

HOUSE BILL 3900

State of Washington

55th Legislature

1997 Regular Session

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 02/11/97 (Introduced with Senate Sponsors). Referred to Committee on Law & Justice.

1 AN ACT Relating to offenders; amending RCW 9.94A.040, 9A.04.050,
2 13.40.010, 13.40.0357, 13.40.040, 13.40.045, 13.40.050, 13.40.060,
3 13.40.070, 13.40.077, 13.40.080, 13.40.100, 13.40.110, 13.40.125,
4 13.40.130, 13.40.135, 13.40.150, 13.40.160, 13.40.190, 13.40.193,
5 13.40.200, 13.40.230, 13.40.250, 13.40.265, 13.40.320, 13.50.010,
6 13.50.050, 9A.36.045, 9A.36.050, 9.41.010, 9.41.040, 9.94A.103,
7 9.94A.105, 9.94A.310, 10.99.020, 10.99.040, and 10.99.050; reenacting
8 and amending RCW 9.94A.030, 9.94A.120, 9.94A.360, 13.04.030, 13.40.020,
9 9.94A.320, and 9A.46.060; adding a new section to chapter 13.40 RCW;
10 creating a new section; repealing RCW 9.94A.045, 13.40.025, 13.40.0354,
11 and 13.40.075; and prescribing penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (18) "Drug offense" means:

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

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

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

39 (19) "Escape" means:

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

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

9 (20) "Felony traffic offense" means:

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

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

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

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

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

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

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

4 (b) Assault in the second degree;

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

6 (d) Child molestation in the second degree;

7 (e) Controlled substance homicide;

8 (f) Extortion in the first degree;

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

10 (h) Indecent liberties;

11 (i) Kidnapping in the second degree;

12 (j) Leading organized crime;

13 (k) Manslaughter in the first degree;

14 (l) Manslaughter in the second degree;

15 (m) Promoting prostitution in the first degree;

16 (n) Rape in the third degree;

17 (o) Robbery in the second degree;

18 (p) Sexual exploitation;

19 (q) Vehicular assault;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (30) "Serious traffic offense" means:

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

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

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

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

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

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

21 (33) "Sex offense" means:

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

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

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

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

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

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

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

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

8 (38) "Violent offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 33 (a) Devote time to a specific employment or occupation;
- 34 (b) Undergo available outpatient treatment for up to two years, or
35 inpatient treatment not to exceed the standard range of confinement for
36 that offense;
- 37 (c) Pursue a prescribed, secular course of study or vocational
38 training;

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

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

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

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

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

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

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

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

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

- 11 (i) Devote time to a specific employment or training;
 - 12 (ii) Remain within prescribed geographical boundaries and notify
13 the court or the community corrections officer before any change in the
14 offender's address or employment;
 - 15 (iii) Report as directed to a community corrections officer;
 - 16 (iv) Pay all court-ordered legal financial obligations;
 - 17 (v) Perform community service work;
 - 18 (vi) Stay out of areas designated by the sentencing judge.
- 19 (c) If the offender violates any of the sentence conditions in (b)
20 of this subsection, the department shall impose sanctions
21 administratively, with notice to the prosecuting attorney and the
22 sentencing court. Upon motion of the court or the prosecuting
23 attorney, a violation hearing shall be held by the court. If the court
24 finds that conditions have been willfully violated, the court may
25 impose confinement consisting of up to the remaining one-half of the
26 midpoint of the standard range. All total confinement served during
27 the period of community custody shall be credited to the offender,
28 regardless of whether the total confinement is served as a result of
29 the original sentence, as a result of a sanction imposed by the
30 department, or as a result of a violation found by the court. The term
31 of community supervision shall be tolled by any period of time served
32 in total confinement as a result of a violation found by the court.
- 33 (d) The department shall determine the rules for calculating the
34 value of a day fine based on the offender's income and reasonable
35 obligations which the offender has for the support of the offender and
36 any dependents. These rules shall be developed in consultation with
37 the administrator for the courts, the office of financial management,
38 and the commission.

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

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

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

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

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

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

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

32 (D) Anticipated length of treatment; and

33 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 34 (i) Devote time to a specific employment or occupation;
35 (ii) Remain within prescribed geographical boundaries and notify
36 the court or the community corrections officer prior to any change in
37 the offender's address or employment;
38 (iii) Report as directed to the court and a community corrections
39 officer;

1 (iv) Undergo available outpatient treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (iv) The offender shall not consume alcohol;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 ~~((8))~~ (7) If the present conviction is for a nonviolent offense
10 and not covered by subsection (11) or (12) (~~(or (13))~~) of this section,
11 count one point for each adult prior felony conviction and one point
12 for each juvenile prior violent felony conviction and ½ point for each
13 juvenile prior nonviolent felony conviction.

14 ~~((9))~~ (8) If the present conviction is for a violent offense and
15 not covered in subsection (9), (10), (11), or (12) (~~(, or (13))~~) of this
16 section, count two points for each prior adult and juvenile violent
17 felony conviction, one point for each prior adult nonviolent felony
18 conviction, and ½ point for each prior juvenile nonviolent felony
19 conviction.

20 ~~((10))~~ (9) If the present conviction is for Murder 1 or 2,
21 Assault 1, Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or
22 Rape 1, count three points for prior adult and juvenile convictions for
23 crimes in these categories, two points for each prior adult and
24 juvenile violent conviction (not already counted), one point for each
25 prior adult nonviolent felony conviction, and ½ point for each prior
26 juvenile nonviolent felony conviction.

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

32 ~~((12))~~ (11) If the present conviction is for a felony traffic
33 offense count two points for each adult or juvenile prior conviction
34 for Vehicular Homicide or Vehicular Assault; for each felony offense or
35 serious traffic offense, count one point for each adult and ½ point for
36 each juvenile prior conviction.

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

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

4 ~~((+14+))~~ (13) If the present conviction is for Willful Failure to
5 Return from Furlough, RCW 72.66.060, Willful Failure to Return from
6 Work Release, RCW 72.65.070, or Escape from Community Custody, RCW
7 72.09.310, count only prior escape convictions in the offender score.
8 Count adult prior escape convictions as one point and juvenile prior
9 escape convictions as ½ point.

10 ~~((+15+))~~ (14) If the present conviction is for Escape 1, RCW
11 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as
12 one point and juvenile prior convictions as ½ point.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (g) Relating to termination of a diversion agreement under RCW
26 13.40.080, including a proceeding in which the divertee has attained
27 eighteen years of age;

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

34 (i) Relating to petitions to compel disclosure of information filed
35 by the department of social and health services pursuant to RCW
36 74.13.042.

37 (2) The family court shall have concurrent original jurisdiction
38 with the juvenile court over all proceedings under this section if the

1 superior court judges of a county authorize concurrent jurisdiction as
2 provided in RCW 26.12.010.

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

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

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

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

20 (a) Protect the citizenry from criminal behavior;

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

23 (c) Make the juvenile offender accountable for his or her criminal
24 behavior;

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

27 (e) Provide due process for juveniles alleged to have committed an
28 offense;

29 (f) Provide necessary treatment, supervision, and custody for
30 juvenile offenders;

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

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

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

37 (j) Provide for a clear policy to determine what types of offenders
38 shall receive punishment, treatment, or both, and to determine the

1 jurisdictional limitations of the courts, institutions, and community
2 services; and

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

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

7 For the purposes of this chapter:

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

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

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

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

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

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

38 (a) Community-based sanctions;

1 (b) Community-based rehabilitation;
2 (c) Monitoring and reporting requirements;
3 (d) Posting of a probation bond (~~imposed pursuant to RCW~~
4 ~~13.40.0357~~);
5 ~~((4))~~ (3) Community-based sanctions may include one or more of
6 the following:
7 (a) A fine, not to exceed ~~((one))~~ five hundred dollars;
8 (b) Community service not to exceed one hundred fifty hours of
9 service;
10 ~~((5))~~ (4) "Community-based rehabilitation" means one or more of
11 the following: Employment; attendance of information classes;
12 counseling, outpatient substance abuse treatment programs, outpatient
13 mental health programs, anger management classes, education or
14 outpatient treatment programs to prevent animal cruelty, or other
15 services; or attendance at school or other educational programs
16 appropriate for the juvenile as determined by the school district.
17 Placement in community-based rehabilitation programs is subject to
18 available funds;
19 ~~((6))~~ (5) "Monitoring and reporting requirements" means one or
20 more of the following: Curfews; requirements to remain at home,
21 school, work, or court-ordered treatment programs during specified
22 hours; restrictions from leaving or entering specified geographical
23 areas; requirements to report to the probation officer as directed and
24 to remain under the probation officer's supervision; and other
25 conditions or limitations as the court may require which may not
26 include confinement;
27 ~~((7))~~ (6) "Confinement" means physical custody by the department
28 of social and health services in a facility operated by or pursuant to
29 a contract with the state, or physical custody in a detention facility
30 operated by or pursuant to a contract with any county. The county may
31 operate or contract with vendors to operate county detention
32 facilities. The department may operate or contract to operate
33 detention facilities for juveniles committed to the department.
34 Pretrial confinement or confinement of less than thirty-one days
35 imposed as part of a disposition or modification order may be served
36 consecutively or intermittently, in the discretion of the court;
37 ~~((8))~~ (7) "Court," ~~((7))~~ when used without further qualification,
38 means the juvenile court judge(s) or commissioner(s);

1 ~~((9))~~ (8) "Criminal history" includes all criminal complaints
2 against the respondent for which, prior to the commission of a current
3 offense:

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

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

15 ~~((10))~~ (9) "Department" means the department of social and health
16 services;

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

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

1 ~~((13))~~ (12) "Institution" means a juvenile facility established
2 pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

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

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

11 (15) "Local sanctions" mean one or more of the following: (a) 0-30
12 days of confinement; (b) 0-12 months of community supervision; (c)
13 0-150 hours of community service; or (d) \$0-\$500 fine;

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

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

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

23 ~~(a) Four misdemeanors;~~
24 ~~(b) Two misdemeanors and one gross misdemeanor;~~
25 ~~(c) One misdemeanor and two gross misdemeanors; and~~
26 ~~(d) Three gross misdemeanors.~~

27 ~~For purposes of this definition, current violations shall be~~
28 ~~counted as misdemeanors;~~

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

33 ~~((20))~~ (18) "Respondent" means a juvenile who is alleged or
34 proven to have committed an offense;

35 ~~((21))~~ (19) "Restitution" means financial reimbursement by the
36 offender to the victim, and shall be limited to easily ascertainable
37 damages for injury to or loss of property, actual expenses incurred for
38 medical treatment for physical injury to persons, lost wages resulting
39 from physical injury, and costs of the victim's counseling reasonably

1 related to the offense if the offense is a sex offense. Restitution
2 shall not include reimbursement for damages for mental anguish, pain
3 and suffering, or other intangible losses. Nothing in this chapter
4 shall limit or replace civil remedies or defenses available to the
5 victim or offender;

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

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

13 ~~((+24+))~~ (22) "Sex offense" means an offense defined as a sex
14 offense in RCW 9.94A.030;

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

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

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

24 ~~((+28+))~~ (26) "Violent offense" means a violent offense as defined
25 in RCW 9.94A.030;

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

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

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

3 ((~~SCHEDULE A~~))

4 **DESCRIPTION AND OFFENSE CATEGORY**

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

.....

