of the department of corrections for an offense  
3 categorized as a sex offense committed on or after July 1, 1990, but  
4 before June 6, 1996, a serious violent offense, vehicular homicide, or  
5 vehicular assault, committed on or after July 1, 1990, the court shall  
6 in addition to other terms of the sentence, sentence the offender to  
7 community placement for two years or up to the period of earned early  
8 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is  
9 longer. The community placement shall begin either upon completion of  
10 the term of confinement or at such time as the offender is transferred  
11 to community custody in lieu of earned early release in accordance with  
12 RCW 9.94A.150 (1) and (2). When the court sentences an offender under  
13 this subsection to the statutory maximum period of confinement then the  
14 community placement portion of the sentence shall consist entirely of  
15 the community custody to which the offender may become eligible, in  
16 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
17 custody actually served shall be credited against the community  
18 placement portion of the sentence. Unless a condition is waived by the  
19 court, the terms of community placement for offenders sentenced  
20 pursuant to this section shall include the following conditions:

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

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

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

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

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

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

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

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

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

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

5 (iv) The offender shall not consume alcohol;

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

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

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

17 (10)(a) When a court sentences a person to the custody of the  
18 department of corrections for an offense categorized as a sex offense  
19 committed on or after June 6, 1996, the court shall, in addition to  
20 other terms of the sentence, sentence the offender to community custody  
21 for three years or up to the period of earned early release awarded  
22 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The  
23 community custody shall begin either upon completion of the term of  
24 confinement or at such time as the offender is transferred to community  
25 custody in lieu of earned early release in accordance with RCW  
26 9.94A.150 (1) and (2).

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

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

1 of community custody. If a violation of a condition extended under  
2 this subsection occurs after the expiration of the offender's term of  
3 community custody, it shall be deemed a violation of the sentence for  
4 the purposes of RCW 9.94A.195 and may be punishable as contempt of  
5 court as provided for in RCW 7.21.040.

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

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

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

37 (14) All offenders sentenced to terms involving community  
38 supervision, community service, community placement, or legal financial  
39 obligation shall be under the supervision of the department of

1 corrections and shall follow explicitly the instructions and conditions  
2 of the department of corrections.

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

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

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

32 (15) All offenders sentenced to terms involving community  
33 supervision, community service, or community placement under the  
34 supervision of the department of corrections shall not own, use, or  
35 possess firearms or ammunition. Offenders who own, use, or are found  
36 to be in actual or constructive possession of firearms or ammunition  
37 shall be subject to the appropriate violation process and sanctions.  
38 "Constructive possession" as used in this subsection means the power  
39 and intent to control the firearm or ammunition. "Firearm" as used in



1 this subsection means a weapon or device from which a projectile may be  
2 fired by an explosive such as gunpowder.

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

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

12 (18) The court shall order restitution whenever the offender is  
13 convicted of a felony that results in injury to any person or damage to  
14 or loss of property, whether the offender is sentenced to confinement  
15 or placed under community supervision, unless extraordinary  
16 circumstances exist that make restitution inappropriate in the court's  
17 judgment. The court shall set forth the extraordinary circumstances in  
18 the record if it does not order restitution.

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

26 (20) In any sentence of partial confinement, the court may require  
27 the defendant to serve the partial confinement in work release, in a  
28 program of home detention, on work crew, or in a combined program of  
29 work crew and home detention.

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

34 **Sec. 4.** RCW 9.94A.360 and 1995 c 316 s 1 and 1995 c 101 s 1 are  
35 each reenacted and amended to read as follows:

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

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

3 (1) A prior conviction is a conviction which exists before the date  
4 of sentencing for the offense for which the offender score is being  
5 computed. Convictions entered or sentenced on the same date as the  
6 conviction for which the offender score is being computed shall be  
7 deemed "other current offenses" within the meaning of RCW 9.94A.400.

8 (~~(2) ((Except as provided in subsection (4) of this section,))~~) Class  
9 A and sex prior felony convictions shall always be included in the  
10 offender score. Class B prior felony convictions other than sex  
11 offenses shall not be included in the offender score, if since the last  
12 date of release from confinement (including full-time residential  
13 treatment) pursuant to a felony conviction, if any, or entry of  
14 judgment and sentence, the offender had spent ten consecutive years in  
15 the community without committing any crime that subsequently results in  
16 a conviction. Class C prior felony convictions other than sex offenses  
17 shall not be included in the offender score if, since the last date of  
18 release from confinement (including full-time residential treatment)  
19 pursuant to a felony conviction, if any, or entry of judgment and  
20 sentence, the offender had spent five consecutive years in the  
21 community without committing any crime that subsequently results in a  
22 conviction. Serious traffic convictions shall not be included in the  
23 offender score if, since the last date of release from confinement  
24 (including full-time residential treatment) pursuant to a felony  
25 conviction, if any, or entry of judgment and sentence, the offender  
26 spent five years in the community without committing any crime that  
27 subsequently results in a conviction. This subsection applies to both  
28 adult and juvenile prior convictions.

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

38 (~~(4) ((Always include juvenile convictions for sex offenses and~~  
39 ~~serious violent offenses. Include other class A juvenile felonies only~~

1 if the offender was 15 or older at the time the juvenile offense was  
2 committed. Include other class B and C juvenile felony convictions  
3 only if the offender was 15 or older at the time the juvenile offense  
4 was committed and the offender was less than 23 at the time the offense  
5 for which he or she is being sentenced was committed.

