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ENGROSSED SUBSTITUTE SENATE BILL 5305

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State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Fairley, Wojahn, Goings, McAuliffe, Patterson and Kohl)

Read first time 02/27/97.

1 AN ACT Relating to controlling drugs used to facilitate rape;  
2 amending RCW 69.50.401, 69.50.406, 13.40.0357, 9A.44.050, and  
3 9A.44.100; reenacting and amending RCW 9.94A.030, 9.94A.120, and  
4 9.94A.320; adding a new section to chapter 9A.44 RCW; and prescribing  
5 penalties.

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

7 **Sec. 1.** RCW 69.50.401 and 1996 c 205 s 2 are each amended to read  
8 as follows:

9 (a) Except as authorized by this chapter, it is unlawful for any  
10 person to manufacture, deliver, or possess with intent to manufacture  
11 or deliver, a controlled substance.

12 (1) Any person who violates this subsection with respect to:

13 (i) a controlled substance classified in Schedule I or II which is  
14 a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty  
15 of a crime and upon conviction may be imprisoned for not more than ten  
16 years, or (A) fined not more than twenty-five thousand dollars if the  
17 crime involved less than two kilograms of the drug, or both such  
18 imprisonment and fine; or (B) if the crime involved two or more  
19 kilograms of the drug, then fined not more than one hundred thousand

1 dollars for the first two kilograms and not more than fifty dollars for  
2 each gram in excess of two kilograms, or both such imprisonment and  
3 fine;

4 (ii) methamphetamine, is guilty of a crime and upon conviction may  
5 be imprisoned for not more than ten years, or (A) fined not more than  
6 twenty-five thousand dollars if the crime involved less than two  
7 kilograms of the drug, or both such imprisonment and fine; or (B) if  
8 the crime involved two or more kilograms of the drug, then fined not  
9 more than one hundred thousand dollars for the first two kilograms and  
10 not more than fifty dollars for each gram in excess of two kilograms,  
11 or both such imprisonment and fine;

12 (iii) any other controlled substance classified in Schedule I, II,  
13 or III, is guilty of a crime and upon conviction may be imprisoned for  
14 not more than five years, fined not more than ten thousand dollars, or  
15 both;

16 (iv) a substance classified in Schedule IV other than  
17 flunitrazepam, is guilty of a crime and upon conviction may be  
18 imprisoned for not more than five years, fined not more than ten  
19 thousand dollars, or both;

20 (v) a substance classified in Schedule V, is guilty of a crime and  
21 upon conviction may be imprisoned for not more than five years, fined  
22 not more than ten thousand dollars, or both.

23 (b) Except as authorized by this chapter, it is unlawful for any  
24 person to create, deliver, or possess a counterfeit substance.

25 (1) Any person who violates this subsection with respect to:

26 (i) a counterfeit substance classified in Schedule I or II which is  
27 a narcotic drug or flunitrazepam classified in Schedule IV, is guilty  
28 of a crime and upon conviction may be imprisoned for not more than ten  
29 years, fined not more than twenty-five thousand dollars, or both;

30 (ii) a counterfeit substance which is methamphetamine, is guilty of  
31 a crime and upon conviction may be imprisoned for not more than ten  
32 years, fined not more than twenty-five thousand dollars, or both;

33 (iii) any other counterfeit substance classified in Schedule I, II,  
34 or III, is guilty of a crime and upon conviction may be imprisoned for  
35 not more than five years, fined not more than ten thousand dollars, or  
36 both;

37 (iv) a counterfeit substance classified in Schedule IV except  
38 flunitrazepam, is guilty of a crime and upon conviction may be

1 imprisoned for not more than five years, fined not more than ten  
2 thousand dollars, or both;

3 (v) a counterfeit substance classified in Schedule V, is guilty of  
4 a crime and upon conviction may be imprisoned for not more than five  
5 years, fined not more than ten thousand dollars, or both.

6 (c) It is unlawful, except as authorized in this chapter and  
7 chapter 69.41 RCW, for any person to offer, arrange, or negotiate for  
8 the sale, gift, delivery, dispensing, distribution, or administration  
9 of a controlled substance to any person and then sell, give, deliver,  
10 dispense, distribute, or administer to that person any other liquid,  
11 substance, or material in lieu of such controlled substance. Any  
12 person who violates this subsection is guilty of a crime and upon  
13 conviction may be imprisoned for not more than five years, fined not  
14 more than ten thousand dollars, or both.

