

SECOND SUBSTITUTE HOUSE BILL 3900

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Sheahan, Ballasiotes, Schoesler, Bush, Honeyford, Carrell, Chandler, Mitchell, Clements, Huff, Thompson, Hankins, Mulliken, Koster, Carlson, Cairnes, Cooke, Johnson, Skinner, Mastin, Smith, Crouse, Benson, Alexander, Talcott, Robertson, Lisk, Zellinsky, Boldt, Delvin, Sterk, Lambert, Hickel, Backlund and Pennington)

Read first time 03/05/97 (Introduced with Senate Sponsors).

1 AN ACT Relating to offenders; amending RCW 5.60.060, 9.94A.040,
2 9A.04.050, 13.40.010, 13.40.0357, 13.40.040, 13.40.045, 13.40.050,
3 13.40.060, 13.40.070, 13.40.077, 13.40.080, 13.40.100, 13.40.110,
4 13.40.125, 13.40.130, 13.40.135, 13.40.150, 13.40.160, 13.40.190,
5 13.40.193, 13.40.200, 13.40.210, 13.40.230, 13.40.250, 13.40.265,
6 13.40.320, 13.50.010, 13.50.050, 9A.36.045, 9A.36.050, 9.41.010,
7 9.41.040, 9.94A.103, 9.94A.105, 9.94A.310, 10.99.020, 10.99.040, and
8 10.99.050; reenacting and amending RCW 9.94A.030, 9.94A.120, 9.94A.360,
9 13.04.030, 13.40.020, 9.94A.320, and 9A.46.060; adding a new section to
10 chapter 13.40 RCW; 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 5.60.060 and 1996 c 156 s 1 are each amended to read
14 as follows:

15 (1) A husband shall not be examined for or against his wife,
16 without the consent of the wife, nor a wife for or against her husband
17 without the consent of the husband; nor can either during marriage or
18 afterward, be without the consent of the other, examined as to any
19 communication made by one to the other during marriage. But this

1 exception shall not apply to a civil action or proceeding by one  
2 against the other, nor to a criminal action or proceeding for a crime  
3 committed by one against the other, nor to a criminal action or  
4 proceeding against a spouse if the marriage occurred subsequent to the  
5 filing of formal charges against the defendant, nor to a criminal  
6 action or proceeding for a crime committed by said husband or wife  
7 against any child of whom said husband or wife is the parent or  
8 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:  
9 PROVIDED, That the spouse of a person sought to be detained under  
10 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall  
11 be so informed by the court prior to being called as a witness.

12 (2) (a) An attorney or counselor shall not, without the consent of  
13 his or her client, be examined as to any communication made by the  
14 client to him or her, or his or her advice given thereon in the course  
15 of professional employment.

16 (b) A parent shall not be examined as to a communication made by  
17 that parent's minor child to the child's attorney after the filing of  
18 juvenile offender or adult criminal charges, if the parent was present  
19 at the time of the communication. This privilege does not extend to  
20 communications made prior to filing of charges.

21 (3) A member of the clergy or a priest shall not, without the  
22 consent of a person making the confession, be examined as to any  
23 confession made to him or her in his or her professional character, in  
24 the course of discipline enjoined by the church to which he or she  
25 belongs.

26 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,  
27 a physician or surgeon or osteopathic physician or surgeon shall not,  
28 without the consent of his or her patient, be examined in a civil  
29 action as to any information acquired in attending such patient, which  
30 was necessary to enable him or her to prescribe or act for the patient,  
31 except as follows:

32 (a) In any judicial proceedings regarding a child's injury,  
33 neglect, or sexual abuse or the cause thereof; and

34 (b) Ninety days after filing an action for personal injuries or  
35 wrongful death, the claimant shall be deemed to waive the physician-  
36 patient privilege. Waiver of the physician-patient privilege for any  
37 one physician or condition constitutes a waiver of the privilege as to  
38 all physicians or conditions, subject to such limitations as a court  
39 may impose pursuant to court rules.

1 (5) A public officer shall not be examined as a witness as to  
2 communications made to him or her in official confidence, when the  
3 public interest would suffer by the disclosure.

4 (6) (a) A peer support group counselor shall not, without consent of  
5 the law enforcement officer making the communication, be compelled to  
6 testify about any communication made to the counselor by the officer  
7 while receiving counseling. The counselor must be designated as such  
8 by the sheriff, police chief, or chief of the Washington state patrol,  
9 prior to the incident that results in counseling. The privilege only  
10 applies when the communication was made to the counselor while acting  
11 in his or her capacity as a peer support group counselor. The  
12 privilege does not apply if the counselor was an initial responding  
13 officer, a witness, or a party to the incident which prompted the  
14 delivery of peer support group counseling services to the law  
15 enforcement officer.

16 (b) For purposes of this section, "peer support group counselor"  
17 means a:

18 (i) Law enforcement officer, or civilian employee of a law  
19 enforcement agency, who has received training to provide emotional and  
20 moral support and counseling to an officer who needs those services as  
21 a result of an incident in which the officer was involved while acting  
22 in his or her official capacity; or

23 (ii) Nonemployee counselor who has been designated by the sheriff,  
24 police chief, or chief of the Washington state patrol to provide  
25 emotional and moral support and counseling to an officer who needs  
26 those services as a result of an incident in which the officer was  
27 involved while acting in his or her official capacity.

28 (7) A sexual assault advocate may not, without the consent of the  
29 victim, be examined as to any communication made by the victim to the  
30 sexual assault advocate.

31 (a) For purposes of this section, "sexual assault advocate" means  
32 the employee or volunteer from a rape crisis center, victim assistance  
33 unit, program, or association, that provides information, medical or  
34 legal advocacy, counseling, or support to victims of sexual assault,  
35 who is designated by the victim to accompany the victim to the hospital  
36 or other health care facility and to proceedings concerning the alleged  
37 assault, including police and prosecution interviews and court  
38 proceedings.

1 (b) A sexual assault advocate may disclose a confidential  
2 communication without the consent of the victim if failure to disclose  
3 is likely to result in a clear, imminent risk of serious physical  
4 injury or death of the victim or another person. Any sexual assault  
5 advocate participating in good faith in the disclosing of records and  
6 communications under this section shall have immunity from any  
7 liability, civil, criminal, or otherwise, that might result from the  
8 action. In any proceeding, civil or criminal, arising out of a  
9 disclosure under this section, the good faith of the sexual assault  
10 advocate who disclosed the confidential communication shall be  
11 presumed.

12 **Sec. 2.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are  
13 each reenacted and amended to read as follows:

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

16 (1) "Collect," or any derivative thereof, "collect and remit," or  
17 "collect and deliver," when used with reference to the department of  
18 corrections, means that the department is responsible for monitoring  
19 and enforcing the offender's sentence with regard to the legal  
20 financial obligation, receiving payment thereof from the offender, and,  
21 consistent with current law, delivering daily the entire payment to the  
22 superior court clerk without depositing it in a departmental account.

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

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

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

33 (5) "Community placement" means that period during which the  
34 offender is subject to the conditions of community custody and/or  
35 postrelease supervision, which begins either upon completion of the  
36 term of confinement (postrelease supervision) or at such time as the  
37 offender is transferred to community custody in lieu of earned early

1 release. Community placement may consist of entirely community  
2 custody, entirely postrelease supervision, or a combination of the two.

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

6 (7) "Community supervision" means a period of time during which a  
7 convicted offender is subject to crime-related prohibitions and other  
8 sentence conditions imposed by a court pursuant to this chapter or RCW  
9 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
10 may include crime-related prohibitions and other conditions imposed  
11 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
12 for out-of-state supervision of parolees and probationers, RCW  
13 9.95.270, community supervision is the functional equivalent of  
14 probation and should be considered the same as probation by other  
15 states.

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

18 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
19 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
20 acceptance of a plea of guilty.

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

35 (11) "Crime-related prohibition" means an order of a court  
36 prohibiting conduct that directly relates to the circumstances of the  
37 crime for which the offender has been convicted, and shall not be  
38 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform  
2 affirmative conduct.

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

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

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

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

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

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

37 (17) "Disposable earnings" means that part of the earnings of an  
38 individual remaining after the deduction from those earnings of any  
39 amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal  
2 services, whether denominated as wages, salary, commission, bonuses, or  
3 otherwise, and, notwithstanding any other provision of law making the  
4 payments exempt from garnishment, attachment, or other process to  
5 satisfy a court-ordered legal financial obligation, specifically  
6 includes periodic payments pursuant to pension or retirement programs,  
7 or insurance policies of any type, but does not include payments made  
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
9 or Title 74 RCW.

10 (18) "Drug offense" means:

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

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

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

20 (19) "Escape" means:

21 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
22 second degree (RCW 9A.76.120), willful failure to return from furlough  
23 (RCW 72.66.060), willful failure to return from work release (RCW  
24 72.65.070), or willful failure to be available for supervision by the  
25 department while in community custody (RCW 72.09.310); or

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

29 (20) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
31 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
32 and-run injury-accident (RCW 46.52.020(4)); or

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

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

38 (22) (~~(a)~~) "First-time offender" means any person who is convicted  
39 of a felony (~~(a)~~) (a) not classified as a violent offense or a sex

1 offense under this chapter, or ~~((+ii))~~ (b) that is not the  
2 manufacture, delivery, or possession with intent to manufacture or  
3 deliver a controlled substance classified in schedule I or II that is  
4 a narcotic drug, nor the manufacture, delivery, or possession with  
5 intent to deliver methamphetamine, its salts, isomers, and salts of its  
6 isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit  
7 of any controlled substance or counterfeit substance classified in  
8 schedule I, RCW 69.50.204, except leaves and flowering tops of  
9 marihuana, ~~((and except as provided in (b) of this subsection,))~~ who  
10 previously has never been convicted of a felony in this state, federal  
11 court, or another state, and who has never participated in a program of  
12 deferred prosecution for a felony offense.

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

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

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

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

38 (q) Vehicular assault;



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

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

7 (t) Any other felony with a deadly weapon verdict under RCW  
8 9.94A.125;

9 (u) Any felony offense in effect at any time prior to December 2,  
10 1993, that is comparable to a most serious offense under this  
11 subsection, or any federal or out-of-state conviction for an offense  
12 that under the laws of this state would be a felony classified as a  
13 most serious offense under this subsection.

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

16 (25) "Offender" means a person who has committed a felony  
17 established by state law and is eighteen years of age or older or is  
18 less than eighteen years of age but whose case is under superior court  
19 jurisdiction under RCW 13.04.030 or has been transferred by the  
20 appropriate juvenile court to a criminal court pursuant to RCW  
21 13.40.110. Throughout this chapter, the terms "offender" and  
22 "defendant" are used interchangeably.

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

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

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

34 (ii) Has, before the commission of the offense under (a) of this  
35 subsection, been convicted as an offender on at least two separate  
36 occasions, whether in this state or elsewhere, of felonies that under  
37 the laws of this state would be considered most serious offenses and  
38 would be included in the offender score under RCW 9.94A.360; provided  
39 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most  
2 serious offenses for which the offender was previously convicted; or

3 (b) (i) Has been convicted of (A) rape in the first degree, rape in  
4 the second degree, or indecent liberties by forcible compulsion; (B)  
5 murder in the first degree, murder in the second degree, kidnapping in  
6 the first degree, kidnapping in the second degree, assault in the first  
7 degree, assault in the second degree, or burglary in the first degree,  
8 with a finding of sexual motivation; or (C) an attempt to commit any  
9 crime listed in this subsection (27) (b) (i); and

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

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

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

20 (30) "Serious traffic offense" means:

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

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

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

31 (a) Murder in the first degree, homicide by abuse, murder in the  
32 second degree, assault in the first degree, kidnapping in the first  
33 degree, or rape in the first degree, assault of a child in the first  
34 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
35 commit one of these felonies; or

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

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

3 (33) "Sex offense" means:

4 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
5 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
6 criminal attempt, criminal solicitation, or criminal conspiracy to  
7 commit such crimes;

8 (b) A felony with a finding of sexual motivation under RCW  
9 9.94A.127 or 13.40.135; or

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

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

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

20 (36) "Transition training" means written and verbal instructions  
21 and assistance provided by the department to the offender during the  
22 two weeks prior to the offender's successful completion of the work  
23 ethic camp program. The transition training shall include instructions  
24 in the offender's requirements and obligations during the offender's  
25 period of community custody.

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

29 (38) "Violent offense" means:

30 (a) Any of the following felonies, as now existing or hereafter  
31 amended: Any felony defined under any law as a class A felony or an  
32 attempt to commit a class A felony, criminal solicitation of or  
33 criminal conspiracy to commit a class A felony, manslaughter in the  
34 first degree, manslaughter in the second degree, indecent liberties if  
35 committed by forcible compulsion, kidnapping in the second degree,  
36 arson in the second degree, assault in the second degree, assault of a  
37 child in the second degree, extortion in the first degree, robbery in  
38 the second degree, drive-by shooting, vehicular assault, and vehicular  
39 homicide, when proximately caused by the driving of any vehicle by any

1 person while under the influence of intoxicating liquor or any drug as  
2 defined by RCW 46.61.502, or by the operation of any vehicle in a  
3 reckless manner;

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

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

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

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

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

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

36 **Sec. 3.** RCW 9.94A.040 and 1996 c 232 s 1 are each amended to read  
37 as follows:

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

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

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

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

9 (ii) The intent of the legislature to emphasize confinement for the  
10 violent offender and alternatives to confinement for the nonviolent  
11 offender.

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

15 (b) Recommend to the legislature revisions or modifications to the  
16 standard sentence ranges, state sentencing policy, prosecuting  
17 standards, and other standards. If implementation of the revisions or  
18 modifications would result in exceeding the capacity of correctional  
19 facilities, then the commission shall accompany its recommendation with  
20 an additional list of standard sentence ranges which are consistent  
21 with correction capacity;

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

24 (d) (i) Serve as a clearinghouse and information center for the  
25 collection, preparation, analysis, and dissemination of information on  
26 state and local adult and juvenile sentencing practices; (ii) develop  
27 and maintain a computerized adult and juvenile sentencing information  
28 system by individual superior court judge consisting of offender,  
29 offense, history, and sentence information entered from judgment and  
30 sentence forms for all adult felons; and (iii) conduct ongoing research  
31 regarding adult and juvenile sentencing guidelines, use of total  
32 confinement and alternatives to total confinement, plea bargaining, and  
33 other matters relating to the improvement of the adult criminal justice  
34 system and the juvenile justice system;

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

37 (f) Evaluate the effectiveness of existing disposition standards  
38 and related statutes in implementing policies set forth in RCW  
39 13.40.010 generally, specifically review the guidelines relating to the

1 confinement of minor and first offenders as well as the use of  
2 diversion, and review the application of current and proposed juvenile  
3 sentencing standards and guidelines for potential adverse impacts on  
4 the sentencing outcomes of racial and ethnic minority youth;

5 (g) Solicit the comments and suggestions of the juvenile justice  
6 community concerning disposition standards, and make recommendations to  
7 the legislature regarding revisions or modifications of the standards  
8 (~~(in accordance with RCW 9.94A.045)~~). The evaluations shall be  
9 submitted to the legislature on December 1 of each odd-numbered year.  
10 The department of social and health services shall provide the  
11 commission with available data concerning the implementation of the  
12 disposition standards and related statutes and their effect on the  
13 performance of the department's responsibilities relating to juvenile  
14 offenders, and with recommendations for modification of the disposition  
15 standards. The office of the administrator for the courts shall  
16 provide the commission with available data on diversion and  
17 dispositions of juvenile offenders under chapter 13.40 RCW; and

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

- 21 (i) Racial disproportionality in juvenile and adult sentencing;  
22 (ii) The capacity of state and local juvenile and adult facilities  
23 and resources; and  
24 (iii) Recidivism information on adult and juvenile offenders.

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

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

30 (a) If the maximum term in the range is one year or less, the  
31 minimum term in the range shall be no less than one-third of the  
32 maximum term in the range, except that if the maximum term in the range  
33 is ninety days or less, the minimum term may be less than one-third of  
34 the maximum;

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

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

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

3 **Sec. 4.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c  
4 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as  
5 follows:

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

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

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

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

19 (4) A persistent offender shall be sentenced to a term of total  
20 confinement for life without the possibility of parole or, when  
21 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
22 first degree, sentenced to death, notwithstanding the maximum sentence  
23 under any other law. An offender convicted of the crime of murder in  
24 the first degree shall be sentenced to a term of total confinement not  
25 less than twenty years. An offender convicted of the crime of assault  
26 in the first degree or assault of a child in the first degree where the  
27 offender used force or means likely to result in death or intended to  
28 kill the victim shall be sentenced to a term of total confinement not  
29 less than five years. An offender convicted of the crime of rape in  
30 the first degree shall be sentenced to a term of total confinement not  
31 less than five years. The foregoing minimum terms of total confinement  
32 are mandatory and shall not be varied or modified as provided in  
33 subsection (2) of this section. In addition, all offenders subject to  
34 the provisions of this subsection shall not be eligible for community  
35 custody, earned early release time, furlough, home detention, partial  
36 confinement, work crew, work release, or any other form of early  
37 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
38 or any other form of authorized leave of absence from the correctional

1 facility while not in the direct custody of a corrections officer or  
2 officers during such minimum terms of total confinement except in the  
3 case of an offender in need of emergency medical treatment or for the  
4 purpose of commitment to an inpatient treatment facility in the case of  
5 an offender convicted of the crime of rape in the first degree.

6 (5) In sentencing a first-time offender the court may waive the  
7 imposition of a sentence within the sentence range and impose a  
8 sentence which may include up to ninety days of confinement in a  
9 facility operated or utilized under contract by the county and a  
10 requirement that the offender refrain from committing new offenses.  
11 The sentence may also include up to two years of community supervision,  
12 which, in addition to crime-related prohibitions, may include  
13 requirements that the offender perform any one or more of the  
14 following:

- 15 (a) Devote time to a specific employment or occupation;
- 16 (b) Undergo available outpatient treatment for up to two years, or  
17 inpatient treatment not to exceed the standard range of confinement for  
18 that offense;
- 19 (c) Pursue a prescribed, secular course of study or vocational  
20 training;
- 21 (d) Remain within prescribed geographical boundaries and notify the  
22 court or the community corrections officer prior to any change in the  
23 offender's address or employment;
- 24 (e) Report as directed to the court and a community corrections  
25 officer; or
- 26 (f) Pay all court-ordered legal financial obligations as provided  
27 in RCW 9.94A.030 and/or perform community service work.

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

30 (i) The offender is convicted of the manufacture, delivery, or  
31 possession with intent to manufacture or deliver a controlled substance  
32 classified in Schedule I or II that is a narcotic drug or a felony that  
33 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
34 criminal solicitation, or criminal conspiracy to commit such crimes,  
35 and the violation does not involve a sentence enhancement under RCW  
36 9.94A.310 (3) or (4);

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



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

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

- 32 (i) Devote time to a specific employment or training;
- 33 (ii) Remain within prescribed geographical boundaries and notify  
34 the court or the community corrections officer before any change in the  
35 offender's address or employment;
- 36 (iii) Report as directed to a community corrections officer;
- 37 (iv) Pay all court-ordered legal financial obligations;
- 38 (v) Perform community service work;
- 39 (vi) Stay out of areas designated by the sentencing judge.

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

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

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

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

36 The report of the examination shall include at a minimum the  
37 following: The defendant's version of the facts and the official  
38 version of the facts, the defendant's offense history, an assessment of  
39 problems in addition to alleged deviant behaviors, the offender's

1 social and employment situation, and other evaluation measures used.  
2 The report shall set forth the sources of the evaluator's information.

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

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

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

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

13 (D) Anticipated length of treatment; and

14 (E) Recommended crime-related prohibitions.

15 The court on its own motion may order, or on a motion by the state  
16 shall order, a second examination regarding the offender's amenability  
17 to treatment. The evaluator shall be selected by the party making the  
18 motion. The defendant shall pay the cost of any second examination  
19 ordered unless the court finds the defendant to be indigent in which  
20 case the state shall pay the cost.

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

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

35 (B) The court shall order treatment for any period up to three  
36 years in duration. The court in its discretion shall order outpatient  
37 sex offender treatment or inpatient sex offender treatment, if  
38 available. A community mental health center may not be used for such  
39 treatment unless it has an appropriate program designed for sex

1 offender treatment. The offender shall not change sex offender  
2 treatment providers or treatment conditions without first notifying the  
3 prosecutor, the community corrections officer, and the court, and shall  
4 not change providers without court approval after a hearing if the  
5 prosecutor or community corrections officer object to the change. In  
6 addition, as conditions of the suspended sentence, the court may impose  
7 other sentence conditions including up to six months of confinement,  
8 not to exceed the sentence range of confinement for that offense,  
9 crime-related prohibitions, and requirements that the offender perform  
10 any one or more of the following:

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

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

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

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

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

22 (iii) The sex offender therapist shall submit quarterly reports on  
23 the defendant's progress in treatment to the court and the parties.  
24 The report shall reference the treatment plan and include at a minimum  
25 the following: Dates of attendance, defendant's compliance with  
26 requirements, treatment activities, the defendant's relative progress  
27 in treatment, and any other material as specified by the court at  
28 sentencing.

29 (iv) At the time of sentencing, the court shall set a treatment  
30 termination hearing for three months prior to the anticipated date for  
31 completion of treatment. Prior to the treatment termination hearing,  
32 the treatment professional and community corrections officer shall  
33 submit written reports to the court and parties regarding the  
34 defendant's compliance with treatment and monitoring requirements, and  
35 recommendations regarding termination from treatment, including  
36 proposed community supervision conditions. Either party may request  
37 and the court may order another evaluation regarding the advisability  
38 of termination from treatment. The defendant shall pay the cost of any  
39 additional evaluation ordered unless the court finds the defendant to

1 be indigent in which case the state shall pay the cost. At the  
2 treatment termination hearing the court may: (A) Modify conditions of  
3 community custody, and either (B) terminate treatment, or (C) extend  
4 treatment for up to the remaining period of community custody.

5 (v) If a violation of conditions occurs during community custody,  
6 the department shall either impose sanctions as provided for in RCW  
7 9.94A.205(2)(a) or refer the violation to the court and recommend  
8 revocation of the suspended sentence as provided for in (a)(vi) of this  
9 subsection.

10 (vi) The court may revoke the suspended sentence at any time during  
11 the period of community custody and order execution of the sentence if:  
12 (A) The defendant violates the conditions of the suspended sentence, or  
13 (B) the court finds that the defendant is failing to make satisfactory  
14 progress in treatment. All confinement time served during the period  
15 of community custody shall be credited to the offender if the suspended  
16 sentence is revoked.

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

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

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

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

38 (b) When an offender commits any felony sex offense on or after  
39 July 1, 1987, and is sentenced to a term of confinement of more than

1 one year but less than six years, the sentencing court may, on its own  
2 motion or on the motion of the offender or the state, request the  
3 department of corrections to evaluate whether the offender is amenable  
4 to treatment and the department may place the offender in a treatment  
5 program within a correctional facility operated by the department.

6 Except for an offender who has been convicted of a violation of RCW  
7 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
8 before the expiration of his or her term of confinement, the department  
9 of corrections may request the court to convert the balance of  
10 confinement to community supervision and to place conditions on the  
11 offender including crime-related prohibitions and requirements that the  
12 offender perform any one or more of the following:

- 13 (i) Devote time to a specific employment or occupation;
- 14 (ii) Remain within prescribed geographical boundaries and notify  
15 the court or the community corrections officer prior to any change in  
16 the offender's address or employment;
- 17 (iii) Report as directed to the court and a community corrections  
18 officer;
- 19 (iv) Undergo available outpatient treatment.

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

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

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

36 (9) (a) When a court sentences a person to a term of total  
37 confinement to the custody of the department of corrections for an  
38 offense categorized as a sex offense or a serious violent offense  
39 committed after July 1, 1988, but before July 1, 1990, assault in the

1 second degree, assault of a child in the second degree, any crime  
2 against a person where it is determined in accordance with RCW  
3 9.94A.125 that the defendant or an accomplice was armed with a deadly  
4 weapon at the time of commission, or any felony offense under chapter  
5 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
6 committed on or after July 1, 1988, the court shall in addition to the  
7 other terms of the sentence, sentence the offender to a one-year term  
8 of community placement beginning either upon completion of the term of  
9 confinement or at such time as the offender is transferred to community  
10 custody in lieu of earned early release in accordance with RCW  
11 9.94A.150 (1) and (2). When the court sentences an offender under this  
12 subsection to the statutory maximum period of confinement then the  
13 community placement portion of the sentence shall consist entirely of  
14 such community custody to which the offender may become eligible, in  
15 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
16 custody actually served shall be credited against the community  
17 placement portion of the sentence.

18 (b) When a court sentences a person to a term of total confinement  
19 to the custody of the department of corrections for an offense  
20 categorized as a sex offense committed on or after July 1, 1990, but  
21 before June 6, 1996, a serious violent offense, vehicular homicide, or  
22 vehicular assault, committed on or after July 1, 1990, the court shall  
23 in addition to other terms of the sentence, sentence the offender to  
24 community placement for two years or up to the period of earned early  
25 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is  
26 longer. The community placement shall begin either upon completion of  
27 the term of confinement or at such time as the offender is transferred  
28 to community custody in lieu of earned early release in accordance with  
29 RCW 9.94A.150 (1) and (2). When the court sentences an offender under  
30 this subsection to the statutory maximum period of confinement then the  
31 community placement portion of the sentence shall consist entirely of  
32 the community custody to which the offender may become eligible, in  
33 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
34 custody actually served shall be credited against the community  
35 placement portion of the sentence. Unless a condition is waived by the  
36 court, the terms of community placement for offenders sentenced  
37 pursuant to this section shall include the following conditions:

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

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

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

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

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

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

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

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

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

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

21 (iv) The offender shall not consume alcohol;

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

23 or

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

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

33 (10) (a) When a court sentences a person to the custody of the  
34 department of corrections for an offense categorized as a sex offense  
35 committed on or after June 6, 1996, the court shall, in addition to  
36 other terms of the sentence, sentence the offender to community custody  
37 for three years or up to the period of earned early release awarded  
38 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The  
39 community custody shall begin either upon completion of the term of



1 confinement or at such time as the offender is transferred to community  
2 custody in lieu of earned early release in accordance with RCW  
3 9.94A.150 (1) and (2).

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

11 (c) At any time prior to the completion of a sex offender's term of  
12 community custody, if the court finds that public safety would be  
13 enhanced, the court may impose and enforce an order extending any or  
14 all of the conditions imposed pursuant to this section for a period up  
15 to the maximum allowable sentence for the crime as it is classified in  
16 chapter 9A.20 RCW, regardless of the expiration of the offender's term  
17 of community custody. If a violation of a condition extended under  
18 this subsection occurs after the expiration of the offender's term of  
19 community custody, it shall be deemed a violation of the sentence for  
20 the purposes of RCW 9.94A.195 and may be punishable as contempt of  
21 court as provided for in RCW 7.21.040.

22 (11) If the court imposes a sentence requiring confinement of  
23 thirty days or less, the court may, in its discretion, specify that the  
24 sentence be served on consecutive or intermittent days. A sentence  
25 requiring more than thirty days of confinement shall be served on  
26 consecutive days. Local jail administrators may schedule court-ordered  
27 intermittent sentences as space permits.