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

9 ((6)) (5)(a) In the case of multiple prior convictions, for the  
10 purpose of computing the offender score, count all convictions  
11 separately, except:

12 (i) Prior ((adult)) offenses which were found, under RCW  
13 9.94A.400(1)(a), to encompass the same criminal conduct, shall be  
14 counted as one offense, the offense that yields the highest offender  
15 score. The current sentencing court shall determine with respect to  
16 other prior adult offenses for which sentences were served concurrently  
17 or prior juvenile offenses for which sentences were served  
18 consecutively, whether those offenses shall be counted as one offense  
19 or as separate offenses using the "same criminal conduct" analysis  
20 found in RCW 9.94A.400(1)(a), and if the court finds that they shall be  
21 counted as one offense, then the offense that yields the highest  
22 offender score shall be used. The current sentencing court may presume  
23 that such other prior ((adult)) offenses were not the same criminal  
24 conduct from sentences imposed on separate dates, or in separate  
25 counties or jurisdictions, or in separate complaints, indictments, or  
26 informations; and

27 (ii) ((Juvenile prior convictions entered or sentenced on the same  
28 date shall count as one offense, the offense that yields the highest  
29 offender score, except for juvenile prior convictions for violent  
30 offenses with separate victims, which shall count as separate offenses;  
31 and

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

38 (b) As used in this subsection ((6)) (5), "served concurrently"  
39 means that: (i) The latter sentence was imposed with specific

1 reference to the former; (ii) the concurrent relationship of the  
2 sentences was judicially imposed; and (iii) the concurrent timing of  
3 the sentences was not the result of a probation or parole revocation on  
4 the former offense.

5 ~~((+7))~~ (6) If the present conviction is one of the anticipatory  
6 offenses of criminal attempt, solicitation, or conspiracy, count each  
7 prior conviction as if the present conviction were for a completed  
8 offense.

9 ~~((+8))~~ (7) If the present conviction is for a nonviolent offense  
10 and not covered by subsection (11) or (12) ~~((or+13))~~ of this section,  
11 count one point for each adult prior felony conviction and one point  
12 for each juvenile prior violent felony conviction and « point for each  
13 juvenile prior nonviolent felony conviction.

14 ~~((+9))~~ (8) If the present conviction is for a violent offense and  
15 not covered in subsection (9), (10), (11), or (12) ~~((or+13))~~ of this  
16 section, count two points for each prior adult and juvenile violent  
17 felony conviction, one point for each prior adult nonviolent felony  
18 conviction, and « point for each prior juvenile nonviolent felony  
19 conviction.

20 ~~((+10))~~ (9) If the present conviction is for Murder 1 or 2,  
21 Assault 1, Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or  
22 Rape 1, count three points for prior adult and juvenile convictions for  
23 crimes in these categories, two points for each prior adult and  
24 juvenile violent conviction (not already counted), one point for each  
25 prior adult nonviolent felony conviction, and « point for each prior  
26 juvenile nonviolent felony conviction.

27 ~~((+11))~~ (10) If the present conviction is for Burglary 1, count  
28 prior convictions as in subsection ~~((+9))~~ (8) of this section; however  
29 count two points for each prior adult Burglary 2 or residential  
30 burglary conviction, and one point for each prior juvenile Burglary 2  
31 or residential burglary conviction.

32 ~~((+12))~~ (11) If the present conviction is for a felony traffic  
33 offense count two points for each adult or juvenile prior conviction  
34 for Vehicular Homicide or Vehicular Assault; for each felony offense or  
35 serious traffic offense, count one point for each adult and « point for  
36 each juvenile prior conviction.

37 ~~((+13))~~ (12) If the present conviction is for a drug offense count  
38 three points for each adult prior felony drug offense conviction and  
39 two points for each juvenile drug offense. All other adult and

1 juvenile felonies are scored as in subsection ~~((+9))~~ (8) of this  
2 section if the current drug offense is violent, or as in subsection  
3 ~~((+8))~~ (7) of this section if the current drug offense is nonviolent.

4 ~~((+14))~~ (13) If the present conviction is for Willful Failure to  
5 Return from Furlough, RCW 72.66.060, Willful Failure to Return from  
6 Work Release, RCW 72.65.070, or Escape from Community Custody, RCW  
7 72.09.310, count only prior escape convictions in the offender score.  
8 Count adult prior escape convictions as one point and juvenile prior  
9 escape convictions as « point.

10 ~~((+15))~~ (14) If the present conviction is for Escape 1, RCW  
11 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as  
12 one point and juvenile prior convictions as « point.

13 ~~((+16))~~ (15) If the present conviction is for Burglary 2 or  
14 residential burglary, count priors as in subsection ~~((+8))~~ (7) of this  
15 section; however, count two points for each adult and juvenile prior  
16 Burglary 1 conviction, two points for each adult prior Burglary 2 or  
17 residential burglary conviction, and one point for each juvenile prior  
18 Burglary 2 or residential burglary conviction.

19 ~~((+17))~~ (16) If the present conviction is for a sex offense, count  
20 priors as in subsections ~~((+8))~~ (7) through ~~((+16))~~ (15) of this  
21 section; however count three points for each adult and juvenile prior  
22 sex offense conviction.

23 ~~((+18))~~ (17) If the present conviction is for an offense committed  
24 while the offender was under community placement, add one point.