10 **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+ |

23 **Assault and Other Crimes**

24 **Involving Physical Harm**

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

1		Burglary and Trespass	
2	B+	Burglary 1 (9A.52.020)	C+
3	<u>B</u>	<u>Residential Burglary</u>	
4		<u>(9A.52.025)</u>	<u>C</u>
5	B	Burglary 2 (9A.52.030)	C
6	D	Burglary Tools (Possession of)	
7		(9A.52.060)	E
8	D	Criminal Trespass 1 (9A.52.070)	E
9	E	Criminal Trespass 2 (9A.52.080)	E
10	<u>C</u>	<u>Vehicle Prowling 1 (9A.52.095)</u>	<u>D</u>
11	D	Vehicle Prowling <u>2</u> (9A.52.100)	E
12		Drugs	
13	E	Possession/Consumption of Alcohol	
14		(66.44.270)	E
15	C	Illegally Obtaining Legend Drug	
16		(69.41.020)	D
17	C+	Sale, Delivery, Possession of Legend	
18		Drug with Intent to Sell	
19		(69.41.030)	D+
20	E	Possession of Legend Drug	
21		(69.41.030)	E
22	B+	Violation of Uniform Controlled	
23		Substances Act - Narcotic or	
24		Methamphetamine Sale	
25		(69.50.401(a)(1)(i) or (ii))	B+
26	C	Violation of Uniform Controlled	
27		Substances Act - Nonnarcotic Sale	
28		(69.50.401(a)(1)(iii))	C
29	E	Possession of Marihuana <40 grams	
30		(69.50.401(e))	E
31	C	Fraudulently Obtaining Controlled	
32		Substance (69.50.403)	C
33	C+	Sale of Controlled Substance	
34		for Profit (69.50.410)	C+
35	E	Unlawful Inhalation (9.47A.020)	E
36	B	Violation of Uniform Controlled	
37		Substances Act - Narcotic or	
38		Methamphetamine	

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

1	C+	Unlawful Imprisonment	
2		(9A.40.040)	D+
3		Obstructing Governmental Operation	
4		(E)	
5	<u>D</u>	Obstructing a Law Enforcement	
6		Officer (9A.76.020)	E
7	E	Resisting Arrest (9A.76.040)	E
8	B	Introducing Contraband 1	
9		(9A.76.140)	C
10	C	Introducing Contraband 2	
11		(9A.76.150)	D
12	E	Introducing Contraband 3	
13		(9A.76.160)	E
14	B+	Intimidating a Public Servant	
15		(9A.76.180)	C+
16	B+	Intimidating a Witness	
17		(9A.72.110)	C+
18		Public Disturbance	
19	C+	Riot with Weapon (9A.84.010)	D+
20	D+	Riot Without Weapon	
21		(9A.84.010)	E
22	E	Failure to Disperse (9A.84.020)	E
23	E	Disorderly Conduct (9A.84.030)	E
24		Sex Crimes	
25	A	Rape 1 (9A.44.040)	B+
26	A-	Rape 2 (9A.44.050)	B+
27	C+	Rape 3 (9A.44.060)	D+
28	A-	Rape of a Child 1 (9A.44.073)	B+
29	<u>B±</u>	Rape of a Child 2 (9A.44.076)	C+
30	B	Incest 1 (9A.64.020(1))	C
31	C	Incest 2 (9A.64.020(2))	D
32	D+	Indecent Exposure	
33		(Victim <14) (9A.88.010)	E
34	E	Indecent Exposure	
35		(Victim 14 or over) (9A.88.010)	E
36	B+	Promoting Prostitution 1	
37		(9A.88.070)	C+

1	C+	Promoting Prostitution 2	
2		(9A.88.080)	D+
3	E	O & A (Prostitution) (9A.88.030)	E
4	B+	Indecent Liberties (9A.44.100)	C+
5	(B+)		((C+))
6	<u>A-</u>	Child Molestation 1 (9A.44.083)	<u>B+</u>
7	((C+))		
8	<u>B</u>	Child Molestation 2 (9A.44.086)	<u>C±</u>
9		Theft, Robbery, Extortion, and Forgery	
10	B	Theft 1 (9A.56.030)	C
11	C	Theft 2 (9A.56.040)	D
12	D	Theft 3 (9A.56.050)	E
13	B	Theft of Livestock (9A.56.080)	C
14	C	Forgery (9A.60.020)	D
15	A	Robbery 1 (9A.56.200)	B+
16	B+	Robbery 2 (9A.56.210)	C+
17	B+	Extortion 1 (9A.56.120)	C+
18	C+	Extortion 2 (9A.56.130)	D+
19	B	Possession of Stolen Property 1	
20		(9A.56.150)	C
21	C	Possession of Stolen Property 2	
22		(9A.56.160)	D
23	D	Possession of Stolen Property 3	
24		(9A.56.170)	E
25	C	Taking Motor Vehicle Without	
26		Owner's Permission (9A.56.070)	D
27		Motor Vehicle Related Crimes	
28	E	Driving Without a License	
29		(46.20.021)	E
30	C	Hit and Run - Injury	
31		(46.52.020(4))	D
32	D	Hit and Run-Attended	
33		(46.52.020(5))	E
34	E	Hit and Run-Unattended	
35		(46.52.010)	E
36	C	Vehicular Assault (46.61.522)	D
37	C	Attempting to Elude Pursuing	
38		Police Vehicle (46.61.024)	D

1	E	Reckless Driving (46.61.500)	E
2	D	Driving While Under the Influence	
3		(46.61.502 and 46.61.504)	E
4	(D)	Vehicle Prowling (9A.52.100)	E
5	C	Taking Motor Vehicle Without	
6		Owner's Permission (9A.56.070)	D))
7		Other	
8	B	Bomb Threat (9.61.160)	C
9	C	Escape 1 ¹ (9A.76.110)	C
10	C	Escape 2 ¹ (9A.76.120)	C
11	D	Escape 3 (9A.76.130)	E
12	E	Obscene, Harassing, Etc.,	
13		Phone Calls (9.61.230)	E
14	A	Other Offense Equivalent to an	
15		Adult Class A Felony	B+
16	B	Other Offense Equivalent to an	
17		Adult Class B Felony	C
18	C	Other Offense Equivalent to an	
19		Adult Class C Felony	D
20	D	Other Offense Equivalent to an	
21		Adult Gross Misdemeanor	E
22	E	Other Offense Equivalent to an	
23		Adult Misdemeanor	E
24	V	Violation of Order of Restitution,	
25		Community Supervision, or	
26		Confinement (13.40.200) ²	V

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

29 1st escape or attempted escape during 12-month period - 4 weeks
30 confinement

31 2nd escape or attempted escape during 12-month period - 8 weeks
32 confinement

33 3rd and subsequent escape or attempted escape during 12-month
34 period - 12 weeks confinement

35 ²If the court finds that a respondent has violated terms of an order,
36 it may impose a penalty of up to 30 days of confinement.

~~((SCHEDULE B~~

~~PRIOR OFFENSE INCREASE FACTOR~~

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

~~TIME SPAN~~

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

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

~~SCHEDULE C~~

~~CURRENT OFFENSE POINTS~~

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

~~AGE~~

OFFENSE	12 &	13	14	15	16	17
CATEGORY	Under	13	14	15	16	17
A+	STANDARD RANGE 180-224 WEEKS					
A	250	300	350	375	375	375
A-	150	150	150	200	200	200
B+	110	110	120	130	140	150

1	B	45	45	50	50	57	57
2	C+	44	44	49	49	55	55
3	C	40	40	45	45	50	50
4	D+	16	18	20	22	24	26
5	D	14	16	18	20	22	24
6	E	4	4	4	6	8	10

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

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

13
14 **((MINOR/FIRST OFFENDER**

15 **OPTION A**

16 **STANDARD RANGE**

	Community	Community Service	Points	Supervision	Hours	Fine
17					
21	1-9	0-3 months	and/or	0-8	and/or	0-\$10
22	10-19	0-3 months	and/or	0-8	and/or	0-\$10
23	20-29	0-3 months	and/or	0-16	and/or	0-\$10
24	30-39	0-3 months	and/or	8-24	and/or	0-\$25
25	40-49	3-6 months	and/or	16-32	and/or	0-\$25
26	50-59	3-6 months	and/or	24-40	and/or	0-\$25
27	60-69	6-9 months	and/or	32-48	and/or	0-\$50
28	70-79	6-9 months	and/or	40-56	and/or	0-\$50
29	80-89	9-12 months	and/or	48-64	and/or	10-\$100
30	90-109	9-12 months	and/or	56-72	and/or	10-\$100

1 _____ ~~OR~~

2 _____ ~~OPTION B~~

3 _____ ~~STATUTORY OPTION~~

4 ~~0-12 Months Community Supervision~~

5 ~~0-150 Hours Community Service~~

6 ~~0-100 Fine~~

7 ~~Posting of a Probation Bond~~

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

10 _____ ~~OR~~

11 _____ ~~OPTION C~~

12 _____ ~~MANIFEST INJUSTICE~~

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

18 _____ ~~JUVENILE SENTENCING STANDARDS~~

19 _____ ~~SCHEDULE D-2~~

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

23 _____ ~~MIDDLE OFFENDER~~

24 _____ ~~OPTION A~~

25 _____ ~~STANDARD RANGE~~

	Community	Community Service	Confinement
Points	Supervision	Hours	Fine
	Days	Weeks	
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

1	60-69	6-9 months	and/or 32-48	and/or 0-\$50	and/or 5-10
2	70-79	6-9 months	and/or 40-56	and/or 0-\$50	and/or 10-20
3	80-89	9-12 months	and/or 48-64	and/or 0-\$100	and/or 10-20
4	90-109	9-12 months	and/or 56-72	and/or 0-\$100	and/or 15-30
5	110-129				8-12
6	130-149				13-16
7	150-199				21-28
8	200-249				30-40
9	250-299				52-65
10	300-374				80-100
11	375+				103-129

~~12 Middle offenders with 110 points or more do not have to be committed.~~
~~13 They may be assigned community supervision under option B.~~
~~14 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 E

28 _____
29 0 1 2 3 4 >4

30 PRIOR FELONY ADJUDICATIONS

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 24 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**~~

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

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 **Sec. 10.** RCW 13.40.040 and 1995 c 395 s 4 are each amended to
4 read as follows:

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

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

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

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

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

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

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

22 (i) The juvenile will likely fail to appear for further
23 proceedings; or

24 (ii) Detention is required to protect the juvenile from himself or
25 herself; or

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

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

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

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

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

33 (d) The juvenile is a material witness.

34 (3) Upon a finding that members of the community have threatened
35 the health of a juvenile taken into custody, at the juvenile's request
36 the court may order continued detention pending further order of the
37 court.