28 (12) If a sentence imposed includes payment of a legal financial  
29 obligation, the sentence shall specify the total amount of the legal  
30 financial obligation owed, and shall require the offender to pay a  
31 specified monthly sum toward that legal financial obligation.  
32 Restitution to victims shall be paid prior to any other payments of  
33 monetary obligations. Any legal financial obligation that is imposed  
34 by the court may be collected by the department, which shall deliver  
35 the amount paid to the county clerk for credit. The offender's  
36 compliance with payment of legal financial obligations shall be  
37 supervised by the department. All monetary payments ordered shall be  
38 paid no later than ten years after the last date of release from  
39 confinement pursuant to a felony conviction or the date the sentence

1 was entered. Independent of the department, the party or entity to  
2 whom the legal financial obligation is owed shall have the authority to  
3 utilize any other remedies available to the party or entity to collect  
4 the legal financial obligation. Nothing in this section makes the  
5 department, the state, or any of its employees, agents, or other  
6 persons acting on their behalf liable under any circumstances for the  
7 payment of these legal financial obligations. If an order includes  
8 restitution as one of the monetary assessments, the county clerk shall  
9 make disbursements to victims named in the order.

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

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

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

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

1 the department pursuant to subsection (10) of this section be continued  
2 beyond the expiration of the offender's term of community custody as  
3 authorized in subsection (10)(c) of this section.

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

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

19 (16) The sentencing court shall give the offender credit for all  
20 confinement time served before the sentencing if that confinement was  
21 solely in regard to the offense for which the offender is being  
22 sentenced.

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

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

35 (19) As a part of any sentence, the court may impose and enforce an  
36 order that relates directly to the circumstances of the crime for which  
37 the offender has been convicted, prohibiting the offender from having  
38 any contact with other specified individuals or a specific class of  
39 individuals for a period not to exceed the maximum allowable sentence

1 for the crime, regardless of the expiration of the offender's term of  
2 community supervision or community placement.

3 (20) In any sentence of partial confinement, the court may require  
4 the defendant to serve the partial confinement in work release, in a  
5 program of home detention, on work crew, or in a combined program of  
6 work crew and home detention.

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

11 **Sec. 5.** RCW 9.94A.360 and 1995 c 316 s 1 and 1995 c 101 s 1 are  
12 each reenacted and amended to read as follows:

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

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

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

22 (2) (~~Except as provided in subsection (4) of this section,~~) Class  
23 A and sex prior felony convictions shall always be included in the  
24 offender score. Class B prior felony convictions other than sex  
25 offenses shall not be included in the offender score, if since the last  
26 date of release from confinement (including full-time residential  
27 treatment) pursuant to a felony conviction, if any, or entry of  
28 judgment and sentence, the offender had spent ten consecutive years in  
29 the community without committing any crime that subsequently results in  
30 a conviction. Class C prior felony convictions other than sex offenses  
31 shall not be included in the offender score if, since the last date of  
32 release from confinement (including full-time residential treatment)  
33 pursuant to a felony conviction, if any, or entry of judgment and  
34 sentence, the offender had spent five consecutive years in the  
35 community without committing any crime that subsequently results in a  
36 conviction. Serious traffic convictions shall not be included in the  
37 offender score if, since the last date of release from confinement  
38 (including full-time residential treatment) pursuant to a felony

1 conviction, if any, or entry of judgment and sentence, the offender  
2 spent five years in the community without committing any crime that  
3 subsequently results in a conviction. This subsection applies to both  
4 adult and juvenile prior convictions.

5 (3) Out-of-state convictions for offenses shall be classified  
6 according to the comparable offense definitions and sentences provided  
7 by Washington law. Federal convictions for offenses shall be  
8 classified according to the comparable offense definitions and  
9 sentences provided by Washington law. If there is no clearly  
10 comparable offense under Washington law or the offense is one that is  
11 usually considered subject to exclusive federal jurisdiction, the  
12 offense shall be scored as a class C felony equivalent if it was a  
13 felony under the relevant federal statute.

14 ~~(4) ((Always include juvenile convictions for sex offenses and  
15 serious violent offenses. Include other class A juvenile felonies only  
16 if the offender was 15 or older at the time the juvenile offense was  
17 committed. Include other class B and C juvenile felony convictions  
18 only if the offender was 15 or older at the time the juvenile offense  
19 was committed and the offender was less than 23 at the time the offense  
20 for which he or she is being sentenced was committed.~~

21 ~~—(5))~~ Score prior convictions for felony anticipatory offenses  
22 (attempts, criminal solicitations, and criminal conspiracies) the same  
23 as if they were convictions for completed offenses.

24 ~~((+6))~~ (5)(a) In the case of multiple prior convictions, for the  
25 purpose of computing the offender score, count all convictions  
26 separately, except:

27 (i) Prior ~~((adult))~~ offenses which were found, under RCW  
28 9.94A.400(1)(a), to encompass the same criminal conduct, shall be  
29 counted as one offense, the offense that yields the highest offender  
30 score. The current sentencing court shall determine with respect to  
31 other prior adult offenses for which sentences were served concurrently  
32 or prior juvenile offenses for which sentences were served  
33 consecutively, whether those offenses shall be counted as one offense  
34 or as separate offenses using the "same criminal conduct" analysis  
35 found in RCW 9.94A.400(1)(a), and if the court finds that they shall be  
36 counted as one offense, then the offense that yields the highest  
37 offender score shall be used. The current sentencing court may presume  
38 that such other prior ~~((adult))~~ offenses were not the same criminal  
39 conduct from sentences imposed on separate dates, or in separate

1 counties or jurisdictions, or in separate complaints, indictments, or  
2 informations; and

3 ~~(ii) ((Juvenile prior convictions entered or sentenced on the same  
4 date shall count as one offense, the offense that yields the highest  
5 offender score, except for juvenile prior convictions for violent  
6 offenses with separate victims, which shall count as separate offenses,  
7 and~~

8 ~~—(iii))~~ In the case of multiple prior convictions for offenses  
9 committed before July 1, 1986, for the purpose of computing the  
10 offender score, count all adult convictions served concurrently as one  
11 offense, and count all juvenile convictions entered on the same date as  
12 one offense. Use the conviction for the offense that yields the  
13 highest offender score.

14 (b) As used in this subsection ~~((+6))~~ (5), "served concurrently"  
15 means that: (i) The latter sentence was imposed with specific  
16 reference to the former; (ii) the concurrent relationship of the  
17 sentences was judicially imposed; and (iii) the concurrent timing of  
18 the sentences was not the result of a probation or parole revocation on  
19 the former offense.

20 ~~((+7))~~ (6) If the present conviction is one of the anticipatory  
21 offenses of criminal attempt, solicitation, or conspiracy, count each  
22 prior conviction as if the present conviction were for a completed  
23 offense.

24 ~~((+8))~~ (7) If the present conviction is for a nonviolent offense  
25 and not covered by subsection (11) or (12) ~~((or (13))~~ of this section,  
26 count one point for each adult prior felony conviction and one point  
27 for each juvenile prior violent felony conviction and ½ point for each  
28 juvenile prior nonviolent felony conviction.

29 ~~((+9))~~ (8) If the present conviction is for a violent offense and  
30 not covered in subsection (9), (10), (11), or (12) ~~((, or (13))~~ of this  
31 section, count two points for each prior adult and juvenile violent  
32 felony conviction, one point for each prior adult nonviolent felony  
33 conviction, and ½ point for each prior juvenile nonviolent felony  
34 conviction.

35 ~~((+10))~~ (9) If the present conviction is for Murder 1 or 2,  
36 Assault 1, Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or  
37 Rape 1, count three points for prior adult and juvenile convictions for  
38 crimes in these categories, two points for each prior adult and  
39 juvenile violent conviction (not already counted), one point for each

1 prior adult nonviolent felony conviction, and ½ point for each prior  
2 juvenile nonviolent felony conviction.

3 ~~((11))~~ (10) If the present conviction is for Burglary 1, count  
4 prior convictions as in subsection ~~((9))~~ (8) of this section; however  
5 count two points for each prior adult Burglary 2 or residential  
6 burglary conviction, and one point for each prior juvenile Burglary 2  
7 or residential burglary conviction.

8 ~~((12))~~ (11) If the present conviction is for a felony traffic  
9 offense count two points for each adult or juvenile prior conviction  
10 for Vehicular Homicide or Vehicular Assault; for each felony offense or  
11 serious traffic offense, count one point for each adult and ½ point for  
12 each juvenile prior conviction.

13 ~~((13))~~ (12) If the present conviction is for a drug offense count  
14 three points for each adult prior felony drug offense conviction and  
15 two points for each juvenile drug offense. All other adult and  
16 juvenile felonies are scored as in subsection ~~((9))~~ (8) of this  
17 section if the current drug offense is violent, or as in subsection  
18 ~~((8))~~ (7) of this section if the current drug offense is nonviolent.

19 ~~((14))~~ (13) If the present conviction is for Willful Failure to  
20 Return from Furlough, RCW 72.66.060, Willful Failure to Return from  
21 Work Release, RCW 72.65.070, or Escape from Community Custody, RCW  
22 72.09.310, count only prior escape convictions in the offender score.  
23 Count adult prior escape convictions as one point and juvenile prior  
24 escape convictions as ½ point.

25 ~~((15))~~ (14) If the present conviction is for Escape 1, RCW  
26 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as  
27 one point and juvenile prior convictions as ½ point.

28 ~~((16))~~ (15) If the present conviction is for Burglary 2 or  
29 residential burglary, count priors as in subsection ~~((8))~~ (7) of this  
30 section; however, count two points for each adult and juvenile prior  
31 Burglary 1 conviction, two points for each adult prior Burglary 2 or  
32 residential burglary conviction, and one point for each juvenile prior  
33 Burglary 2 or residential burglary conviction.

34 ~~((17))~~ (16) If the present conviction is for a sex offense, count  
35 priors as in subsections ~~((8))~~ (7) through ~~((16))~~ (15) of this  
36 section; however count three points for each adult and juvenile prior  
37 sex offense conviction.

38 ~~((18))~~ (17) If the present conviction is for an offense committed  
39 while the offender was under community placement, add one point.

1       **Sec. 6.** RCW 9A.04.050 and 1975 1st ex.s. c 260 s 9A.04.050 are  
2 each amended to read as follows:

3       Children under the age of eight years are incapable of committing  
4 crime. Children of eight and under twelve years of age are presumed to  
5 be incapable of committing crime, but this presumption may be removed  
6 by proof that they have sufficient capacity to understand the act or  
7 neglect, and to know that it was wrong. The court shall hold a hearing  
8 to determine whether a child who is ten or eleven years of age and who  
9 is alleged to have committed an offense has the capacity to understand  
10 the alleged act or neglect and that it is wrong. Whenever in legal  
11 proceedings it becomes necessary to determine the age of a child, he or  
12 she may be produced for inspection, to enable the court or jury to  
13 determine the age thereby; and the court may also direct ((his)) the  
14 child's examination by one or more physicians, whose opinion shall be  
15 competent evidence upon the question of ((his)) the child's age.

16       **Sec. 7.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15 are  
17 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

36       (iii) The alleged offense or infraction is a traffic, fish,  
37 boating, or game offense, or traffic or civil infraction committed by  
38 a juvenile sixteen years of age or older and would, if committed by an



1 adult, be tried or heard in a court of limited jurisdiction, in which  
2 instance the appropriate court of limited jurisdiction shall have  
3 jurisdiction over the alleged offense or infraction, and no guardian ad  
4 litem is required in any such proceeding due to the juvenile's age:  
5 PROVIDED, That if such an alleged offense or infraction and an alleged  
6 offense or infraction subject to juvenile court jurisdiction arise out  
7 of the same event or incident, the juvenile court may have jurisdiction  
8 of both matters: PROVIDED FURTHER, That the jurisdiction under this  
9 subsection does not constitute "transfer" or a "decline" for purposes  
10 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,  
11 That courts of limited jurisdiction which confine juveniles for an  
12 alleged offense or infraction may place juveniles in juvenile detention  
13 facilities under an agreement with the officials responsible for the  
14 administration of the juvenile detention facility in RCW 13.04.035 and  
15 13.20.060; or

16 (iv) The juvenile is sixteen or seventeen years old and the alleged  
17 offense is: (A) A serious violent offense as defined in RCW 9.94A.030  
18 committed on or after June 13, 1994; or (B) a violent offense as  
19 defined in RCW 9.94A.030 committed on or after June 13, 1994, but  
20 before the effective date of this act, and the juvenile has a criminal  
21 history consisting of: (I) One or more prior serious violent offenses;  
22 (II) two or more prior violent offenses; or (III) three or more of any  
23 combination of the following offenses: Any class A felony, any class  
24 B felony, vehicular assault, or manslaughter in the second degree, all  
25 of which must have been committed after the juvenile's thirteenth  
26 birthday and prosecuted separately; or (C) a violent offense as defined  
27 in RCW 9.94A.030 committed on or after the effective date of this act.  
28 In such a case the adult criminal court shall have exclusive original  
29 jurisdiction.

30 If the juvenile challenges the state's determination of the  
31 juvenile's criminal history, the state may establish the offender's  
32 criminal history by a preponderance of the evidence. If the criminal  
33 history consists of adjudications entered upon a plea of guilty, the  
34 state shall not bear a burden of establishing the knowing and  
35 voluntariness of the plea;

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

1 (g) Relating to termination of a diversion agreement under RCW  
2 13.40.080, including a proceeding in which the divertee has attained  
3 eighteen years of age;

4 (h) Relating to court validation of a voluntary consent to an out-  
5 of-home placement under chapter 13.34 RCW, by the parent or Indian  
6 custodian of an Indian child, except if the parent or Indian custodian  
7 and child are residents of or domiciled within the boundaries of a  
8 federally recognized Indian reservation over which the tribe exercises  
9 exclusive jurisdiction; and

10 (i) Relating to petitions to compel disclosure of information filed  
11 by the department of social and health services pursuant to RCW  
12 74.13.042.

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

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

21 **Sec. 8.** RCW 13.40.010 and 1992 c 205 s 101 are each amended to  
22 read as follows:

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

25 (2) It is the intent of the legislature that a system capable of  
26 having primary responsibility for, being accountable for, and  
27 responding to the needs of youthful offenders, as defined by this  
28 chapter, be established. It is the further intent of the legislature  
29 that youth, in turn, be held accountable for their offenses and that  
30 (~~both~~) communities, families, and the juvenile courts carry out their  
31 functions consistent with this intent. To effectuate these policies,  
32 the legislature declares the following to be equally important purposes  
33 of this chapter:

34 (a) Protect the citizenry from criminal behavior;

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

37 (c) Make the juvenile offender accountable for his or her criminal  
38 behavior;

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

3 (e) Provide due process for juveniles alleged to have committed an  
4 offense;

5 (f) Provide necessary treatment, supervision, and custody for  
6 juvenile offenders;

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

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

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

13 (j) Provide for a clear policy to determine what types of offenders  
14 shall receive punishment, treatment, or both, and to determine the  
15 jurisdictional limitations of the courts, institutions, and community  
16 services; and

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

19 **Sec. 9.** RCW 13.40.020 and 1995 c 395 s 2 and 1995 c 134 s 1 are  
20 each reenacted and amended to read as follows:

21 For the purposes of this chapter:

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

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

26 ~~— (b) Manslaughter in the first degree; or~~

27 ~~— (c) Assault in the second degree, extortion in the first degree,~~  
28 ~~child molestation in the second degree, kidnapping in the second~~  
29 ~~degree, robbery in the second degree, residential burglary, or burglary~~  
30 ~~in the second degree, where such offenses include the infliction of~~  
31 ~~bodily harm upon another or where during the commission of or immediate~~  
32 ~~withdrawal from such an offense the perpetrator is armed with a deadly~~  
33 ~~weapon;~~

34 ~~— (2))~~ "Community service" means compulsory service, without  
35 compensation, performed for the benefit of the community by the  
36 offender as punishment for committing an offense. Community service  
37 may be performed through public or private organizations or through  
38 work crews;

1        ~~((3))~~ (2) "Community supervision" means an order of disposition  
2 by the court of an adjudicated youth not committed to the department or  
3 an order granting a deferred (~~(adjudication)~~) disposition pursuant to  
4 RCW 13.40.125. A community supervision order for a single offense may  
5 be for a period of up to two years for a sex offense as defined by RCW  
6 9.94A.030 and up to one year for other offenses. As a mandatory  
7 condition of any term of community supervision, the court shall order  
8 the juvenile to refrain from committing new offenses. As a mandatory  
9 condition of community supervision, the court shall order the juvenile  
10 to comply with the mandatory school attendance provisions of chapter  
11 28A.225 RCW and to inform the school of the existence of this  
12 requirement. Community supervision is an individualized program  
13 comprised of one or more of the following:

- 14        (a) Community-based sanctions;
- 15        (b) Community-based rehabilitation;
- 16        (c) Monitoring and reporting requirements;
- 17        (d) Posting of a probation bond (~~(imposed pursuant to RCW~~  
18 ~~13.40.0357)~~);

19        ~~((4))~~ (3) Community-based sanctions may include one or more of  
20 the following:

- 21        (a) A fine, not to exceed (~~(one)~~) five hundred dollars;
- 22        (b) Community service not to exceed one hundred fifty hours of  
23 service;

24        ~~((5))~~ (4) "Community-based rehabilitation" means one or more of  
25 the following: Employment; attendance of information classes;  
26 counseling, outpatient substance abuse treatment programs, outpatient  
27 mental health programs, anger management classes, education or  
28 outpatient treatment programs to prevent animal cruelty, or other  
29 services; or attendance at school or other educational programs  
30 appropriate for the juvenile as determined by the school district.  
31 Placement in community-based rehabilitation programs is subject to  
32 available funds;

33        ~~((6))~~ (5) "Monitoring and reporting requirements" means one or  
34 more of the following: Curfews; requirements to remain at home,  
35 school, work, or court-ordered treatment programs during specified  
36 hours; restrictions from leaving or entering specified geographical  
37 areas; requirements to report to the probation officer as directed and  
38 to remain under the probation officer's supervision; and other

1 conditions or limitations as the court may require which may not  
2 include confinement;

3 ~~((7))~~ (6) "Confinement" means physical custody by the department  
4 of social and health services in a facility operated by or pursuant to  
5 a contract with the state, or physical custody in a detention facility  
6 operated by or pursuant to a contract with any county. The county may  
7 operate or contract with vendors to operate county detention  
8 facilities. The department may operate or contract to operate  
9 detention facilities for juveniles committed to the department.  
10 Pretrial confinement or confinement of less than thirty-one days  
11 imposed as part of a disposition or modification order may be served  
12 consecutively or intermittently, in the discretion of the court;

13 ~~((8))~~ (7) "Court," ~~((7))~~ when used without further qualification,  
14 means the juvenile court judge(s) or commissioner(s);

15 ~~((9))~~ (8) "Criminal history" includes all criminal complaints  
16 against the respondent for which, prior to the commission of a current  
17 offense:

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

22 (b) The criminal complaint was diverted by a prosecutor pursuant to  
23 the provisions of this chapter on agreement of the respondent and after  
24 an advisement to the respondent that the criminal complaint would be  
25 considered as part of the respondent's criminal history. A  
26 successfully completed deferred adjudication that was entered before  
27 the effective date of this act or a deferred disposition shall not be  
28 considered part of the respondent's criminal history;

29 ~~((10))~~ (9) "Department" means the department of social and health  
30 services;

31 ~~((11))~~ (10) "Detention facility" means a county facility, paid  
32 for by the county, for the physical confinement of a juvenile alleged  
33 to have committed an offense or an adjudicated offender subject to a  
34 disposition or modification order. "Detention facility" includes  
35 county group homes, inpatient substance abuse programs, juvenile basic  
36 training camps, and electronic monitoring;

37 ~~((12))~~ (11) "Diversion unit" means any probation counselor who  
38 enters into a diversion agreement with an alleged youthful offender, or  
39 any other person, community accountability board, or other entity

1 except a law enforcement official or entity, with whom the juvenile  
2 court administrator has contracted to arrange and supervise such  
3 agreements pursuant to RCW 13.40.080, or any person, community  
4 accountability board, or other entity specially funded by the  
5 legislature to arrange and supervise diversion agreements in accordance  
6 with the requirements of this chapter. For purposes of this  
7 subsection, "community accountability board" means a board comprised of  
8 members of the local community in which the juvenile offender resides.  
9 The superior court shall appoint the members. The boards shall consist  
10 of at least three and not more than seven members. If possible, the  
11 board should include a variety of representatives from the community,  
12 such as a law enforcement officer, teacher or school administrator,  
13 high school student, parent, and business owner, and should represent  
14 the cultural diversity of the local community;

15 ~~((13))~~ (12) "Institution" means a juvenile facility established  
16 pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

17 ~~((14))~~ (13) "Juvenile," "youth," and "child" mean any individual  
18 who is under the chronological age of eighteen years and who has not  
19 been previously transferred to adult court pursuant to RCW 13.40.110 or  
20 who is otherwise under adult court jurisdiction;

21 ~~((15))~~ (14) "Juvenile offender" means any juvenile who has been  
22 found by the juvenile court to have committed an offense, including a  
23 person eighteen years of age or older over whom jurisdiction has been  
24 extended under RCW 13.40.300;

25 (15) "Local sanctions" mean one or more of the following: (a) 0-30  
26 days of confinement; (b) 0-12 months of community supervision; (c)  
27 0-150 hours of community service; or (d) \$0-\$500 fine;

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

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

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

37 ~~(a) Four misdemeanors;~~

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

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

1 ~~(d) Three gross misdemeanors.~~  
2 ~~For purposes of this definition, current violations shall be~~  
3 ~~counted as misdemeanors;~~  
4 ~~(19))~~ "Offense" means an act designated a violation or a crime if  
5 committed by an adult under the law of this state, under any ordinance  
6 of any city or county of this state, under any federal law, or under  
7 the law of another state if the act occurred in that state;  
8 ((~~20~~)) (18) "Respondent" means a juvenile who is alleged or  
9 proven to have committed an offense;  
10 ((~~21~~)) (19) "Restitution" means financial reimbursement by the  
11 offender to the victim, and shall be limited to easily ascertainable  
12 damages for injury to or loss of property, actual expenses incurred for  
13 medical treatment for physical injury to persons, lost wages resulting  
14 from physical injury, and costs of the victim's counseling reasonably  
15 related to the offense if the offense is a sex offense. Restitution  
16 shall not include reimbursement for damages for mental anguish, pain  
17 and suffering, or other intangible losses. Nothing in this chapter  
18 shall limit or replace civil remedies or defenses available to the  
19 victim or offender;  
20 ((~~22~~)) (20) "Secretary" means the secretary of the department of  
21 social and health services. "Assistant secretary" means the assistant  
22 secretary for juvenile rehabilitation for the department;  
23 ((~~23~~)) (21) "Services" mean services which provide alternatives  
24 to incarceration for those juveniles who have pleaded or been  
25 adjudicated guilty of an offense or have signed a diversion agreement  
26 pursuant to this chapter;  
27 ((~~24~~)) (22) "Sex offense" means an offense defined as a sex  
28 offense in RCW 9.94A.030;  
29 ((~~25~~)) (23) "Sexual motivation" means that one of the purposes  
30 for which the respondent committed the offense was for the purpose of  
31 his or her sexual gratification;  
32 ((~~26~~)) (24) "Foster care" means temporary physical care in a  
33 foster family home or group care facility as defined in RCW 74.15.020  
34 and licensed by the department, or other legally authorized care;  
35 ((~~27~~)) (25) "Violation" means an act or omission, which if  
36 committed by an adult, must be proven beyond a reasonable doubt, and is  
37 punishable by sanctions which do not include incarceration;  
38 ((~~28~~)) (26) "Violent offense" means a violent offense as defined  
39 in RCW 9.94A.030;

1        (~~(29)~~) (27) "Probation bond" means a bond, posted with sufficient  
 2 security by a surety justified and approved by the court, to secure the  
 3 offender's appearance at required court proceedings and compliance with  
 4 court-ordered community supervision or conditions of release ordered  
 5 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of  
 6 cash or posting of other collateral in lieu of a bond if approved by  
 7 the court;

8        (~~(30)~~) (28) "Surety" means an entity licensed under state  
 9 insurance laws or by the state department of licensing, to write  
 10 corporate, property, or probation bonds within the state, and justified  
 11 and approved by the superior court of the county having jurisdiction of  
 12 the case.