25 **Sec. 5.** RCW 9A.04.050 and 1975 1st ex.s. c 260 s 9A.04.050 are  
26 each amended to read as follows:

27 Children under the age of eight years are incapable of committing  
28 crime. Children of eight and under twelve years of age are presumed to  
29 be incapable of committing crime, but this presumption may be removed  
30 by proof that they have sufficient capacity to understand the act or  
31 neglect, and to know that it was wrong. The court shall hold a hearing  
32 to determine whether a child who is ten or eleven years of age and who  
33 is alleged to have committed an offense has the capacity to understand  
34 the alleged act or neglect and that it is wrong. Whenever in legal  
35 proceedings it becomes necessary to determine the age of a child, he or  
36 she may be produced for inspection, to enable the court or jury to  
37 determine the age thereby; and the court may also direct ~~((his))~~ the

1 child's examination by one or more physicians, whose opinion shall be  
2 competent evidence upon the question of (~~his~~) the child's age.

3 **Sec. 6.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15 are  
4 each reenacted and amended to read as follows:

5 (1) Except as provided in subsection (2) of this section, the  
6 juvenile courts in the several counties of this state, shall have  
7 exclusive original jurisdiction over all proceedings:

8 (a) Under the interstate compact on placement of children as  
9 provided in chapter 26.34 RCW;

10 (b) Relating to children alleged or found to be dependent as  
11 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

12 (c) Relating to the termination of a parent and child relationship  
13 as provided in RCW 13.34.180 through 13.34.210;

14 (d) To approve or disapprove out-of-home placement as provided in  
15 RCW 13.32A.170;

16 (e) Relating to juveniles alleged or found to have committed  
17 offenses, traffic or civil infractions, or violations as provided in  
18 RCW 13.40.020 through 13.40.230, unless:

19 (i) The juvenile court transfers jurisdiction of a particular  
20 juvenile to adult criminal court pursuant to RCW 13.40.110; or

21 (ii) The statute of limitations applicable to adult prosecution for  
22 the offense, traffic infraction, or violation has expired; or

23 (iii) The alleged offense or infraction is a traffic, fish,  
24 boating, or game offense, or traffic or civil infraction committed by  
25 a juvenile sixteen years of age or older and would, if committed by an  
26 adult, be tried or heard in a court of limited jurisdiction, in which  
27 instance the appropriate court of limited jurisdiction shall have  
28 jurisdiction over the alleged offense or infraction: PROVIDED, That if  
29 such an alleged offense or infraction and an alleged offense or  
30 infraction subject to juvenile court jurisdiction arise out of the same  
31 event or incident, the juvenile court may have jurisdiction of both  
32 matters: PROVIDED FURTHER, That the jurisdiction under this subsection  
33 does not constitute "transfer" or a "decline" for purposes of RCW  
34 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That  
35 courts of limited jurisdiction which confine juveniles for an alleged  
36 offense or infraction may place juveniles in juvenile detention  
37 facilities under an agreement with the officials responsible for the

1 administration of the juvenile detention facility in RCW 13.04.035 and  
2 13.20.060; or

3 (iv) The juvenile is sixteen or seventeen years old and the alleged  
4 offense is: (A) A serious violent offense as defined in RCW 9.94A.030  
5 committed on or after June 13, 1994; or (B) a violent offense as  
6 defined in RCW 9.94A.030 committed on or after June 13, 1994, and the  
7 juvenile has a criminal history consisting of: (I) One or more prior  
8 serious violent offenses; (II) two or more prior violent offenses; or  
9 (III) three or more of any combination of the following offenses: Any  
10 class A felony, any class B felony, vehicular assault, or manslaughter  
11 in the second degree, all of which must have been committed after the  
12 juvenile's thirteenth birthday and prosecuted separately. In such a  
13 case the adult criminal court shall have exclusive original  
14 jurisdiction.

15 If the juvenile challenges the state's determination of the  
16 juvenile's criminal history, the state may establish the offender's  
17 criminal history by a preponderance of the evidence. If the criminal  
18 history consists of adjudications entered upon a plea of guilty, the  
19 state shall not bear a burden of establishing the knowing and  
20 voluntariness of the plea;

21 (f) Under the interstate compact on juveniles as provided in  
22 chapter 13.24 RCW;

23 (g) Relating to termination of a diversion agreement under RCW  
24 13.40.080, including a proceeding in which the divertee has attained  
25 eighteen years of age;

26 (h) Relating to court validation of a voluntary consent to an out-  
27 of-home placement under chapter 13.34 RCW, by the parent or Indian  
28 custodian of an Indian child, except if the parent or Indian custodian  
29 and child are residents of or domiciled within the boundaries of a  
30 federally recognized Indian reservation over which the tribe exercises  
31 exclusive jurisdiction; and

32 (i) Relating to petitions to compel disclosure of information filed  
33 by the department of social and health services pursuant to RCW  
34 74.13.042.

35 (2) The family court shall have concurrent original jurisdiction  
36 with the juvenile court over all proceedings under this section if the  
37 superior court judges of a county authorize concurrent jurisdiction as  
38 provided in RCW 26.12.010.

1 (3) A juvenile subject to adult superior court jurisdiction under  
2 subsection (1)(e) (i) through (iv) of this section, who is detained  
3 pending trial, may be detained in a county detention facility as  
4 defined in RCW 13.40.020 pending sentencing or a dismissal.

5 **Sec. 7.** RCW 13.40.010 and 1992 c 205 s 101 are each amended to  
6 read as follows:

7 (1) This chapter shall be known and cited as the Juvenile Justice  
8 Act of 1977.