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

22 **Sec. 11.** RCW 13.40.045 and 1994 sp.s. c 7 s 518 are each amended
23 to read as follows:

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

32 **Sec. 12.** RCW 13.40.050 and 1995 c 395 s 5 are each amended to
33 read as follows:

34 (1) When a juvenile taken into custody is held in detention:
35 (a) An information, a community supervision modification or
36 termination of diversion petition, or a parole modification petition

1 shall be filed within seventy-two hours, Saturdays, Sundays, and
2 holidays excluded, or the juvenile shall be released; and

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

9 (2) Notice of the detention hearing, stating the time, place, and
10 purpose of the hearing, (~~and~~) stating the right to counsel, and
11 requiring attendance shall be given to the parent, guardian, or
12 custodian if such person can be found and shall also be given to the
13 juvenile if over twelve years of age.

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

17 (4) The court shall, based upon the allegations in the
18 information, determine whether the case is properly before it or
19 whether the case should be treated as a diversion case under RCW
20 13.40.080. If the case is not properly before the court the juvenile
21 shall be ordered released.

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

27 (6) If detention is not necessary under RCW 13.40.040, (~~as now or~~
28 ~~hereafter amended,~~) the court shall impose the most appropriate of the
29 following conditions or, if necessary, any combination of the following
30 conditions:

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

33 (b) Place restrictions on the travel of the juvenile during the
34 period of release;

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

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

1 (e) Require that the juvenile return to detention during specified
2 hours; or

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

5 (7) A juvenile may be released only to a responsible adult.

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

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

16 **Sec. 13.** RCW 13.40.060 and 1989 c 71 s 1 are each amended to read
17 as follows:

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

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

31 ~~————(3))~~ The case and copies of all legal and social documents
32 pertaining thereto may in the discretion of the court be transferred to
33 the county in which the juvenile resides for supervision and
34 enforcement of the disposition order. The court of the receiving
35 county has jurisdiction to modify and enforce the disposition order.

36 ~~((4))~~ (3) The court upon motion of any party or upon its own
37 motion may, at any time, transfer a proceeding to another juvenile

1 court when there is reason to believe that an impartial proceeding
2 cannot be held in the county in which the proceeding was begun.

3 **Sec. 14.** RCW 13.40.070 and 1994 sp.s. c 7 s 543 are each amended
4 to read as follows:

5 (1) Complaints referred to the juvenile court alleging the
6 commission of an offense shall be referred directly to the prosecutor.
7 The prosecutor, upon receipt of a complaint, shall screen the complaint
8 to determine whether:

9 (a) The alleged facts bring the case within the jurisdiction of
10 the court; and

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

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

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

27 (4) An information shall be a plain, concise, and definite written
28 statement of the essential facts constituting the offense charged. It
29 shall be signed by the prosecuting attorney and conform to chapter
30 10.37 RCW.

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

33 (a) An alleged offender is accused of a class A felony, a class B
34 felony, an attempt to commit a class B felony, a class C felony listed
35 in RCW 9.94A.440(2) as a crime against persons or listed in RCW
36 9A.46.060 as a crime of harassment, a class C felony that is a
37 violation of RCW 9.41.080 or 9.41.040(1) ~~((+e))~~ (b)(iii), or ~~((any~~
38 ~~other offense listed in RCW 13.40.020(1) (b) or (c))~~ burglary in the

1 second degree or residential burglary when either offense includes the
2 infliction of bodily harm upon another or when during the commission of
3 or immediate withdrawal from the offense the offender is armed with a
4 deadly weapon; 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. 15.** 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. 16.** 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 divertee 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 divertee;

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 divertee 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 divertee was diverted:

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

9 (ii) In superior court or the appropriate court of limited
10 jurisdiction if the divertee 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 divertee 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. 17.** 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. 18.** 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. 19.** 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. 20.** 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. 21.** 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. 22.** 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. 23.** 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 24 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. 24.** 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. 25.** 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. 26.** 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) ~~((~~te~~))~~ (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 of
30 confinement shall be added to the entire standard range disposition of
31 confinement if the offender or an accomplice was armed with a firearm
32 when the offender committed: (a) Any violent offense; or (b) escape in
33 the first degree; burglary in the second degree; theft of livestock in
34 the first or second degree; or any felony drug offense. If the
35 offender or an accomplice was armed with a firearm and the offender is
36 being adjudicated for an anticipatory felony offense under chapter
37 9A.28 RCW to commit one of the offenses listed in this subsection,
38 ninety days shall be added to the entire standard range disposition of

1 confinement. The ninety days shall be imposed regardless of the
2 offense's juvenile disposition offense category as designated in RCW
3 13.40.0357. The department shall not release the offender until the
4 offender has served a minimum of ninety days in confinement, unless the
5 juvenile is committed to and successfully completes the juvenile
6 offender basic training camp disposition option.

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

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

21 **Sec. 27.** RCW 13.40.200 and 1995 c 395 s 8 are each amended to
22 read as follows:

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

27 (2) The hearing shall afford the respondent the same due process
28 of law as would be afforded an adult probationer. The court may issue
29 a summons or a warrant to compel the respondent's appearance. The
30 state shall have the burden of proving by a preponderance of the
31 evidence the fact of the violation. The respondent shall have the
32 burden of showing that the violation was not a willful refusal to
33 comply with the terms of the order. If a respondent has failed to pay
34 a fine, penalty assessments, or restitution or to perform community
35 service hours, as required by the court, it shall be the respondent's
36 burden to show that he or she did not have the means and could not
37 reasonably have acquired the means to pay the fine, penalty
38 assessments, or restitution or perform community service.

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

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

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

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

30 **Sec. 28.** RCW 13.40.230 and 1981 c 299 s 16 are each amended to
31 read as follows:

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

35 An appeal under this section shall be heard solely upon the record
36 that was before the disposition court. No written briefs may be
37 required, and the appeal shall be heard within thirty days following
38 the date of sentencing and a decision rendered within fifteen days

1 following the argument. The supreme court shall promulgate any
2 necessary rules to effectuate the purposes of this section.

3 (2) To uphold a disposition outside the standard range, (~~or which~~
4 ~~imposes confinement for a minor or first offender,~~) the court of
5 appeals must find (a) that the reasons supplied by the disposition
6 judge are supported by the record which was before the judge and that
7 those reasons clearly and convincingly support the conclusion that a
8 disposition within the range (~~, or nonconfinement for a minor or first~~
9 ~~offender,~~) would constitute a manifest injustice, and (b) that the
10 sentence imposed was neither clearly excessive nor clearly too lenient.

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

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

18 (5) (~~Pending appeal, a respondent may not be committed or~~
19 ~~detained for a period of time in excess of the standard range for the~~
20 ~~offense(s) committed or sixty days, whichever is longer.~~) The
21 disposition court may impose conditions on release pending appeal as
22 provided in RCW 13.40.040(4) and 13.40.050(6). (~~Upon the expiration~~
23 ~~of the period of commitment or detention specified in this subsection,~~
24 ~~the court may also impose such conditions on the respondent's release~~
25 ~~pending disposition of the appeal.~~)

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

28 **Sec. 29.** RCW 13.40.250 and 1980 c 128 s 16 are each amended to
29 read as follows:

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

33 (1) If a notice of a traffic or civil infraction is filed in
34 juvenile court, the juvenile named in the notice shall be afforded the
35 same due process afforded to adult defendants in traffic infraction
36 cases.

37 (2) A monetary penalty imposed upon a juvenile under the age of
38 sixteen who is found to have committed a traffic or civil infraction

1 may not exceed one hundred dollars. At the juvenile's request, the
2 court may order performance of a number of hours of community service
3 in lieu of a monetary penalty, at the rate of the prevailing state
4 minimum wage per hour.

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

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

13 **Sec. 30.** RCW 13.40.265 and 1994 sp.s. c 7 s 435 are each amended
14 to read as follows:

15 (1)(a) If a juvenile thirteen years of age or older is found by
16 juvenile court to have committed an offense while armed with a firearm
17 or an offense that is a violation of RCW 9.41.040(1) ~~((e))~~ (b)(iii) or
18 chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the
19 department of licensing within twenty-four hours after entry of the
20 judgment.

21 (b) Except as otherwise provided in (c) of this subsection, upon
22 petition of a juvenile who has been found by the court to have
23 committed an offense that is a violation of chapter 66.44, 69.41,
24 69.50, or 69.52 RCW, the court may at any time the court deems
25 appropriate notify the department of licensing that the juvenile's
26 driving privileges should be reinstated.

27 (c) If the offense is the juvenile's first violation of chapter
28 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the
29 court for reinstatement of the juvenile's privilege to drive revoked
30 pursuant to RCW 46.20.265 until ninety days after the date the juvenile
31 turns sixteen or ninety days after the judgment was entered, whichever
32 is later. If the offense is the juvenile's second or subsequent
33 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile
34 may not petition the court for reinstatement of the juvenile's
35 privilege to drive revoked pursuant to RCW 46.20.265 until the date the
36 juvenile turns seventeen or one year after the date judgment was
37 entered, whichever is later.

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

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

9 **Sec. 31.** RCW 13.40.320 and 1995 c 40 s 1 are each amended to read
10 as follows:

11 (1) The department of social and health services shall establish
12 and operate a medium security juvenile offender basic training camp
13 program. The department shall site a juvenile offender basic training
14 camp facility in the most cost-effective facility possible and shall
15 review the possibility of using an existing abandoned and/or available
16 state, federally, or military-owned site or facility.

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

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

27 (4) The juvenile offender basic training camp shall be a
28 structured and regimented model lasting one hundred twenty days
29 emphasizing the building up of an offender's self-esteem, confidence,
30 and discipline. The juvenile offender basic training camp program
31 shall provide participants with basic education, prevocational
32 training, work-based learning, live work, work ethic skills, conflict
33 resolution counseling, substance abuse intervention, anger management
34 counseling, and structured intensive physical training. The juvenile
35 offender basic training camp program shall have a curriculum training
36 and work schedule that incorporates a balanced assignment of these or
37 other rehabilitation and training components for no less than sixteen
38 hours per day, six days a week.

1 The department shall adopt rules for the safe and effective
2 operation of the juvenile offender basic training camp program,
3 standards for an offender's successful program completion, and rules
4 for the continued after-care supervision of offenders who have
5 successfully completed the program.

6 (5) Offenders eligible for the juvenile offender basic training
7 camp option shall be those with a disposition of not more than
8 (~~seventy-eight~~) thirty-six weeks. Violent and sex offenders shall
9 not be eligible for the juvenile offender basic training camp program.

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

21 (7) All juvenile offenders eligible for the juvenile offender
22 basic training camp sentencing option shall spend one hundred twenty
23 days of their disposition in a juvenile offender basic training camp.
24 If the juvenile offender's activities while in the juvenile offender
25 basic training camp are so disruptive to the juvenile offender basic
26 training camp program, as determined by the secretary according to
27 rules adopted by the department, as to result in the removal of the
28 juvenile offender from the juvenile offender basic training camp
29 program, or if the offender cannot complete the juvenile offender basic
30 training camp program due to medical problems, the secretary shall
31 require that the offender be committed to a juvenile institution to
32 serve the entire remainder of his or her disposition, less the amount
33 of time already served in the juvenile offender basic training camp
34 program.