13        **Sec. 10.** RCW 13.40.0357 and 1996 c 205 s 6 are each amended to  
 14 read as follows:

15        (1)

( (~~SCHEDULE A~~) )

**DESCRIPTION AND OFFENSE CATEGORY**

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, 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+



1		<b>Assault and Other Crimes</b>	
2		<b>Involving Physical Harm</b>	
3	A	Assault 1 (9A.36.011)	B+
4	B+	Assault 2 (9A.36.021)	C+
5	C+	Assault 3 (9A.36.031)	D+
6	D+	Assault 4 (9A.36.041)	E
7	<u>B+</u>	<u>Drive-By Shooting</u>	
8		<u>(9A.36.045)</u>	<u>C+</u>
9	D+	Reckless Endangerment	
10		(9A.36.050)	E
11	C+	Promoting Suicide Attempt	
12		(9A.36.060)	D+
13	D+	Coercion (9A.36.070)	E
14	C+	Custodial Assault (9A.36.100)	D+
15		<b>Burglary and Trespass</b>	
16	B+	Burglary 1 (9A.52.020)	C+
17	<u>B</u>	<u>Residential Burglary</u>	
18		<u>(9A.52.025)</u>	<u>C</u>
19	B	Burglary 2 (9A.52.030)	C
20	D	Burglary Tools (Possession of)	
21		(9A.52.060)	E
22	D	Criminal Trespass 1 (9A.52.070)	E
23	E	Criminal Trespass 2 (9A.52.080)	E
24	<u>C</u>	<u>Vehicle Prowling 1 (9A.52.095)</u>	<u>D</u>
25	D	Vehicle Prowling <u>2</u> (9A.52.100)	E
26		<b>Drugs</b>	
27	E	Possession/Consumption of Alcohol	
28		(66.44.270)	E
29	C	Illegally Obtaining Legend Drug	
30		(69.41.020)	D
31	C+	Sale, Delivery, Possession of Legend	
32		Drug with Intent to Sell	
33		(69.41.030)	D+
34	E	Possession of Legend Drug	
35		(69.41.030)	E

1	B+	Violation of Uniform Controlled	
2		Substances Act - Narcotic or	
3		Methamphetamine Sale	
4		(69.50.401(a)(1)(i) or (ii))	B+
5	C	Violation of Uniform Controlled	
6		Substances Act - Nonnarcotic Sale	
7		(69.50.401(a)(1)(iii))	C
8	E	Possession of Marihuana <40 grams	
9		(69.50.401(e))	E
10	C	Fraudulently Obtaining Controlled	
11		Substance (69.50.403)	C
12	C+	Sale of Controlled Substance	
13		for Profit (69.50.410)	C+
14	E	Unlawful Inhalation (9.47A.020)	E
15	B	Violation of Uniform Controlled	
16		Substances Act - Narcotic or	
17		Methamphetamine	
18		Counterfeit Substances	
19		(69.50.401(b)(1)(i) or (ii))	B
20	C	Violation of Uniform Controlled	
21		Substances Act - Nonnarcotic	
22		Counterfeit Substances	
23		(69.50.401(b)(1) (iii), (iv),	
24		(v))	C
25	C	Violation of Uniform Controlled	
26		Substances Act - Possession of a	
27		Controlled Substance	
28		(69.50.401(d))	C
29	C	Violation of Uniform Controlled	
30		Substances Act - Possession of a	
31		Controlled Substance	
32		(69.50.401(c))	C
33		<b>Firearms and Weapons</b>	
34	<u>B</u>	<u>Theft of Firearm (9A.56.300)</u>	<u>C</u>
35	<u>B</u>	<u>Possession of Stolen Firearm</u>	
36		<u>(9A.56.310)</u>	<u>C</u>
37	E	Carrying Loaded Pistol Without	
38		Permit (9.41.050)	E

1	C	Possession of Firearms by Minor (<18)	
2		(9.41.040(1) (b)( <del>(iv)</del> ) (iii))	C
3	D+	Possession of Dangerous Weapon	
4		(9.41.250)	E
5	D	Intimidating Another Person by use	
6		of Weapon (9.41.270)	E
7		<b>Homicide</b>	
8	A+	Murder 1 (9A.32.030)	A
9	A+	Murder 2 (9A.32.050)	B+
10	B+	Manslaughter 1 (9A.32.060)	C+
11	C+	Manslaughter 2 (9A.32.070)	D+
12	B+	Vehicular Homicide (46.61.520)	C+
13		<b>Kidnapping</b>	
14	A	Kidnap 1 (9A.40.020)	B+
15	B+	Kidnap 2 (9A.40.030)	C+
16	C+	Unlawful Imprisonment	
17		(9A.40.040)	D+
18		<b>Obstructing Governmental Operation</b>	
19	( <del>Ⓔ</del> )		
20	<u>D</u>	Obstructing a Law Enforcement	
21		Officer (9A.76.020)	E
22	E	Resisting Arrest (9A.76.040)	E
23	B	Introducing Contraband 1	
24		(9A.76.140)	C
25	C	Introducing Contraband 2	
26		(9A.76.150)	D
27	E	Introducing Contraband 3	
28		(9A.76.160)	E
29	B+	Intimidating a Public Servant	
30		(9A.76.180)	C+
31	B+	Intimidating a Witness	
32		(9A.72.110)	C+
33		<b>Public Disturbance</b>	
34	C+	Riot with Weapon (9A.84.010)	D+
35	D+	Riot Without Weapon	
36		(9A.84.010)	E

1	E	Failure to Disperse (9A.84.020)	E
2	E	Disorderly Conduct (9A.84.030)	E
3		<b>Sex Crimes</b>	
4	A	Rape 1 (9A.44.040)	B+
5	A-	Rape 2 (9A.44.050)	B+
6	C+	Rape 3 (9A.44.060)	D+
7	A-	Rape of a Child 1 (9A.44.073)	B+
8	B±	Rape of a Child 2 (9A.44.076)	C+
9	B	Incest 1 (9A.64.020(1))	C
10	C	Incest 2 (9A.64.020(2))	D
11	D+	Indecent Exposure	
12		(Victim <14) (9A.88.010)	E
13	E	Indecent Exposure	
14		(Victim 14 or over) (9A.88.010)	E
15	B+	Promoting Prostitution 1	
16		(9A.88.070)	C+
17	C+	Promoting Prostitution 2	
18		(9A.88.080)	D+
19	E	O & A (Prostitution) (9A.88.030)	E
20	B+	Indecent Liberties (9A.44.100)	C+
21	((B+))		((C+))
22	<u>A-</u>	Child Molestation 1 (9A.44.083)	<u>B+</u>
23	((C+))		
24	<u>B</u>	Child Molestation 2 (9A.44.086)	<u>C±</u>
25		<b>Theft, Robbery, Extortion, and Forgery</b>	
26	B	Theft 1 (9A.56.030)	C
27	C	Theft 2 (9A.56.040)	D
28	D	Theft 3 (9A.56.050)	E
29	B	Theft of Livestock (9A.56.080)	C
30	C	Forgery (9A.60.020)	D
31	A	Robbery 1 (9A.56.200)	B+
32	B+	Robbery 2 (9A.56.210)	C+
33	B+	Extortion 1 (9A.56.120)	C+
34	C+	Extortion 2 (9A.56.130)	D+
35	B	Possession of Stolen Property 1	
36		(9A.56.150)	C
37	C	Possession of Stolen Property 2	
38		(9A.56.160)	D

1	D	Possession of Stolen Property 3	
2		(9A.56.170)	E
3	C	Taking Motor Vehicle Without	
4		Owner's Permission (9A.56.070)	D
5		<b>Motor Vehicle Related Crimes</b>	
6	E	Driving Without a License	
7		(46.20.021)	E
8	C	Hit and Run - Injury	
9		(46.52.020(4))	D
10	D	Hit and Run-Attended	
11		(46.52.020(5))	E
12	E	Hit and Run-Unattended	
13		(46.52.010)	E
14	C	Vehicular Assault (46.61.522)	D
15	C	Attempting to Elude Pursuing	
16		Police Vehicle (46.61.024)	D
17	E	Reckless Driving (46.61.500)	E
18	D	Driving While Under the Influence	
19		(46.61.502 and 46.61.504)	E
20	<del>(D)</del>	<del>Vehicle Prowling (9A.52.100)</del>	<del>E</del>
21	<del>C</del>	<del>Taking Motor Vehicle Without</del>	
22		<del>Owner's Permission (9A.56.070)</del>	<del>D</del>
23		<b>Other</b>	
24	B	Bomb Threat (9.61.160)	C
25	C	Escape 1 <sup>1</sup> (9A.76.110)	C
26	C	Escape 2 <sup>1</sup> (9A.76.120)	C
27	D	Escape 3 (9A.76.130)	E
28	E	Obscene, Harassing, Etc.,	
29		Phone Calls (9.61.230)	E
30	A	Other Offense Equivalent to an	
31		Adult Class A Felony	B+
32	B	Other Offense Equivalent to an	
33		Adult Class B Felony	C
34	C	Other Offense Equivalent to an	
35		Adult Class C Felony	D
36	D	Other Offense Equivalent to an	
37		Adult Gross Misdemeanor	E

1	E	Other Offense Equivalent to an	
2		Adult Misdemeanor	E
3	V	Violation of Order of Restitution,	
4		Community Supervision, or	
5		Confinement (13.40.200) <sup>2</sup>	V

6 <sup>1</sup>Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses  
7 and the standard range is established as follows:

8 1st escape or attempted escape during 12-month period - 4 weeks  
9 confinement

10 2nd escape or attempted escape during 12-month period - 8 weeks  
11 confinement

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

14 <sup>2</sup>If the court finds that a respondent has violated terms of an order,  
15 it may impose a penalty of up to 30 days of confinement.

16 ~~( (SCHEDULE B~~

17 ~~————— PRIOR OFFENSE INCREASE FACTOR~~

18 ~~For use with all CURRENT OFFENSES occurring on or after July 1,~~  
19 ~~1989.~~

20 ~~————— TIME SPAN~~

<del>OFFENSE</del>	<del>0-12</del>	<del>13-24</del>	<del>25 Months</del>
<del>CATEGORY</del>	<del>Months</del>	<del>Months</del>	<del>or More</del>
<del>A+</del>	<del>.9</del>	<del>.9</del>	<del>.9</del>
<del>A</del>	<del>.9</del>	<del>.8</del>	<del>.6</del>
<del>A-</del>	<del>.9</del>	<del>.8</del>	<del>.5</del>
<del>B+</del>	<del>.9</del>	<del>.7</del>	<del>.4</del>
<del>B</del>	<del>.9</del>	<del>.6</del>	<del>.3</del>
<del>C+</del>	<del>.6</del>	<del>.3</del>	<del>.2</del>
<del>C</del>	<del>.5</del>	<del>.2</del>	<del>.2</del>
<del>D+</del>	<del>.3</del>	<del>.2</del>	<del>.1</del>
<del>D</del>	<del>.2</del>	<del>.1</del>	<del>.1</del>
<del>E</del>	<del>.1</del>	<del>.1</del>	<del>.1</del>

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

5 ~~\_\_\_\_\_~~ **SCHEDULE C**

6 ~~\_\_\_\_\_~~ **CURRENT OFFENSE POINTS**

7 ~~For use with all CURRENT OFFENSES occurring on or after July 1,~~  
8 ~~1989.~~

9 ~~\_\_\_\_\_~~ **AGE**

10	OFFENSE	12 &					
11	CATEGORY	Under	13	14	15	16	17
12	.....						
13	<del>A+</del>	<del>STANDARD RANGE</del>	<del>180-224</del>	<del>WEEKS</del>			
14	<del>A</del>	<del>250</del>	<del>300</del>	<del>350</del>	<del>375</del>	<del>375</del>	<del>375</del>
15	<del>A-</del>	<del>150</del>	<del>150</del>	<del>150</del>	<del>200</del>	<del>200</del>	<del>200</del>
16	<del>B+</del>	<del>110</del>	<del>110</del>	<del>120</del>	<del>130</del>	<del>140</del>	<del>150</del>
17	<del>B</del>	<del>45</del>	<del>45</del>	<del>50</del>	<del>50</del>	<del>57</del>	<del>57</del>
18	<del>C+</del>	<del>44</del>	<del>44</del>	<del>49</del>	<del>49</del>	<del>55</del>	<del>55</del>
19	<del>C</del>	<del>40</del>	<del>40</del>	<del>45</del>	<del>45</del>	<del>50</del>	<del>50</del>
20	<del>D+</del>	<del>16</del>	<del>18</del>	<del>20</del>	<del>22</del>	<del>24</del>	<del>26</del>
21	<del>D</del>	<del>14</del>	<del>16</del>	<del>18</del>	<del>20</del>	<del>22</del>	<del>24</del>
22	<del>E</del>	<del>4</del>	<del>4</del>	<del>4</del>	<del>6</del>	<del>8</del>	<del>10))</del>

23 (2) **JUVENILE SENTENCING STANDARDS**  
24 **((SCHEDULE D-1))**

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

29  
30 **((MINOR/FIRST OFFENDER**

31 ~~\_\_\_\_\_~~ **OPTION A**

32 ~~\_\_\_\_\_~~ **STANDARD RANGE**

33 ~~\_\_\_\_\_~~ Community

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~~Community Service  
Points Supervision Hours Fine  
.....  
1-9 0-3 months and/or 0-8 and/or 0-\$10  
10-19 0-3 months and/or 0-8 and/or 0-\$10  
20-29 0-3 months and/or 0-16 and/or 0-\$10  
30-39 0-3 months and/or 8-24 and/or 0-\$25  
40-49 3-6 months and/or 16-32 and/or 0-\$25  
50-59 3-6 months and/or 24-40 and/or 0-\$25  
60-69 6-9 months and/or 32-48 and/or 0-\$50  
70-79 6-9 months and/or 40-56 and/or 0-\$50  
80-89 9-12 months and/or 48-64 and/or 10-\$100  
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  
0-100 Fine  
Posting of a Probation Bond~~

~~A term of community supervision with a maximum of 150 hours, \$100.00 fine, and 12 months supervision.~~

~~OR~~

~~OPTION C~~

~~MANIFEST INJUSTICE~~

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



~~JUVENILE SENTENCING STANDARDS~~

~~SCHEDULE D-2~~

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

~~MIDDLE OFFENDER~~

~~OPTION A~~

~~STANDARD RANGE~~

Points	Community		Fine	Confinement Days Weeks
	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
250-299				52-65
300-374				80-100
375+				103-129

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

1 OPTION A

2 JUVENILE OFFENDER SENTENCING GRID

3 STANDARD RANGE

4							
5	A+	180 WEEKS TO AGE 21 YEARS					
6							
7	A	103 WEEKS TO 129 WEEKS					
8							
9	A-	52-65	80-100				
10		WEEKS	WEEKS				
11	24-36						
12	Current B+	WEEKS	52-65	80-100			
13	Offense		WEEKS	WEEKS			
14	Category						
15	B			52-65			
16		24-36 WEEKS		WEEKS			
17							
18	C+						
19				24-36 WEEKS			
20							
21	C	Local Sanctions					
22							
23		0 to 30 Days					
24	D+	0 to 12 Months Community Supervision					
25		0 to 150 Hours Community Service					
26	D	\$0 to \$500 Fine					
27							
28	E						
29		0	1	2	3	4	>4
30	<u>PRIOR FELONY ADJUDICATIONS</u>						

31 NOTE: References in the grid to days or weeks mean periods of  
32 confinement.

33 (1) The vertical axis of the grid is the current offense category.  
34 The current offense category is determined by the offense of  
35 adjudication.

36 (2) (a) The horizontal axis of the grid is the number of prior  
37 felony adjudications included in the juvenile's criminal history.

1 (b) Prior adjudications for violations, misdemeanors, and gross  
2 misdemeanors are not included in the grid but may be considered by the  
3 court in determining whether a disposition within the standard range  
4 would effectuate a manifest injustice.

5 (3) The standard range disposition for each offense is determined  
6 by the intersection of the column defined by the prior felony  
7 adjudications and the row defined by the current offense category.

8 (4) RCW 13.40.180 applies if the offender is being sentenced for  
9 more than one offense.

10 (5) A current offense that is a violation is equivalent to an  
11 offense category of E. However, a disposition for a violation shall  
12 not include confinement.

13 OR

14 OPTION B

15 (( STATUTORY OPTION ))

16 CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

17 ~~((0-12 Months Community Supervision~~  
18 ~~0-150 Hours Community Service~~  
19 ~~0-100 Fine~~  
20 ~~Posting of a Probation Bond~~

21 ~~If the offender has less than 110 points, the court may impose a~~  
22 ~~determinate disposition of community supervision and/or up to 30 days~~  
23 ~~confinement; in which case, if confinement has been imposed, the court~~  
24 ~~shall state either aggravating or mitigating factors as set forth in~~  
25 ~~RCW 13.40.150.))~~

26 If the ((middle)) juvenile offender ((has 110 points or more)) is  
27 subject to a standard range disposition of local sanctions or 24 to 36  
28 weeks of confinement and has not committed an A- or B+ offense, the  
29 court may impose a disposition under ((option A and may suspend the  
30 disposition on the condition that the offender serve up to thirty days  
31 of confinement and follow all conditions of community supervision. If  
32 the offender fails to comply with the terms of community supervision,  
33 the court may impose sanctions pursuant to RCW 13.40.200 or may revoke  
34 the suspended disposition and order execution of the disposition. If  
35 the court imposes confinement for offenders with 110 points or more,  
36 the court shall state either aggravating or mitigating factors set  
37 forth in RCW 13.40.150)) RCW 13.40.160(5) and section 25 of this act.

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OR

**OPTION C**  
**MANIFEST INJUSTICE**

If the court determines that a disposition under option A or B would effectuate a manifest injustice, the court shall ~~((sentence the juvenile to a maximum term and the provisions of RCW 13.40.030(2) shall be used to determine the range))~~ impose a disposition outside the standard range under RCW 13.40.160(2).

~~((**JUVENILE SENTENCING STANDARDS**~~  
~~**SCHEDULE D-3**~~

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

~~**SERIOUS OFFENDER**~~  
~~**OPTION A**~~  
~~**STANDARD RANGE**~~

<del>Points</del>	<del>Institution Time</del>
<del>0-129</del>	<del>8-12 weeks</del>
<del>130-149</del>	<del>13-16 weeks</del>
<del>150-199</del>	<del>21-28 weeks</del>
<del>200-249</del>	<del>30-40 weeks</del>
<del>250-299</del>	<del>52-65 weeks</del>
<del>300-374</del>	<del>80-100 weeks</del>
<del>375+</del>	<del>103-129 weeks</del>
<del>All A+ Offenses</del>	<del>180-224 weeks</del>

OR

~~**OPTION B**~~  
~~**MANIFEST INJUSTICE**~~

~~A disposition outside the standard range shall be determined and shall be comprised of confinement or community supervision including posting a probation bond or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding 30~~

1 ~~days, the court shall sentence the juvenile to a maximum term, and the~~  
2 ~~provisions of RCW 13.40.030(2) shall be used to determine the range.)~~)

3 (3) This section is null and void unless section 7 of this act  
4 becomes law.

5 **Sec. 11.** RCW 13.40.040 and 1995 c 395 s 4 are each amended to  
6 read as follows:

7 (1) A juvenile may be taken into custody:

8 (a) Pursuant to a court order if a complaint is filed with the  
9 court alleging, and the court finds probable cause to believe, that the  
10 juvenile has committed an offense or has violated terms of a  
11 disposition order or release order; or

12 (b) Without a court order, by a law enforcement officer if grounds  
13 exist for the arrest of an adult in identical circumstances. Admission  
14 to, and continued custody in, a court detention facility shall be  
15 governed by subsection (2) of this section; or

16 (c) Pursuant to a court order that the juvenile be held as a  
17 material witness; or

18 (d) Where the secretary or the secretary's designee has suspended  
19 the parole of a juvenile offender.

20 (2) A juvenile may not be held in detention unless there is  
21 probable cause to believe that:

22 (a) The juvenile has committed an offense or has violated the  
23 terms of a disposition order; and

24 (i) The juvenile will likely fail to appear for further  
25 proceedings; or

26 (ii) Detention is required to protect the juvenile from himself or  
27 herself; or

28 (iii) The juvenile is a threat to community safety; or

29 (iv) The juvenile will intimidate witnesses or otherwise  
30 unlawfully interfere with the administration of justice; or

31 (v) The juvenile has committed a crime while another case was  
32 pending; or

33 (b) The juvenile is a fugitive from justice; or

34 (c) The juvenile's parole has been suspended or modified; or

35 (d) The juvenile is a material witness.

36 (3) Upon a finding that members of the community have threatened  
37 the health of a juvenile taken into custody, at the juvenile's request

1 the court may order continued detention pending further order of the  
2 court.

3 (4) A juvenile detained under this section may be released upon  
4 posting a probation bond set by the court. The juvenile's parent or  
5 guardian may sign for the probation bond. A court authorizing such a  
6 release shall issue an order containing a statement of conditions  
7 imposed upon the juvenile and shall set the date of his or her next  
8 court appearance. The court shall advise the juvenile of any  
9 conditions specified in the order and may at any time amend such an  
10 order in order to impose additional or different conditions of release  
11 upon the juvenile or to return the juvenile to custody for failing to  
12 conform to the conditions imposed. In addition to requiring the  
13 juvenile to appear at the next court date, the court may condition the  
14 probation bond on the juvenile's compliance with conditions of release.  
15 The juvenile's parent or guardian may notify the court that the  
16 juvenile has failed to conform to the conditions of release or the  
17 provisions in the probation bond. If the parent notifies the court of  
18 the juvenile's failure to comply with the probation bond, the court  
19 shall notify the surety. As provided in the terms of the bond, the  
20 surety shall provide notice to the court of the offender's  
21 noncompliance. A juvenile may be released only to a responsible adult  
22 or the department of social and health services. Failure to appear on  
23 the date scheduled by the court pursuant to this section shall  
24 constitute the crime of bail jumping.

25 **Sec. 12.** RCW 13.40.045 and 1994 sp.s. c 7 s 518 are each amended  
26 to read as follows:

27 The secretary, assistant secretary, or the secretary's designee  
28 shall issue arrest warrants for juveniles who escape from department  
29 residential custody. The secretary, assistant secretary, or the  
30 secretary's designee may issue arrest warrants for juveniles who  
31 abscond from parole supervision or fail to meet conditions of parole.  
32 These arrest warrants shall authorize any law enforcement, probation  
33 and parole, or peace officer of this state, or any other state where  
34 the juvenile is located, to arrest the juvenile and to place the  
35 juvenile in physical custody pending the juvenile's return to  
36 confinement in a state juvenile rehabilitation facility.

1           **Sec. 13.** RCW 13.40.050 and 1995 c 395 s 5 are each amended to  
2 read as follows:

3           (1) When a juvenile taken into custody is held in detention:

4           (a) An information, a community supervision modification or  
5 termination of diversion petition, or a parole modification petition  
6 shall be filed within seventy-two hours, Saturdays, Sundays, and  
7 holidays excluded, or the juvenile shall be released; and

8           (b) A detention hearing, a community supervision modification or  
9 termination of diversion petition, or a parole modification petition  
10 shall be held within seventy-two hours, Saturdays, Sundays, and  
11 holidays excluded, from the time of filing the information or petition,  
12 to determine whether continued detention is necessary under RCW  
13 13.40.040.

14           (2) Notice of the detention hearing, stating the time, place, and  
15 purpose of the hearing, (~~and~~) stating the right to counsel, and  
16 requiring attendance shall be given to the parent, guardian, or  
17 custodian if such person can be found and shall also be given to the  
18 juvenile if over twelve years of age.

19           (3) At the commencement of the detention hearing, the court shall  
20 advise the parties of their rights under this chapter and shall appoint  
21 counsel as specified in this chapter.

22           (4) The court shall, based upon the allegations in the  
23 information, determine whether the case is properly before it or  
24 whether the case should be treated as a diversion case under RCW  
25 13.40.080. If the case is not properly before the court the juvenile  
26 shall be ordered released.

27           (5) Notwithstanding a determination that the case is properly  
28 before the court and that probable cause exists, a juvenile shall at  
29 the detention hearing be ordered released on the juvenile's personal  
30 recognizance pending further hearing unless the court finds detention  
31 is necessary under RCW 13.40.040 (~~as now or hereafter amended~~).

32           (6) If detention is not necessary under RCW 13.40.040, (~~as now or~~  
33 ~~hereafter amended,~~) the court shall impose the most appropriate of the  
34 following conditions or, if necessary, any combination of the following  
35 conditions:

36           (a) Place the juvenile in the custody of a designated person  
37 agreeing to supervise such juvenile;

38           (b) Place restrictions on the travel of the juvenile during the  
39 period of release;

1 (c) Require the juvenile to report regularly to and remain under  
2 the supervision of the juvenile court;

3 (d) Impose any condition other than detention deemed reasonably  
4 necessary to assure appearance as required;

5 (e) Require that the juvenile return to detention during specified  
6 hours; or

7 (f) Require the juvenile to post a probation bond set by the court  
8 under terms and conditions as provided in RCW 13.40.040(4).

9 (7) A juvenile may be released only to a responsible adult or the  
10 department of social and health services.

11 (8) If the parent, guardian, or custodian of the juvenile in  
12 detention is available, the court shall consult with them prior to a  
13 determination to further detain or release the juvenile or treat the  
14 case as a diversion case under RCW 13.40.080.

15 (9) A person notified under this section who fails without  
16 reasonable cause to appear and abide by the order of the court may be  
17 proceeded against as for contempt of court. In determining whether a  
18 parent, guardian, or custodian had reasonable cause not to appear, the  
19 court may consider all factors relevant to the person's ability to  
20 appear as summoned.

21 **Sec. 14.** RCW 13.40.060 and 1989 c 71 s 1 are each amended to read  
22 as follows:

23 (1) All actions under this chapter shall be commenced and tried in  
24 the county where any element of the offense was committed except as  
25 otherwise specially provided by statute. In cases in which diversion  
26 is provided by statute, venue is in the county in which the juvenile  
27 resides or in the county in which any element of the offense was  
28 committed.

29 ~~(2) ((The case and copies of all legal and social documents~~  
30 ~~pertaining thereto may in the discretion of the court be transferred to~~  
31 ~~the county where the juvenile resides for a disposition hearing. All~~  
32 ~~costs and arrangements for care and transportation of the juvenile in~~  
33 ~~custody shall be the responsibility of the receiving county as of the~~  
34 ~~date of the transfer of the juvenile to such county, unless the~~  
35 ~~counties otherwise agree.~~

36 ~~————(3))~~ The case and copies of all legal and social documents  
37 pertaining thereto may in the discretion of the court be transferred to  
38 the county in which the juvenile resides for supervision and



1 enforcement of the disposition order. The court of the receiving  
2 county has jurisdiction to modify and enforce the disposition order.

3 (~~(4)~~) (3) The court upon motion of any party or upon its own  
4 motion may, at any time, transfer a proceeding to another juvenile  
5 court when there is reason to believe that an impartial proceeding  
6 cannot be held in the county in which the proceeding was begun.

7 **Sec. 15.** RCW 13.40.070 and 1994 sp.s. c 7 s 543 are each amended  
8 to read as follows:

9 (1) Complaints referred to the juvenile court alleging the  
10 commission of an offense shall be referred directly to the prosecutor.  
11 The prosecutor, upon receipt of a complaint, shall screen the complaint  
12 to determine whether:

13 (a) The alleged facts bring the case within the jurisdiction of  
14 the court; and

15 (b) On a basis of available evidence there is probable cause to  
16 believe that the juvenile did commit the offense.

17 (2) If the identical alleged acts constitute an offense under both  
18 the law of this state and an ordinance of any city or county of this  
19 state, state law shall govern the prosecutor's screening and charging  
20 decision for both filed and diverted cases.

21 (3) If the requirements of subsections (1) (a) and (b) of this  
22 section are met, the prosecutor shall either file an information in  
23 juvenile court or divert the case, as set forth in subsections (5),  
24 (6), and (7) of this section. If the prosecutor finds that the  
25 requirements of subsection (1) (a) and (b) of this section are not met,  
26 the prosecutor shall maintain a record, for one year, of such decision  
27 and the reasons therefor. In lieu of filing an information or  
28 diverting an offense a prosecutor may file a motion to modify community  
29 supervision where such offense constitutes a violation of community  
30 supervision.

31 (4) An information shall be a plain, concise, and definite written  
32 statement of the essential facts constituting the offense charged. It  
33 shall be signed by the prosecuting attorney and conform to chapter  
34 10.37 RCW.

35 (5) Where a case is legally sufficient, the prosecutor shall file  
36 an information with the juvenile court if:

37 (a) An alleged offender is accused of a class A felony, a class B  
38 felony, an attempt to commit a class B felony, a class C felony listed

1 in RCW 9.94A.440(2) as a crime against persons or listed in RCW  
2 9A.46.060 as a crime of harassment, or a class C felony that is a  
3 violation of RCW 9.41.080 or (~~9.41.040(1)(e), or any other offense~~  
4 ~~listed in RCW 13.40.020(1) (b) or (c))~~ 9.41.040(1)(b)(iii); or

5 (b) An alleged offender is accused of a felony and has a criminal  
6 history of any felony, or at least two gross misdemeanors, or at least  
7 two misdemeanors; or

8 (c) An alleged offender has previously been committed to the  
9 department; or

10 (d) An alleged offender has been referred by a diversion unit for  
11 prosecution or desires prosecution instead of diversion; or

12 (e) An alleged offender has two or more diversion contracts on the  
13 alleged offender's criminal history; or

14 (f) A special allegation has been filed that the offender or an  
15 accomplice was armed with a firearm when the offense was committed.

16 (6) Where a case is legally sufficient the prosecutor shall divert  
17 the case if the alleged offense is a misdemeanor or gross misdemeanor  
18 or violation and the alleged offense is the offender's first offense or  
19 violation. If the alleged offender is charged with a related offense  
20 that must or may be filed under subsections (5) and (7) of this  
21 section, a case under this subsection may also be filed.

22 (7) Where a case is legally sufficient and falls into neither  
23 subsection (5) nor (6) of this section, it may be filed or diverted.  
24 In deciding whether to file or divert an offense under this section the  
25 prosecutor shall be guided only by the length, seriousness, and recency  
26 of the alleged offender's criminal history and the circumstances  
27 surrounding the commission of the alleged offense.

28 (8) Whenever a juvenile is placed in custody or, where not placed  
29 in custody, referred to a diversionary interview, the parent or legal  
30 guardian of the juvenile shall be notified as soon as possible  
31 concerning the allegation made against the juvenile and the current  
32 status of the juvenile. Where a case involves victims of crimes  
33 against persons or victims whose property has not been recovered at the  
34 time a juvenile is referred to a diversionary unit, the victim shall be  
35 notified of the referral and informed how to contact the unit.

36 (9) The responsibilities of the prosecutor under subsections (1)  
37 through (8) of this section may be performed by a juvenile court  
38 probation counselor for any complaint referred to the court alleging  
39 the commission of an offense which would not be a felony if committed

1 by an adult, if the prosecutor has given sufficient written notice to  
2 the juvenile court that the prosecutor will not review such complaints.

3 (10) The prosecutor, juvenile court probation counselor, or  
4 diversion unit may, in exercising their authority under this section or  
5 RCW 13.40.080, refer juveniles to mediation or victim offender  
6 reconciliation programs. Such mediation or victim offender  
7 reconciliation programs shall be voluntary for victims.