9 (2) It is the intent of the legislature that a system capable of  
10 having primary responsibility for, being accountable for, and  
11 responding to the needs of youthful offenders, as defined by this  
12 chapter, be established. It is the further intent of the legislature  
13 that youth, in turn, be held accountable for their offenses and that  
14 ((~~both~~)) communities, families, and the juvenile courts carry out their  
15 functions consistent with this intent. To effectuate these policies,  
16 the legislature declares the following to be equally important purposes  
17 of this chapter:

18 (a) Protect the citizenry from criminal behavior;

19 (b) Provide for determining whether accused juveniles have  
20 committed offenses as defined by this chapter;

21 (c) Make the juvenile offender accountable for his or her criminal  
22 behavior;

23 (d) Provide for punishment commensurate with the age, crime, and  
24 criminal history of the juvenile offender;

25 (e) Provide due process for juveniles alleged to have committed an  
26 offense;

27 (f) Provide necessary treatment, supervision, and custody for  
28 juvenile offenders;

29 (g) Provide for the handling of juvenile offenders by communities  
30 whenever consistent with public safety;

31 (h) Provide for restitution to victims of crime;

32 (i) Develop effective standards and goals for the operation,  
33 funding, and evaluation of all components of the juvenile justice  
34 system and related services at the state and local levels; ((~~and~~))

35 (j) Provide for a clear policy to determine what types of offenders  
36 shall receive punishment, treatment, or both, and to determine the  
37 jurisdictional limitations of the courts, institutions, and community  
38 services; and



1        (k) Encourage the parents, guardian, or custodian of the juvenile  
2 to actively participate in the juvenile justice process.

3        **Sec. 8.** RCW 13.40.020 and 1995 c 395 s 2 and 1995 c 134 s 1 are  
4 each reenacted and amended to read as follows:

5        For the purposes of this chapter:

6        ~~(1) ("Serious offender" means a person fifteen years of age or~~  
7 ~~older who has committed an offense which if committed by an adult would~~  
8 ~~be:~~

9        ~~(a) A class A felony, or an attempt to commit a class A felony;~~

10        ~~(b) Manslaughter in the first degree; or~~

11        ~~(c) Assault in the second degree, extortion in the first degree,~~  
12 ~~child molestation in the second degree, kidnapping in the second~~  
13 ~~degree, robbery in the second degree, residential burglary, or burglary~~  
14 ~~in the second degree, where such offenses include the infliction of~~  
15 ~~bodily harm upon another or where during the commission of or immediate~~  
16 ~~withdrawal from such an offense the perpetrator is armed with a deadly~~  
17 ~~weapon;~~

18        ~~(2))~~ "Community service" means compulsory service, without  
19 compensation, performed for the benefit of the community by the  
20 offender as punishment for committing an offense. Community service  
21 may be performed through public or private organizations or through  
22 work crews;

23        ~~((3))~~ (2) "Community supervision" means an order of disposition  
24 by the court of an adjudicated youth not committed to the department or  
25 an order granting a deferred ~~((adjudication))~~ disposition pursuant to  
26 RCW 13.40.125. A community supervision order for a single offense may  
27 be for a period of up to two years for a sex offense as defined by RCW  
28 9.94A.030 and up to one year for other offenses. As a mandatory  
29 condition of any term of community supervision, the court shall order  
30 the juvenile to refrain from committing new offenses. As a mandatory  
31 condition of community supervision, the court shall order the juvenile  
32 to comply with the mandatory school attendance provisions of chapter  
33 28A.225 RCW and to inform the school of the existence of this  
34 requirement. Community supervision is an individualized program  
35 comprised of one or more of the following:

36        (a) Community-based sanctions;

37        (b) Community-based rehabilitation;

38        (c) Monitoring and reporting requirements;

1 (d) Posting of a probation bond (~~imposed pursuant to RCW~~  
2 ~~13.40.0357~~));

3 (~~(4)~~) (3) Community-based sanctions may include one or more of  
4 the following:

5 (a) A fine, not to exceed (~~one~~) five hundred dollars;

6 (b) Community service not to exceed one hundred fifty hours of  
7 service;

8 (~~(5)~~) (4) "Community-based rehabilitation" means one or more of  
9 the following: Employment; attendance of information classes;  
10 counseling, outpatient substance abuse treatment programs, outpatient  
11 mental health programs, anger management classes, education or  
12 outpatient treatment programs to prevent animal cruelty, or other  
13 services; or attendance at school or other educational programs  
14 appropriate for the juvenile as determined by the school district.  
15 Placement in community-based rehabilitation programs is subject to  
16 available funds;

17 (~~(6)~~) (5) "Monitoring and reporting requirements" means one or  
18 more of the following: Curfews; requirements to remain at home,  
19 school, work, or court-ordered treatment programs during specified  
20 hours; restrictions from leaving or entering specified geographical  
21 areas; requirements to report to the probation officer as directed and  
22 to remain under the probation officer's supervision; and other  
23 conditions or limitations as the court may require which may not  
24 include confinement;

25 (~~(7)~~) (6) "Confinement" means physical custody by the department  
26 of social and health services in a facility operated by or pursuant to  
27 a contract with the state, or physical custody in a detention facility  
28 operated by or pursuant to a contract with any county. The county may  
29 operate or contract with vendors to operate county detention  
30 facilities. The department may operate or contract to operate  
31 detention facilities for juveniles committed to the department.  
32 Pretrial confinement or confinement of less than thirty-one days  
33 imposed as part of a disposition or modification order may be served  
34 consecutively or intermittently, in the discretion of the court;

35 (~~(8)~~) (7) "Court," (~~(7)~~) when used without further qualification,  
36 means the juvenile court judge(s) or commissioner(s);