35 (8) All offenders who successfully graduate from the one hundred
36 twenty day juvenile offender basic training camp program shall spend
37 the remainder of their disposition on parole in a division of juvenile
38 rehabilitation intensive aftercare program in the local community. The
39 program shall provide for the needs of the offender based on his or her

1 progress in the aftercare program as indicated by ongoing assessment of
2 those needs and progress. The intensive aftercare program shall
3 monitor postprogram juvenile offenders and assist them to successfully
4 reintegrate into the community. In addition, the program shall develop
5 a process for closely monitoring and assessing public safety risks.
6 The intensive aftercare program shall be designed and funded by the
7 department of social and health services.

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

19 **Sec. 32.** RCW 13.50.010 and 1996 c 232 s 6 are each amended to
20 read as follows:

21 (1) For purposes of this chapter:

22 (a) "Juvenile justice or care agency" means any of the following:
23 Police, diversion units, court, prosecuting attorney, defense attorney,
24 detention center, attorney general, the department of social and health
25 services and its contracting agencies, schools; and, in addition,
26 persons or public or private agencies having children committed to
27 their custody;

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

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

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

36 (2) Each petition or information filed with the court may include
37 only one juvenile and each petition or information shall be filed under

1 a separate docket number. The social file shall be filed separately
2 from the official juvenile court file.

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

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

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

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

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

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

28 (6) A juvenile, or his or her parents, or any person who has
29 reasonable cause to believe information concerning that person is
30 included in the records of a juvenile justice or care agency may make
31 a motion to the court challenging the accuracy of any information
32 concerning the moving party in the record or challenging the continued
33 possession of the record by the agency. If the court grants the
34 motion, it shall order the record or information to be corrected or
35 destroyed.

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

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

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

23 **Sec. 33.** RCW 13.50.050 and 1992 c 188 s 7 are each amended to
24 read as follows:

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

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

30 (3) All records other than the official juvenile court file are
31 confidential and may be released only as provided in this section, RCW
32 13.50.010, 13.40.215, and 4.24.550.

33 (4) Except as otherwise provided in this section and RCW
34 13.50.010, records retained or produced by any juvenile justice or care
35 agency may be released to other participants in the juvenile justice or
36 care system only when an investigation or case involving the juvenile
37 in question is being pursued by the other participant or when that

1 other participant is assigned the responsibility for supervising the
2 juvenile.

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

8 (6) Notwithstanding any other provision of this chapter, the
9 release, to the juvenile or his or her attorney, of law enforcement and
10 prosecuting attorneys' records pertaining to investigation, diversion,
11 and prosecution of juvenile offenses shall be governed by the rules of
12 discovery and other rules of law applicable in adult criminal
13 investigations and prosecutions.

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

25 (8) Upon request of the victim of a crime or the victim's
26 immediate family, the identity of an alleged or proven juvenile
27 offender alleged or found to have committed a crime against the victim
28 and the identity of the alleged or proven juvenile offender's parent,
29 guardian, or custodian and the circumstance of the alleged or proven
30 crime shall be released to the victim of the crime or the victim's
31 immediate family.

32 (9) Subject to the rules of discovery applicable in adult criminal
33 prosecutions, the juvenile offense records of an adult criminal
34 defendant or witness in an adult criminal proceeding shall be released
35 upon request to prosecution and defense counsel after a charge has
36 actually been filed. The juvenile offense records of any adult
37 convicted of a crime and placed under the supervision of the adult
38 corrections system shall be released upon request to the adult
39 corrections system.

1 (10) In any case in which an information has been filed pursuant
2 to RCW 13.40.100 or a complaint has been filed with the prosecutor and
3 referred for diversion pursuant to RCW 13.40.070, the person the
4 subject of the information or complaint may file a motion with the
5 court to have the court vacate its order and findings, if any, and,
6 subject to subsection ~~((24))~~ (22) of this section, order the sealing
7 of the official juvenile court file, the social file, and records of
8 the court and of any other agency in the case.

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

11 (a) Two years have elapsed from the later of: (i) Final discharge
12 of the person from the supervision of any agency charged with
13 supervising juvenile offenders; or (ii) from the entry of a court order
14 relating to the commission of a juvenile offense or a criminal offense;

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

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

19 (d) Full restitution has been paid.

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

24 (13) If the court grants the motion to seal made pursuant to
25 subsection (10) of this section, it shall, subject to subsection
26 ~~((24))~~ (22) of this section, order sealed the official juvenile court
27 file, the social file, and other records relating to the case as are
28 named in the order. Thereafter, the proceedings in the case shall be
29 treated as if they never occurred, and the subject of the records may
30 reply accordingly to any inquiry about the events, records of which are
31 sealed. Any agency shall reply to any inquiry concerning confidential
32 or sealed records that records are confidential, and no information can
33 be given about the existence or nonexistence of records concerning an
34 individual.

35 (14) Inspection of the files and records included in the order to
36 seal may thereafter be permitted only by order of the court upon motion
37 made by the person who is the subject of the information or complaint,
38 except as otherwise provided in RCW 13.50.010(8) and subsection
39 ~~((24))~~ (22) of this section.

1 (15) Any adjudication of a juvenile offense or a crime subsequent
2 to sealing has the effect of nullifying the sealing order. Any
3 (~~conviction for any~~) charging of an adult felony subsequent to the
4 sealing has the effect of nullifying the sealing order for the purposes
5 of chapter 9.94A RCW (~~for any juvenile adjudication of guilt for a~~
6 ~~class A offense or a sex offense as defined in RCW 9.94A.030~~).

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

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

17 ~~— (a) The person making the motion is at least twenty-three years of~~
18 ~~age;~~

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

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

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

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

29 (~~(19)~~) (17) If the court grants the motion to destroy records
30 made pursuant to subsection (16) (~~(or (18))~~) of this section, it shall,
31 subject to subsection (~~(24)~~) (22) of this section, order the official
32 juvenile court file, the social file, and any other records named in
33 the order to be destroyed.

34 (~~(20)~~) (18) The person making the motion pursuant to subsection
35 (16) (~~(or (18))~~) of this section shall give reasonable notice of the
36 motion to the prosecuting attorney and to any agency whose records are
37 sought to be destroyed.

38 (~~(21)~~) (19) Any juvenile to whom the provisions of this section
39 may apply shall be given written notice of his or her rights under this

1 section at the time of his or her disposition hearing or during the
2 diversion process.

3 ~~((+22+))~~ (20) Nothing in this section may be construed to prevent
4 a crime victim or a member of the victim's family from divulging the
5 identity of the alleged or proven juvenile offender or his or her
6 family when necessary in a civil proceeding.

7 ~~((+23+))~~ (21) Any juvenile justice or care agency may, subject to
8 the limitations in subsection ~~((+24+))~~ (22) of this section and
9 ~~((subparagraphs))~~ (a) and (b) of this subsection, develop procedures
10 for the routine destruction of records relating to juvenile offenses
11 and diversions.

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

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

19 ~~((+24+))~~ (22) No identifying information held by the Washington
20 state patrol in accordance with chapter 43.43 RCW is subject to
21 destruction or sealing under this section. For the purposes of this
22 subsection, identifying information includes photographs, fingerprints,
23 palmprints, soleprints, toeprints and any other data that identifies a
24 person by physical characteristics, name, birthdate or address, but
25 does not include information regarding criminal activity, arrest,
26 charging, diversion, conviction or other information about a person's
27 treatment by the criminal justice system or about the person's
28 behavior.

29 ~~((+25+))~~ (23) Information identifying child victims under age
30 eighteen who are victims of sexual assaults by juvenile offenders is
31 confidential and not subject to release to the press or public without
32 the permission of the child victim or the child's legal guardian.
33 Identifying information includes the child victim's name, addresses,
34 location, photographs, and in cases in which the child victim is a
35 relative of the alleged perpetrator, identification of the relationship
36 between the child and the alleged perpetrator. Information identifying
37 a child victim of sexual assault may be released to law enforcement,
38 prosecutors, judges, defense attorneys, or private or governmental
39 agencies that provide services to the child victim of sexual assault.

1 **Sec. 34.** RCW 9A.36.045 and 1995 c 129 s 8 are each amended to
2 read as follows:

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

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

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

16 **Sec. 35.** RCW 9A.36.050 and 1989 c 271 s 110 are each amended to
17 read as follows:

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

23 (2) Reckless endangerment (~~in the second degree~~) is a gross
24 misdemeanor.

25 **Sec. 36.** RCW 9.41.010 and 1996 c 295 s 1 are each amended to read
26 as follows:

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

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

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

34 (3) "Rifle" means a weapon designed or redesigned, made or remade,
35 and intended to be fired from the shoulder and designed or redesigned,
36 made or remade, and intended to use the energy of the explosive in a

1 fixed metallic cartridge to fire only a single projectile through a
2 rifled bore for each single pull of the trigger.

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

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

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

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

24 (8) "Antique firearm" means a firearm or replica of a firearm not
25 designed or redesigned for using rim fire or conventional center fire
26 ignition with fixed ammunition and manufactured in or before 1898,
27 including any matchlock, flintlock, percussion cap, or similar type of
28 ignition system and also any firearm using fixed ammunition
29 manufactured in or before 1898, for which ammunition is no longer
30 manufactured in the United States and is not readily available in the
31 ordinary channels of commercial trade.

32 (9) "Loaded" means:

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

34 (b) Cartridges are in a clip that is locked in place in the
35 firearm;

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

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

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

3 (10) "Dealer" means a person engaged in the business of selling
4 firearms at wholesale or retail who has, or is required to have, a
5 federal firearms license under 18 U.S.C. Sec. 923(a). A person who
6 does not have, and is not required to have, a federal firearms license
7 under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only
8 occasional sales, exchanges, or purchases of firearms for the
9 enhancement of a personal collection or for a hobby, or sells all or
10 part of his or her personal collection of firearms.

11 (11) "Crime of violence" means:

12 (a) Any of the following felonies, as now existing or hereafter
13 amended: Any felony defined under any law as a class A felony or an
14 attempt to commit a class A felony, criminal solicitation of or
15 criminal conspiracy to commit a class A felony, manslaughter in the
16 first degree, manslaughter in the second degree, indecent liberties if
17 committed by forcible compulsion, kidnapping in the second degree,
18 arson in the second degree, assault in the second degree, assault of a
19 child in the second degree, extortion in the first degree, burglary in
20 the second degree, residential burglary, and robbery in the second
21 degree;

22 (b) Any conviction for a felony offense in effect at any time
23 prior to June 6, 1996, which is comparable to a felony classified as a
24 crime of violence in (a) of this subsection; and

25 (c) Any federal or out-of-state conviction for an offense
26 comparable to a felony classified as a crime of violence under (a) or
27 (b) of this subsection.