8 **Sec. 16.** RCW 13.40.077 and 1996 c 9 s 1 are each amended to read  
9 as follows:

10 RECOMMENDED PROSECUTING STANDARDS  
11 FOR CHARGING AND PLEA DISPOSITIONS

12 INTRODUCTION: These standards are intended solely for the  
13 guidance of prosecutors in the state of Washington. They are not  
14 intended to, do not, and may not be relied upon to create a right or  
15 benefit, substantive or procedural, enforceable at law by a party in  
16 litigation with the state.

17 Evidentiary sufficiency.

18 (1) Decision not to prosecute.

19 STANDARD: A prosecuting attorney may decline to prosecute, even  
20 though technically sufficient evidence to prosecute exists, in  
21 situations where prosecution would serve no public purpose, would  
22 defeat the underlying purpose of the law in question, or would result  
23 in decreased respect for the law. The decision not to prosecute or  
24 divert shall not be influenced by the race, gender, religion, or creed  
25 of the suspect.

26 GUIDELINES/COMMENTARY:

27 Examples

28 The following are examples of reasons not to prosecute which could  
29 satisfy the standard.

30 (a) Contrary to Legislative Intent - It may be proper to decline  
31 to charge where the application of criminal sanctions would be clearly  
32 contrary to the intent of the legislature in enacting the particular  
33 statute.

34 (b) Antiquated Statute - It may be proper to decline to charge  
35 where the statute in question is antiquated in that:

36 (i) It has not been enforced for many years;

37 (ii) Most members of society act as if it were no longer in  
38 existence;

1 (iii) It serves no deterrent or protective purpose in today's  
2 society; and

3 (iv) The statute has not been recently reconsidered by the  
4 legislature.

5 This reason is not to be construed as the basis for declining  
6 cases because the law in question is unpopular or because it is  
7 difficult to enforce.

8 (c) De Minimis Violation - It may be proper to decline to charge  
9 where the violation of law is only technical or insubstantial and where  
10 no public interest or deterrent purpose would be served by prosecution.

11 (d) Confinement on Other Charges - It may be proper to decline to  
12 charge because the accused has been sentenced on another charge to a  
13 lengthy period of confinement; and

14 (i) Conviction of the new offense would not merit any additional  
15 direct or collateral punishment;

16 (ii) The new offense is either a misdemeanor or a felony which is  
17 not particularly aggravated; and

18 (iii) Conviction of the new offense would not serve any  
19 significant deterrent purpose.

20 (e) Pending Conviction on Another Charge - It may be proper to  
21 decline to charge because the accused is facing a pending prosecution  
22 in the same or another county; and

23 (i) Conviction of the new offense would not merit any additional  
24 direct or collateral punishment;

25 (ii) Conviction in the pending prosecution is imminent;

26 (iii) The new offense is either a misdemeanor or a felony which is  
27 not particularly aggravated; and

28 (iv) Conviction of the new offense would not serve any significant  
29 deterrent purpose.

30 (f) High Disproportionate Cost of Prosecution - It may be proper  
31 to decline to charge where the cost of locating or transporting, or the  
32 burden on, prosecution witnesses is highly disproportionate to the  
33 importance of prosecuting the offense in question. The reason should  
34 be limited to minor cases and should not be relied upon in serious  
35 cases.

36 (g) Improper Motives of Complainant - It may be proper to decline  
37 charges because the motives of the complainant are improper and  
38 prosecution would serve no public purpose, would defeat the underlying

1 purpose of the law in question, or would result in decreased respect  
2 for the law.

3 (h) Immunity - It may be proper to decline to charge where  
4 immunity is to be given to an accused in order to prosecute another  
5 where the accused information or testimony will reasonably lead to the  
6 conviction of others who are responsible for more serious criminal  
7 conduct or who represent a greater danger to the public interest.

8 (i) Victim Request - It may be proper to decline to charge because  
9 the victim requests that no criminal charges be filed and the case  
10 involves the following crimes or situations:

11 (i) Assault cases where the victim has suffered little or no  
12 injury;

13 (ii) Crimes against property, not involving violence, where no  
14 major loss was suffered;

15 (iii) Where doing so would not jeopardize the safety of society.  
16 Care should be taken to insure that the victim's request is freely  
17 made and is not the product of threats or pressure by the accused.

18 The presence of these factors may also justify the decision to  
19 dismiss a prosecution which has been commenced.

20 Notification

21 The prosecutor is encouraged to notify the victim, when practical,  
22 and the law enforcement personnel, of the decision not to prosecute.

23 (2) Decision to prosecute.

24 STANDARD:

25 Crimes against persons will be filed if sufficient admissible  
26 evidence exists, which, when considered with the most plausible,  
27 reasonably foreseeable defense that could be raised under the evidence,  
28 would justify conviction by a reasonable and objective fact-finder.  
29 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
30 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
31 9A.64.020 the prosecutor should avoid prefiling agreements or  
32 diversions intended to place the accused in a program of treatment or  
33 counseling, so that treatment, if determined to be beneficial, can be  
34 proved under RCW 13.40.160(~~(+5)~~) (4).

35 Crimes against property/other crimes will be filed if the  
36 admissible evidence is of such convincing force as to make it probable  
37 that a reasonable and objective fact-finder would convict after hearing  
38 all the admissible evidence and the most plausible defense that could  
39 be raised.

1 The categorization of crimes for these charging standards shall be  
2 the same as found in RCW 9.94A.440(2).

3 The decision to prosecute or use diversion shall not be influenced  
4 by the race, gender, religion, or creed of the respondent.

5 (3) Selection of Charges/Degree of Charge

6 (a) The prosecutor should file charges which adequately describe  
7 the nature of the respondent's conduct. Other offenses may be charged  
8 only if they are necessary to ensure that the charges:

9 (i) Will significantly enhance the strength of the state's case at  
10 trial; or

11 (ii) Will result in restitution to all victims.

12 (b) The prosecutor should not overcharge to obtain a guilty plea.  
13 Overcharging includes:

14 (i) Charging a higher degree;

15 (ii) Charging additional counts.

16 This standard is intended to direct prosecutors to charge those  
17 crimes which demonstrate the nature and seriousness of a respondent's  
18 criminal conduct, but to decline to charge crimes which are not  
19 necessary to such an indication. Crimes which do not merge as a matter  
20 of law, but which arise from the same course of conduct, do not all  
21 have to be charged.

22 (4) Police Investigation

23 A prosecuting attorney is dependent upon law enforcement agencies  
24 to conduct the necessary factual investigation which must precede the  
25 decision to prosecute. The prosecuting attorney shall ensure that a  
26 thorough factual investigation has been conducted before a decision to  
27 prosecute is made. In ordinary circumstances the investigation should  
28 include the following:

29 (a) The interviewing of all material witnesses, together with the  
30 obtaining of written statements whenever possible;

31 (b) The completion of necessary laboratory tests; and

32 (c) The obtaining, in accordance with constitutional requirements,  
33 of the suspect's version of the events.

34 If the initial investigation is incomplete, a prosecuting attorney  
35 should insist upon further investigation before a decision to prosecute  
36 is made, and specify what the investigation needs to include.

37 (5) Exceptions

38 In certain situations, a prosecuting attorney may authorize filing  
39 of a criminal complaint before the investigation is complete if:

- 1 (a) Probable cause exists to believe the suspect is guilty; and  
2 (b) The suspect presents a danger to the community or is likely to  
3 flee if not apprehended; or  
4 (c) The arrest of the suspect is necessary to complete the  
5 investigation of the crime.

6 In the event that the exception (~~(that [to])~~) to the standard is  
7 applied, the prosecuting attorney shall obtain a commitment from the  
8 law enforcement agency involved to complete the investigation in a  
9 timely manner. If the subsequent investigation does not produce  
10 sufficient evidence to meet the normal charging standard, the complaint  
11 should be dismissed.

12 (6) Investigation Techniques

13 The prosecutor should be fully advised of the investigatory  
14 techniques that were used in the case investigation including:

- 15 (a) Polygraph testing;  
16 (b) Hypnosis;  
17 (c) Electronic surveillance;  
18 (d) Use of informants.

19 (7) Prefiling Discussions with Defendant

20 Discussions with the defendant or his or her representative  
21 regarding the selection or disposition of charges may occur prior to  
22 the filing of charges, and potential agreements can be reached.

23 (8) Plea dispositions:

24 STANDARD

25 (a) Except as provided in subsection (2) of this section, a  
26 respondent will normally be expected to plead guilty to the charge or  
27 charges which adequately describe the nature of his or her criminal  
28 conduct or go to trial.

29 (b) In certain circumstances, a plea agreement with a respondent  
30 in exchange for a plea of guilty to a charge or charges that may not  
31 fully describe the nature of his or her criminal conduct may be  
32 necessary and in the public interest. Such situations may include the  
33 following:

34 (i) Evidentiary problems which make conviction of the original  
35 charges doubtful;

36 (ii) The respondent's willingness to cooperate in the  
37 investigation or prosecution of others whose criminal conduct is more  
38 serious or represents a greater public threat;

1 (iii) A request by the victim when it is not the result of  
2 pressure from the respondent;

3 (iv) The discovery of facts which mitigate the seriousness of the  
4 respondent's conduct;

5 (v) The correction of errors in the initial charging decision;

6 (vi) The respondent's history with respect to criminal activity;

7 (vii) The nature and seriousness of the offense or offenses  
8 charged;

9 (viii) The probable effect of witnesses.

10 (c) No plea agreement shall be influenced by the race, gender,  
11 religion, or creed of the respondent. This includes but is not limited  
12 to the prosecutor's decision to utilize such disposition alternatives  
13 as "Option B," the Special Sex Offender Disposition Alternative, and  
14 manifest injustice.

15 (9) Disposition recommendations:

16 STANDARD

17 The prosecutor may reach an agreement regarding disposition  
18 recommendations.

19 The prosecutor shall not agree to withhold relevant information  
20 from the court concerning the plea agreement.

21 **Sec. 17.** RCW 13.40.080 and 1996 c 124 s 1 are each amended to  
22 read as follows:

23 (1) A diversion agreement shall be a contract between a juvenile  
24 accused of an offense and a diversionary unit whereby the juvenile  
25 agrees to fulfill certain conditions in lieu of prosecution. Such  
26 agreements may be entered into only after the prosecutor, or probation  
27 counselor pursuant to this chapter, has determined that probable cause  
28 exists to believe that a crime has been committed and that the juvenile  
29 committed it. Such agreements shall be entered into as expeditiously  
30 as possible.

31 (2) A diversion agreement shall be limited to one or more of the  
32 following:

33 (a) Community service not to exceed one hundred fifty hours, not  
34 to be performed during school hours if the juvenile is attending  
35 school;

36 (b) Restitution limited to the amount of actual loss incurred by  
37 the victim;



1 (c) Attendance at up to ten hours of counseling and/or up to  
2 twenty hours of educational or informational sessions at a community  
3 agency. The educational or informational sessions may include sessions  
4 relating to respect for self, others, and authority; victim awareness;  
5 accountability; self-worth; responsibility; work ethics; good  
6 citizenship; and life skills. For purposes of this section, "community  
7 agency" may also mean a community-based nonprofit organization, if  
8 approved by the diversion unit. The state shall not be liable for  
9 costs resulting from the diversionary unit exercising the option to  
10 permit diversion agreements to mandate attendance at up to ten hours of  
11 counseling and/or up to twenty hours of educational or informational  
12 sessions;

13 (d) A fine, not to exceed one hundred dollars. In determining the  
14 amount of the fine, the diversion unit shall consider only the  
15 juvenile's financial resources and whether the juvenile has the means  
16 to pay the fine. The diversion unit shall not consider the financial  
17 resources of the juvenile's parents, guardian, or custodian in  
18 determining the fine to be imposed; and

19 (e) Requirements to remain during specified hours at home, school,  
20 or work, and restrictions on leaving or entering specified geographical  
21 areas.

22 (3) In assessing periods of community service to be performed and  
23 restitution to be paid by a juvenile who has entered into a diversion  
24 agreement, the court officer to whom this task is assigned shall  
25 consult with the juvenile's custodial parent or parents or guardian and  
26 victims who have contacted the diversionary unit and, to the extent  
27 possible, involve members of the community. Such members of the  
28 community shall meet with the juvenile and advise the court officer as  
29 to the terms of the diversion agreement and shall supervise the  
30 juvenile in carrying out its terms.

31 (4) (a) A diversion agreement may not exceed a period of six months  
32 and may include a period extending beyond the eighteenth birthday of  
33 the divertee.

34 (b) If additional time is necessary for the juvenile to complete  
35 restitution to the victim, the time period limitations of this  
36 subsection may be extended by an additional six months.

37 (c) If the juvenile has not paid the full amount of restitution by  
38 the end of the additional six-month period, then the juvenile shall be  
39 referred to the juvenile court for entry of an order establishing the

1 amount of restitution still owed to the victim. In this order, the  
2 court shall also determine the terms and conditions of the restitution,  
3 including a payment plan extending up to ten years if the court  
4 determines that the juvenile does not have the means to make full  
5 restitution over a shorter period. For the purposes of this subsection  
6 (4)(c), the juvenile shall remain under the court's jurisdiction for a  
7 maximum term of ten years after the juvenile's eighteenth birthday.  
8 The court may not require the juvenile to pay full or partial  
9 restitution if the juvenile reasonably satisfies the court that he or  
10 she does not have the means to make full or partial restitution and  
11 could not reasonably acquire the means to pay the restitution over a  
12 ten-year period. The county clerk shall make disbursements to victims  
13 named in the order. The restitution to victims named in the order  
14 shall be paid prior to any payment for other penalties or monetary  
15 assessments. A juvenile under obligation to pay restitution may  
16 petition the court for modification of the restitution order.

17 (5) The juvenile shall retain the right to be referred to the  
18 court at any time prior to the signing of the diversion agreement.

19 (6) Divertees and potential divertees shall be afforded due  
20 process in all contacts with a diversionary unit regardless of whether  
21 the juveniles are accepted for diversion or whether the diversion  
22 program is successfully completed. Such due process shall include, but  
23 not be limited to, the following:

24 (a) A written diversion agreement shall be executed stating all  
25 conditions in clearly understandable language;

26 (b) Violation of the terms of the agreement shall be the only  
27 grounds for termination;

28 (c) No diverttee may be terminated from a diversion program without  
29 being given a court hearing, which hearing shall be preceded by:

30 (i) Written notice of alleged violations of the conditions of the  
31 diversion program; and

32 (ii) Disclosure of all evidence to be offered against the  
33 diverttee;

34 (d) The hearing shall be conducted by the juvenile court and shall  
35 include:

36 (i) Opportunity to be heard in person and to present evidence;

37 (ii) The right to confront and cross-examine all adverse  
38 witnesses;

1 (iii) A written statement by the court as to the evidence relied  
2 on and the reasons for termination, should that be the decision; and

3 (iv) Demonstration by evidence that the diverttee has substantially  
4 violated the terms of his or her diversion agreement.

5 (e) The prosecutor may file an information on the offense for  
6 which the diverttee was diverted:

7 (i) In juvenile court if the diverttee is under eighteen years of  
8 age; or

9 (ii) In superior court or the appropriate court of limited  
10 jurisdiction if the diverttee is eighteen years of age or older.

11 (7) The diversion unit shall, subject to available funds, be  
12 responsible for providing interpreters when juveniles need interpreters  
13 to effectively communicate during diversion unit hearings or  
14 negotiations.

15 (8) The diversion unit shall be responsible for advising a  
16 diverttee of his or her rights as provided in this chapter.

17 (9) The diversion unit may refer a juvenile to community-based  
18 counseling or treatment programs.

19 (10) The right to counsel shall inure prior to the initial  
20 interview for purposes of advising the juvenile as to whether he or she  
21 desires to participate in the diversion process or to appear in the  
22 juvenile court. The juvenile may be represented by counsel at any  
23 critical stage of the diversion process, including intake interviews  
24 and termination hearings. The juvenile shall be fully advised at the  
25 intake of his or her right to an attorney and of the relevant services  
26 an attorney can provide. For the purpose of this section, intake  
27 interviews mean all interviews regarding the diversion agreement  
28 process.

29 The juvenile shall be advised that a diversion agreement shall  
30 constitute a part of the juvenile's criminal history (~~as defined by~~  
31 ~~RCW 13.40.020(9)~~). A signed acknowledgment of such advisement shall  
32 be obtained from the juvenile, and the document shall be maintained by  
33 the diversionary unit together with the diversion agreement, and a copy  
34 of both documents shall be delivered to the prosecutor if requested by  
35 the prosecutor. The supreme court shall promulgate rules setting forth  
36 the content of such advisement in simple language.

37 (11) When a juvenile enters into a diversion agreement, the  
38 juvenile court may receive only the following information for  
39 dispositional purposes:

- 1 (a) The fact that a charge or charges were made;
- 2 (b) The fact that a diversion agreement was entered into;
- 3 (c) The juvenile's obligations under such agreement;
- 4 (d) Whether the alleged offender performed his or her obligations
- 5 under such agreement; and
- 6 (e) The facts of the alleged offense.

7 (12) A diversionary unit may refuse to enter into a diversion  
8 agreement with a juvenile. When a diversionary unit refuses to enter  
9 a diversion agreement with a juvenile, it shall immediately refer such  
10 juvenile to the court for action and shall forward to the court the  
11 criminal complaint and a detailed statement of its reasons for refusing  
12 to enter into a diversion agreement. The diversionary unit shall also  
13 immediately refer the case to the prosecuting attorney for action if  
14 such juvenile violates the terms of the diversion agreement.

15 (13) A diversionary unit may, in instances where it determines  
16 that the act or omission of an act for which a juvenile has been  
17 referred to it involved no victim, or where it determines that the  
18 juvenile referred to it has no prior criminal history and is alleged to  
19 have committed an illegal act involving no threat of or instance of  
20 actual physical harm and involving not more than fifty dollars in  
21 property loss or damage and that there is no loss outstanding to the  
22 person or firm suffering such damage or loss, counsel and release or  
23 release such a juvenile without entering into a diversion agreement.  
24 A diversion unit's authority to counsel and release a juvenile under  
25 this subsection shall include the authority to refer the juvenile to  
26 community-based counseling or treatment programs. Any juvenile  
27 released under this subsection shall be advised that the act or  
28 omission of any act for which he or she had been referred shall  
29 constitute a part of the juvenile's criminal history (~~as defined by~~  
30 ~~RCW 13.40.020(9)~~). A signed acknowledgment of such advisement shall  
31 be obtained from the juvenile, and the document shall be maintained by  
32 the unit, and a copy of the document shall be delivered to the  
33 prosecutor if requested by the prosecutor. The supreme court shall  
34 promulgate rules setting forth the content of such advisement in simple  
35 language. A juvenile determined to be eligible by a diversionary unit  
36 for release as provided in this subsection shall retain the same right  
37 to counsel and right to have his or her case referred to the court for  
38 formal action as any other juvenile referred to the unit.

1 (14) A diversion unit may supervise the fulfillment of a diversion  
2 agreement entered into before the juvenile's eighteenth birthday and  
3 which includes a period extending beyond the diverttee's eighteenth  
4 birthday.

5 (15) If a fine required by a diversion agreement cannot reasonably  
6 be paid due to a change of circumstance, the diversion agreement may be  
7 modified at the request of the diverttee and with the concurrence of the  
8 diversion unit to convert an unpaid fine into community service. The  
9 modification of the diversion agreement shall be in writing and signed  
10 by the diverttee and the diversion unit. The number of hours of  
11 community service in lieu of a monetary penalty shall be converted at  
12 the rate of the prevailing state minimum wage per hour.

13 (16) Fines imposed under this section shall be collected and paid  
14 into the county general fund in accordance with procedures established  
15 by the juvenile court administrator under RCW 13.04.040 and may be used  
16 only for juvenile services. In the expenditure of funds for juvenile  
17 services, there shall be a maintenance of effort whereby counties  
18 exhaust existing resources before using amounts collected under this  
19 section.

20 **Sec. 18.** RCW 13.40.100 and 1979 c 155 s 62 are each amended to  
21 read as follows:

22 (1) Upon the filing of an information the alleged offender shall  
23 be notified by summons, warrant, or other method approved by the court  
24 of the next required court appearance.

25 (2) If notice is by summons, the clerk of the court shall issue a  
26 summons directed to the juvenile, if the juvenile is twelve or more  
27 years of age, and another to the parents, guardian, or custodian, and  
28 such other persons as appear to the court to be proper or necessary  
29 parties to the proceedings, requiring them to appear personally before  
30 the court at the time fixed to hear the petition. Where the custodian  
31 is summoned, the parent or guardian or both shall also be served with  
32 a summons.

33 (3) A copy of the information shall be attached to each summons.

34 (4) The summons shall advise the parties of the right to counsel.

35 (5) The judge may endorse upon the summons an order directing the  
36 parents, guardian, or custodian having the custody or control of the  
37 juvenile to bring the juvenile to the hearing.

1 (6) If it appears from affidavit or sworn statement presented to  
2 the judge that there is probable cause for the issuance of a warrant of  
3 arrest or that the juvenile needs to be taken into custody pursuant to  
4 RCW 13.34.050, as now or hereafter amended, the judge may endorse upon  
5 the summons an order that an officer serving the summons shall at once  
6 take the juvenile into custody and take the juvenile to the place of  
7 detention or shelter designated by the court.

8 (7) Service of summons may be made under the direction of the  
9 court by any law enforcement officer or probation counselor.

10 (8) If the person summoned as herein provided fails without  
11 reasonable cause to appear and abide the order of the court, the person  
12 may be proceeded against as for contempt of court. In determining  
13 whether a parent, guardian, or custodian had reasonable cause not to  
14 appear, the court may consider all factors relevant to the person's  
15 ability to appear as summoned.

16 **Sec. 19.** RCW 13.40.110 and 1990 c 3 s 303 are each amended to  
17 read as follows:

18 (1) The prosecutor, respondent, or the court on its own motion  
19 may, before a hearing on the information on its merits, file a motion  
20 requesting the court to transfer the respondent for adult criminal  
21 prosecution and the matter shall be set for a hearing on the question  
22 of declining jurisdiction. Unless waived by the court, the parties,  
23 and their counsel, a decline hearing shall be held (~~(where)~~) when:

24 (a) The respondent is fifteen(~~(, sixteen, or seventeen)~~) years of  
25 age and the information alleges a class A felony or an attempt,  
26 solicitation, or conspiracy to commit a class A felony; or

27 (b) The respondent is seventeen years of age and the information  
28 alleges (~~(assault in the second degree, extortion in the first~~  
29 ~~degree,)~~) indecent liberties((~~7~~)) without forcible compulsion or child  
30 molestation in the second degree((~~, kidnapping in the second degree, or~~  
31 robbery in the second degree)).

32 (2) The court after a decline hearing may order the case  
33 transferred for adult criminal prosecution upon a finding that the  
34 declination would be in the best interest of the juvenile or the  
35 public. The court shall consider the relevant reports, facts,  
36 opinions, and arguments presented by the parties and their counsel.

37 (3) When the respondent is transferred for criminal prosecution or  
38 retained for prosecution in juvenile court, the court shall set forth

1 in writing its finding which shall be supported by relevant facts and  
2 opinions produced at the hearing.

3       **Sec. 20.** RCW 13.40.125 and 1995 c 395 s 6 are each amended to  
4 read as follows:

5       (1) Upon motion at least fourteen days before commencement of  
6 trial, the juvenile court has the power, after consulting the  
7 juvenile's custodial parent or parents or guardian and with the consent  
8 of the juvenile, to continue the case for (~~(adjudication)~~) disposition  
9 for a period not to exceed one year from the date (~~(the motion is~~  
10 ~~granted)~~) of entry of a plea of guilty or a finding of guilt following  
11 a hearing under subsection (5) of this section. The court may continue  
12 the case for an additional one-year period for good cause.

13       (2) Any juvenile granted a deferral of (~~(adjudication)~~)  
14 disposition under this section shall be placed under community  
15 supervision. The court may impose any conditions of supervision that  
16 it deems appropriate including posting a probation bond. Payment of  
17 restitution, as provided in RCW 13.40.190 shall also be a condition of  
18 community supervision under this section.

19       (3) Upon full compliance with conditions of supervision, the  
20 respondent's adjudication shall be vacated and the court shall dismiss  
21 the case with prejudice.

22       (4) If the juvenile fails to comply with the terms of supervision,  
23 the court shall enter an order of (~~(adjudication and proceed to)~~)  
24 disposition. The juvenile's lack of compliance shall be determined by  
25 the judge upon written motion by the prosecutor or the juvenile's  
26 juvenile court community supervision counselor. A parent who signed  
27 for a probation bond or deposited cash may notify the counselor if the  
28 juvenile fails to comply with the bond or conditions of supervision.  
29 The counselor shall notify the court and surety. A surety shall notify  
30 the court of the juvenile's failure to comply with the probation bond.  
31 The state shall bear the burden to prove by a preponderance of the  
32 evidence that the juvenile has failed to comply with the terms of  
33 community supervision.

34       (5) If the juvenile agrees to a deferral of (~~(adjudication)~~)  
35 disposition, the juvenile shall waive all rights:

- 36       (a) To a speedy trial and disposition;  
37       (b) To call and confront witnesses; and

1 (c) To a hearing on the record. The adjudicatory hearing shall be  
2 limited to a reading of the court's record.

3 (6) A juvenile is not eligible for a deferred (~~adjudication~~)  
4 disposition if:

5 (a) The juvenile's current offense is a sex or violent offense;

6 (b) The juvenile's criminal history includes any felony;

7 (c) The juvenile has a prior deferred (~~adjudication~~)  
8 disposition; or

9 (d) The juvenile has had more than two diversions.

10 **Sec. 21.** RCW 13.40.130 and 1981 c 299 s 10 are each amended to  
11 read as follows:

12 (1) The respondent shall be advised of the allegations in the  
13 information and shall be required to plead guilty or not guilty to the  
14 allegation(s). The state or the respondent may make preliminary  
15 motions up to the time of the plea.

16 (2) If the respondent pleads guilty, the court may proceed with  
17 disposition or may continue the case for a dispositional hearing. If  
18 the respondent denies guilt, an adjudicatory hearing date shall be set.  
19 The court shall notify the parent, guardian, or custodian who has  
20 custody of a juvenile described in the charging document of the  
21 dispositional or adjudicatory hearing and shall require attendance.

22 (3) At the adjudicatory hearing it shall be the burden of the  
23 prosecution to prove the allegations of the information beyond a  
24 reasonable doubt.

25 (4) The court shall record its findings of fact and shall enter  
26 its decision upon the record. Such findings shall set forth the  
27 evidence relied upon by the court in reaching its decision.

28 (5) If the respondent is found not guilty he or she shall be  
29 released from detention.

30 (6) If the respondent is found guilty the court may immediately  
31 proceed to disposition or may continue the case for a dispositional  
32 hearing. Notice of the time and place of the continued hearing may be  
33 given in open court. If notice is not given in open court to a party,  
34 the party and the parent, guardian, or custodian who has custody of the  
35 juvenile shall be notified by mail of the time and place of the  
36 continued hearing.



1 (7) The court following an adjudicatory hearing may request that  
2 a predisposition study be prepared to aid the court in its evaluation  
3 of the matters relevant to disposition of the case.

4 (8) The disposition hearing shall be held within fourteen days  
5 after the adjudicatory hearing or plea of guilty unless good cause is  
6 shown for further delay, or within twenty-one days if the juvenile is  
7 not held in a detention facility, unless good cause is shown for  
8 further delay.

9 (9) In sentencing an offender, the court shall use the disposition  
10 standards in effect on the date of the offense.

11 (10) A person notified under this section who fails without  
12 reasonable cause to appear and abide by the order of the court may be  
13 proceeded against as for contempt of court. In determining whether a  
14 parent, guardian, or custodian had reasonable cause not to appear, the  
15 court may consider all factors relevant to the person's ability to  
16 appear as summoned.