37 (~~(9)~~) (8) "Criminal history" includes all criminal complaints  
38 against the respondent for which, prior to the commission of a current  
39 offense:

1 (a) The allegations were found correct by a court. If a respondent  
2 is convicted of two or more charges arising out of the same course of  
3 conduct, only the highest charge from among these shall count as an  
4 offense for the purposes of this chapter; or

5 (b) The criminal complaint was diverted by a prosecutor pursuant to  
6 the provisions of this chapter on agreement of the respondent and after  
7 an advisement to the respondent that the criminal complaint would be  
8 considered as part of the respondent's criminal history. A  
9 successfully completed deferred adjudication that was entered before  
10 the effective date of this act or a deferred disposition shall not be  
11 considered part of the respondent's criminal history;

12 (~~(10)~~) (9) "Department" means the department of social and health  
13 services;

14 (~~(11)~~) (10) "Detention facility" means a county facility, paid  
15 for by the county, for the physical confinement of a juvenile alleged  
16 to have committed an offense or an adjudicated offender subject to a  
17 disposition or modification order. "Detention facility" includes  
18 county group homes, inpatient substance abuse programs, juvenile basic  
19 training camps, and electronic monitoring;

20 (~~(12)~~) (11) "Diversion unit" means any probation counselor who  
21 enters into a diversion agreement with an alleged youthful offender, or  
22 any other person, community accountability board, or other entity  
23 except a law enforcement official or entity, with whom the juvenile  
24 court administrator has contracted to arrange and supervise such  
25 agreements pursuant to RCW 13.40.080, or any person, community  
26 accountability board, or other entity specially funded by the  
27 legislature to arrange and supervise diversion agreements in accordance  
28 with the requirements of this chapter. For purposes of this  
29 subsection, "community accountability board" means a board comprised of  
30 members of the local community in which the juvenile offender resides.  
31 The superior court shall appoint the members. The boards shall consist  
32 of at least three and not more than seven members. If possible, the  
33 board should include a variety of representatives from the community,  
34 such as a law enforcement officer, teacher or school administrator,  
35 high school student, parent, and business owner, and should represent  
36 the cultural diversity of the local community;

37 (~~(13)~~) (12) "Institution" means a juvenile facility established  
38 pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

1       (~~(14)~~) (13) "Juvenile," "youth," and "child" mean any individual  
2 who is under the chronological age of eighteen years and who has not  
3 been previously transferred to adult court pursuant to RCW 13.40.110 or  
4 who is otherwise under adult court jurisdiction;

5       (~~(15)~~) (14) "Juvenile offender" means any juvenile who has been  
6 found by the juvenile court to have committed an offense, including a  
7 person eighteen years of age or older over whom jurisdiction has been  
8 extended under RCW 13.40.300;

9       (15) "Local sanctions" mean one or more of the following: (a) 0-30  
10 days of confinement; (b) 0-12 months of community supervision; (c)  
11 0-150 hours of community service; or (d) \$0-\$500 fine;

12       (16) "Manifest injustice" means a disposition that would either  
13 impose an excessive penalty on the juvenile or would impose a serious,  
14 and clear danger to society in light of the purposes of this chapter;

15       (~~(17) ("Middle offender" means a person who has committed an~~  
16 ~~offense and who is neither a minor or first offender nor a serious~~  
17 ~~offender;~~

18       (~~(18) "Minor or first offender" means a person whose current~~  
19 ~~offense(s) and criminal history fall entirely within one of the~~  
20 ~~following categories:~~

21       (~~(a) Four misdemeanors;~~

22       (~~(b) Two misdemeanors and one gross misdemeanor;~~

23       (~~(c) One misdemeanor and two gross misdemeanors; and~~

24       (~~(d) Three gross misdemeanors.~~

25       (~~For purposes of this definition, current violations shall be~~  
26 ~~counted as misdemeanors;~~

27       (~~(19)~~) "Offense" means an act designated a violation or a crime if  
28 committed by an adult under the law of this state, under any ordinance  
29 of any city or county of this state, under any federal law, or under  
30 the law of another state if the act occurred in that state;

31       (~~(20)~~) (18) "Respondent" means a juvenile who is alleged or  
32 proven to have committed an offense;

33       (~~(21)~~) (19) "Restitution" means financial reimbursement by the  
34 offender to the victim, and shall be limited to easily ascertainable  
35 damages for injury to or loss of property, actual expenses incurred for  
36 medical treatment for physical injury to persons, lost wages resulting  
37 from physical injury, and costs of the victim's counseling reasonably  
38 related to the offense if the offense is a sex offense. Restitution  
39 shall not include reimbursement for damages for mental anguish, pain

1 and suffering, or other intangible losses. Nothing in this chapter  
2 shall limit or replace civil remedies or defenses available to the  
3 victim or offender;

4 ~~((22))~~ (20) "Secretary" means the secretary of the department of  
5 social and health services. "Assistant secretary" means the assistant  
6 secretary for juvenile rehabilitation for the department;

7 ~~((23))~~ (21) "Services" mean services which provide alternatives  
8 to incarceration for those juveniles who have pleaded or been  
9 adjudicated guilty of an offense or have signed a diversion agreement  
10 pursuant to this chapter;

11 ~~((24))~~ (22) "Sex offense" means an offense defined as a sex  
12 offense in RCW 9.94A.030;

13 ~~((25))~~ (23) "Sexual motivation" means that one of the purposes  
14 for which the respondent committed the offense was for the purpose of  
15 his or her sexual gratification;