28 (12) "Serious offense" means any of the following felonies or a
29 felony attempt to commit any of the following felonies, as now existing
30 or hereafter amended:

31 (a) Any crime of violence;

32 (b) Any felony violation of the uniform controlled substances act,
33 chapter 69.50 RCW, that is classified as a class B felony or that has
34 a maximum term of imprisonment of at least ten years;

35 (c) Child molestation in the second degree;

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

37 (e) Indecent liberties;

38 (f) Leading organized crime;

39 (g) Promoting prostitution in the first degree;

- 1 (h) Rape in the third degree;
- 2 (i) (~~Reckless endangerment in the first degree~~) Drive-by
- 3 shooting;
- 4 (j) Sexual exploitation;
- 5 (k) Vehicular assault;
- 6 (l) Vehicular homicide, when proximately caused by the driving of
- 7 any vehicle by any person while under the influence of intoxicating
- 8 liquor or any drug as defined by RCW 46.61.502, or by the operation of
- 9 any vehicle in a reckless manner;
- 10 (m) Any other class B felony offense with a finding of sexual
- 11 motivation, as "sexual motivation" is defined under RCW 9.94A.030;
- 12 (n) Any other felony with a deadly weapon verdict under RCW
- 13 9.94A.125; or
- 14 (o) Any felony offense in effect at any time prior to June 6,
- 15 1996, that is comparable to a serious offense, or any federal or out-
- 16 of-state conviction for an offense that under the laws of this state
- 17 would be a felony classified as a serious offense.
- 18 (13) "Law enforcement officer" includes a general authority
- 19 Washington peace officer as defined in RCW 10.93.020, or a specially
- 20 commissioned Washington peace officer as defined in RCW 10.93.020.
- 21 "Law enforcement officer" also includes a limited authority Washington
- 22 peace officer as defined in RCW 10.93.020 if such officer is duly
- 23 authorized by his or her employer to carry a concealed pistol.
- 24 (14) "Felony" means any felony offense under the laws of this
- 25 state or any federal or out-of-state offense comparable to a felony
- 26 offense under the laws of this state.
- 27 (15) "Sell" refers to the actual approval of the delivery of a
- 28 firearm in consideration of payment or promise of payment of a certain
- 29 price in money.
- 30 (16) "Barrel length" means the distance from the bolt face of a
- 31 closed action down the length of the axis of the bore to the crown of
- 32 the muzzle, or in the case of a barrel with attachments to the end of
- 33 any legal device permanently attached to the end of the muzzle.
- 34 (17) "Family or household member" means "family" or "household
- 35 member" as used in RCW 10.99.020.

36 **Sec. 37.** RCW 9.41.040 and 1996 c 295 s 2 are each amended to read

37 as follows:

1 (1)(a) A person, whether an adult or juvenile, is guilty of the
2 crime of unlawful possession of a firearm in the first degree, if the
3 person owns, has in his or her possession, or has in his or her control
4 any firearm after having previously been convicted in this state or
5 elsewhere of any serious offense as defined in this chapter.

6 (b) A person, whether an adult or juvenile, is guilty of the crime
7 of unlawful possession of a firearm in the second degree, if the person
8 does not qualify under (a) of this subsection for the crime of unlawful
9 possession of a firearm in the first degree and the person owns, has in
10 his or her possession, or has in his or her control any firearm:

11 (i) After having previously been convicted in this state or
12 elsewhere of any felony not specifically listed as prohibiting firearm
13 possession under (a) of this subsection, or any of the following crimes
14 when committed by one family or household member against another,
15 committed on or after July 1, 1993: Assault in the fourth degree,
16 coercion, stalking, reckless endangerment (~~(in the second degree)~~),
17 criminal trespass in the first degree, or violation of the provisions
18 of a protection order or no-contact order restraining the person or
19 excluding the person from a residence (RCW 26.50.060, 26.50.070,
20 26.50.130, or 10.99.040);

21 (ii) After having previously been involuntarily committed for
22 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77
23 RCW, or equivalent statutes of another jurisdiction, unless his or her
24 right to possess a firearm has been restored as provided in RCW
25 9.41.047;

26 (iii) If the person is under eighteen years of age, except as
27 provided in RCW 9.41.042; and/or

28 (iv) If the person is free on bond or personal recognizance
29 pending trial, appeal, or sentencing for a serious offense as defined
30 in RCW 9.41.010.

31 (2)(a) Unlawful possession of a firearm in the first degree is a
32 class B felony, punishable under chapter 9A.20 RCW.

33 (b) Unlawful possession of a firearm in the second degree is a
34 class C felony, punishable under chapter 9A.20 RCW.

35 (3) Notwithstanding RCW 9.41.047 or any other provisions of law,
36 as used in this chapter, a person has been "convicted", whether in an
37 adult court or adjudicated in a juvenile court, at such time as a plea
38 of guilty has been accepted, or a verdict of guilty has been filed,
39 notwithstanding the pendency of any future proceedings including but

1 not limited to sentencing or disposition, post-trial or post-
2 factfinding motions, and appeals. Conviction includes a dismissal
3 entered after a period of probation, suspension or deferral of
4 sentence, and also includes equivalent dispositions by courts in
5 jurisdictions other than Washington state. A person shall not be
6 precluded from possession of a firearm if the conviction has been the
7 subject of a pardon, annulment, certificate of rehabilitation, or other
8 equivalent procedure based on a finding of the rehabilitation of the
9 person convicted or the conviction or disposition has been the subject
10 of a pardon, annulment, or other equivalent procedure based on a
11 finding of innocence. Where no record of the court's disposition of
12 the charges can be found, there shall be a rebuttable presumption that
13 the person was not convicted of the charge.

14 (4) Notwithstanding subsection (1) of this section, a person
15 convicted of an offense prohibiting the possession of a firearm under
16 this section other than murder, manslaughter, robbery, rape, indecent
17 liberties, arson, assault, kidnapping, extortion, burglary, or
18 violations with respect to controlled substances under RCW 69.50.401(a)
19 and 69.50.410, who received a probationary sentence under RCW 9.95.200,
20 and who received a dismissal of the charge under RCW 9.95.240, shall
21 not be precluded from possession of a firearm as a result of the
22 conviction. Notwithstanding any other provisions of this section, if
23 a person is prohibited from possession of a firearm under subsection
24 (1) of this section and has not previously been convicted of a sex
25 offense prohibiting firearm ownership under subsection (1) of this
26 section and/or any felony defined under any law as a class A felony or
27 with a maximum sentence of at least twenty years, or both, the
28 individual may petition a court of record to have his or her right to
29 possess a firearm restored:

30 (a) Under RCW 9.41.047; and/or

31 (b) (i) If the conviction was for a felony offense, after five or
32 more consecutive years in the community without being convicted or
33 currently charged with any felony, gross misdemeanor, or misdemeanor
34 crimes, if the individual has no prior felony convictions that prohibit
35 the possession of a firearm counted as part of the offender score under
36 RCW 9.94A.360; or

37 (ii) If the conviction was for a nonfelony offense, after three or
38 more consecutive years in the community without being convicted or
39 currently charged with any felony, gross misdemeanor, or misdemeanor

1 crimes, if the individual has no prior felony convictions that prohibit
2 the possession of a firearm counted as part of the offender score under
3 RCW 9.94A.360 and the individual has completed all conditions of the
4 sentence.

5 (5) In addition to any other penalty provided for by law, if a
6 person under the age of eighteen years is found by a court to have
7 possessed a firearm in a vehicle in violation of subsection (1) of this
8 section or to have committed an offense while armed with a firearm
9 during which offense a motor vehicle served an integral function, the
10 court shall notify the department of licensing within twenty-four hours
11 and the person's privilege to drive shall be revoked under RCW
12 46.20.265.

13 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
14 or interpreted as preventing an offender from being charged and
15 subsequently convicted for the separate felony crimes of theft of a
16 firearm or possession of a stolen firearm, or both, in addition to
17 being charged and subsequently convicted under this section for
18 unlawful possession of a firearm in the first or second degree.
19 Notwithstanding any other law, if the offender is convicted under this
20 section for unlawful possession of a firearm in the first or second
21 degree and for the felony crimes of theft of a firearm or possession of
22 a stolen firearm, or both, then the offender shall serve consecutive
23 sentences for each of the felony crimes of conviction listed in this
24 subsection.

25 (7) Each firearm unlawfully possessed under this section shall be
26 a separate offense.

27 **Sec. 38.** RCW 9.94A.103 and 1995 c 129 s 5 are each amended to
28 read as follows:

29 Any and all recommended sentencing agreements or plea agreements
30 and the sentences for any and all felony crimes shall be made and
31 retained as public records if the felony crime involves:

- 32 (1) Any violent offense as defined in this chapter;
- 33 (2) Any most serious offense as defined in this chapter;
- 34 (3) Any felony with a deadly weapon special verdict under RCW
35 9.94A.125;
- 36 (4) Any felony with any deadly weapon enhancements under RCW
37 9.94A.310 (3) or (4), or both; and/or

1 (5) The felony crimes of possession of a machine gun, possessing
2 a stolen firearm, (~~reckless endangerment in the first degree~~) drive-
3 by shooting, theft of a firearm, unlawful possession of a firearm in
4 the first or second degree, and/or use of a machine gun in a felony.

5 **Sec. 39.** RCW 9.94A.105 and 1995 c 129 s 6 are each amended to
6 read as follows:

7 (1) A current, newly created or reworked judgment and sentence
8 document for each felony sentencing shall record any and all
9 recommended sentencing agreements or plea agreements and the sentences
10 for any and all felony crimes kept as public records under RCW
11 9.94A.103 shall contain the clearly printed name and legal signature of
12 the sentencing judge. The judgment and sentence document as defined in
13 this section shall also provide additional space for the sentencing
14 judge's reasons for going either above or below the presumptive
15 sentence range for any and all felony crimes covered as public records
16 under RCW 9.94A.103. Both the sentencing judge and the prosecuting
17 attorney's office shall each retain or receive a completed copy of each
18 sentencing document as defined in this section for their own records.

19 (2) The sentencing guidelines commission shall be sent a completed
20 copy of the judgment and sentence document upon conviction for each
21 felony sentencing under subsection (1) of this section and shall
22 compile a yearly and cumulative judicial record of each sentencing
23 judge in regards to his or her sentencing practices for any and all
24 felony crimes involving:

25 (a) Any violent offense as defined in this chapter;
26 (b) Any most serious offense as defined in this chapter;
27 (c) Any felony with any deadly weapon special verdict under RCW
28 9.94A.125;

29 (d) Any felony with any deadly weapon enhancements under RCW
30 9.94A.310 (3) or (4), or both; and/or

31 (e) The felony crimes of possession of a machine gun, possessing
32 a stolen firearm, (~~reckless endangerment in the first degree~~)
33 drive-by shooting, theft of a firearm, unlawful possession of a firearm
34 in the first or second degree, and/or use of a machine gun in a felony.

35 (3) The sentencing guidelines commission shall compare each
36 individual judge's sentencing practices to the standard or presumptive
37 sentence range for any and all felony crimes listed in subsection (2)
38 of this section for the appropriate offense level as defined in RCW

1 9.94A.320, offender score as defined in RCW 9.94A.360, and any
 2 applicable deadly weapon enhancements as defined in RCW 9.94A.310 (3)
 3 or (4), or both. These comparative records shall be retained and made
 4 available to the public for review in a current, newly created or
 5 reworked official published document by the sentencing guidelines
 6 commission.

7 (4) Any and all felony sentences which are either above or below
 8 the standard or presumptive sentence range in subsection (3) of this
 9 section shall also mark whether the prosecuting attorney in the case
 10 also recommended a similar sentence, if any, which was either above or
 11 below the presumptive sentence range and shall also indicate if the
 12 sentence was in conjunction with an approved alternative sentencing
 13 option including a first-time offender waiver, sex offender sentencing
 14 alternative, or other prescribed sentencing option.