17 **Sec. 22.** RCW 13.40.135 and 1990 c 3 s 604 are each amended to  
18 read as follows:

19 (1) The prosecuting attorney shall file a special allegation of  
20 sexual motivation in every juvenile offense other than sex offenses as  
21 defined in RCW 9.94A.030(~~((+29))~~) (33) (a) or (c) when sufficient  
22 admissible evidence exists, which, when considered with the most  
23 plausible, reasonably consistent defense that could be raised under the  
24 evidence, would justify a finding of sexual motivation by a reasonable  
25 and objective fact-finder.

26 (2) In a juvenile case wherein there has been a special allegation  
27 the state shall prove beyond a reasonable doubt that the juvenile  
28 committed the offense with a sexual motivation. The court shall make  
29 a finding of fact of whether or not the sexual motivation was present  
30 at the time of the commission of the offense. This finding shall not  
31 be applied to sex offenses as defined in RCW 9.94A.030(~~((+29))~~) (33) (a)  
32 or (c).

33 (3) The prosecuting attorney shall not withdraw the special  
34 allegation of "sexual motivation" without approval of the court through  
35 an order of dismissal. The court shall not dismiss the special  
36 allegation unless it finds that such an order is necessary to correct  
37 an error in the initial charging decision or unless there are

1 evidentiary problems which make proving the special allegation  
2 doubtful.

3       **Sec. 23.** RCW 13.40.150 and 1995 c 268 s 5 are each amended to  
4 read as follows:

5       (1) In disposition hearings all relevant and material evidence,  
6 including oral and written reports, may be received by the court and  
7 may be relied upon to the extent of its probative value, even though  
8 such evidence may not be admissible in a hearing on the information.  
9 The youth or the youth's counsel and the prosecuting attorney shall be  
10 afforded an opportunity to examine and controvert written reports so  
11 received and to cross-examine individuals making reports when such  
12 individuals are reasonably available, but sources of confidential  
13 information need not be disclosed. The prosecutor and counsel for the  
14 juvenile may submit recommendations for disposition.

15       (2) For purposes of disposition:

16       (a) Violations which are current offenses count as misdemeanors;

17       (b) Violations may not count as part of the offender's criminal  
18 history;

19       (c) In no event may a disposition for a violation include  
20 confinement.

21       (3) Before entering a dispositional order as to a respondent found  
22 to have committed an offense, the court shall hold a disposition  
23 hearing, at which the court shall:

24       (a) Consider the facts supporting the allegations of criminal  
25 conduct by the respondent;

26       (b) Consider information and arguments offered by parties and  
27 their counsel;

28       (c) Consider any predisposition reports;

29       (d) Consult with the respondent's parent, guardian, or custodian  
30 on the appropriateness of dispositional options under consideration and  
31 afford the respondent and the respondent's parent, guardian, or  
32 custodian an opportunity to speak in the respondent's behalf;

33       (e) Allow the victim or a representative of the victim and an  
34 investigative law enforcement officer to speak;

35       (f) Determine the amount of restitution owing to the victim, if  
36 any, or set a hearing for a later date to determine that amount;

37       (g) ~~((Determine whether the respondent is a serious offender, a~~  
38 ~~middle offender, or a minor or first offender;~~

1 ~~(h))~~ Consider whether or not any of the following mitigating  
2 factors exist:

3 (i) The respondent's conduct neither caused nor threatened serious  
4 bodily injury or the respondent did not contemplate that his or her  
5 conduct would cause or threaten serious bodily injury;

6 (ii) The respondent acted under strong and immediate provocation;

7 (iii) The respondent was suffering from a mental or physical  
8 condition that significantly reduced his or her culpability for the  
9 offense though failing to establish a defense;

10 (iv) Prior to his or her detection, the respondent compensated or  
11 made a good faith attempt to compensate the victim for the injury or  
12 loss sustained; and

13 (v) There has been at least one year between the respondent's  
14 current offense and any prior criminal offense;

15 ~~((i))~~ (h) Consider whether or not any of the following  
16 aggravating factors exist:

17 (i) In the commission of the offense, or in flight therefrom, the  
18 respondent inflicted or attempted to inflict serious bodily injury to  
19 another;

20 (ii) The offense was committed in an especially heinous, cruel, or  
21 depraved manner;

22 (iii) The victim or victims were particularly vulnerable;

23 (iv) The respondent has a recent criminal history or has failed to  
24 comply with conditions of a recent dispositional order or diversion  
25 agreement;

26 (v) The current offense included a finding of sexual motivation  
27 pursuant to RCW 13.40.135;

28 (vi) The respondent was the leader of a criminal enterprise  
29 involving several persons; ~~((and))~~

30 (vii) There are other complaints which have resulted in diversion  
31 or a finding or plea of guilty but which are not included as criminal  
32 history; and

33 (viii) The standard range disposition is clearly too lenient  
34 considering the seriousness of the juvenile's prior adjudications.

35 (4) The following factors may not be considered in determining the  
36 punishment to be imposed:

37 (a) The sex of the respondent;

38 (b) The race or color of the respondent or the respondent's  
39 family;

1 (c) The creed or religion of the respondent or the respondent's  
2 family;

3 (d) The economic or social class of the respondent or the  
4 respondent's family; and

5 (e) Factors indicating that the respondent may be or is a  
6 dependent child within the meaning of this chapter.

7 (5) A court may not commit a juvenile to a state institution  
8 solely because of the lack of facilities, including treatment  
9 facilities, existing in the community.

10 **Sec. 24.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to  
11 read as follows:

12 (1) (~~When the respondent is found to be a serious offender, the~~  
13 ~~court shall commit the offender to the department for the standard~~  
14 ~~range of disposition for the offense, as indicated in option A of~~  
15 ~~schedule D-3, RCW 13.40.0357 except as provided in subsections (5) and~~  
16 ~~(6) of this section.)) The standard range disposition for a juvenile  
17 adjudicated of an offense is determined according to RCW 13.40.0357.~~

18 (a) When the court sentences an offender to a local sanction as  
19 provided in RCW 13.40.0357 Option A, the court shall impose a  
20 determinate disposition within the standard ranges, except as provided  
21 in subsections (2), (4), and (5) of this section. The disposition may  
22 be comprised of one or more local sanctions.

23 (b) When the court sentences an offender to a standard range as  
24 provided in RCW 13.40.0357 Option A that includes a term of confinement  
25 exceeding thirty days, commitment shall be to the department for the  
26 standard range of confinement, except as provided in subsections (2),  
27 (4), and (5) of this section.

28 (2) If the court concludes, and enters reasons for its conclusion,  
29 that disposition within the standard range would effectuate a manifest  
30 injustice the court shall impose a disposition outside the standard  
31 range, as indicated in option ((B)) C of ((~~schedule D-3,~~)) RCW  
32 13.40.0357. The court's finding of manifest injustice shall be  
33 supported by clear and convincing evidence.

34 A disposition outside the standard range shall be determinate and  
35 shall be comprised of confinement or community supervision, or a  
36 combination thereof. When a judge finds a manifest injustice and  
37 imposes a sentence of confinement exceeding thirty days, the court  
38 shall sentence the juvenile to a maximum term, and the provisions of

1 RCW 13.40.030(2) shall be used to determine the range. A disposition  
2 outside the standard range is appealable under RCW 13.40.230 by the  
3 state or the respondent. A disposition within the standard range is  
4 not appealable under RCW 13.40.230.

5 ~~((2) Where the respondent is found to be a minor or first  
6 offender, the court shall order that the respondent serve a term of  
7 community supervision as indicated in option A or option B of schedule  
8 D-1, RCW 13.40.0357 except as provided in subsections (5) and (6) of  
9 this section. If the court determines that a disposition of community  
10 supervision would effectuate a manifest injustice the court may impose  
11 another disposition under option C of schedule D-1, RCW 13.40.0357.  
12 Except as provided in subsection (5) of this section, a disposition  
13 other than a community supervision may be imposed only after the court  
14 enters reasons upon which it bases its conclusions that imposition of  
15 community supervision would effectuate a manifest injustice. When a  
16 judge finds a manifest injustice and imposes a sentence of confinement  
17 exceeding thirty days, the court shall sentence the juvenile to a  
18 maximum term, and the provisions of RCW 13.40.030(2) shall be used to  
19 determine the range. The court's finding of manifest injustice shall  
20 be supported by clear and convincing evidence.~~

21 ~~— Except for disposition of community supervision or a disposition  
22 imposed pursuant to subsection (5) of this section, disposition may be  
23 appealed as provided in RCW 13.40.230 by the state or the respondent.  
24 A disposition of community supervision or a disposition imposed  
25 pursuant to subsection (5) of this section may not be appealed under  
26 RCW 13.40.230.) )~~

27 (3) Where a respondent is found to have committed an offense for  
28 which the respondent declined to enter into a diversion agreement, the  
29 court shall impose a term of community supervision limited to the  
30 conditions allowed in a diversion agreement as provided in RCW  
31 13.40.080(2).

32 (4) ~~((If a respondent is found to be a middle offender:  
33 (a) The court shall impose a determinate disposition within the  
34 standard range(s) for such offense, as indicated in option A of  
35 schedule D-2, RCW 13.40.0357 except as provided in subsections (5) and  
36 (6) of this section. If the standard range includes a term of  
37 confinement exceeding thirty days, commitment shall be to the  
38 department for the standard range of confinement; or~~

1 ~~—— (b) If the middle offender has less than 110 points, the court~~  
2 ~~shall impose a determinate disposition of community supervision and/or~~  
3 ~~up to thirty days confinement, as indicated in option B of schedule D-~~  
4 ~~2, RCW 13.40.0357 in which case, if confinement has been imposed, the~~  
5 ~~court shall state either aggravating or mitigating factors as set forth~~  
6 ~~in RCW 13.40.150. If the middle offender has 110 points or more, the~~  
7 ~~court may impose a disposition under option A and may suspend the~~  
8 ~~disposition on the condition that the offender serve up to thirty days~~  
9 ~~of confinement and follow all conditions of community supervision. If~~  
10 ~~the offender violates any condition of the disposition including~~  
11 ~~conditions of a probation bond, the court may impose sanctions pursuant~~  
12 ~~to RCW 13.40.200 or may revoke the suspension and order execution of~~  
13 ~~the disposition. The court shall give credit for any confinement time~~  
14 ~~previously served if that confinement was for the offense for which the~~  
15 ~~suspension is being revoked.~~

16 ~~—— (c) Only if the court concludes, and enters reasons for its~~  
17 ~~conclusions, that disposition as provided in subsection (4) (a) or (b)~~  
18 ~~of this section would effectuate a manifest injustice, the court shall~~  
19 ~~sentence the juvenile to a maximum term, and the provisions of RCW~~  
20 ~~13.40.030(2) shall be used to determine the range. The court's finding~~  
21 ~~of manifest injustice shall be supported by clear and convincing~~  
22 ~~evidence.~~

23 ~~—— (d) A disposition pursuant to subsection (4) (c) of this section is~~  
24 ~~appealable under RCW 13.40.230 by the state or the respondent. A~~  
25 ~~disposition pursuant to subsection (4) (a) or (b) of this section is~~  
26 ~~not appealable under RCW 13.40.230.~~

27 ~~—— (5)) When a ((serious, middle, or minor first)) juvenile offender~~  
28 ~~is found to have committed a sex offense, other than a sex offense that~~  
29 ~~is also a serious violent offense as defined by RCW 9.94A.030, and has~~  
30 ~~no history of a prior sex offense, the court, on its own motion or the~~  
31 ~~motion of the state or the respondent, may order an examination to~~  
32 ~~determine whether the respondent is amenable to treatment.~~

33 The report of the examination shall include at a minimum the  
34 following: The respondent's version of the facts and the official  
35 version of the facts, the respondent's offense history, an assessment  
36 of problems in addition to alleged deviant behaviors, the respondent's  
37 social, educational, and employment situation, and other evaluation  
38 measures used. The report shall set forth the sources of the  
39 evaluator's information.

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

5 (a)(i) Frequency and type of contact between the offender and  
6 therapist;

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

9 (iii) Monitoring plans, including any requirements regarding  
10 living conditions, lifestyle requirements, and monitoring by family  
11 members, legal guardians, or others;

12 (iv) Anticipated length of treatment; and

13 (v) Recommended crime-related prohibitions.

14 The court on its own motion may order, or on a motion by the state  
15 shall order, a second examination regarding the offender's amenability  
16 to treatment. The evaluator shall be selected by the party making the  
17 motion. The defendant shall pay the cost of any second examination  
18 ordered unless the court finds the defendant to be indigent in which  
19 case the state shall pay the cost.

20 After receipt of reports of the examination, the court shall then  
21 consider whether the offender and the community will benefit from use  
22 of this special sex offender disposition alternative and consider the  
23 victim's opinion whether the offender should receive a treatment  
24 disposition under this section. If the court determines that this  
25 special sex offender disposition alternative is appropriate, then the  
26 court shall impose a determinate disposition within the standard range  
27 for the offense, or if the court concludes, and enters reasons for its  
28 conclusions, that such disposition would cause a manifest injustice,  
29 the court shall impose a disposition under option C, and the court may  
30 suspend the execution of the disposition and place the offender on  
31 community supervision for (~~up to~~) at least two years. As a condition  
32 of the suspended disposition, the court may impose the conditions of  
33 community supervision and other conditions, including up to thirty days  
34 of confinement and requirements that the offender do any one or more of  
35 the following:

36 (b)(i) Devote time to a specific education, employment, or  
37 occupation;

38 (ii) Undergo available outpatient sex offender treatment for up to  
39 two years, or inpatient sex offender treatment not to exceed the

1 standard range of confinement for that offense. A community mental  
2 health center may not be used for such treatment unless it has an  
3 appropriate program designed for sex offender treatment. The  
4 respondent shall not change sex offender treatment providers or  
5 treatment conditions without first notifying the prosecutor, the  
6 probation counselor, and the court, and shall not change providers  
7 without court approval after a hearing if the prosecutor or probation  
8 counselor object to the change;

9 (iii) Remain within prescribed geographical boundaries and notify  
10 the court or the probation counselor prior to any change in the  
11 offender's address, educational program, or employment;

12 (iv) Report to the prosecutor and the probation counselor prior to  
13 any change in a sex offender treatment provider. This change shall  
14 have prior approval by the court;

15 (v) Report as directed to the court and a probation counselor;

16 (vi) Pay all court-ordered legal financial obligations, perform  
17 community service, or any combination thereof;

18 (vii) Make restitution to the victim for the cost of any  
19 counseling reasonably related to the offense; or

20 (viii) Comply with the conditions of any court-ordered probation  
21 bond.

22 The sex offender treatment provider shall submit quarterly reports  
23 on the respondent's progress in treatment to the court and the parties.  
24 The reports shall reference the treatment plan and include at a minimum  
25 the following: Dates of attendance, respondent's compliance with  
26 requirements, treatment activities, the respondent's relative progress  
27 in treatment, and any other material specified by the court at the time  
28 of the disposition.

29 At the time of the disposition, the court may set treatment review  
30 hearings as the court considers appropriate.

31 Except as provided in this subsection (~~(+5+)~~) (4), after July 1,  
32 1991, examinations and treatment ordered pursuant to this subsection  
33 shall only be conducted by sex offender treatment providers certified  
34 by the department of health pursuant to chapter 18.155 RCW. A sex  
35 offender therapist who examines or treats a juvenile sex offender  
36 pursuant to this subsection does not have to be certified by the  
37 department of health pursuant to chapter 18.155 RCW if the court finds  
38 that: (A) The offender has already moved to another state or plans to  
39 move to another state for reasons other than circumventing the



1 certification requirements; (B) no certified providers are available  
2 for treatment within a reasonable geographical distance of the  
3 offender's home; and (C) the evaluation and treatment plan comply with  
4 this subsection (~~((5))~~) (4) and the rules adopted by the department of  
5 health.

6 If the offender violates any condition of the disposition or the  
7 court finds that the respondent is failing to make satisfactory  
8 progress in treatment, the court may revoke the suspension and order  
9 execution of the disposition or the court may impose a penalty of up to  
10 thirty days' confinement for violating conditions of the disposition.  
11 The court may order both execution of the disposition and up to thirty  
12 days' confinement for the violation of the conditions of the  
13 disposition. The court shall give credit for any confinement time  
14 previously served if that confinement was for the offense for which the  
15 suspension is being revoked.

16 For purposes of this section, "victim" means any person who has  
17 sustained emotional, psychological, physical, or financial injury to  
18 person or property as a direct result of the crime charged. "Victim"  
19 may also include a known parent or guardian of a victim who is a minor  
20 child unless the parent or guardian is the perpetrator of the offense.

21 ~~((6))~~ A disposition entered under this subsection (4) is not  
22 appealable under RCW 13.40.230.

23 (5) If the juvenile offender is subject to a standard range  
24 disposition of local sanctions or 24 to 36 weeks of confinement and has  
25 not committed an A- or B+ offense, the court may impose the disposition  
26 alternative under section 25 of this act.

27 (6) RCW 13.40.193 shall govern the disposition of any juvenile  
28 adjudicated of possessing a firearm in violation of RCW  
29 9.41.040(1) (~~((e))~~) (b)(iii) or any crime in which a special finding is  
30 entered that the juvenile was armed with a firearm.

31 (7) Whenever a juvenile offender is entitled to credit for time  
32 spent in detention prior to a dispositional order, the dispositional  
33 order shall specifically state the number of days of credit for time  
34 served.

35 (8) Except as provided (~~(for in)~~) under subsection (4) (~~((b))~~) or  
36 (5) of this section or RCW 13.40.125, the court shall not suspend or  
37 defer the imposition or the execution of the disposition.

1 (9) In no case shall the term of confinement imposed by the court  
2 at disposition exceed that to which an adult could be subjected for the  
3 same offense.

4 NEW SECTION. **Sec. 25.** A new section is added to chapter 13.40  
5 RCW to read as follows:

6 (1) When a juvenile offender is subject to a standard range  
7 disposition of local sanctions or 24 to 36 weeks of confinement and has  
8 not committed an A- or B+ offense, the court, on its own motion or the  
9 motion of the state or the respondent if the evidence shows that the  
10 offender may be chemically dependent, may order an examination by a  
11 chemical dependency counselor from a chemical dependency treatment  
12 facility approved under chapter 70.96A RCW to determine if the youth is  
13 chemically dependent and amenable to treatment.

14 (2) The report of the examination shall include at a minimum the  
15 following: The respondent's version of the facts and the official  
16 version of the facts, the respondent's offense history, an assessment  
17 of drug-alcohol problems and previous treatment attempts, the  
18 respondent's social, educational, and employment situation, and other  
19 evaluation measures used. The report shall set forth the sources of  
20 the examiner's information.

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

- 25 (a) Whether inpatient and/or outpatient treatment is recommended;
- 26 (b) Availability of appropriate treatment;
- 27 (c) Monitoring plans, including any requirements regarding living  
28 conditions, lifestyle requirements, and monitoring by family members,  
29 legal guardians, or others;
- 30 (d) Anticipated length of treatment;
- 31 (e) Recommended crime-related prohibitions; and
- 32 (f) Whether the respondent is amenable to treatment.

33 (4) The court on its own motion may order, or on a motion by the  
34 state shall order, a second examination regarding the offender's  
35 amenability to treatment. The evaluator shall be selected by the party  
36 making the motion. The defendant shall pay the cost of any examination  
37 ordered under this subsection (4) or subsection (1) of this section  
38 unless the court finds that the offender is indigent and no third party

1 insurance coverage is available, in which case the state shall pay the  
2 cost.

3 (5) (a) After receipt of reports of the examination, the court  
4 shall then consider whether the offender and the community will benefit  
5 from use of this chemical dependency disposition alternative and  
6 consider the victim's opinion whether the offender should receive a  
7 treatment disposition under this section.

8 (b) If the court determines that this chemical dependency  
9 disposition alternative is appropriate, then the court shall impose the  
10 standard range for the offense, suspend execution of the disposition,  
11 and place the offender on community supervision for up to one year. As  
12 a condition of the suspended disposition, the court shall require the  
13 offender to undergo available outpatient drug/alcohol treatment and/or  
14 inpatient drug/alcohol treatment. For purposes of this section, the  
15 sum of confinement time and inpatient treatment may not exceed ninety  
16 days. As a condition of the suspended disposition, the court may  
17 impose conditions of community supervision and other sanctions,  
18 including up to thirty days of confinement, one hundred fifty hours of  
19 community service, and payment of legal financial obligations and  
20 restitution.

21 (6) The drug/alcohol treatment provider shall submit monthly  
22 reports on the respondent's progress in treatment to the court and the  
23 parties. The reports shall reference the treatment plan and include at  
24 a minimum the following: Dates of attendance, respondent's compliance  
25 with requirements, treatment activities, the respondent's relative  
26 progress in treatment, and any other material specified by the court at  
27 the time of the disposition.

28 At the time of the disposition, the court may set treatment review  
29 hearings as the court considers appropriate.

30 If the offender violates any condition of the disposition or the  
31 court finds that the respondent is failing to make satisfactory  
32 progress in treatment, the court may revoke the suspension and order  
33 execution of the disposition. The court shall give credit for any  
34 confinement time previously served if that confinement was for the  
35 offense for which the suspension is being revoked.

36 (7) For purposes of this section, "victim" means any person who  
37 has sustained emotional, psychological, physical, or financial injury  
38 to person or property as a direct result of the offense charged.

1 (8) Whenever a juvenile offender is entitled to credit for time  
2 spent in detention prior to a dispositional order, the dispositional  
3 order shall specifically state the number of days of credit for time  
4 served.

5 (9) In no case shall the term of confinement imposed by the court  
6 at disposition exceed that to which an adult could be subjected for the  
7 same offense.

8 (10) A disposition under this section is not appealable under RCW  
9 13.40.230.

10 **Sec. 26.** RCW 13.40.190 and 1996 c 124 s 2 are each amended to  
11 read as follows:

12 (1) In its dispositional order, the court shall require the  
13 respondent to make restitution to any persons who have suffered loss or  
14 damage as a result of the offense committed by the respondent. In  
15 addition, restitution may be ordered for loss or damage if the offender  
16 pleads guilty to a lesser offense or fewer offenses and agrees with the  
17 prosecutor's recommendation that the offender be required to pay  
18 restitution to a victim of an offense or offenses which, pursuant to a  
19 plea agreement, are not prosecuted. The payment of restitution shall  
20 be in addition to any punishment which is imposed pursuant to the other  
21 provisions of this chapter. The court may determine the amount, terms,  
22 and conditions of the restitution including a payment plan extending up  
23 to ten years after the respondent's eighteenth birthday if the court  
24 determines that the respondent does not have the means to make full  
25 restitution over a shorter period. Restitution may include the costs  
26 of counseling reasonably related to the offense. If the respondent  
27 participated in the crime with another person or other persons, all  
28 such participants shall be jointly and severally responsible for the  
29 payment of restitution. For the purposes of this section, the  
30 respondent shall remain under the court's jurisdiction for a maximum  
31 term of ten years after the respondent's eighteenth birthday. (~~The  
32 court may not require the respondent to pay full or partial restitution  
33 if the respondent reasonably satisfies the court that he or she does  
34 not have the means to make full or partial restitution and could not  
35 reasonably acquire the means to pay such restitution over a ten-year  
36 period.~~)

37 (2) Regardless of the provisions of subsection (1) of this  
38 section, the court shall order restitution in all cases where the

1 victim is entitled to benefits under the crime victims' compensation  
2 act, chapter 7.68 RCW. If the court does not order restitution and the  
3 victim of the crime has been determined to be entitled to benefits  
4 under the crime victims' compensation act, the department of labor and  
5 industries, as administrator of the crime victims' compensation  
6 program, may petition the court within one year of entry of the  
7 disposition order for entry of a restitution order. Upon receipt of a  
8 petition from the department of labor and industries, the court shall  
9 hold a restitution hearing and shall enter a restitution order.

10 (3) If an order includes restitution as one of the monetary  
11 assessments, the county clerk shall make disbursements to victims named  
12 in the order. The restitution to victims named in the order shall be  
13 paid prior to any payment for other penalties or monetary assessments.

14 (4) A respondent under obligation to pay restitution may petition  
15 the court for modification of the restitution order.

16 **Sec. 27.** RCW 13.40.193 and 1994 sp.s. c 7 s 525 are each amended  
17 to read as follows:

18 (1) If a respondent is found to have been in possession of a  
19 firearm in violation of RCW 9.41.040(1) ~~((e))~~ (b)(iii), the court  
20 shall impose a ~~((determinate))~~ minimum disposition of ten days of  
21 confinement ~~((and up to twelve months of community supervision))~~. If  
22 the offender's standard range of disposition for the offense as  
23 indicated in RCW 13.40.0357 is more than thirty days of confinement,  
24 the court shall commit the offender to the department for the standard  
25 range disposition. The offender shall not be released until the  
26 offender has served a minimum of ten days in confinement.

27 (2) If the court finds that the respondent or an accomplice was  
28 armed with a firearm, the court shall determine the standard range  
29 disposition for the offense pursuant to RCW 13.40.160. ~~((Ninety days  
30 of confinement shall be added to the entire standard range disposition  
31 of confinement))~~ If the offender or an accomplice was armed with a  
32 firearm when the offender committed ~~((: (a) Any violent offense; or (b)  
33 escape in the first degree; burglary in the second degree; theft of  
34 livestock in the first or second degree; or any felony drug offense.  
35 If the offender or an accomplice was armed with a firearm and the  
36 offender is being adjudicated for an anticipatory felony offense under  
37 chapter 9A.28 RCW to commit one of the offenses listed in this  
38 subsection, ninety days shall be added to the entire standard range~~

1 ~~disposition of confinement)) any felony other than possession of a  
2 machine gun, possession of a stolen firearm, reckless endangerment in  
3 the first degree, theft of a firearm, unlawful possession of a firearm  
4 in the first and second degree, or use of a machine gun in a felony,  
5 the following periods of total confinement must be added to the  
6 sentence: For a class A felony, six months; for a class B felony, four  
7 months; and for a class C felony, two months. The ((ninety days))  
8 additional time shall be imposed regardless of the offense's juvenile  
9 disposition offense category as designated in RCW 13.40.0357. ((The  
10 department shall not release the offender until the offender has served  
11 a minimum of ninety days in confinement, unless the juvenile is  
12 committed to and successfully completes the juvenile offender basic  
13 training camp disposition option.))~~

14 (3) ~~((Option B of schedule D-2, RCW 13.40.0357, shall not be~~  
15 ~~available for middle offenders who receive a disposition under this~~  
16 ~~section.))~~ When a disposition under this section would effectuate a  
17 manifest injustice, the court may impose another disposition. When a  
18 judge finds a manifest injustice and imposes a disposition of  
19 confinement exceeding thirty days, the court shall commit the juvenile  
20 to a maximum term, and the provisions of RCW 13.40.030(2) shall be used  
21 to determine the range. When a judge finds a manifest injustice and  
22 imposes a disposition of confinement less than thirty days, the  
23 disposition shall be comprised of confinement or community supervision  
24 or both.

25 (4) Any term of confinement ordered pursuant to this section may  
26 run concurrently to any term of confinement imposed in the same  
27 disposition for other offenses.

28 **Sec. 28.** RCW 13.40.200 and 1995 c 395 s 8 are each amended to  
29 read as follows:

30 (1) When a respondent fails to comply with an order of  
31 restitution, community supervision, penalty assessments, or confinement  
32 of less than thirty days, the court upon motion of the prosecutor or  
33 its own motion, may modify the order after a hearing on the violation.

34 (2) The hearing shall afford the respondent the same due process  
35 of law as would be afforded an adult probationer. The court may issue  
36 a summons or a warrant to compel the respondent's appearance. The  
37 state shall have the burden of proving by a preponderance of the  
38 evidence the fact of the violation. The respondent shall have the

1 burden of showing that the violation was not a willful refusal to  
2 comply with the terms of the order. If a respondent has failed to pay  
3 a fine, penalty assessments, or restitution or to perform community  
4 service hours, as required by the court, it shall be the respondent's  
5 burden to show that he or she did not have the means and could not  
6 reasonably have acquired the means to pay the fine, penalty  
7 assessments, or restitution or perform community service.