16 ~~((26))~~ (24) "Foster care" means temporary physical care in a  
17 foster family home or group care facility as defined in RCW 74.15.020  
18 and licensed by the department, or other legally authorized care;

19 ~~((27))~~ (25) "Violation" means an act or omission, which if  
20 committed by an adult, must be proven beyond a reasonable doubt, and is  
21 punishable by sanctions which do not include incarceration;

22 ~~((28))~~ (26) "Violent offense" means a violent offense as defined  
23 in RCW 9.94A.030;

24 ~~((29))~~ (27) "Probation bond" means a bond, posted with sufficient  
25 security by a surety justified and approved by the court, to secure the  
26 offender's appearance at required court proceedings and compliance with  
27 court-ordered community supervision or conditions of release ordered  
28 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of  
29 cash or posting of other collateral in lieu of a bond if approved by  
30 the court;

31 ~~((30))~~ (28) "Surety" means an entity licensed under state  
32 insurance laws or by the state department of licensing, to write  
33 corporate, property, or probation bonds within the state, and justified  
34 and approved by the superior court of the county having jurisdiction of  
35 the case.

36 **Sec. 9.** RCW 13.40.0357 and 1996 c 205 s 6 are each amended to read  
37 as follows:

( ( ~~SCHEDULE A~~ ) )

**DESCRIPTION AND OFFENSE CATEGORY**

JUVENILE		JUVENILE DISPOSITION
DISPOSITION		CATEGORY FOR ATTEMPT,
OFFENSE		BAILJUMP, CONSPIRACY,
CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
.....		

**Arson and Malicious Mischief**

A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (<\$50 is	
	E class) (9A.48.090)	E
E	Tampering with Fire Alarm	
	Apparatus (9.40.100)	E
A	Possession of Incendiary Device	
	(9.40.120)	B+

**Assault and Other Crimes**

**Involving Physical Harm**

A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
<u>B+</u>	<u>Drive-By Shooting</u>	
	<u>(9A.36.045)</u>	<u>C+</u>
D+	Reckless Endangerment	
	(9A.36.050)	E
C+	Promoting Suicide Attempt	
	(9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+

**Burglary and Trespass**

B+	Burglary 1 (9A.52.020)	C+
----	------------------------	----

1	<u>B</u>	<u>Residential Burglary</u>	
2		<u>(9A.52.025)</u>	<u>C</u>
3	B	Burglary 2 (9A.52.030)	C
4	D	Burglary Tools (Possession of)	
5		(9A.52.060)	E
6	D	Criminal Trespass 1 (9A.52.070)	E
7	E	Criminal Trespass 2 (9A.52.080)	E
8	<u>C</u>	<u>Vehicle Prowling 1 (9A.52.095)</u>	<u>D</u>
9	D	Vehicle Prowling 2 (9A.52.100)	E
10		<b>Drugs</b>	
11	E	Possession/Consumption of Alcohol	
12		(66.44.270)	E
13	C	Illegally Obtaining Legend Drug	
14		(69.41.020)	D
15	C+	Sale, Delivery, Possession of Legend	
16		Drug with Intent to Sell	
17		(69.41.030)	D+
18	E	Possession of Legend Drug	
19		(69.41.030)	E
20	B+	Violation of Uniform Controlled	
21		Substances Act - Narcotic or	
22		Methamphetamine Sale	
23		(69.50.401(a)(1)(i) or (ii))	B+
24	C	Violation of Uniform Controlled	
25		Substances Act - Nonnarcotic Sale	
26		(69.50.401(a)(1)(iii))	C
27	E	Possession of Marihuana <40 grams	
28		(69.50.401(e))	E
29	C	Fraudulently Obtaining Controlled	
30		Substance (69.50.403)	C
31	C+	Sale of Controlled Substance	
32		for Profit (69.50.410)	C+
33	E	Unlawful Inhalation (9.47A.020)	E
34	B	Violation of Uniform Controlled	
35		Substances Act - Narcotic or	
36		Methamphetamine	
37		Counterfeit Substances	
38		(69.50.401(b)(1)(i) or (ii))	B

1	C	Violation of Uniform Controlled	
2		Substances Act - Nonnarcotic	
3		Counterfeit Substances	
4		(69.50.401(b)(1) (iii), (iv),	
5		(v))	C
6	C	Violation of Uniform Controlled	
7		Substances Act - Possession of a	
8		Controlled Substance	
9		(69.50.401(d))	C
10	C	Violation of Uniform Controlled	
11		Substances Act - Possession of a	
12		Controlled Substance	
13		(69.50.401(c))	C
14		<b>Firearms and Weapons</b>	
15	<u>B</u>	<u>Theft of Firearm (9A.56.300)</u>	<u>C</u>
16	<u>B</u>	<u>Possession of Stolen Firearm</u>	
17		<u>(9A.56.310)</u>	<u>C</u>
18	E	Carrying Loaded Pistol Without	
19		Permit (9.41.050)	E
20	C	Possession of Firearms by Minor (<18)	
21		(9.41.040(1) (b)((iv)) (iii))	C
22	D+	Possession of Dangerous Weapon	
23		(9.41.250)	E
24	D	Intimidating Another Person by use	
25		of Weapon (9.41.270)	E
26		<b>Homicide</b>	
27	A+	Murder 1 (9A.32.030)	A
28	A+	Murder 2 (9A.32.050)	B+
29	B+	Manslaughter 1 (9A.32.060)	C+
30	C+	Manslaughter 2 (9A.32.070)	D+
31	B+	Vehicular Homicide (46.61.520)	C+
32		<b>Kidnapping</b>	
33	A	Kidnap 1 (9A.40.020)	B+
34	B+	Kidnap 2 (9A.40.030)	C+
35	C+	Unlawful Imprisonment	
36		(9A.40.040)	D+