15 (5) If any completed judgment and sentence document as defined in
 16 subsection (1) of this section is not sent to the sentencing guidelines
 17 commission as required in subsection (2) of this section, the
 18 sentencing guidelines commission shall have the authority and shall
 19 undertake reasonable and necessary steps to assure that all past,
 20 current, and future sentencing documents as defined in subsection (1)
 21 of this section are received by the sentencing guidelines commission.

22 **Sec. 40.** RCW 9.94A.310 and 1996 c 205 s 5 are each amended to
 23 read as follows:
 24

25 (1) TABLE 1

26 Sentencing Grid

27 SERIOUSNESS

28 SCORE	29 OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
30 XV	31 Life Sentence without Parole/Death Penalty									
32 XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
33	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
34	320	333	347	361	374	388	416	450	493	548
35										
36										
37										

1	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
2		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
3		164	178	192	205	219	233	260	288	342	397
4											
5	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
6		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
7		123	136	147	160	171	184	216	236	277	318
8											
9	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
10		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
11		102	114	125	136	147	158	194	211	245	280
12											
13	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
14		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
15		68	75	82	89	96	102	130	144	171	198
16											
17	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
18		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
19		41	48	54	61	68	75	102	116	144	171
20											
21	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
22		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
23		27	34	41	48	54	61	89	102	116	144
24											
25	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
26		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
27		20	27	34	41	48	54	75	89	102	116
28											
29	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
30		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
31		14	20	27	34	41	48	61	75	89	102
32											
33	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
34		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
35		12	14	17	20	29	43	54	68	82	96
36											
37	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
38		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
39		9	12	14	17	20	29	43	57	70	84

1	<hr/>										
2	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
3		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
4		3	8	12	12	16	22	29	43	57	68
5	<hr/>										
6	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
7		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
8		Days	6	9	12	14	18	22	29	43	57
9	<hr/>										
10	I			3m	4m	5m	8m	13m	16m	20m	2y2m
11		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
12		Days	Days	5	6	8	12	14	18	22	29
13	<hr/>										

14 NOTE: Numbers in the first horizontal row of each seriousness category
15 represent sentencing midpoints in years(y) and months(m). Numbers in
16 the second and third rows represent presumptive sentencing ranges in
17 months, or in days if so designated. 12+ equals one year and one day.

18 (2) For persons convicted of the anticipatory offenses of criminal
19 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
20 presumptive sentence is determined by locating the sentencing grid
21 sentence range defined by the appropriate offender score and the
22 seriousness level of the completed crime, and multiplying the range by
23 75 percent.

24 (3) The following additional times shall be added to the
25 presumptive sentence for felony crimes committed after July 23, 1995,
26 if the offender or an accomplice was armed with a firearm as defined in
27 RCW 9.41.010 and the offender is being sentenced for one of the crimes
28 listed in this subsection as eligible for any firearm enhancements
29 based on the classification of the completed felony crime. If the
30 offender or an accomplice was armed with a firearm as defined in RCW
31 9.41.010 and the offender is being sentenced for an anticipatory
32 offense under chapter 9A.28 RCW to commit one of the crimes listed in
33 this subsection as eligible for any firearm enhancements, the following
34 additional times shall be added to the presumptive sentence determined
35 under subsection (2) of this section based on the felony crime of
36 conviction as classified under RCW 9A.28.020:

1 (a) Five years for any felony defined under any law as a class A
2 felony or with a maximum sentence of at least twenty years, or both,
3 and not covered under (f) of this subsection.

4 (b) Three years for any felony defined under any law as a class B
5 felony or with a maximum sentence of ten years, or both, and not
6 covered under (f) of this subsection.

7 (c) Eighteen months for any felony defined under any law as a
8 class C felony or with a maximum sentence of five years, or both, and
9 not covered under (f) of this subsection.

10 (d) If the offender is being sentenced for any firearm
11 enhancements under (a), (b), and/or (c) of this subsection and the
12 offender has previously been sentenced for any deadly weapon
13 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
14 subsection or subsection (4)(a), (b), and/or (c) of this section, or
15 both, any and all firearm enhancements under this subsection shall be
16 twice the amount of the enhancement listed.

17 (e) Notwithstanding any other provision of law, any and all
18 firearm enhancements under this section are mandatory, shall be served
19 in total confinement, and shall not run concurrently with any other
20 sentencing provisions.

21 (f) The firearm enhancements in this section shall apply to all
22 felony crimes except the following: Possession of a machine gun,
23 possessing a stolen firearm, (~~reckless endangerment in the first~~
24 ~~degree~~) drive-by shooting, theft of a firearm, unlawful possession of
25 a firearm in the first and second degree, and use of a machine gun in
26 a felony.

27 (g) If the presumptive sentence under this section exceeds the
28 statutory maximum for the offense, the statutory maximum sentence shall
29 be the presumptive sentence unless the offender is a persistent
30 offender as defined in RCW 9.94A.030.

31 (4) The following additional times shall be added to the
32 presumptive sentence for felony crimes committed after July 23, 1995,
33 if the offender or an accomplice was armed with a deadly weapon as
34 defined in this chapter other than a firearm as defined in RCW 9.41.010
35 and the offender is being sentenced for one of the crimes listed in
36 this subsection as eligible for any deadly weapon enhancements based on
37 the classification of the completed felony crime. If the offender or
38 an accomplice was armed with a deadly weapon other than a firearm as
39 defined in RCW 9.41.010 and the offender is being sentenced for an

1 anticipatory offense under chapter 9A.28 RCW to commit one of the
2 crimes listed in this subsection as eligible for any deadly weapon
3 enhancements, the following additional times shall be added to the
4 presumptive sentence determined under subsection (2) of this section
5 based on the felony crime of conviction as classified under RCW
6 9A.28.020:

7 (a) Two years for any felony defined under any law as a class A
8 felony or with a maximum sentence of at least twenty years, or both,
9 and not covered under (f) of this subsection.

10 (b) One year for any felony defined under any law as a class B
11 felony or with a maximum sentence of ten years, or both, and not
12 covered under (f) of this subsection.

13 (c) Six months for any felony defined under any law as a class C
14 felony or with a maximum sentence of five years, or both, and not
15 covered under (f) of this subsection.

16 (d) If the offender is being sentenced under (a), (b), and/or (c)
17 of this subsection for any deadly weapon enhancements and the offender
18 has previously been sentenced for any deadly weapon enhancements after
19 July 23, 1995, under (a), (b), and/or (c) of this subsection or
20 subsection (3)(a), (b), and/or (c) of this section, or both, any and
21 all deadly weapon enhancements under this subsection shall be twice the
22 amount of the enhancement listed.

23 (e) Notwithstanding any other provision of law, any and all deadly
24 weapon enhancements under this section are mandatory, shall be served
25 in total confinement, and shall not run concurrently with any other
26 sentencing provisions.

27 (f) The deadly weapon enhancements in this section shall apply to
28 all felony crimes except the following: Possession of a machine gun,
29 possessing a stolen firearm, (~~reckless endangerment in the first~~
30 ~~degree~~) drive-by shooting, theft of a firearm, unlawful possession of
31 a firearm in the first and second degree, and use of a machine gun in
32 a felony.

33 (g) If the presumptive sentence under this section exceeds the
34 statutory maximum for the offense, the statutory maximum sentence shall
35 be the presumptive sentence unless the offender is a persistent
36 offender as defined in RCW 9.94A.030.

37 (5) The following additional times shall be added to the
38 presumptive sentence if the offender or an accomplice committed the
39 offense while in a county jail or state correctional facility as that

1 term is defined in this chapter and the offender is being sentenced for
2 one of the crimes listed in this subsection. If the offender or an
3 accomplice committed one of the crimes listed in this subsection while
4 in a county jail or state correctional facility as that term is defined
5 in this chapter, and the offender is being sentenced for an
6 anticipatory offense under chapter 9A.28 RCW to commit one of the
7 crimes listed in this subsection, the following additional times shall
8 be added to the presumptive sentence determined under subsection (2) of
9 this section:

10 (a) Eighteen months for offenses committed under RCW
11 69.50.401(a)(1) (i) or (ii) or 69.50.410;

12 (b) Fifteen months for offenses committed under RCW
13 69.50.401(a)(1) (iii), (iv), and (v);

14 (c) Twelve months for offenses committed under RCW 69.50.401(d).

15 For the purposes of this subsection, all of the real property of
16 a state correctional facility or county jail shall be deemed to be part
17 of that facility or county jail.

18 (6) An additional twenty-four months shall be added to the
19 presumptive sentence for any ranked offense involving a violation of
20 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

21 **Sec. 41.** RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and
22 1996 c 36 s 2 are each reenacted and amended to read as follows:
23

24 TABLE 2

25 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

26	XV	Aggravated Murder 1 (RCW 10.95.020)
27	XIV	Murder 1 (RCW 9A.32.030)
28		Homicide by abuse (RCW 9A.32.055)
29	XIII	Murder 2 (RCW 9A.32.050)
30	XII	Assault 1 (RCW 9A.36.011)
31		Assault of a Child 1 (RCW 9A.36.120)
32	XI	Rape 1 (RCW 9A.44.040)
33		Rape of a Child 1 (RCW 9A.44.073)

1 X Kidnapping 1 (RCW 9A.40.020)
2 Rape 2 (RCW 9A.44.050)
3 Rape of a Child 2 (RCW 9A.44.076)
4 Child Molestation 1 (RCW 9A.44.083)
5 Damaging building, etc., by explosion with
6 threat to human being (RCW 70.74.280(1))
7 Over 18 and deliver heroin or narcotic from
8 Schedule I or II to someone under 18
9 (RCW 69.50.406)
10 Leading Organized Crime (RCW 9A.82.060(1)(a))
11 IX Assault of a Child 2 (RCW 9A.36.130)
12 Robbery 1 (RCW 9A.56.200)
13 Manslaughter 1 (RCW 9A.32.060)
14 Explosive devices prohibited (RCW 70.74.180)
15 Indecent Liberties (with forcible compulsion)
16 (RCW 9A.44.100(1)(a))
17 Endangering life and property by explosives
18 with threat to human being (RCW
19 70.74.270)
20 Over 18 and deliver narcotic from Schedule
21 III, IV, or V or a nonnarcotic from
22 Schedule I-V to someone under 18 and 3
23 years junior (RCW 69.50.406)
24 Controlled Substance Homicide (RCW 69.50.415)
25 Sexual Exploitation (RCW 9.68A.040)
26 Inciting Criminal Profiteering (RCW
27 9A.82.060(1)(b))
28 Vehicular Homicide, by being under the
29 influence of intoxicating liquor or any
30 drug (RCW 46.61.520)
31 VIII Arson 1 (RCW 9A.48.020)
32 Promoting Prostitution 1 (RCW 9A.88.070)
33 Selling for profit (controlled or
34 counterfeit) any controlled substance
35 (RCW 69.50.410)
36 Manufacture, deliver, or possess with intent
37 to deliver heroin or cocaine (RCW
38 69.50.401(a)(1)(i))