8 (3) ~~((a))~~ If the court finds that a respondent has willfully  
9 violated the terms of an order pursuant to subsections (1) and (2) of  
10 this section, it may impose a penalty of up to thirty days'  
11 confinement. Penalties for multiple violations occurring prior to the  
12 hearing shall not be aggregated to exceed thirty days' confinement.  
13 Regardless of the number of times a respondent is brought to court for  
14 violations of the terms of a single disposition order, the combined  
15 total number of days spent by the respondent in detention shall never  
16 exceed the maximum term to which an adult could be sentenced for the  
17 underlying offense.

18 ~~((b) If the violation of the terms of the order under (a) of this  
19 subsection is failure to pay fines, penalty assessments, complete  
20 community service, or make restitution, the term of confinement imposed  
21 under (a) of this subsection shall be assessed at a rate of one day of  
22 confinement for each twenty-five dollars or eight hours owed.))~~

23 (4) If a respondent has been ordered to pay a fine or monetary  
24 penalty and due to a change of circumstance cannot reasonably comply  
25 with the order, the court, upon motion of the respondent, may order  
26 that the unpaid fine or monetary penalty be converted to community  
27 service. The number of hours of community service in lieu of a  
28 monetary penalty or fine shall be converted at the rate of the  
29 prevailing state minimum wage per hour. The monetary penalties or  
30 fines collected shall be deposited in the county general fund. A  
31 failure to comply with an order under this subsection shall be deemed  
32 a failure to comply with an order of community supervision and may be  
33 proceeded against as provided in this section.

34 (5) When a respondent has willfully violated the terms of a  
35 probation bond, the court may modify, revoke, or retain the probation  
36 bond as provided in RCW 13.40.054.

37 **Sec. 29.** RCW 13.40.210 and 1994 sp.s. c 7 s 527 are each amended  
38 to read as follows:

1           (1) The secretary shall, except in the case of a juvenile  
2 committed by a court to a term of confinement in a state institution  
3 outside the appropriate standard range for the offense(s) for which the  
4 juvenile was found to be guilty established pursuant to RCW 13.40.030,  
5 set a release or discharge date for each juvenile committed to its  
6 custody. The release or discharge date shall be within the prescribed  
7 range to which a juvenile has been committed except as provided in RCW  
8 13.40.320 concerning offenders the department determines are eligible  
9 for the juvenile offender basic training camp program. Such dates  
10 shall be determined prior to the expiration of sixty percent of a  
11 juvenile's minimum term of confinement included within the prescribed  
12 range to which the juvenile has been committed. The secretary shall  
13 release any juvenile committed to the custody of the department within  
14 four calendar days prior to the juvenile's release date or on the  
15 release date set under this chapter. Days spent in the custody of the  
16 department shall be tolled by any period of time during which a  
17 juvenile has absented himself or herself from the department's  
18 supervision without the prior approval of the secretary or the  
19 secretary's designee.

20           (2) The secretary shall monitor the average daily population of  
21 the state's juvenile residential facilities. When the secretary  
22 concludes that in-residence population of residential facilities  
23 exceeds one hundred five percent of the rated bed capacity specified in  
24 statute, or in absence of such specification, as specified by the  
25 department in rule, the secretary may recommend reductions to the  
26 governor. On certification by the governor that the recommended  
27 reductions are necessary, the secretary has authority to  
28 administratively release a sufficient number of offenders to reduce in-  
29 residence population to one hundred percent of rated bed capacity. The  
30 secretary shall release those offenders who have served the greatest  
31 proportion of their sentence. However, the secretary may deny release  
32 in a particular case at the request of an offender, or if the secretary  
33 finds that there is no responsible custodian, as determined by the  
34 department, to whom to release the offender, or if the release of the  
35 offender would pose a clear danger to society. The department shall  
36 notify the committing court of the release at the time of release if  
37 any such early releases have occurred as a result of excessive in-  
38 residence population. In no event shall an offender adjudicated of a



1 violent offense be granted release under the provisions of this  
2 subsection.

3 (3) Following the juvenile's release under subsection (1) of this  
4 section, the secretary may require the juvenile to comply with a  
5 program of parole to be administered by the department in his or her  
6 community which shall last no longer than eighteen months, except that  
7 in the case of a juvenile sentenced for rape in the first or second  
8 degree, rape of a child in the first or second degree, child  
9 molestation in the first degree, or indecent liberties with forcible  
10 compulsion, the period of parole shall be twenty-four months and, in  
11 the discretion of the secretary, may be up to thirty-six months when  
12 the secretary believes that an additional period of parole is necessary  
13 and appropriate in the interests of public safety or to meet the  
14 ongoing needs of the juvenile. A parole program is mandatory for  
15 offenders released under subsection (2) of this section. The secretary  
16 shall, for the period of parole, facilitate the juvenile's  
17 reintegration into his or her community and to further this goal shall  
18 require the juvenile to refrain from possessing a firearm or using a  
19 deadly weapon and refrain from committing new offenses and may require  
20 the juvenile to: (a) Undergo available medical ~~((or))~~ psychiatric  
21 ((treatment)), drug and alcohol, sex offender, mental health, and other  
22 offense-related treatment services; (b) report as directed to a parole  
23 officer and/or designee; (c) pursue a course of study ~~((or))~~ ,  
24 vocational training, or employment; ~~((and))~~ (d) notify the parole  
25 officer of the current address where he or she resides; (e) be present  
26 at a particular address during specified hours; (f) remain within  
27 prescribed geographical boundaries ~~((and notify the department of any~~  
28 ~~change in his or her address));~~ (g) submit to electronic monitoring;  
29 (h) refrain from using illegal drugs and alcohol and submit to random  
30 urinalysis when requested by the assigned parole officer; (i) refrain  
31 from contact with specific individuals or a specified group of  
32 individuals; (j) meet other conditions determined by the parole officer  
33 to further enhance the juvenile's reintegration into the community; (k)  
34 pay any court-ordered fines or restitution; and (l) perform community  
35 service. Community service for the purpose of this section means  
36 compulsory service, without compensation, performed for the benefit of  
37 the community by the offender. Community service may be performed  
38 through public or private organizations or through work crews. After

1 termination of the parole period, the juvenile shall be discharged from  
2 the department's supervision.

3 (4) (a) The department may also modify parole for violation  
4 thereof. If, after affording a juvenile all of the due process rights  
5 to which he or she would be entitled if the juvenile were an adult, the  
6 secretary finds that a juvenile has violated a condition of his or her  
7 parole, the secretary shall order one of the following which is  
8 reasonably likely to effectuate the purpose of the parole and to  
9 protect the public: (i) Continued supervision under the same  
10 conditions previously imposed; (ii) intensified supervision with  
11 increased reporting requirements; (iii) additional conditions of  
12 supervision authorized by this chapter; (iv) except as provided in  
13 (a) (v) of this subsection, imposition of a period of confinement not to  
14 exceed thirty days in a facility operated by or pursuant to a contract  
15 with the state of Washington or any city or county for a portion of  
16 each day or for a certain number of days each week with the balance of  
17 the days or weeks spent under supervision; and (v) the secretary may  
18 order any of the conditions or may return the offender to confinement  
19 (~~in an institution~~) for the remainder of the sentence range if the  
20 offense for which the offender was sentenced is rape in the first or  
21 second degree, rape of a child in the first or second degree, child  
22 molestation in the first degree, indecent liberties with forcible  
23 compulsion, or a sex offense that is also a serious violent offense as  
24 defined by RCW 9.94A.030.

25 (b) If the department finds that any juvenile in a program of  
26 parole has possessed a firearm or used a deadly weapon during the  
27 program of parole, the department shall modify the parole under (a) of  
28 this subsection and confine the juvenile for at least thirty days.  
29 Confinement shall be in a facility operated by or pursuant to a  
30 contract with the state or any county.

31 (5) A parole officer of the department of social and health  
32 services shall have the power to arrest a juvenile under his or her  
33 supervision on the same grounds as a law enforcement officer would be  
34 authorized to arrest the person.

35 (6) If so requested and approved under chapter 13.06 RCW, the  
36 secretary shall permit a county or group of counties to perform  
37 functions under subsections (3) through (5) of this section.

1           **Sec. 30.** RCW 13.40.230 and 1981 c 299 s 16 are each amended to  
2 read as follows:

3           (1) Dispositions reviewed pursuant to RCW 13.40.160, as now or  
4 hereafter amended, shall be reviewed in the appropriate division of the  
5 court of appeals.

6           An appeal under this section shall be heard solely upon the record  
7 that was before the disposition court. No written briefs may be  
8 required, and the appeal shall be heard within thirty days following  
9 the date of sentencing and a decision rendered within fifteen days  
10 following the argument. The supreme court shall promulgate any  
11 necessary rules to effectuate the purposes of this section.

12           (2) To uphold a disposition outside the standard range, (~~or which~~  
13 ~~imposes confinement for a minor or first offender,~~) the court of  
14 appeals must find (a) that the reasons supplied by the disposition  
15 judge are supported by the record which was before the judge and that  
16 those reasons clearly and convincingly support the conclusion that a  
17 disposition within the range (~~, or nonconfinement for a minor or first~~  
18 ~~offender,~~) would constitute a manifest injustice, and (b) that the  
19 sentence imposed was neither clearly excessive nor clearly too lenient.

20           (3) If the court does not find subsection (2) (a) of this section  
21 it shall remand the case for disposition within the standard range (~~or~~  
22 ~~for community supervision without confinement as would otherwise be~~  
23 ~~appropriate pursuant to this chapter).~~

24           (4) If the court finds subsection (2) (a) but not subsection (2) (b)  
25 of this section it shall remand the case with instructions for further  
26 proceedings consistent with the provisions of this chapter.

27           (5) (~~Pending appeal, a respondent may not be committed or~~  
28 ~~detained for a period of time in excess of the standard range for the~~  
29 ~~offense(s) committed or sixty days, whichever is longer.~~) The  
30 disposition court may impose conditions on release pending appeal as  
31 provided in RCW 13.40.040(4) and 13.40.050(6). (~~Upon the expiration~~  
32 ~~of the period of commitment or detention specified in this subsection,~~  
33 ~~the court may also impose such conditions on the respondent's release~~  
34 ~~pending disposition of the appeal.~~)

35           (6) Appeal of a disposition under this section does not affect the  
36 finality or appeal of the underlying adjudication of guilt.

37           **Sec. 31.** RCW 13.40.250 and 1980 c 128 s 16 are each amended to  
38 read as follows:

1 A traffic or civil infraction case involving a juvenile under the  
2 age of sixteen may be diverted in accordance with the provisions of  
3 this chapter or filed in juvenile court.

4 (1) If a notice of a traffic or civil infraction is filed in  
5 juvenile court, the juvenile named in the notice shall be afforded the  
6 same due process afforded to adult defendants in traffic infraction  
7 cases.

8 (2) A monetary penalty imposed upon a juvenile under the age of  
9 sixteen who is found to have committed a traffic or civil infraction  
10 may not exceed one hundred dollars. At the juvenile's request, the  
11 court may order performance of a number of hours of community service  
12 in lieu of a monetary penalty, at the rate of the prevailing state  
13 minimum wage per hour.

14 (3) A diversion agreement entered into by a juvenile referred  
15 pursuant to this section shall be limited to thirty hours of community  
16 service, or educational or informational sessions.

17 (4) If a case involving the commission of a traffic or civil  
18 infraction or offense by a juvenile under the age of sixteen has been  
19 referred to a diversion unit, an abstract of the action taken by the  
20 diversion unit may be forwarded to the department of licensing in the  
21 manner provided for in RCW 46.20.270(2).

22 **Sec. 32.** RCW 13.40.265 and 1994 sp.s. c 7 s 435 are each amended  
23 to read as follows:

24 (1)(a) If a juvenile thirteen years of age or older is found by  
25 juvenile court to have committed an offense while armed with a firearm  
26 or an offense that is a violation of RCW 9.41.040(1) ~~((te))~~ (b)(iii) or  
27 chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the  
28 department of licensing within twenty-four hours after entry of the  
29 judgment.

30 (b) Except as otherwise provided in (c) of this subsection, upon  
31 petition of a juvenile who has been found by the court to have  
32 committed an offense that is a violation of chapter 66.44, 69.41,  
33 69.50, or 69.52 RCW, the court may at any time the court deems  
34 appropriate notify the department of licensing that the juvenile's  
35 driving privileges should be reinstated.

36 (c) If the offense is the juvenile's first violation of chapter  
37 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the  
38 court for reinstatement of the juvenile's privilege to drive revoked

1 pursuant to RCW 46.20.265 until ninety days after the date the juvenile  
2 turns sixteen or ninety days after the judgment was entered, whichever  
3 is later. If the offense is the juvenile's second or subsequent  
4 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile  
5 may not petition the court for reinstatement of the juvenile's  
6 privilege to drive revoked pursuant to RCW 46.20.265 until the date the  
7 juvenile turns seventeen or one year after the date judgment was  
8 entered, whichever is later.

9 (2)(a) If a juvenile enters into a diversion agreement with a  
10 diversion unit pursuant to RCW 13.40.080 concerning an offense that is  
11 a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion  
12 unit shall notify the department of licensing within twenty-four hours  
13 after the diversion agreement is signed.

14 (b) If a diversion unit has notified the department pursuant to  
15 (a) of this subsection, the diversion unit shall notify the department  
16 of licensing when the juvenile has completed the agreement.

17 **Sec. 33.** RCW 13.40.320 and 1995 c 40 s 1 are each amended to read  
18 as follows:

19 (1) The department of social and health services shall establish  
20 and operate a medium security juvenile offender basic training camp  
21 program. The department shall site a juvenile offender basic training  
22 camp facility in the most cost-effective facility possible and shall  
23 review the possibility of using an existing abandoned and/or available  
24 state, federally, or military-owned site or facility.

25 (2) The department may contract under this chapter with private  
26 companies, the national guard, or other federal, state, or local  
27 agencies to operate the juvenile offender basic training camp,  
28 notwithstanding the provisions of RCW 41.06.380. Requests for  
29 proposals from possible contractors shall not call for payment on a per  
30 diem basis.

31 (3) The juvenile offender basic training camp shall accommodate at  
32 least seventy offenders. The beds shall count as additions to, and not  
33 be used as replacements for, existing bed capacity at existing  
34 department of social and health services juvenile facilities.

35 (4) The juvenile offender basic training camp shall be a  
36 structured and regimented model lasting one hundred twenty days  
37 emphasizing the building up of an offender's self-esteem, confidence,  
38 and discipline. The juvenile offender basic training camp program

1 shall provide participants with basic education, prevocational  
2 training, work-based learning, live work, work ethic skills, conflict  
3 resolution counseling, substance abuse intervention, anger management  
4 counseling, and structured intensive physical training. The juvenile  
5 offender basic training camp program shall have a curriculum training  
6 and work schedule that incorporates a balanced assignment of these or  
7 other rehabilitation and training components for no less than sixteen  
8 hours per day, six days a week.

9 The department shall adopt rules for the safe and effective  
10 operation of the juvenile offender basic training camp program,  
11 standards for an offender's successful program completion, and rules  
12 for the continued after-care supervision of offenders who have  
13 successfully completed the program.

14 (5) Offenders eligible for the juvenile offender basic training  
15 camp option shall be those with a disposition of not more than  
16 (~~seventy-eight~~) sixty-five weeks. Violent and sex offenders shall  
17 not be eligible for the juvenile offender basic training camp program.

18 (6) If the court determines that the offender is eligible for the  
19 juvenile offender basic training camp option, the court may recommend  
20 that the department place the offender in the program. The department  
21 shall evaluate the offender and may place the offender in the program.  
22 The evaluation shall include, at a minimum, a risk assessment developed  
23 by the department and designed to determine the offender's suitability  
24 for the program. No juvenile who is assessed as a high risk offender  
25 or suffers from any mental or physical problems that could endanger his  
26 or her health or drastically affect his or her performance in the  
27 program shall be admitted to or retained in the juvenile offender basic  
28 training camp program.

29 (7) All juvenile offenders eligible for the juvenile offender  
30 basic training camp sentencing option shall spend one hundred twenty  
31 days of their disposition in a juvenile offender basic training camp.  
32 If the juvenile offender's activities while in the juvenile offender  
33 basic training camp are so disruptive to the juvenile offender basic  
34 training camp program, as determined by the secretary according to  
35 rules adopted by the department, as to result in the removal of the  
36 juvenile offender from the juvenile offender basic training camp  
37 program, or if the offender cannot complete the juvenile offender basic  
38 training camp program due to medical problems, the secretary shall  
39 require that the offender be committed to a juvenile institution to

1 serve the entire remainder of his or her disposition, less the amount  
2 of time already served in the juvenile offender basic training camp  
3 program.

4 (8) All offenders who successfully graduate from the one hundred  
5 twenty day juvenile offender basic training camp program shall spend  
6 the remainder of their disposition on parole in a division of juvenile  
7 rehabilitation intensive aftercare program in the local community. The  
8 program shall provide for the needs of the offender based on his or her  
9 progress in the aftercare program as indicated by ongoing assessment of  
10 those needs and progress. The intensive aftercare program shall  
11 monitor postprogram juvenile offenders and assist them to successfully  
12 reintegrate into the community. In addition, the program shall develop  
13 a process for closely monitoring and assessing public safety risks.  
14 The intensive aftercare program shall be designed and funded by the  
15 department of social and health services.

16 (9) The department shall also develop and maintain a data base to  
17 measure recidivism rates specific to this incarceration program. The  
18 data base shall maintain data on all juvenile offenders who complete  
19 the juvenile offender basic training camp program for a period of two  
20 years after they have completed the program. The data base shall also  
21 maintain data on the criminal activity, educational progress, and  
22 employment activities of all juvenile offenders who participated in the  
23 program. (~~The department shall produce an outcome evaluation report  
24 on the progress of the juvenile offender basic training camp program to  
25 the appropriate committees of the legislature no later than December  
26 12, 1996.~~)

27 **Sec. 34.** RCW 13.50.010 and 1996 c 232 s 6 are each amended to  
28 read as follows:

29 (1) For purposes of this chapter:

30 (a) "Juvenile justice or care agency" means any of the following:  
31 Police, diversion units, court, prosecuting attorney, defense attorney,  
32 detention center, attorney general, the department of social and health  
33 services and its contracting agencies, schools; and, in addition,  
34 persons or public or private agencies having children committed to  
35 their custody;

36 (b) "Official juvenile court file" means the legal file of the  
37 juvenile court containing the petition or information, motions,  
38 memorandums, briefs, findings of the court, and court orders;

1 (c) "Social file" means the juvenile court file containing the  
2 records and reports of the probation counselor;

3 (d) "Records" means the official juvenile court file, the social  
4 file, and records of any other juvenile justice or care agency in the  
5 case.

6 (2) Each petition or information filed with the court may include  
7 only one juvenile and each petition or information shall be filed under  
8 a separate docket number. The social file shall be filed separately  
9 from the official juvenile court file.

10 (3) It is the duty of any juvenile justice or care agency to  
11 maintain accurate records. To this end:

12 (a) The agency may never knowingly record inaccurate information.  
13 Any information in records maintained by the department of social and  
14 health services relating to a petition filed pursuant to chapter 13.34  
15 RCW that is found by the court, upon proof presented, to be false or  
16 inaccurate shall be corrected or expunged from such records by the  
17 agency;

18 (b) An agency shall take reasonable steps to assure the security  
19 of its records and prevent tampering with them; and

20 (c) An agency shall make reasonable efforts to insure the  
21 completeness of its records, including action taken by other agencies  
22 with respect to matters in its files.

23 (4) Each juvenile justice or care agency shall implement  
24 procedures consistent with the provisions of this chapter to facilitate  
25 inquiries concerning records.

26 (5) Any person who has reasonable cause to believe information  
27 concerning that person is included in the records of a juvenile justice  
28 or care agency and who has been denied access to those records by the  
29 agency may make a motion to the court for an order authorizing that  
30 person to inspect the juvenile justice or care agency record concerning  
31 that person. The court shall grant the motion to examine records  
32 unless it finds that in the interests of justice or in the best  
33 interests of the juvenile the records or parts of them should remain  
34 confidential.

35 (6) A juvenile, or his or her parents, or any person who has  
36 reasonable cause to believe information concerning that person is  
37 included in the records of a juvenile justice or care agency may make  
38 a motion to the court challenging the accuracy of any information  
39 concerning the moving party in the record or challenging the continued



1 possession of the record by the agency. If the court grants the  
2 motion, it shall order the record or information to be corrected or  
3 destroyed.

4 (7) The person making a motion under subsection (5) or (6) of this  
5 section shall give reasonable notice of the motion to all parties to  
6 the original action and to any agency whose records will be affected by  
7 the motion.

8 (8) The court may permit inspection of records by, or release of  
9 information to, any clinic, hospital, or agency which has the subject  
10 person under care or treatment. The court may also permit inspection  
11 by or release to individuals or agencies, including juvenile justice  
12 advisory committees of county law and justice councils, engaged in  
13 legitimate research for educational, scientific, or public purposes.  
14 The court may also permit inspection of, or release of information  
15 from, records which have been sealed pursuant to RCW 13.50.050(11).  
16 The court shall release to the sentencing guidelines commission records  
17 needed for its research and data-gathering functions under RCW  
18 9.94A.040 and other statutes. Access to records or information for  
19 research purposes shall be permitted only if the anonymity of all  
20 persons mentioned in the records or information will be preserved.  
21 Each person granted permission to inspect juvenile justice or care  
22 agency records for research purposes shall present a notarized  
23 statement to the court stating that the names of juveniles and parents  
24 will remain confidential.

25 (9) Juvenile detention facilities shall release records to the  
26 sentencing guidelines commission under RCW (~~13.40.025 and~~) 9.94A.040  
27 upon request. The commission shall not disclose the names of any  
28 juveniles or parents mentioned in the records without the named  
29 individual's written permission.

30 **Sec. 35.** RCW 13.50.050 and 1992 c 188 s 7 are each amended to  
31 read as follows:

32 (1) This section governs records relating to the commission of  
33 juvenile offenses, including records relating to diversions.

34 (2) The official juvenile court file of any alleged or proven  
35 juvenile offender shall be open to public inspection, unless sealed  
36 pursuant to subsection (11) of this section.

1 (3) All records other than the official juvenile court file are  
2 confidential and may be released only as provided in this section, RCW  
3 13.50.010, 13.40.215, and 4.24.550.

4 (4) Except as otherwise provided in this section and RCW  
5 13.50.010, records retained or produced by any juvenile justice or care  
6 agency may be released to other participants in the juvenile justice or  
7 care system only when an investigation or case involving the juvenile  
8 in question is being pursued by the other participant or when that  
9 other participant is assigned the responsibility for supervising the  
10 juvenile.

11 (5) Except as provided in RCW 4.24.550, information not in an  
12 official juvenile court file concerning a juvenile or a juvenile's  
13 family may be released to the public only when that information could  
14 not reasonably be expected to identify the juvenile or the juvenile's  
15 family.

16 (6) Notwithstanding any other provision of this chapter, the  
17 release, to the juvenile or his or her attorney, of law enforcement and  
18 prosecuting attorneys' records pertaining to investigation, diversion,  
19 and prosecution of juvenile offenses shall be governed by the rules of  
20 discovery and other rules of law applicable in adult criminal  
21 investigations and prosecutions.

22 (7) The juvenile court and the prosecutor may set up and maintain  
23 a central record-keeping system which may receive information on all  
24 alleged juvenile offenders against whom a complaint has been filed  
25 pursuant to RCW 13.40.070 whether or not their cases are currently  
26 pending before the court. The central record-keeping system may be  
27 computerized. If a complaint has been referred to a diversion unit,  
28 the diversion unit shall promptly report to the juvenile court or the  
29 prosecuting attorney when the juvenile has agreed to diversion. An  
30 offense shall not be reported as criminal history in any central  
31 record-keeping system without notification by the diversion unit of the  
32 date on which the offender agreed to diversion.

33 (8) Upon request of the victim of a crime or the victim's  
34 immediate family, the identity of an alleged or proven juvenile  
35 offender alleged or found to have committed a crime against the victim  
36 and the identity of the alleged or proven juvenile offender's parent,  
37 guardian, or custodian and the circumstance of the alleged or proven  
38 crime shall be released to the victim of the crime or the victim's  
39 immediate family.

1 (9) Subject to the rules of discovery applicable in adult criminal  
2 prosecutions, the juvenile offense records of an adult criminal  
3 defendant or witness in an adult criminal proceeding shall be released  
4 upon request to prosecution and defense counsel after a charge has  
5 actually been filed. The juvenile offense records of any adult  
6 convicted of a crime and placed under the supervision of the adult  
7 corrections system shall be released upon request to the adult  
8 corrections system.

9 (10) In any case in which an information has been filed pursuant  
10 to RCW 13.40.100 or a complaint has been filed with the prosecutor and  
11 referred for diversion pursuant to RCW 13.40.070, the person the  
12 subject of the information or complaint may file a motion with the  
13 court to have the court vacate its order and findings, if any, and,  
14 subject to subsection ~~((24))~~ (22) of this section, order the sealing  
15 of the official juvenile court file, the social file, and records of  
16 the court and of any other agency in the case.

17 (11) The court shall grant the motion to seal records made  
18 pursuant to subsection (10) of this section if it finds that:

19 (a) ~~((Two years have elapsed from the later of: (i) Final  
20 discharge of the person from the supervision of any agency charged with  
21 supervising juvenile offenders; or (ii) from the entry of a court order  
22 relating to the commission of a juvenile offense or a criminal  
23 offense))~~ For class B felonies other than sex offenses, since the last  
24 date of release from confinement, including full-time residential  
25 treatment, pursuant to a felony conviction, if any, or entry of  
26 judgment and sentence, the person has spent ten consecutive years in  
27 the community without committing any crime that subsequently results in  
28 conviction. For class C felonies other than sex offenses, since the  
29 last date of release from confinement, including full-time residential  
30 treatment, pursuant to a felony conviction, if any, or entry of  
31 judgment and sentence, the person has spent five consecutive years in  
32 the community without committing any crime that subsequently results in  
33 conviction;

34 (b) No proceeding is pending against the moving party seeking the  
35 conviction of a juvenile offense or a criminal offense; ~~((and))~~

36 (c) No proceeding is pending seeking the formation of a diversion  
37 agreement with that person; and

38 (d) Full restitution has been paid.

1 (12) The person making a motion pursuant to subsection (10) of  
2 this section shall give reasonable notice of the motion to the  
3 prosecution and to any person or agency whose files are sought to be  
4 sealed.

5 (13) If the court grants the motion to seal made pursuant to  
6 subsection (10) of this section, it shall, subject to subsection  
7 ~~((24))~~ (22) of this section, order sealed the official juvenile court  
8 file, the social file, and other records relating to the case as are  
9 named in the order. Thereafter, the proceedings in the case shall be  
10 treated as if they never occurred, and the subject of the records may  
11 reply accordingly to any inquiry about the events, records of which are  
12 sealed. Any agency shall reply to any inquiry concerning confidential  
13 or sealed records that records are confidential, and no information can  
14 be given about the existence or nonexistence of records concerning an  
15 individual.

16 (14) Inspection of the files and records included in the order to  
17 seal may thereafter be permitted only by order of the court upon motion  
18 made by the person who is the subject of the information or complaint,  
19 except as otherwise provided in RCW 13.50.010(8) and subsection  
20 ~~((24))~~ (22) of this section.