1		<b>Obstructing Governmental Operation</b>	
2	(E)		
3	D	Obstructing a Law Enforcement	
4		Officer (9A.76.020)	E
5	E	Resisting Arrest (9A.76.040)	E
6	B	Introducing Contraband 1	
7		(9A.76.140)	C
8	C	Introducing Contraband 2	
9		(9A.76.150)	D
10	E	Introducing Contraband 3	
11		(9A.76.160)	E
12	B+	Intimidating a Public Servant	
13		(9A.76.180)	C+
14	B+	Intimidating a Witness	
15		(9A.72.110)	C+
16		<b>Public Disturbance</b>	
17	C+	Riot with Weapon (9A.84.010)	D+
18	D+	Riot Without Weapon	
19		(9A.84.010)	E
20	E	Failure to Disperse (9A.84.020)	E
21	E	Disorderly Conduct (9A.84.030)	E
22		<b>Sex Crimes</b>	
23	A	Rape 1 (9A.44.040)	B+
24	A-	Rape 2 (9A.44.050)	B+
25	C+	Rape 3 (9A.44.060)	D+
26	A-	Rape of a Child 1 (9A.44.073)	B+
27	B <sub>±</sub>	Rape of a Child 2 (9A.44.076)	C+
28	B	Incest 1 (9A.64.020(1))	C
29	C	Incest 2 (9A.64.020(2))	D
30	D+	Indecent Exposure	
31		(Victim <14) (9A.88.010)	E
32	E	Indecent Exposure	
33		(Victim 14 or over) (9A.88.010)	E
34	B+	Promoting Prostitution 1	
35		(9A.88.070)	C+
36	C+	Promoting Prostitution 2	
37		(9A.88.080)	D+
38	E	O & A (Prostitution) (9A.88.030)	E

1	B+	Indecent Liberties (9A.44.100)	C+
2	<del>(B+)</del>		<del>((C+))</del>
3	<u>A-</u>	Child Molestation 1 (9A.44.083)	<u>B+</u>
4	<del>((C+))</del>		
5	<u>B</u>	Child Molestation 2 (9A.44.086)	<u>C±</u>
6		<b>Theft, Robbery, Extortion, and Forgery</b>	
7	B	Theft 1 (9A.56.030)	C
8	C	Theft 2 (9A.56.040)	D
9	D	Theft 3 (9A.56.050)	E
10	B	Theft of Livestock (9A.56.080)	C
11	C	Forgery (9A.60.020)	D
12	A	Robbery 1 (9A.56.200)	B+
13	B+	Robbery 2 (9A.56.210)	C+
14	B+	Extortion 1 (9A.56.120)	C+
15	C+	Extortion 2 (9A.56.130)	D+
16	B	Possession of Stolen Property 1	
17		(9A.56.150)	C
18	C	Possession of Stolen Property 2	
19		(9A.56.160)	D
20	D	Possession of Stolen Property 3	
21		(9A.56.170)	E
22	C	Taking Motor Vehicle Without	
23		Owner's Permission (9A.56.070)	D
24		<b>Motor Vehicle Related Crimes</b>	
25	E	Driving Without a License	
26		(46.20.021)	E
27	C	Hit and Run - Injury	
28		(46.52.020(4))	D
29	D	Hit and Run-Attended	
30		(46.52.020(5))	E
31	E	Hit and Run-Unattended	
32		(46.52.010)	E
33	C	Vehicular Assault (46.61.522)	D
34	C	Attempting to Elude Pursuing	
35		Police Vehicle (46.61.024)	D
36	E	Reckless Driving (46.61.500)	E
37	D	Driving While Under the Influence	
38		(46.61.502 and 46.61.504)	E

1		<del>((D) Vehicle Prowling (9A.52.100) ----- E</del>
2		<del>C Taking Motor Vehicle Without</del>
3		<del>Owner's Permission (9A.56.070) ----- D))</del>
4		<b>Other</b>
5	B	Bomb Threat (9.61.160) C
6	C	Escape 1 (9A.76.110) C
7	C	Escape 2 (9A.76.120) C
8	D	Escape 3 (9A.76.130) E
9	E	Obscene, Harassing, Etc.,
10		Phone Calls (9.61.230) E
11	A	Other Offense Equivalent to an
12		Adult Class A Felony B+
13	B	Other Offense Equivalent to an
14		Adult Class B Felony C
15	C	Other Offense Equivalent to an
16		Adult Class C Felony D
17	D	Other Offense Equivalent to an
18		Adult Gross Misdemeanor E
19	E	Other Offense Equivalent to an
20		Adult Misdemeanor E
21	V	Violation of Order of Restitution,
22		Community Supervision, or
23		Confinement (13.40.200) V

24 Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses  
25 and the standard range is established as follows:

26 1st escape or attempted escape during 12-month period - 4 weeks  
27 confinement

28 2nd escape or attempted escape during 12-month period - 8 weeks  
29 confinement

30 3rd and subsequent escape or attempted escape during 12-month  
31 period - 12 weeks confinement

32 If the court finds that a respondent has violated terms of an order,  
33 it may impose a penalty of up to 30 days of confinement.