1 Manufacture, deliver, or possess with intent
2 to deliver methamphetamine (RCW
3 69.50.401(a)(1)(ii))
4 Possession of ephedrine or pseudoephedrine
5 with intent to manufacture
6 methamphetamine (RCW 69.50.440)
7 Vehicular Homicide, by the operation of any
8 vehicle in a reckless manner (RCW
9 46.61.520)

10 VII Burglary 1 (RCW 9A.52.020)
11 Vehicular Homicide, by disregard for the
12 safety of others (RCW 46.61.520)
13 Introducing Contraband 1 (RCW 9A.76.140)
14 Indecent Liberties (without forcible
15 compulsion) (RCW 9A.44.100(1)(b) and
16 (c))
17 Child Molestation 2 (RCW 9A.44.086)
18 Dealing in depictions of minor engaged in
19 sexually explicit conduct (RCW
20 9.68A.050)
21 Sending, bringing into state depictions of
22 minor engaged in sexually explicit
23 conduct (RCW 9.68A.060)
24 Involving a minor in drug dealing (RCW
25 69.50.401(f))
26 (~~(Reckless Endangerment 1)~~) Drive-by Shooting
27 (RCW 9A.36.045)
28 Unlawful Possession of a Firearm in the first
29 degree (RCW 9.41.040(1)(a))

30 VI Bribery (RCW 9A.68.010)
31 Manslaughter 2 (RCW 9A.32.070)
32 Rape of a Child 3 (RCW 9A.44.079)
33 Intimidating a Juror/Witness (RCW 9A.72.110,
34 9A.72.130)
35 Damaging building, etc., by explosion with no
36 threat to human being (RCW 70.74.280(2))

1 Endangering life and property by explosives
2 with no threat to human being (RCW
3 70.74.270)
4 Incest 1 (RCW 9A.64.020(1))
5 Manufacture, deliver, or possess with intent
6 to deliver narcotics from Schedule I or
7 II (except heroin or cocaine) (RCW
8 69.50.401(a)(1)(i))
9 Intimidating a Judge (RCW 9A.72.160)
10 Bail Jumping with Murder 1 (RCW
11 9A.76.170(2)(a))
12 Theft of a Firearm (RCW 9A.56.300)
13 V Persistent prison misbehavior (RCW 9.94.070)
14 Criminal Mistreatment 1 (RCW 9A.42.020)
15 Abandonment of dependent person 1 (RCW
16 9A.42.060)
17 Rape 3 (RCW 9A.44.060)
18 Sexual Misconduct with a Minor 1 (RCW
19 9A.44.093)
20 Child Molestation 3 (RCW 9A.44.089)
21 Kidnapping 2 (RCW 9A.40.030)
22 Extortion 1 (RCW 9A.56.120)
23 Incest 2 (RCW 9A.64.020(2))
24 Perjury 1 (RCW 9A.72.020)
25 Extortionate Extension of Credit (RCW
26 9A.82.020)
27 Advancing money or property for extortionate
28 extension of credit (RCW 9A.82.030)
29 Extortionate Means to Collect Extensions of
30 Credit (RCW 9A.82.040)
31 Rendering Criminal Assistance 1 (RCW
32 9A.76.070)
33 Bail Jumping with class A Felony (RCW
34 9A.76.170(2)(b))
35 Sexually Violating Human Remains (RCW
36 9A.44.105)
37 Delivery of imitation controlled substance by
38 person eighteen or over to person under
39 eighteen (RCW 69.52.030(2))

1 Possession of a Stolen Firearm (RCW
2 9A.56.310)

3 IV Residential Burglary (RCW 9A.52.025)
4 Theft of Livestock 1 (RCW 9A.56.080)
5 Robbery 2 (RCW 9A.56.210)
6 Assault 2 (RCW 9A.36.021)
7 Escape 1 (RCW 9A.76.110)
8 Arson 2 (RCW 9A.48.030)
9 Commercial Bribery (RCW 9A.68.060)
10 Bribing a Witness/Bribe Received by Witness
11 (RCW 9A.72.090, 9A.72.100)
12 Malicious Harassment (RCW 9A.36.080)
13 Threats to Bomb (RCW 9.61.160)
14 Willful Failure to Return from Furlough (RCW
15 72.66.060)
16 Hit and Run -- Injury Accident (RCW
17 46.52.020(4))
18 Hit and Run with Vessel -- Injury Accident
19 (RCW 88.12.155(3))
20 Vehicular Assault (RCW 46.61.522)
21 Manufacture, deliver, or possess with intent
22 to deliver narcotics from Schedule III,
23 IV, or V or nonnarcotics from Schedule
24 I-V (except marijuana or
25 methamphetamines) (RCW 69.50.401(a)(1)
26 (iii) through (v))
27 Influencing Outcome of Sporting Event (RCW
28 9A.82.070)
29 Use of Proceeds of Criminal Profiteering (RCW
30 9A.82.080 (1) and (2))
31 Knowingly Trafficking in Stolen Property (RCW
32 9A.82.050(2))

33 III Criminal Mistreatment 2 (RCW 9A.42.030)
34 Abandonment of dependent person 2 (RCW
35 9A.42.070)
36 Extortion 2 (RCW 9A.56.130)
37 Unlawful Imprisonment (RCW 9A.40.040)
38 Assault 3 (RCW 9A.36.031)

1 Assault of a Child 3 (RCW 9A.36.140)
2 Custodial Assault (RCW 9A.36.100)
3 Unlawful possession of firearm in the second
4 degree (RCW 9.41.040(1)(b))
5 Harassment (RCW 9A.46.020)
6 Promoting Prostitution 2 (RCW 9A.88.080)
7 Willful Failure to Return from Work Release
8 (RCW 72.65.070)
9 Burglary 2 (RCW 9A.52.030)
10 Introducing Contraband 2 (RCW 9A.76.150)
11 Communication with a Minor for Immoral
12 Purposes (RCW 9.68A.090)
13 Patronizing a Juvenile Prostitute (RCW
14 9.68A.100)
15 Escape 2 (RCW 9A.76.120)
16 Perjury 2 (RCW 9A.72.030)
17 Bail Jumping with class B or C Felony (RCW
18 9A.76.170(2)(c))
19 Intimidating a Public Servant (RCW 9A.76.180)
20 Tampering with a Witness (RCW 9A.72.120)
21 Manufacture, deliver, or possess with intent
22 to deliver marijuana (RCW
23 69.50.401(a)(1)(iii))
24 Delivery of a material in lieu of a
25 controlled substance (RCW 69.50.401(c))
26 Manufacture, distribute, or possess with
27 intent to distribute an imitation
28 controlled substance (RCW 69.52.030(1))
29 Recklessly Trafficking in Stolen Property
30 (RCW 9A.82.050(1))
31 Theft of livestock 2 (RCW 9A.56.080)
32 Securities Act violation (RCW 21.20.400)
33 II Unlawful Practice of Law (RCW 2.48.180)
34 Malicious Mischief 1 (RCW 9A.48.070)
35 Possession of Stolen Property 1 (RCW
36 9A.56.150)
37 Theft 1 (RCW 9A.56.030)
38 Trafficking in Insurance Claims (RCW
39 48.30A.015)

1 Unlicensed Practice of a Profession or
2 Business (RCW 18.130.190(7))
3 Health Care False Claims (RCW 48.80.030)
4 Possession of controlled substance that is
5 either heroin or narcotics from Schedule
6 I or II (RCW 69.50.401(d))
7 Possession of phencyclidine (PCP) (RCW
8 69.50.401(d))
9 Create, deliver, or possess a counterfeit
10 controlled substance (RCW 69.50.401(b))
11 Computer Trespass 1 (RCW 9A.52.110)
12 Escape from Community Custody (RCW 72.09.310)
13 I Theft 2 (RCW 9A.56.040)
14 Possession of Stolen Property 2 (RCW
15 9A.56.160)
16 Forgery (RCW 9A.60.020)
17 Taking Motor Vehicle Without Permission (RCW
18 9A.56.070)
19 Vehicle Prowl 1 (RCW 9A.52.095)
20 Attempting to Elude a Pursuing Police Vehicle
21 (RCW 46.61.024)
22 Malicious Mischief 2 (RCW 9A.48.080)
23 Reckless Burning 1 (RCW 9A.48.040)
24 Unlawful Issuance of Checks or Drafts (RCW
25 9A.56.060)
26 Unlawful Use of Food Stamps (RCW 9.91.140 (2)
27 and (3))
28 False Verification for Welfare (RCW
29 74.08.055)
30 Forged Prescription (RCW 69.41.020)
31 Forged Prescription for a Controlled
32 Substance (RCW 69.50.403)
33 Possess Controlled Substance that is a
34 Narcotic from Schedule III, IV, or V or
35 Non-narcotic from Schedule I-V (except
36 phencyclidine) (RCW 69.50.401(d))

37 **Sec. 42.** RCW 9A.46.060 and 1994 c 271 s 802 and 1994 c 121 s 2
38 are each reenacted and amended to read as follows:

1 As used in this chapter, "harassment" may include but is not
2 limited to any of the following crimes:

- 3 (1) Harassment (RCW 9A.46.020);
- 4 (2) Malicious harassment (RCW 9A.36.080);
- 5 (3) Telephone harassment (RCW 9.61.230);
- 6 (4) Assault in the first degree (RCW 9A.36.011);
- 7 (5) Assault of a child in the first degree (RCW 9A.36.120);
- 8 (6) Assault in the second degree (RCW 9A.36.021);
- 9 (7) Assault of a child in the second degree (RCW 9A.36.130);
- 10 (8) Assault in the fourth degree (RCW 9A.36.041);
- 11 (9) Reckless endangerment (~~(in the second degree)~~) (RCW
12 9A.36.050);
- 13 (10) Extortion in the first degree (RCW 9A.56.120);
- 14 (11) Extortion in the second degree (RCW 9A.56.130);
- 15 (12) Coercion (RCW 9A.36.070);
- 16 (13) Burglary in the first degree (RCW 9A.52.020);
- 17 (14) Burglary in the second degree (RCW 9A.52.030);
- 18 (15) Criminal trespass in the first degree (RCW 9A.52.070);
- 19 (16) Criminal trespass in the second degree (RCW 9A.52.080);
- 20 (17) Malicious mischief in the first degree (RCW 9A.48.070);
- 21 (18) Malicious mischief in the second degree (RCW 9A.48.080);
- 22 (19) Malicious mischief in the third degree (RCW 9A.48.090);
- 23 (20) Kidnapping in the first degree (RCW 9A.40.020);
- 24 (21) Kidnapping in the second degree (RCW 9A.40.030);
- 25 (22) Unlawful imprisonment (RCW 9A.40.040);
- 26 (23) Rape in the first degree (RCW 9A.44.040);
- 27 (24) Rape in the second degree (RCW 9A.44.050);
- 28 (25) Rape in the third degree (RCW 9A.44.060);
- 29 (26) Indecent liberties (RCW 9A.44.100);
- 30 (27) Rape of a child in the first degree (RCW 9A.44.073);
- 31 (28) Rape of a child in the second degree (RCW 9A.44.076);
- 32 (29) Rape of a child in the third degree (RCW 9A.44.079);
- 33 (30) Child molestation in the first degree (RCW 9A.44.083);
- 34 (31) Child molestation in the second degree (RCW 9A.44.086);
- 35 (32) Child molestation in the third degree (RCW 9A.44.089);
- 36 (33) Stalking (RCW 9A.46.110);
- 37 (34) Residential burglary (RCW 9A.52.025); and
- 38 (35) Violation of a temporary or permanent protective order issued
39 pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW.