21 (15) Any adjudication of a juvenile offense or a crime subsequent  
22 to sealing has the effect of nullifying the sealing order. Any  
23 ~~((conviction for any))~~ charging of an adult felony subsequent to the  
24 sealing has the effect of nullifying the sealing order for the purposes  
25 of chapter 9.94A RCW ~~((for any juvenile adjudication of guilt for a  
26 class A offense or a sex offense as defined in RCW 9.94A.030))~~.

27 ~~((16))~~ ~~((In any case in which an information has been filed pursuant  
28 to RCW 13.40.100 or a complaint has been filed with the prosecutor and  
29 referred for diversion pursuant to RCW 13.40.070, the person who is the  
30 subject of the information or complaint may file a motion with the  
31 court to have the court vacate its order and findings, if any, and,  
32 subject to subsection (24) of this section, order the destruction of  
33 the official juvenile court file, the social file, and records of the  
34 court and of any other agency in the case.~~

35 ~~———— (17) The court may grant the motion to destroy records made  
36 pursuant to subsection (16) of this section if it finds:~~

37 ~~———— (a) The person making the motion is at least twenty three years of  
38 age;~~

39 ~~———— (b) The person has not subsequently been convicted of a felony;~~

1 ~~(c) No proceeding is pending against that person seeking the~~  
2 ~~conviction of a criminal offense; and~~

3 ~~(d) The person has never been found guilty of a serious offense.~~

4 ~~(18))~~ A person eighteen years of age or older whose criminal  
5 history consists of only one referral for diversion may request that  
6 the court order the records in that case destroyed. The request shall  
7 be granted, subject to subsection ~~((24))~~ (22) of this section, if the  
8 court finds that two years have elapsed since completion of the  
9 diversion agreement.

10 ~~((19))~~ (17) If the court grants the motion to destroy records  
11 made pursuant to subsection (16) ~~((or (18)))~~ of this section, it shall,  
12 subject to subsection ~~((24))~~ (22) of this section, order the official  
13 juvenile court file, the social file, and any other records named in  
14 the order to be destroyed.

15 ~~((20))~~ (18) The person making the motion pursuant to subsection  
16 (16) ~~((or (18)))~~ of this section shall give reasonable notice of the  
17 motion to the prosecuting attorney and to any agency whose records are  
18 sought to be destroyed.

19 ~~((21))~~ (19) Any juvenile to whom the provisions of this section  
20 may apply shall be given written notice of his or her rights under this  
21 section at the time of his or her disposition hearing or during the  
22 diversion process.

23 ~~((22))~~ (20) Nothing in this section may be construed to prevent  
24 a crime victim or a member of the victim's family from divulging the  
25 identity of the alleged or proven juvenile offender or his or her  
26 family when necessary in a civil proceeding.

27 ~~((23))~~ (21) Any juvenile justice or care agency may, subject to  
28 the limitations in subsection ~~((24))~~ (22) of this section and  
29 ~~((subparagraphs))~~ (a) and (b) of this subsection, develop procedures  
30 for the routine destruction of records relating to juvenile offenses  
31 and diversions.

32 (a) Records may be routinely destroyed only when the person the  
33 subject of the information or complaint has attained twenty-three years  
34 of age or older, or is eighteen years of age or older and his or her  
35 criminal history consists entirely of one diversion agreement and two  
36 years have passed since completion of the agreement.

37 (b) The court may not routinely destroy the official juvenile  
38 court file or recordings or transcripts of any proceedings.

1           (~~(+24)~~) (22) No identifying information held by the Washington  
2 state patrol in accordance with chapter 43.43 RCW is subject to  
3 destruction or sealing under this section. For the purposes of this  
4 subsection, identifying information includes photographs, fingerprints,  
5 palmprints, soleprints, toeprints and any other data that identifies a  
6 person by physical characteristics, name, birthdate or address, but  
7 does not include information regarding criminal activity, arrest,  
8 charging, diversion, conviction or other information about a person's  
9 treatment by the criminal justice system or about the person's  
10 behavior.

11           (~~(+25)~~) (23) Information identifying child victims under age  
12 eighteen who are victims of sexual assaults by juvenile offenders is  
13 confidential and not subject to release to the press or public without  
14 the permission of the child victim or the child's legal guardian.  
15 Identifying information includes the child victim's name, addresses,  
16 location, photographs, and in cases in which the child victim is a  
17 relative of the alleged perpetrator, identification of the relationship  
18 between the child and the alleged perpetrator. Information identifying  
19 a child victim of sexual assault may be released to law enforcement,  
20 prosecutors, judges, defense attorneys, or private or governmental  
21 agencies that provide services to the child victim of sexual assault.

22           **Sec. 36.** RCW 9A.36.045 and 1995 c 129 s 8 are each amended to  
23 read as follows:

24           (1) A person is guilty of (~~(reckless endangerment in the first~~  
25 ~~degree)~~) drive-by shooting when he or she recklessly discharges a  
26 firearm as defined in RCW 9.41.010 in a manner which creates a  
27 substantial risk of death or serious physical injury to another person  
28 and the discharge is either from a motor vehicle or from the immediate  
29 area of a motor vehicle that was used to transport the shooter or the  
30 firearm, or both, to the scene of the discharge.

31           (2) A person who unlawfully discharges a firearm from a moving  
32 motor vehicle may be inferred to have engaged in reckless conduct,  
33 unless the discharge is shown by evidence satisfactory to the trier of  
34 fact to have been made without such recklessness.

35           (3) (~~(Reckless endangerment in the first degree)~~) Drive-by  
36 shooting is a class B felony.

1           **Sec. 37.** RCW 9A.36.050 and 1989 c 271 s 110 are each amended to  
2 read as follows:

3           (1) A person is guilty of reckless endangerment (~~(in the second~~  
4 ~~degree)~~) when he or she recklessly engages in conduct not amounting to  
5 (~~reckless endangerment in the first degree but which~~) drive-by  
6 shooting but that creates a substantial risk of death or serious  
7 physical injury to another person.

8           (2) Reckless endangerment (~~(in the second degree)~~) is a gross  
9 misdemeanor.

10           **Sec. 38.** RCW 9.41.010 and 1996 c 295 s 1 are each amended to read  
11 as follows:

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

14           (1) "Firearm" means a weapon or device from which a projectile or  
15 projectiles may be fired by an explosive such as gunpowder.

16           (2) "Pistol" means any firearm with a barrel less than sixteen  
17 inches in length, or is designed to be held and fired by the use of a  
18 single hand.

19           (3) "Rifle" means a weapon designed or redesigned, made or remade,  
20 and intended to be fired from the shoulder and designed or redesigned,  
21 made or remade, and intended to use the energy of the explosive in a  
22 fixed metallic cartridge to fire only a single projectile through a  
23 rifled bore for each single pull of the trigger.

24           (4) "Short-barreled rifle" means a rifle having one or more  
25 barrels less than sixteen inches in length and any weapon made from a  
26 rifle by any means of modification if such modified weapon has an  
27 overall length of less than twenty-six inches.

28           (5) "Shotgun" means a weapon with one or more barrels, designed or  
29 redesigned, made or remade, and intended to be fired from the shoulder  
30 and designed or redesigned, made or remade, and intended to use the  
31 energy of the explosive in a fixed shotgun shell to fire through a  
32 smooth bore either a number of ball shot or a single projectile for  
33 each single pull of the trigger.

34           (6) "Short-barreled shotgun" means a shotgun having one or more  
35 barrels less than eighteen inches in length and any weapon made from a  
36 shotgun by any means of modification if such modified weapon has an  
37 overall length of less than twenty-six inches.

1 (7) "Machine gun" means any firearm known as a machine gun,  
2 mechanical rifle, submachine gun, or any other mechanism or instrument  
3 not requiring that the trigger be pressed for each shot and having a  
4 reservoir clip, disc, drum, belt, or other separable mechanical device  
5 for storing, carrying, or supplying ammunition which can be loaded into  
6 the firearm, mechanism, or instrument, and fired therefrom at the rate  
7 of five or more shots per second.

8 (8) "Antique firearm" means a firearm or replica of a firearm not  
9 designed or redesigned for using rim fire or conventional center fire  
10 ignition with fixed ammunition and manufactured in or before 1898,  
11 including any matchlock, flintlock, percussion cap, or similar type of  
12 ignition system and also any firearm using fixed ammunition  
13 manufactured in or before 1898, for which ammunition is no longer  
14 manufactured in the United States and is not readily available in the  
15 ordinary channels of commercial trade.

16 (9) "Loaded" means:

17 (a) There is a cartridge in the chamber of the firearm;

18 (b) Cartridges are in a clip that is locked in place in the  
19 firearm;

20 (c) There is a cartridge in the cylinder of the firearm, if the  
21 firearm is a revolver;

22 (d) There is a cartridge in the tube or magazine that is inserted  
23 in the action; or

24 (e) There is a ball in the barrel and the firearm is capped or  
25 primed if the firearm is a muzzle loader.

26 (10) "Dealer" means a person engaged in the business of selling  
27 firearms at wholesale or retail who has, or is required to have, a  
28 federal firearms license under 18 U.S.C. Sec. 923(a). A person who  
29 does not have, and is not required to have, a federal firearms license  
30 under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only  
31 occasional sales, exchanges, or purchases of firearms for the  
32 enhancement of a personal collection or for a hobby, or sells all or  
33 part of his or her personal collection of firearms.

34 (11) "Crime of violence" means:

35 (a) Any of the following felonies, as now existing or hereafter  
36 amended: Any felony defined under any law as a class A felony or an  
37 attempt to commit a class A felony, criminal solicitation of or  
38 criminal conspiracy to commit a class A felony, manslaughter in the  
39 first degree, manslaughter in the second degree, indecent liberties if



1 committed by forcible compulsion, kidnapping in the second degree,  
2 arson in the second degree, assault in the second degree, assault of a  
3 child in the second degree, extortion in the first degree, burglary in  
4 the second degree, residential burglary, and robbery in the second  
5 degree;

6 (b) Any conviction for a felony offense in effect at any time  
7 prior to June 6, 1996, which is comparable to a felony classified as a  
8 crime of violence in (a) of this subsection; and

9 (c) Any federal or out-of-state conviction for an offense  
10 comparable to a felony classified as a crime of violence under (a) or  
11 (b) of this subsection.

12 (12) "Serious offense" means any of the following felonies or a  
13 felony attempt to commit any of the following felonies, as now existing  
14 or hereafter amended:

15 (a) Any crime of violence;

16 (b) Any felony violation of the uniform controlled substances act,  
17 chapter 69.50 RCW, that is classified as a class B felony or that has  
18 a maximum term of imprisonment of at least ten years;

19 (c) Child molestation in the second degree;

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

21 (e) Indecent liberties;

22 (f) Leading organized crime;

23 (g) Promoting prostitution in the first degree;

24 (h) Rape in the third degree;

25 (i) (~~Reckless endangerment in the first degree~~) Drive-by  
26 shooting;

27 (j) Sexual exploitation;

28 (k) Vehicular assault;

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

33 (m) Any other class B felony offense with a finding of sexual  
34 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

35 (n) Any other felony with a deadly weapon verdict under RCW  
36 9.94A.125; or

37 (o) Any felony offense in effect at any time prior to June 6,  
38 1996, that is comparable to a serious offense, or any federal or out-

1 of-state conviction for an offense that under the laws of this state  
2 would be a felony classified as a serious offense.

3 (13) "Law enforcement officer" includes a general authority  
4 Washington peace officer as defined in RCW 10.93.020, or a specially  
5 commissioned Washington peace officer as defined in RCW 10.93.020.  
6 "Law enforcement officer" also includes a limited authority Washington  
7 peace officer as defined in RCW 10.93.020 if such officer is duly  
8 authorized by his or her employer to carry a concealed pistol.

9 (14) "Felony" means any felony offense under the laws of this  
10 state or any federal or out-of-state offense comparable to a felony  
11 offense under the laws of this state.

12 (15) "Sell" refers to the actual approval of the delivery of a  
13 firearm in consideration of payment or promise of payment of a certain  
14 price in money.

15 (16) "Barrel length" means the distance from the bolt face of a  
16 closed action down the length of the axis of the bore to the crown of  
17 the muzzle, or in the case of a barrel with attachments to the end of  
18 any legal device permanently attached to the end of the muzzle.

19 (17) "Family or household member" means "family" or "household  
20 member" as used in RCW 10.99.020.

21 **Sec. 39.** RCW 9.41.040 and 1996 c 295 s 2 are each amended to read  
22 as follows:

23 (1)(a) A person, whether an adult or juvenile, is guilty of the  
24 crime of unlawful possession of a firearm in the first degree, if the  
25 person owns, has in his or her possession, or has in his or her control  
26 any firearm after having previously been convicted in this state or  
27 elsewhere of any serious offense as defined in this chapter.

28 (b) A person, whether an adult or juvenile, is guilty of the crime  
29 of unlawful possession of a firearm in the second degree, if the person  
30 does not qualify under (a) of this subsection for the crime of unlawful  
31 possession of a firearm in the first degree and the person owns, has in  
32 his or her possession, or has in his or her control any firearm:

33 (i) After having previously been convicted in this state or  
34 elsewhere of any felony not specifically listed as prohibiting firearm  
35 possession under (a) of this subsection, or any of the following crimes  
36 when committed by one family or household member against another,  
37 committed on or after July 1, 1993: Assault in the fourth degree,  
38 coercion, stalking, reckless endangerment (~~(in the second degree)~~),

1 criminal trespass in the first degree, or violation of the provisions  
2 of a protection order or no-contact order restraining the person or  
3 excluding the person from a residence (RCW 26.50.060, 26.50.070,  
4 26.50.130, or 10.99.040);

5 (ii) After having previously been involuntarily committed for  
6 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77  
7 RCW, or equivalent statutes of another jurisdiction, unless his or her  
8 right to possess a firearm has been restored as provided in RCW  
9 9.41.047;

10 (iii) If the person is under eighteen years of age, except as  
11 provided in RCW 9.41.042; and/or

12 (iv) If the person is free on bond or personal recognizance  
13 pending trial, appeal, or sentencing for a serious offense as defined  
14 in RCW 9.41.010.

15 (2)(a) Unlawful possession of a firearm in the first degree is a  
16 class B felony, punishable under chapter 9A.20 RCW.

17 (b) Unlawful possession of a firearm in the second degree is a  
18 class C felony, punishable under chapter 9A.20 RCW.

19 (3) Notwithstanding RCW 9.41.047 or any other provisions of law,  
20 as used in this chapter, a person has been "convicted", whether in an  
21 adult court or adjudicated in a juvenile court, at such time as a plea  
22 of guilty has been accepted, or a verdict of guilty has been filed,  
23 notwithstanding the pendency of any future proceedings including but  
24 not limited to sentencing or disposition, post-trial or post-  
25 factfinding motions, and appeals. Conviction includes a dismissal  
26 entered after a period of probation, suspension or deferral of  
27 sentence, and also includes equivalent dispositions by courts in  
28 jurisdictions other than Washington state. A person shall not be  
29 precluded from possession of a firearm if the conviction has been the  
30 subject of a pardon, annulment, certificate of rehabilitation, or other  
31 equivalent procedure based on a finding of the rehabilitation of the  
32 person convicted or the conviction or disposition has been the subject  
33 of a pardon, annulment, or other equivalent procedure based on a  
34 finding of innocence. Where no record of the court's disposition of  
35 the charges can be found, there shall be a rebuttable presumption that  
36 the person was not convicted of the charge.

37 (4) Notwithstanding subsection (1) of this section, a person  
38 convicted of an offense prohibiting the possession of a firearm under  
39 this section other than murder, manslaughter, robbery, rape, indecent

1 liberties, arson, assault, kidnapping, extortion, burglary, or  
2 violations with respect to controlled substances under RCW 69.50.401(a)  
3 and 69.50.410, who received a probationary sentence under RCW 9.95.200,  
4 and who received a dismissal of the charge under RCW 9.95.240, shall  
5 not be precluded from possession of a firearm as a result of the  
6 conviction. Notwithstanding any other provisions of this section, if  
7 a person is prohibited from possession of a firearm under subsection  
8 (1) of this section and has not previously been convicted of a sex  
9 offense prohibiting firearm ownership under subsection (1) of this  
10 section and/or any felony defined under any law as a class A felony or  
11 with a maximum sentence of at least twenty years, or both, the  
12 individual may petition a court of record to have his or her right to  
13 possess a firearm restored:

14 (a) Under RCW 9.41.047; and/or

15 (b) (i) If the conviction was for a felony offense, after five or  
16 more consecutive years in the community without being convicted or  
17 currently charged with any felony, gross misdemeanor, or misdemeanor  
18 crimes, if the individual has no prior felony convictions that prohibit  
19 the possession of a firearm counted as part of the offender score under  
20 RCW 9.94A.360; or

21 (ii) If the conviction was for a nonfelony offense, after three or  
22 more consecutive years in the community without being convicted or  
23 currently charged with any felony, gross misdemeanor, or misdemeanor  
24 crimes, if the individual has no prior felony convictions that prohibit  
25 the possession of a firearm counted as part of the offender score under  
26 RCW 9.94A.360 and the individual has completed all conditions of the  
27 sentence.

28 (5) In addition to any other penalty provided for by law, if a  
29 person under the age of eighteen years is found by a court to have  
30 possessed a firearm in a vehicle in violation of subsection (1) of this  
31 section or to have committed an offense while armed with a firearm  
32 during which offense a motor vehicle served an integral function, the  
33 court shall notify the department of licensing within twenty-four hours  
34 and the person's privilege to drive shall be revoked under RCW  
35 46.20.265.

36 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed  
37 or interpreted as preventing an offender from being charged and  
38 subsequently convicted for the separate felony crimes of theft of a  
39 firearm or possession of a stolen firearm, or both, in addition to

1 being charged and subsequently convicted under this section for  
2 unlawful possession of a firearm in the first or second degree.  
3 Notwithstanding any other law, if the offender is convicted under this  
4 section for unlawful possession of a firearm in the first or second  
5 degree and for the felony crimes of theft of a firearm or possession of  
6 a stolen firearm, or both, then the offender shall serve consecutive  
7 sentences for each of the felony crimes of conviction listed in this  
8 subsection.

9 (7) Each firearm unlawfully possessed under this section shall be  
10 a separate offense.

11 **Sec. 40.** RCW 9.94A.103 and 1995 c 129 s 5 are each amended to  
12 read as follows:

13 Any and all recommended sentencing agreements or plea agreements  
14 and the sentences for any and all felony crimes shall be made and  
15 retained as public records if the felony crime involves:

- 16 (1) Any violent offense as defined in this chapter;  
17 (2) Any most serious offense as defined in this chapter;  
18 (3) Any felony with a deadly weapon special verdict under RCW  
19 9.94A.125;  
20 (4) Any felony with any deadly weapon enhancements under RCW  
21 9.94A.310 (3) or (4), or both; and/or  
22 (5) The felony crimes of possession of a machine gun, possessing  
23 a stolen firearm, (~~reckless endangerment in the first degree~~) drive-  
24 by shooting, theft of a firearm, unlawful possession of a firearm in  
25 the first or second degree, and/or use of a machine gun in a felony.

26 **Sec. 41.** RCW 9.94A.105 and 1995 c 129 s 6 are each amended to  
27 read as follows:

28 (1) A current, newly created or reworked judgment and sentence  
29 document for each felony sentencing shall record any and all  
30 recommended sentencing agreements or plea agreements and the sentences  
31 for any and all felony crimes kept as public records under RCW  
32 9.94A.103 shall contain the clearly printed name and legal signature of  
33 the sentencing judge. The judgment and sentence document as defined in  
34 this section shall also provide additional space for the sentencing  
35 judge's reasons for going either above or below the presumptive  
36 sentence range for any and all felony crimes covered as public records  
37 under RCW 9.94A.103. Both the sentencing judge and the prosecuting

1 attorney's office shall each retain or receive a completed copy of each  
2 sentencing document as defined in this section for their own records.

3 (2) The sentencing guidelines commission shall be sent a completed  
4 copy of the judgment and sentence document upon conviction for each  
5 felony sentencing under subsection (1) of this section and shall  
6 compile a yearly and cumulative judicial record of each sentencing  
7 judge in regards to his or her sentencing practices for any and all  
8 felony crimes involving:

9 (a) Any violent offense as defined in this chapter;

10 (b) Any most serious offense as defined in this chapter;

11 (c) Any felony with any deadly weapon special verdict under RCW  
12 9.94A.125;

13 (d) Any felony with any deadly weapon enhancements under RCW  
14 9.94A.310 (3) or (4), or both; and/or

15 (e) The felony crimes of possession of a machine gun, possessing  
16 a stolen firearm, (~~reckless endangerment in the first degree~~)  
17 drive-by shooting, theft of a firearm, unlawful possession of a firearm  
18 in the first or second degree, and/or use of a machine gun in a felony.

19 (3) The sentencing guidelines commission shall compare each  
20 individual judge's sentencing practices to the standard or presumptive  
21 sentence range for any and all felony crimes listed in subsection (2)  
22 of this section for the appropriate offense level as defined in RCW  
23 9.94A.320, offender score as defined in RCW 9.94A.360, and any  
24 applicable deadly weapon enhancements as defined in RCW 9.94A.310 (3)  
25 or (4), or both. These comparative records shall be retained and made  
26 available to the public for review in a current, newly created or  
27 reworked official published document by the sentencing guidelines  
28 commission.

29 (4) Any and all felony sentences which are either above or below  
30 the standard or presumptive sentence range in subsection (3) of this  
31 section shall also mark whether the prosecuting attorney in the case  
32 also recommended a similar sentence, if any, which was either above or  
33 below the presumptive sentence range and shall also indicate if the  
34 sentence was in conjunction with an approved alternative sentencing  
35 option including a first-time offender waiver, sex offender sentencing  
36 alternative, or other prescribed sentencing option.

37 (5) If any completed judgment and sentence document as defined in  
38 subsection (1) of this section is not sent to the sentencing guidelines  
39 commission as required in subsection (2) of this section, the

1 sentencing guidelines commission shall have the authority and shall  
 2 undertake reasonable and necessary steps to assure that all past,  
 3 current, and future sentencing documents as defined in subsection (1)  
 4 of this section are received by the sentencing guidelines commission.

5 **Sec. 42.** RCW 9.94A.310 and 1996 c 205 s 5 are each amended to  
 6 read as follows:

7 (1)

TABLE 1

Sentencing Grid

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XV	Life Sentence without Parole/Death Penalty									
XIV	23y4m 240- 320	24y4m 250- 333	25y4m 261- 347	26y4m 271- 361	27y4m 281- 374	28y4m 291- 388	30y4m 312- 416	32y10m 338- 450	36y 370- 493	40y 411- 548
XIII	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397
XII	9y 93- 123	9y11m 102- 136	10y9m 111- 147	11y8m 120- 160	12y6m 129- 171	13y5m 138- 184	15y9m 162- 216	17y3m 178- 236	20y3m 209- 277	23y3m 240- 318
XI	7y6m 78- 102	8y4m 86- 114	9y2m 95- 125	9y11m 102- 136	10y9m 111- 147	11y7m 120- 158	14y2m 146- 194	15y5m 159- 211	17y11m 185- 245	20y5m 210- 280
X	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198

1	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
2		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
3		41	48	54	61	68	75	102	116	144	171
4	<hr/>										
5	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
6		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
7		27	34	41	48	54	61	89	102	116	144
8	<hr/>										
9	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
10		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
11		20	27	34	41	48	54	75	89	102	116
12	<hr/>										
13	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
14		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
15		14	20	27	34	41	48	61	75	89	102
16	<hr/>										
17	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
18		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
19		12	14	17	20	29	43	54	68	82	96
20	<hr/>										
21	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
22		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
23		9	12	14	17	20	29	43	57	70	84
24	<hr/>										
25	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
26		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
27		3	8	12	12	16	22	29	43	57	68
28	<hr/>										
29	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
30		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
31		Days	6	9	12	14	18	22	29	43	57
32	<hr/>										
33	I			3m	4m	5m	8m	13m	16m	20m	2y2m
34		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
35		Days	Days	5	6	8	12	14	18	22	29
36	<hr/>										

37 NOTE: Numbers in the first horizontal row of each seriousness category  
38 represent sentencing midpoints in years(y) and months(m). Numbers in



1 the second and third rows represent presumptive sentencing ranges in  
2 months, or in days if so designated. 12+ equals one year and one day.

3 (2) For persons convicted of the anticipatory offenses of criminal  
4 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
5 presumptive sentence is determined by locating the sentencing grid  
6 sentence range defined by the appropriate offender score and the  
7 seriousness level of the completed crime, and multiplying the range by  
8 75 percent.

9 (3) The following additional times shall be added to the  
10 presumptive sentence for felony crimes committed after July 23, 1995,  
11 if the offender or an accomplice was armed with a firearm as defined in  
12 RCW 9.41.010 and the offender is being sentenced for one of the crimes  
13 listed in this subsection as eligible for any firearm enhancements  
14 based on the classification of the completed felony crime. If the  
15 offender or an accomplice was armed with a firearm as defined in RCW  
16 9.41.010 and the offender is being sentenced for an anticipatory  
17 offense under chapter 9A.28 RCW to commit one of the crimes listed in  
18 this subsection as eligible for any firearm enhancements, the following  
19 additional times shall be added to the presumptive sentence determined  
20 under subsection (2) of this section based on the felony crime of  
21 conviction as classified under RCW 9A.28.020:

22 (a) Five years for any felony defined under any law as a class A  
23 felony or with a maximum sentence of at least twenty years, or both,  
24 and not covered under (f) of this subsection.

25 (b) Three years for any felony defined under any law as a class B  
26 felony or with a maximum sentence of ten years, or both, and not  
27 covered under (f) of this subsection.

28 (c) Eighteen months for any felony defined under any law as a  
29 class C felony or with a maximum sentence of five years, or both, and  
30 not covered under (f) of this subsection.

31 (d) If the offender is being sentenced for any firearm  
32 enhancements under (a), (b), and/or (c) of this subsection and the  
33 offender has previously been sentenced for any deadly weapon  
34 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
35 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
36 both, any and all firearm enhancements under this subsection shall be  
37 twice the amount of the enhancement listed.

38 (e) Notwithstanding any other provision of law, any and all  
39 firearm enhancements under this section are mandatory, shall be served

1 in total confinement, and shall not run concurrently with any other  
2 sentencing provisions.

3 (f) The firearm enhancements in this section shall apply to all  
4 felony crimes except the following: Possession of a machine gun,  
5 possessing a stolen firearm, (~~reckless endangerment in the first~~  
6 ~~degree~~) drive-by shooting, theft of a firearm, unlawful possession of  
7 a firearm in the first and second degree, and use of a machine gun in  
8 a felony.

9 (g) If the presumptive sentence under this section exceeds the  
10 statutory maximum for the offense, the statutory maximum sentence shall  
11 be the presumptive sentence unless the offender is a persistent  
12 offender as defined in RCW 9.94A.030.

13 (4) The following additional times shall be added to the  
14 presumptive sentence for felony crimes committed after July 23, 1995,  
15 if the offender or an accomplice was armed with a deadly weapon as  
16 defined in this chapter other than a firearm as defined in RCW 9.41.010  
17 and the offender is being sentenced for one of the crimes listed in  
18 this subsection as eligible for any deadly weapon enhancements based on  
19 the classification of the completed felony crime. If the offender or  
20 an accomplice was armed with a deadly weapon other than a firearm as  
21 defined in RCW 9.41.010 and the offender is being sentenced for an  
22 anticipatory offense under chapter 9A.28 RCW to commit one of the  
23 crimes listed in this subsection as eligible for any deadly weapon  
24 enhancements, the following additional times shall be added to the  
25 presumptive sentence determined under subsection (2) of this section  
26 based on the felony crime of conviction as classified under RCW  
27 9A.28.020:

28 (a) Two years for any felony defined under any law as a class A  
29 felony or with a maximum sentence of at least twenty years, or both,  
30 and not covered under (f) of this subsection.