15 (d) It is unlawful for any person to possess a controlled substance  
16 unless the substance was obtained directly from, or pursuant to, a  
17 valid prescription or order of a practitioner while acting in the  
18 course of his or her professional practice, or except as otherwise  
19 authorized by this chapter. Any person who violates this subsection is  
20 guilty of a crime, and upon conviction may be imprisoned for not more  
21 than five years, fined not more than ten thousand dollars, or both,  
22 except as provided for in subsection (e) of this section.

23 (e) Except as provided for in subsection (a)(1)(iii) of this  
24 section any person found guilty of possession of forty grams or less of  
25 marihuana shall be guilty of a misdemeanor.

26 (f) It is unlawful to compensate, threaten, solicit, or in any  
27 other manner involve a person under the age of eighteen years in a  
28 transaction unlawfully to manufacture, sell, or deliver a controlled  
29 substance. A violation of this subsection shall be punished as a class  
30 C felony punishable in accordance with RCW 9A.20.021.

31 This section shall not apply to offenses defined and punishable  
32 under the provisions of RCW 69.50.410.

33 **Sec. 2.** RCW 69.50.406 and 1996 c 205 s 7 are each amended to read  
34 as follows:

35 (a) Any person eighteen years of age or over who violates RCW  
36 69.50.401(a) by distributing a controlled substance listed in Schedules  
37 I or II which is a narcotic drug or methamphetamine, or flunitrazepam  
38 listed in Schedule IV, to a person under eighteen years of age is

1 punishable by the fine authorized by RCW 69.50.401(a)(1) (i) or (ii),  
2 by a term of imprisonment of up to twice that authorized by RCW  
3 69.50.401(a)(1) (i) or (ii), or by both.

4 (b) Any person eighteen years of age or over who violates RCW  
5 69.50.401(a) by distributing any other controlled substance listed in  
6 Schedules I, II, III, IV, and V to a person under eighteen years of age  
7 who is at least three years his junior is punishable by the fine  
8 authorized by RCW 69.50.401(a)(1) (iii), (iv), or (v), by a term of  
9 imprisonment up to twice that authorized by RCW 69.50.401(a)(1) (iii),  
10 (iv), or (v), or both.

11 **Sec. 3.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are  
12 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

16 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
17 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
18 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

35 (17) "Disposable earnings" means that part of the earnings of an  
36 individual remaining after the deduction from those earnings of any  
37 amount required by law to be withheld. For the purposes of this  
38 definition, "earnings" means compensation paid or payable for personal  
39 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the  
2 payments exempt from garnishment, attachment, or other process to  
3 satisfy a court-ordered legal financial obligation, specifically  
4 includes periodic payments pursuant to pension or retirement programs,  
5 or insurance policies of any type, but does not include payments made  
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
7 or Title 74 RCW.

8 (18) "Drug offense" means:

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

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

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

18 (19) "Escape" means:

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

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

27 (20) "Felony traffic offense" means:

28 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
29 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
30 and-run injury-accident (RCW 46.52.020(4)); or

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

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

36 (22)(a) "First-time offender" means any person who is convicted of  
37 a felony (i) not classified as a violent offense or a sex offense under  
38 this chapter, or (ii) that is not the manufacture, delivery, or  
39 possession with intent to manufacture or deliver a controlled substance

1 classified in Schedule I or II that is a narcotic drug or flunitrazepam  
2 classified in Schedule IV, nor the manufacture, delivery, or possession  
3 with intent to deliver methamphetamine, its salts, isomers, and salts  
4 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for  
5 profit of any controlled substance or counterfeit substance classified  
6 in Schedule I, RCW 69.50.204, except leaves and flowering tops of  
7 marihuana, and except as provided in (b) of this subsection, who  
8 previously has never been convicted of a felony in this state, federal  
9 court, or another state, and who has never participated in a program of  
10 deferred prosecution for a felony offense.

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

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

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

21 (b) Assault in the second degree;

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

23 (d) Child molestation in the second degree;

24 (e) Controlled substance homicide;

25 (f) Extortion in the first degree;

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

27 (h) Indecent liberties;

28 (i) Kidnapping in the second degree;

29 (j) Leading organized crime;

30 (k) Manslaughter in the first degree;

31 (l) Manslaughter in the second degree;

32 (m) Promoting prostitution in the first degree;

33 (n) Rape in the third degree;

34 (o) Robbery in the second degree;

35 (p) Sexual exploitation;

36 (q) Vehicular assault;

37 (r) Vehicular homicide, when proximately caused by the driving of  
38 any vehicle by any person while under the influence of intoxicating



1 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
2 any vehicle in a reckless manner;

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

5 (t) Any other felony with a deadly weapon verdict under RCW  
6 9.94A.125;

7 (u) Any felony offense in effect at any time prior to December 2,  
8 1993, that is comparable to a most serious offense under this  
9 subsection, or any federal or out-of-state conviction for an offense  
10 that under the laws of this state would be a felony classified as a  
11 most serious offense under this subsection.