1 **Sec. 43.** RCW 10.99.020 and 1996 c 248 s 5 are each amended to
2 read as follows:

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

5 (1) "Family or household members" means spouses, former spouses,
6 persons who have a child in common regardless of whether they have been
7 married or have lived together at any time, adult persons related by
8 blood or marriage, adult persons who are presently residing together or
9 who have resided together in the past, persons sixteen years of age or
10 older who are presently residing together or who have resided together
11 in the past and who have or have had a dating relationship, persons
12 sixteen years of age or older with whom a person sixteen years of age
13 or older has or has had a dating relationship, and persons who have a
14 biological or legal parent-child relationship, including stepparents
15 and stepchildren and grandparents and grandchildren.

16 (2) "Dating relationship" has the same meaning as in RCW
17 26.50.010.

18 (3) "Domestic violence" includes but is not limited to any of the
19 following crimes when committed by one family or household member
20 against another:

21 (a) Assault in the first degree (RCW 9A.36.011);

22 (b) Assault in the second degree (RCW 9A.36.021);

23 (c) Assault in the third degree (RCW 9A.36.031);

24 (d) Assault in the fourth degree (RCW 9A.36.041);

25 (e) (~~Reckless endangerment in the first degree~~) Drive-by
26 shooting (RCW 9A.36.045);

27 (f) Reckless endangerment (~~(in the second degree)~~) (RCW
28 9A.36.050);

29 (g) Coercion (RCW 9A.36.070);

30 (h) Burglary in the first degree (RCW 9A.52.020);

31 (i) Burglary in the second degree (RCW 9A.52.030);

32 (j) Criminal trespass in the first degree (RCW 9A.52.070);

33 (k) Criminal trespass in the second degree (RCW 9A.52.080);

34 (l) Malicious mischief in the first degree (RCW 9A.48.070);

35 (m) Malicious mischief in the second degree (RCW 9A.48.080);

36 (n) Malicious mischief in the third degree (RCW 9A.48.090);

37 (o) Kidnapping in the first degree (RCW 9A.40.020);

38 (p) Kidnapping in the second degree (RCW 9A.40.030);

39 (q) Unlawful imprisonment (RCW 9A.40.040);

1 (r) Violation of the provisions of a restraining order restraining
2 the person or restraining the person from going onto the grounds of or
3 entering a residence, workplace, school, or day care (RCW 26.09.300,
4 26.10.220, or 26.26.138);

5 (s) Violation of the provisions of a protection order or no-
6 contact order restraining the person or restraining the person from
7 going onto the grounds of or entering a residence, workplace, school,
8 or day care (RCW 26.50.060, 26.50.070, 26.50.130, 10.99.040, or
9 10.99.050);

10 (t) Rape in the first degree (RCW 9A.44.040);

11 (u) Rape in the second degree (RCW 9A.44.050);

12 (v) Residential burglary (RCW 9A.52.025);

13 (w) Stalking (RCW 9A.46.110); and

14 (x) Interference with the reporting of domestic violence (RCW
15 9A.36.150).

16 (4) "Victim" means a family or household member who has been
17 subjected to domestic violence.

18 **Sec. 44.** RCW 10.99.040 and 1996 c 248 s 7 are each amended to
19 read as follows:

20 (1) Because of the serious nature of domestic violence, the court
21 in domestic violence actions:

22 (a) Shall not dismiss any charge or delay disposition because of
23 concurrent dissolution or other civil proceedings;

24 (b) Shall not require proof that either party is seeking a
25 dissolution of marriage prior to instigation of criminal proceedings;

26 (c) Shall waive any requirement that the victim's location be
27 disclosed to any person, other than the attorney of a criminal
28 defendant, upon a showing that there is a possibility of further
29 violence: PROVIDED, That the court may order a criminal defense
30 attorney not to disclose to his or her client the victim's location;
31 and

32 (d) Shall identify by any reasonable means on docket sheets those
33 criminal actions arising from acts of domestic violence.

34 (2) Because of the likelihood of repeated violence directed at
35 those who have been victims of domestic violence in the past, when any
36 person charged with or arrested for a crime involving domestic violence
37 is released from custody before arraignment or trial on bail or
38 personal recognizance, the court authorizing the release may prohibit

1 that person from having any contact with the victim. The jurisdiction
2 authorizing the release shall determine whether that person should be
3 prohibited from having any contact with the victim. If there is no
4 outstanding restraining or protective order prohibiting that person
5 from having contact with the victim, the court authorizing release may
6 issue, by telephone, a no-contact order prohibiting the person charged
7 or arrested from having contact with the victim. In issuing the order,
8 the court shall consider the provisions of RCW 9.41.800. The no-
9 contact order shall also be issued in writing as soon as possible.

10 (3) At the time of arraignment the court shall determine whether
11 a no-contact order shall be issued or extended. If a no-contact order
12 is issued or extended, the court may also include in the conditions of
13 release a requirement that the defendant submit to electronic
14 monitoring. If electronic monitoring is ordered, the court shall
15 specify who shall provide the monitoring services, and the terms under
16 which the monitoring shall be performed. Upon conviction, the court
17 may require as a condition of the sentence that the defendant reimburse
18 the providing agency for the costs of the electronic monitoring.

19 (4) (a) Willful violation of a court order issued under subsection
20 (2) or (3) of this section is a gross misdemeanor except as provided in
21 (b) and (c) of this subsection (4). Upon conviction and in addition to
22 other penalties provided by law, the court may require that the
23 defendant submit to electronic monitoring. The court shall specify who
24 shall provide the electronic monitoring services and the terms under
25 which the monitoring must be performed. The court also may include a
26 requirement that the defendant pay the costs of the monitoring. The
27 court shall consider the ability of the convicted person to pay for
28 electronic monitoring.

29 (b) Any assault that is a violation of an order issued under this
30 section and that does not amount to assault in the first or second
31 degree under RCW 9A.36.011 or 9A.36.021 is a class C felony punishable
32 under chapter 9A.20 RCW, and any conduct in violation of a protective
33 order issued under this section that is reckless and creates a
34 substantial risk of death or serious physical injury to another person
35 is a class C felony punishable under chapter 9A.20 RCW.

36 (c) A willful violation of a court order issued under this section
37 is a class C felony if the offender has at least two previous
38 convictions for violating the provisions of a no-contact order issued
39 under this chapter, a domestic violence protection order issued under

1 chapter 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-
2 state order that is comparable to a no-contact order or protection
3 order issued under Washington law. The previous convictions may
4 involve the same victim or other victims specifically protected by the
5 no-contact orders or protection orders the offender violated.

6 (d) The written order releasing the person charged or arrested
7 shall contain the court's directives and shall bear the legend:
8 "Violation of this order is a criminal offense under chapter 10.99 RCW
9 and will subject a violator to arrest; any assault, drive-by shooting,
10 or reckless endangerment that is a violation of this order is a felony.
11 You can be arrested even if any person protected by the order invites
12 or allows you to violate the order's prohibitions. You have the sole
13 responsibility to avoid or refrain from violating the order's
14 provisions. Only the court can change the order." A certified copy of
15 the order shall be provided to the victim. If a no-contact order has
16 been issued prior to charging, that order shall expire at arraignment
17 or within seventy-two hours if charges are not filed. Such orders need
18 not be entered into the computer-based criminal intelligence
19 information system in this state which is used by law enforcement
20 agencies to list outstanding warrants.

21 (5) Whenever an order prohibiting contact is issued, modified, or
22 terminated under subsection (2) or (3) of this section, the clerk of
23 the court shall forward a copy of the order on or before the next
24 judicial day to the appropriate law enforcement agency specified in the
25 order. Upon receipt of the copy of the order the law enforcement
26 agency shall forthwith enter the order for one year or until the
27 expiration date specified on the order into any computer-based criminal
28 intelligence information system available in this state used by law
29 enforcement agencies to list outstanding warrants. Entry into the law
30 enforcement information system constitutes notice to all law
31 enforcement agencies of the existence of the order. The order is fully
32 enforceable in any jurisdiction in the state.

33 **Sec. 45.** RCW 10.99.050 and 1996 c 248 s 8 are each amended to
34 read as follows:

35 (1) When a defendant is found guilty of a crime and a condition of
36 the sentence restricts the defendant's ability to have contact with the
37 victim, such condition shall be recorded and a written certified copy
38 of that order shall be provided to the victim.

1 (2) Willful violation of a court order issued under this section
2 is a gross misdemeanor. Any assault that is a violation of an order
3 issued under this section and that does not amount to assault in the
4 first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C
5 felony, and any conduct in violation of a protective order issued under
6 this section that is reckless and creates a substantial risk of death
7 or serious physical injury to another person is a class C felony. A
8 willful violation of a court order issued under this section is also a
9 class C felony if the offender has at least two previous convictions
10 for violating the provisions of a no-contact order issued under this
11 chapter, or a domestic violence protection order issued under chapter
12 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-state order
13 that is comparable to a no-contact order or protection order that is
14 issued under Washington law. The previous convictions may involve the
15 same victim or other victims specifically protected by the no-contact
16 orders or protection orders the offender violated.

17 The written order shall contain the court's directives and shall
18 bear the legend: Violation of this order is a criminal offense under
19 chapter 10.99 RCW and will subject a violator to arrest; any assault,
20 drive-by shooting, or reckless endangerment that is a violation of this
21 order is a felony.

22 (3) Whenever an order prohibiting contact is issued pursuant to
23 this section, the clerk of the court shall forward a copy of the order
24 on or before the next judicial day to the appropriate law enforcement
25 agency specified in the order. Upon receipt of the copy of the order
26 the law enforcement agency shall forthwith enter the order for one year
27 into any computer-based criminal intelligence information system
28 available in this state used by law enforcement agencies to list
29 outstanding warrants. Entry into the law enforcement information
30 system constitutes notice to all law enforcement agencies of the
31 existence of the order. The order is fully enforceable in any
32 jurisdiction in the state.

33 NEW SECTION. **Sec. 46.** The department of corrections and juvenile
34 rehabilitation administration shall report to the legislature by
35 December 1, 1998, on the feasibility and desirability of placing
36 juvenile offender services under the department of corrections. The
37 report must also address other measures, such as colocation of
38 facilities and jointly providing services, that would not require

1 transferring juvenile offender services to the department of
2 corrections.

3 NEW SECTION. **Sec. 47.** The following acts or parts of acts are
4 each repealed:

5 (1) RCW 9.94A.045 and 1996 c 232 s 2;

6 (2) RCW 13.40.025 and 1996 c 232 s 4, 1995 c 269 s 302, 1986 c 288
7 s 8, 1984 c 287 s 11, & 1981 c 299 s 3;

8 (3) RCW 13.40.0354 and 1994 sp.s. c 7 s 521 & 1989 c 407 s 6; and

9 (4) RCW 13.40.075 and 1994 sp.s. c 7 s 546.

10 NEW SECTION. **Sec. 48.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

--- END ---