31 (b) One year for any felony defined under any law as a class B  
32 felony or with a maximum sentence of ten years, or both, and not  
33 covered under (f) of this subsection.

34 (c) Six months for any felony defined under any law as a class C  
35 felony or with a maximum sentence of five years, or both, and not  
36 covered under (f) of this subsection.

37 (d) If the offender is being sentenced under (a), (b), and/or (c)  
38 of this subsection for any deadly weapon enhancements and the offender  
39 has previously been sentenced for any deadly weapon enhancements after

1 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
2 subsection (3)(a), (b), and/or (c) of this section, or both, any and  
3 all deadly weapon enhancements under this subsection shall be twice the  
4 amount of the enhancement listed.

5 (e) Notwithstanding any other provision of law, any and all deadly  
6 weapon enhancements under this section are mandatory, shall be served  
7 in total confinement, and shall not run concurrently with any other  
8 sentencing provisions.

9 (f) The deadly weapon enhancements in this section shall apply to  
10 all felony crimes except the following: Possession of a machine gun,  
11 possessing a stolen firearm, (~~reckless endangerment in the first~~  
12 ~~degree~~) drive-by shooting, theft of a firearm, unlawful possession of  
13 a firearm in the first and second degree, and use of a machine gun in  
14 a felony.

15 (g) If the presumptive sentence under this section exceeds the  
16 statutory maximum for the offense, the statutory maximum sentence shall  
17 be the presumptive sentence unless the offender is a persistent  
18 offender as defined in RCW 9.94A.030.

19 (5) The following additional times shall be added to the  
20 presumptive sentence if the offender or an accomplice committed the  
21 offense while in a county jail or state correctional facility as that  
22 term is defined in this chapter and the offender is being sentenced for  
23 one of the crimes listed in this subsection. If the offender or an  
24 accomplice committed one of the crimes listed in this subsection while  
25 in a county jail or state correctional facility as that term is defined  
26 in this chapter, and the offender is being sentenced for an  
27 anticipatory offense under chapter 9A.28 RCW to commit one of the  
28 crimes listed in this subsection, the following additional times shall  
29 be added to the presumptive sentence determined under subsection (2) of  
30 this section:

31 (a) Eighteen months for offenses committed under RCW  
32 69.50.401(a)(1)(i) or (ii) or 69.50.410;

33 (b) Fifteen months for offenses committed under RCW  
34 69.50.401(a)(1)(iii), (iv), and (v);

35 (c) Twelve months for offenses committed under RCW 69.50.401(d).

36 For the purposes of this subsection, all of the real property of  
37 a state correctional facility or county jail shall be deemed to be part  
38 of that facility or county jail.

1 (6) An additional twenty-four months shall be added to the  
2 presumptive sentence for any ranked offense involving a violation of  
3 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

4 **Sec. 43.** RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and  
5 1996 c 36 s 2 are each reenacted and amended to read as follows:

6 TABLE 2

7 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

8	XV	Aggravated Murder 1 (RCW 10.95.020)
9	XIV	Murder 1 (RCW 9A.32.030)
10		Homicide by abuse (RCW 9A.32.055)
11	XIII	Murder 2 (RCW 9A.32.050)
12	XII	Assault 1 (RCW 9A.36.011)
13		Assault of a Child 1 (RCW 9A.36.120)
14	XI	Rape 1 (RCW 9A.44.040)
15		Rape of a Child 1 (RCW 9A.44.073)
16	X	Kidnapping 1 (RCW 9A.40.020)
17		Rape 2 (RCW 9A.44.050)
18		Rape of a Child 2 (RCW 9A.44.076)
19		Child Molestation 1 (RCW 9A.44.083)
20		Damaging building, etc., by explosion with
21		threat to human being (RCW 70.74.280(1))
22		Over 18 and deliver heroin or narcotic from
23		Schedule I or II to someone under 18
24		(RCW 69.50.406)
25		Leading Organized Crime (RCW 9A.82.060(1)(a))
26	IX	Assault of a Child 2 (RCW 9A.36.130)
27		Robbery 1 (RCW 9A.56.200)
28		Manslaughter 1 (RCW 9A.32.060)
29		Explosive devices prohibited (RCW 70.74.180)
30		Indecent Liberties (with forcible compulsion)
31		(RCW 9A.44.100(1)(a))
32		Endangering life and property by explosives
33		with threat to human being (RCW
34		70.74.270)

1 Over 18 and deliver narcotic from Schedule  
2 III, IV, or V or a nonnarcotic from  
3 Schedule I-V to someone under 18 and 3  
4 years junior (RCW 69.50.406)  
5 Controlled Substance Homicide (RCW 69.50.415)  
6 Sexual Exploitation (RCW 9.68A.040)  
7 Inciting Criminal Profiteering (RCW  
8 9A.82.060(1)(b))  
9 Vehicular Homicide, by being under the  
10 influence of intoxicating liquor or any  
11 drug (RCW 46.61.520)

12 VIII Arson 1 (RCW 9A.48.020)  
13 Promoting Prostitution 1 (RCW 9A.88.070)  
14 Selling for profit (controlled or  
15 counterfeit) any controlled substance  
16 (RCW 69.50.410)  
17 Manufacture, deliver, or possess with intent  
18 to deliver heroin or cocaine (RCW  
19 69.50.401(a)(1)(i))  
20 Manufacture, deliver, or possess with intent  
21 to deliver methamphetamine (RCW  
22 69.50.401(a)(1)(ii))  
23 Possession of ephedrine or pseudoephedrine  
24 with intent to manufacture  
25 methamphetamine (RCW 69.50.440)  
26 Vehicular Homicide, by the operation of any  
27 vehicle in a reckless manner (RCW  
28 46.61.520)

29 VII Burglary 1 (RCW 9A.52.020)  
30 Vehicular Homicide, by disregard for the  
31 safety of others (RCW 46.61.520)  
32 Introducing Contraband 1 (RCW 9A.76.140)  
33 Indecent Liberties (without forcible  
34 compulsion) (RCW 9A.44.100(1)(b) and  
35 (c))  
36 Child Molestation 2 (RCW 9A.44.086)

1 Dealing in depictions of minor engaged in  
2 sexually explicit conduct (RCW  
3 9.68A.050)  
4 Sending, bringing into state depictions of  
5 minor engaged in sexually explicit  
6 conduct (RCW 9.68A.060)  
7 Involving a minor in drug dealing (RCW  
8 69.50.401(f))  
9 (~~Reckless Endangerment 1~~) Drive-by Shooting  
10 (RCW 9A.36.045)  
11 Unlawful Possession of a Firearm in the first  
12 degree (RCW 9.41.040(1)(a))  
13 VI Bribery (RCW 9A.68.010)  
14 Manslaughter 2 (RCW 9A.32.070)  
15 Rape of a Child 3 (RCW 9A.44.079)  
16 Intimidating a Juror/Witness (RCW 9A.72.110,  
17 9A.72.130)  
18 Damaging building, etc., by explosion with no  
19 threat to human being (RCW 70.74.280(2))  
20 Endangering life and property by explosives  
21 with no threat to human being (RCW  
22 70.74.270)  
23 Incest 1 (RCW 9A.64.020(1))  
24 Manufacture, deliver, or possess with intent  
25 to deliver narcotics from Schedule I or  
26 II (except heroin or cocaine) (RCW  
27 69.50.401(a)(1)(i))  
28 Intimidating a Judge (RCW 9A.72.160)  
29 Bail Jumping with Murder 1 (RCW  
30 9A.76.170(2)(a))  
31 Theft of a Firearm (RCW 9A.56.300)  
32 V Persistent prison misbehavior (RCW 9.94.070)  
33 Criminal Mistreatment 1 (RCW 9A.42.020)  
34 Abandonment of dependent person 1 (RCW  
35 9A.42.060)  
36 Rape 3 (RCW 9A.44.060)  
37 Sexual Misconduct with a Minor 1 (RCW  
38 9A.44.093)

1 Child Molestation 3 (RCW 9A.44.089)  
2 Kidnapping 2 (RCW 9A.40.030)  
3 Extortion 1 (RCW 9A.56.120)  
4 Incest 2 (RCW 9A.64.020(2))  
5 Perjury 1 (RCW 9A.72.020)  
6 Extortionate Extension of Credit (RCW  
7 9A.82.020)  
8 Advancing money or property for extortionate  
9 extension of credit (RCW 9A.82.030)  
10 Extortionate Means to Collect Extensions of  
11 Credit (RCW 9A.82.040)  
12 Rendering Criminal Assistance 1 (RCW  
13 9A.76.070)  
14 Bail Jumping with class A Felony (RCW  
15 9A.76.170(2)(b))  
16 Sexually Violating Human Remains (RCW  
17 9A.44.105)  
18 Delivery of imitation controlled substance by  
19 person eighteen or over to person under  
20 eighteen (RCW 69.52.030(2))  
21 Possession of a Stolen Firearm (RCW  
22 9A.56.310)  
23 IV Residential Burglary (RCW 9A.52.025)  
24 Theft of Livestock 1 (RCW 9A.56.080)  
25 Robbery 2 (RCW 9A.56.210)  
26 Assault 2 (RCW 9A.36.021)  
27 Escape 1 (RCW 9A.76.110)  
28 Arson 2 (RCW 9A.48.030)  
29 Commercial Bribery (RCW 9A.68.060)  
30 Bribing a Witness/Bribe Received by Witness  
31 (RCW 9A.72.090, 9A.72.100)  
32 Malicious Harassment (RCW 9A.36.080)  
33 Threats to Bomb (RCW 9.61.160)  
34 Willful Failure to Return from Furlough (RCW  
35 72.66.060)  
36 Hit and Run -- Injury Accident (RCW  
37 46.52.020(4))  
38 Hit and Run with Vessel -- Injury Accident  
39 (RCW 88.12.155(3))

1 Vehicular Assault (RCW 46.61.522)  
2 Manufacture, deliver, or possess with intent  
3 to deliver narcotics from Schedule III,  
4 IV, or V or nonnarcotics from Schedule  
5 I-V (except marijuana or  
6 methamphetamines) (RCW 69.50.401(a)(1)  
7 (iii) through (v))  
8 Influencing Outcome of Sporting Event (RCW  
9 9A.82.070)  
10 Use of Proceeds of Criminal Profiteering (RCW  
11 9A.82.080 (1) and (2))  
12 Knowingly Trafficking in Stolen Property (RCW  
13 9A.82.050(2))  
14 III Criminal Mistreatment 2 (RCW 9A.42.030)  
15 Abandonment of dependent person 2 (RCW  
16 9A.42.070)  
17 Extortion 2 (RCW 9A.56.130)  
18 Unlawful Imprisonment (RCW 9A.40.040)  
19 Assault 3 (RCW 9A.36.031)  
20 Assault of a Child 3 (RCW 9A.36.140)  
21 Custodial Assault (RCW 9A.36.100)  
22 Unlawful possession of firearm in the second  
23 degree (RCW 9.41.040(1)(b))  
24 Harassment (RCW 9A.46.020)  
25 Promoting Prostitution 2 (RCW 9A.88.080)  
26 Willful Failure to Return from Work Release  
27 (RCW 72.65.070)  
28 Burglary 2 (RCW 9A.52.030)  
29 Introducing Contraband 2 (RCW 9A.76.150)  
30 Communication with a Minor for Immoral  
31 Purposes (RCW 9.68A.090)  
32 Patronizing a Juvenile Prostitute (RCW  
33 9.68A.100)  
34 Escape 2 (RCW 9A.76.120)  
35 Perjury 2 (RCW 9A.72.030)  
36 Bail Jumping with class B or C Felony (RCW  
37 9A.76.170(2)(c))  
38 Intimidating a Public Servant (RCW 9A.76.180)  
39 Tampering with a Witness (RCW 9A.72.120)



1 Manufacture, deliver, or possess with intent  
2 to deliver marijuana (RCW  
3 69.50.401(a)(1)(iii))  
4 Delivery of a material in lieu of a  
5 controlled substance (RCW 69.50.401(c))  
6 Manufacture, distribute, or possess with  
7 intent to distribute an imitation  
8 controlled substance (RCW 69.52.030(1))  
9 Recklessly Trafficking in Stolen Property  
10 (RCW 9A.82.050(1))  
11 Theft of livestock 2 (RCW 9A.56.080)  
12 Securities Act violation (RCW 21.20.400)  
13 II Unlawful Practice of Law (RCW 2.48.180)  
14 Malicious Mischief 1 (RCW 9A.48.070)  
15 Possession of Stolen Property 1 (RCW  
16 9A.56.150)  
17 Theft 1 (RCW 9A.56.030)  
18 Trafficking in Insurance Claims (RCW  
19 48.30A.015)  
20 Unlicensed Practice of a Profession or  
21 Business (RCW 18.130.190(7))  
22 Health Care False Claims (RCW 48.80.030)  
23 Possession of controlled substance that is  
24 either heroin or narcotics from Schedule  
25 I or II (RCW 69.50.401(d))  
26 Possession of phencyclidine (PCP) (RCW  
27 69.50.401(d))  
28 Create, deliver, or possess a counterfeit  
29 controlled substance (RCW 69.50.401(b))  
30 Computer Trespass 1 (RCW 9A.52.110)  
31 Escape from Community Custody (RCW 72.09.310)  
32 I Theft 2 (RCW 9A.56.040)  
33 Possession of Stolen Property 2 (RCW  
34 9A.56.160)  
35 Forgery (RCW 9A.60.020)  
36 Taking Motor Vehicle Without Permission (RCW  
37 9A.56.070)  
38 Vehicle Prowl 1 (RCW 9A.52.095)

1 Attempting to Elude a Pursuing Police Vehicle  
2 (RCW 46.61.024)  
3 Malicious Mischief 2 (RCW 9A.48.080)  
4 Reckless Burning 1 (RCW 9A.48.040)  
5 Unlawful Issuance of Checks or Drafts (RCW  
6 9A.56.060)  
7 Unlawful Use of Food Stamps (RCW 9.91.140 (2)  
8 and (3))  
9 False Verification for Welfare (RCW  
10 74.08.055)  
11 Forged Prescription (RCW 69.41.020)  
12 Forged Prescription for a Controlled  
13 Substance (RCW 69.50.403)  
14 Possess Controlled Substance that is a  
15 Narcotic from Schedule III, IV, or V or  
16 Non-narcotic from Schedule I-V (except  
17 phencyclidine) (RCW 69.50.401(d))

18 **Sec. 44.** RCW 9A.46.060 and 1994 c 271 s 802 and 1994 c 121 s 2  
19 are each reenacted and amended to read as follows:

20 As used in this chapter, "harassment" may include but is not  
21 limited to any of the following crimes:

- 22 (1) Harassment (RCW 9A.46.020);
- 23 (2) Malicious harassment (RCW 9A.36.080);
- 24 (3) Telephone harassment (RCW 9.61.230);
- 25 (4) Assault in the first degree (RCW 9A.36.011);
- 26 (5) Assault of a child in the first degree (RCW 9A.36.120);
- 27 (6) Assault in the second degree (RCW 9A.36.021);
- 28 (7) Assault of a child in the second degree (RCW 9A.36.130);
- 29 (8) Assault in the fourth degree (RCW 9A.36.041);
- 30 (9) Reckless endangerment (~~(in the second degree)~~) (RCW  
31 9A.36.050);
- 32 (10) Extortion in the first degree (RCW 9A.56.120);
- 33 (11) Extortion in the second degree (RCW 9A.56.130);
- 34 (12) Coercion (RCW 9A.36.070);
- 35 (13) Burglary in the first degree (RCW 9A.52.020);
- 36 (14) Burglary in the second degree (RCW 9A.52.030);
- 37 (15) Criminal trespass in the first degree (RCW 9A.52.070);
- 38 (16) Criminal trespass in the second degree (RCW 9A.52.080);

1 (17) Malicious mischief in the first degree (RCW 9A.48.070);  
2 (18) Malicious mischief in the second degree (RCW 9A.48.080);  
3 (19) Malicious mischief in the third degree (RCW 9A.48.090);  
4 (20) Kidnapping in the first degree (RCW 9A.40.020);  
5 (21) Kidnapping in the second degree (RCW 9A.40.030);  
6 (22) Unlawful imprisonment (RCW 9A.40.040);  
7 (23) Rape in the first degree (RCW 9A.44.040);  
8 (24) Rape in the second degree (RCW 9A.44.050);  
9 (25) Rape in the third degree (RCW 9A.44.060);  
10 (26) Indecent liberties (RCW 9A.44.100);  
11 (27) Rape of a child in the first degree (RCW 9A.44.073);  
12 (28) Rape of a child in the second degree (RCW 9A.44.076);  
13 (29) Rape of a child in the third degree (RCW 9A.44.079);  
14 (30) Child molestation in the first degree (RCW 9A.44.083);  
15 (31) Child molestation in the second degree (RCW 9A.44.086);  
16 (32) Child molestation in the third degree (RCW 9A.44.089);  
17 (33) Stalking (RCW 9A.46.110);  
18 (34) Residential burglary (RCW 9A.52.025); and  
19 (35) Violation of a temporary or permanent protective order issued  
20 pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW.

21 **Sec. 45.** RCW 10.99.020 and 1996 c 248 s 5 are each amended to  
22 read as follows:

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

25 (1) "Family or household members" means spouses, former spouses,  
26 persons who have a child in common regardless of whether they have been  
27 married or have lived together at any time, adult persons related by  
28 blood or marriage, adult persons who are presently residing together or  
29 who have resided together in the past, persons sixteen years of age or  
30 older who are presently residing together or who have resided together  
31 in the past and who have or have had a dating relationship, persons  
32 sixteen years of age or older with whom a person sixteen years of age  
33 or older has or has had a dating relationship, and persons who have a  
34 biological or legal parent-child relationship, including stepparents  
35 and stepchildren and grandparents and grandchildren.

36 (2) "Dating relationship" has the same meaning as in RCW  
37 26.50.010.

1 (3) "Domestic violence" includes but is not limited to any of the  
2 following crimes when committed by one family or household member  
3 against another:

- 4 (a) Assault in the first degree (RCW 9A.36.011);
- 5 (b) Assault in the second degree (RCW 9A.36.021);
- 6 (c) Assault in the third degree (RCW 9A.36.031);
- 7 (d) Assault in the fourth degree (RCW 9A.36.041);
- 8 (e) (~~Reckless endangerment in the first degree~~) Drive-by  
9 shooting (RCW 9A.36.045);
- 10 (f) Reckless endangerment (~~in the second degree~~) (RCW  
11 9A.36.050);
- 12 (g) Coercion (RCW 9A.36.070);
- 13 (h) Burglary in the first degree (RCW 9A.52.020);
- 14 (i) Burglary in the second degree (RCW 9A.52.030);
- 15 (j) Criminal trespass in the first degree (RCW 9A.52.070);
- 16 (k) Criminal trespass in the second degree (RCW 9A.52.080);
- 17 (l) Malicious mischief in the first degree (RCW 9A.48.070);
- 18 (m) Malicious mischief in the second degree (RCW 9A.48.080);
- 19 (n) Malicious mischief in the third degree (RCW 9A.48.090);
- 20 (o) Kidnapping in the first degree (RCW 9A.40.020);
- 21 (p) Kidnapping in the second degree (RCW 9A.40.030);
- 22 (q) Unlawful imprisonment (RCW 9A.40.040);
- 23 (r) Violation of the provisions of a restraining order restraining  
24 the person or restraining the person from going onto the grounds of or  
25 entering a residence, workplace, school, or day care (RCW 26.09.300,  
26 26.10.220, or 26.26.138);
- 27 (s) Violation of the provisions of a protection order or no-  
28 contact order restraining the person or restraining the person from  
29 going onto the grounds of or entering a residence, workplace, school,  
30 or day care (RCW 26.50.060, 26.50.070, 26.50.130, 10.99.040, or  
31 10.99.050);
- 32 (t) Rape in the first degree (RCW 9A.44.040);
- 33 (u) Rape in the second degree (RCW 9A.44.050);
- 34 (v) Residential burglary (RCW 9A.52.025);
- 35 (w) Stalking (RCW 9A.46.110); and
- 36 (x) Interference with the reporting of domestic violence (RCW  
37 9A.36.150).

38 (4) "Victim" means a family or household member who has been  
39 subjected to domestic violence.

1           **Sec. 46.** RCW 10.99.040 and 1996 c 248 s 7 are each amended to  
2 read as follows:

3           (1) Because of the serious nature of domestic violence, the court  
4 in domestic violence actions:

5           (a) Shall not dismiss any charge or delay disposition because of  
6 concurrent dissolution or other civil proceedings;

7           (b) Shall not require proof that either party is seeking a  
8 dissolution of marriage prior to instigation of criminal proceedings;

9           (c) Shall waive any requirement that the victim's location be  
10 disclosed to any person, other than the attorney of a criminal  
11 defendant, upon a showing that there is a possibility of further  
12 violence: PROVIDED, That the court may order a criminal defense  
13 attorney not to disclose to his or her client the victim's location;  
14 and

15           (d) Shall identify by any reasonable means on docket sheets those  
16 criminal actions arising from acts of domestic violence.

17           (2) Because of the likelihood of repeated violence directed at  
18 those who have been victims of domestic violence in the past, when any  
19 person charged with or arrested for a crime involving domestic violence  
20 is released from custody before arraignment or trial on bail or  
21 personal recognizance, the court authorizing the release may prohibit  
22 that person from having any contact with the victim. The jurisdiction  
23 authorizing the release shall determine whether that person should be  
24 prohibited from having any contact with the victim. If there is no  
25 outstanding restraining or protective order prohibiting that person  
26 from having contact with the victim, the court authorizing release may  
27 issue, by telephone, a no-contact order prohibiting the person charged  
28 or arrested from having contact with the victim. In issuing the order,  
29 the court shall consider the provisions of RCW 9.41.800. The no-  
30 contact order shall also be issued in writing as soon as possible.

31           (3) At the time of arraignment the court shall determine whether  
32 a no-contact order shall be issued or extended. If a no-contact order  
33 is issued or extended, the court may also include in the conditions of  
34 release a requirement that the defendant submit to electronic  
35 monitoring. If electronic monitoring is ordered, the court shall  
36 specify who shall provide the monitoring services, and the terms under  
37 which the monitoring shall be performed. Upon conviction, the court  
38 may require as a condition of the sentence that the defendant reimburse  
39 the providing agency for the costs of the electronic monitoring.

1 (4) (a) Willful violation of a court order issued under subsection  
2 (2) or (3) of this section is a gross misdemeanor except as provided in  
3 (b) and (c) of this subsection (4). Upon conviction and in addition to  
4 other penalties provided by law, the court may require that the  
5 defendant submit to electronic monitoring. The court shall specify who  
6 shall provide the electronic monitoring services and the terms under  
7 which the monitoring must be performed. The court also may include a  
8 requirement that the defendant pay the costs of the monitoring. The  
9 court shall consider the ability of the convicted person to pay for  
10 electronic monitoring.

11 (b) Any assault that is a violation of an order issued under this  
12 section and that does not amount to assault in the first or second  
13 degree under RCW 9A.36.011 or 9A.36.021 is a class C felony punishable  
14 under chapter 9A.20 RCW, and any conduct in violation of a protective  
15 order issued under this section that is reckless and creates a  
16 substantial risk of death or serious physical injury to another person  
17 is a class C felony punishable under chapter 9A.20 RCW.

18 (c) A willful violation of a court order issued under this section  
19 is a class C felony if the offender has at least two previous  
20 convictions for violating the provisions of a no-contact order issued  
21 under this chapter, a domestic violence protection order issued under  
22 chapter 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-  
23 state order that is comparable to a no-contact order or protection  
24 order issued under Washington law. The previous convictions may  
25 involve the same victim or other victims specifically protected by the  
26 no-contact orders or protection orders the offender violated.

27 (d) The written order releasing the person charged or arrested  
28 shall contain the court's directives and shall bear the legend:  
29 "Violation of this order is a criminal offense under chapter 10.99 RCW  
30 and will subject a violator to arrest; any assault, drive-by shooting,  
31 or reckless endangerment that is a violation of this order is a felony.  
32 You can be arrested even if any person protected by the order invites  
33 or allows you to violate the order's prohibitions. You have the sole  
34 responsibility to avoid or refrain from violating the order's  
35 provisions. Only the court can change the order." A certified copy of  
36 the order shall be provided to the victim. If a no-contact order has  
37 been issued prior to charging, that order shall expire at arraignment  
38 or within seventy-two hours if charges are not filed. Such orders need  
39 not be entered into the computer-based criminal intelligence

1 information system in this state which is used by law enforcement  
2 agencies to list outstanding warrants.

3 (5) Whenever an order prohibiting contact is issued, modified, or  
4 terminated under subsection (2) or (3) of this section, the clerk of  
5 the court shall forward a copy of the order on or before the next  
6 judicial day to the appropriate law enforcement agency specified in the  
7 order. Upon receipt of the copy of the order the law enforcement  
8 agency shall forthwith enter the order for one year or until the  
9 expiration date specified on the order into any computer-based criminal  
10 intelligence information system available in this state used by law  
11 enforcement agencies to list outstanding warrants. Entry into the law  
12 enforcement information system constitutes notice to all law  
13 enforcement agencies of the existence of the order. The order is fully  
14 enforceable in any jurisdiction in the state.

15 **Sec. 47.** RCW 10.99.050 and 1996 c 248 s 8 are each amended to  
16 read as follows:

17 (1) When a defendant is found guilty of a crime and a condition of  
18 the sentence restricts the defendant's ability to have contact with the  
19 victim, such condition shall be recorded and a written certified copy  
20 of that order shall be provided to the victim.

21 (2) Willful violation of a court order issued under this section  
22 is a gross misdemeanor. Any assault that is a violation of an order  
23 issued under this section and that does not amount to assault in the  
24 first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C  
25 felony, and any conduct in violation of a protective order issued under  
26 this section that is reckless and creates a substantial risk of death  
27 or serious physical injury to another person is a class C felony. A  
28 willful violation of a court order issued under this section is also a  
29 class C felony if the offender has at least two previous convictions  
30 for violating the provisions of a no-contact order issued under this  
31 chapter, or a domestic violence protection order issued under chapter  
32 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-state order  
33 that is comparable to a no-contact order or protection order that is  
34 issued under Washington law. The previous convictions may involve the  
35 same victim or other victims specifically protected by the no-contact  
36 orders or protection orders the offender violated.

37 The written order shall contain the court's directives and shall  
38 bear the legend: Violation of this order is a criminal offense under

1 chapter 10.99 RCW and will subject a violator to arrest; any assault,  
2 drive-by shooting, or reckless endangerment that is a violation of this  
3 order is a felony.

4 (3) Whenever an order prohibiting contact is issued pursuant to  
5 this section, the clerk of the court shall forward a copy of the order  
6 on or before the next judicial day to the appropriate law enforcement  
7 agency specified in the order. Upon receipt of the copy of the order  
8 the law enforcement agency shall forthwith enter the order for one year  
9 into any computer-based criminal intelligence information system  
10 available in this state used by law enforcement agencies to list  
11 outstanding warrants. Entry into the law enforcement information  
12 system constitutes notice to all law enforcement agencies of the  
13 existence of the order. The order is fully enforceable in any  
14 jurisdiction in the state.

15 NEW SECTION. **Sec. 48.** The following acts or parts of acts are  
16 each repealed:

- 17 (1) RCW 9.94A.045 and 1996 c 232 s 2;  
18 (2) RCW 13.40.025 and 1996 c 232 s 4, 1995 c 269 s 302, 1986 c 288  
19 s 8, 1984 c 287 s 11, & 1981 c 299 s 3;  
20 (3) RCW 13.40.0354 and 1994 sp.s. c 7 s 521 & 1989 c 407 s 6; and  
21 (4) RCW 13.40.075 and 1994 sp.s. c 7 s 546.

22 NEW SECTION. **Sec. 49.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

--- END ---