34 ~~(( SCHEDULE B~~  
35 ~~PRIOR OFFENSE INCREASE FACTOR~~

1 For use with all CURRENT OFFENSES occurring on or after July 1,  
2 1989.

3 **TIME SPAN**

4 OFFENSE — 0-12 — 13-24 — 25 Months  
5 CATEGORY — Months — Months — or More

	0-12	13-24	25 Months
A+	.9	.9	.9
A	.9	.8	.6
A-	.9	.8	.5
B+	.9	.7	.4
B	.9	.6	.3
C+	.6	.3	.2
C	.5	.2	.2
D+	.3	.2	.1
D	.2	.1	.1
E	.1	.1	.1

17 Prior history — Any offense in which a diversion agreement or counsel  
18 and release form was signed, or any offense which has been adjudicated  
19 by court to be correct prior to the commission of the current  
20 offense(s).

21 **SCHEDULE C**

22 **CURRENT OFFENSE POINTS**

23 For use with all CURRENT OFFENSES occurring on or after July 1,  
24 1989.

25 **AGE**

26 OFFENSE — 12 &  
27 CATEGORY Under — 13 — 14 — 15 — 16 — 17

	Under	13	14	15	16	17
A+	STANDARD RANGE 180-224 WEEKS					
A	250	300	350	375	375	375
A-	150	150	150	200	200	200
B+	110	110	120	130	140	150
B	45	45	50	50	57	57
C+	44	44	49	49	55	55
C	40	40	45	45	50	50

1	D	16	18	20	22	24	26
2	D	14	16	18	20	22	24
3	E	4	4	4	6	8	10))

**JUVENILE SENTENCING STANDARDS  
(( SCHEDULE D-1 ))**

This schedule ((may only)) must be used for ((minor/first)) juvenile offenders. ((After the determination is made that a youth is a minor/first offender,)) The court ((has the discretion to)) may select sentencing option A, B, or C.

**(( MINOR/FIRST OFFENDER**

**OPTION A  
STANDARD RANGE**

	Community
	Community Service
	Points Supervision Hours Fine
	.....
18	1-9 0-3 months and/or 0-8 and/or 0-\$10
19	10-19 0-3 months and/or 0-8 and/or 0-\$10
20	20-29 0-3 months and/or 0-16 and/or 0-\$10
21	30-39 0-3 months and/or 8-24 and/or 0-\$25
22	40-49 3-6 months and/or 16-32 and/or 0-\$25
23	50-59 3-6 months and/or 24-40 and/or 0-\$25
24	60-69 6-9 months and/or 32-48 and/or 0-\$50
25	70-79 6-9 months and/or 40-56 and/or 0-\$50
26	80-89 9-12 months and/or 48-64 and/or 10-\$100
27	90-109 9-12 months and/or 56-72 and/or 10-\$100

**OR**

**OPTION B  
STATUTORY OPTION**

0-12 Months Community Supervision  
0-150 Hours Community Service

1 ~~0-100 Fine~~  
 2 ~~Posting of a Probation Bond~~  
 3 ~~A term of community supervision with a maximum of 150 hours, \$100.00~~  
 4 ~~fine, and 12 months supervision.~~

5 **OR**

6 **OPTION C**

7 **MANIFEST INJUSTICE**

8 ~~When a term of community supervision would effectuate a manifest~~  
 9 ~~injustice, another disposition may be imposed. When a judge imposes a~~  
 10 ~~sentence of confinement exceeding 30 days, the court shall sentence the~~  
 11 ~~juvenile to a maximum term and the provisions of RCW 13.40.030(2) shall~~  
 12 ~~be used to determine the range.~~

13 **JUVENILE SENTENCING STANDARDS**

14 **SCHEDULE D-2**

15 ~~This schedule may only be used for middle offenders. After the~~  
 16 ~~determination is made that a youth is a middle offender, the court has~~  
 17 ~~the discretion to select sentencing option A, B, or C.~~

18 **MIDDLE OFFENDER**

19 **OPTION A**

20 **STANDARD RANGE**

Points	Community		Fine	Confinement
	Supervision	Service Hours		
1-9	0-3 months	and/or 0-8	and/or 0-\$10	and/or 0
10-19	0-3 months	and/or 0-8	and/or 0-\$10	and/or 0
20-29	0-3 months	and/or 0-16	and/or 0-\$10	and/or 0
30-39	0-3 months	and/or 8-24	and/or 0-\$25	and/or 2-4
40-49	3-6 months	and/or 16-32	and/or 0-\$25	and/or 2-4
50-59	3-6 months	and/or 24-40	and/or 0-\$25	and/or 5-10
60-69	6-9 months	and/or 32-48	and/or 0-\$50	and/or 5-10
70-79	6-9 months	and/or 40-56	and/or 0-\$50	and/or 10-20
80-89	9-12 months	and/or 48-64	and/or 0-\$100	and/or 10-20
90-109	9-12 months	and/or 56-72	and/or 0-\$100	and/or 15-30
110-129				8-12
130-149				13-16
150-199				21-28
200-249				30-40

1	250-299	52-65
2	300-374	80-100
3	375+	103-129

4 ~~Middle offenders with 110 points or more do not have to be committed.~~  
5 ~~They may be assigned community supervision under option B.~~  
6 ~~All A+ offenses 180-224 weeks))~~

7 **OPTION A**

8 **JUVENILE OFFENDER SENTENCING GRID**

9 **STANDARD RANGE**

10 \_\_\_\_\_  
11 A+ 180 WEEKS TO AGE 21 YEARS  
12 \_\_\_\_\_

13 A 103 WEEKS TO 129 WEEKS  
14 \_\_\_\_\_

A-