12 (24) "Nonviolent offense" means an offense which is not a violent  
13 offense.

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

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

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

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

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

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

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

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

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

18 (30) "Serious traffic offense" means:

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

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

27 (31) "Serious violent offense" is a subcategory of violent offense  
28 and means:

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

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

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

39 (33) "Sex offense" means:

1 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
2 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
3 criminal attempt, criminal solicitation, or criminal conspiracy to  
4 commit such crimes;

5 (b) A felony with a finding of sexual motivation under RCW  
6 9.94A.127 or 13.40.135; or

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

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

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

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

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

26 (38) "Violent offense" means:

27 (a) Any of the following felonies, as now existing or hereafter  
28 amended: Any felony defined under any law as a class A felony or an  
29 attempt to commit a class A felony, criminal solicitation of or  
30 criminal conspiracy to commit a class A felony, manslaughter in the  
31 first degree, manslaughter in the second degree, indecent liberties if  
32 committed by forcible compulsion, kidnapping in the second degree,  
33 arson in the second degree, assault in the second degree, assault of a  
34 child in the second degree, extortion in the first degree, robbery in  
35 the second degree, vehicular assault, and vehicular homicide, when  
36 proximately caused by the driving of any vehicle by any person while  
37 under the influence of intoxicating liquor or any drug as defined by  
38 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

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

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

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

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

33 **Sec. 4.** RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c  
34 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and  
35 amended to read as follows:

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

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

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

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

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

37 (5) In sentencing a first-time offender the court may waive the  
38 imposition of a sentence within the sentence range and impose a  
39 sentence which may include up to ninety days of confinement in a

1 facility operated or utilized under contract by the county and a  
2 requirement that the offender refrain from committing new offenses.  
3 The sentence may also include up to two years of community supervision,  
4 which, in addition to crime-related prohibitions, may include  
5 requirements that the offender perform any one or more of the  
6 following:

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

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

11 (c) Pursue a prescribed, secular course of study or vocational  
12 training;

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

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

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

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

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

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

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

35 (b) If the midpoint of the standard range is greater than one year  
36 and the sentencing judge determines that the offender is eligible for  
37 this option and that the offender and the community will benefit from  
38 the use of the special drug offender sentencing alternative, the judge  
39 may waive imposition of a sentence within the standard range and impose

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

- 23 (i) Devote time to a specific employment or training;
  - 24 (ii) Remain within prescribed geographical boundaries and notify  
25 the court or the community corrections officer before any change in the  
26 offender's address or employment;
  - 27 (iii) Report as directed to a community corrections officer;
  - 28 (iv) Pay all court-ordered legal financial obligations;
  - 29 (v) Perform community service work;
  - 30 (vi) Stay out of areas designated by the sentencing judge.
- 31 (c) If the offender violates any of the sentence conditions in (b)  
32 of this subsection, the department shall impose sanctions  
33 administratively, with notice to the prosecuting attorney and the  
34 sentencing court. Upon motion of the court or the prosecuting  
35 attorney, a violation hearing shall be held by the court. If the court  
36 finds that conditions have been willfully violated, the court may  
37 impose confinement consisting of up to the remaining one-half of the  
38 midpoint of the standard range. All total confinement served during  
39 the period of community custody shall be credited to the offender,

1 regardless of whether the total confinement is served as a result of  
2 the original sentence, as a result of a sanction imposed by the  
3 department, or as a result of a violation found by the court. The term  
4 of community supervision shall be tolled by any period of time served  
5 in total confinement as a result of a violation found by the court.

6 (d) The department shall determine the rules for calculating the  
7 value of a day fine based on the offender's income and reasonable  
8 obligations which the offender has for the support of the offender and  
9 any dependents. These rules shall be developed in consultation with  
10 the administrator for the courts, the office of financial management,  
11 and the commission.

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

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

27 The report of the examination shall include at a minimum the  
28 following: The defendant's version of the facts and the official  
29 version of the facts, the defendant's offense history, an assessment of  
30 problems in addition to alleged deviant behaviors, the offender's  
31 social and employment situation, and other evaluation measures used.  
32 The report shall set forth the sources of the evaluator's information.

33 The examiner shall assess and report regarding the defendant's  
34 amenability to treatment and relative risk to the community. A  
35 proposed treatment plan shall be provided and shall include, at a  
36 minimum:

- 37 (A) Frequency and type of contact between offender and therapist;
- 38 (B) Specific issues to be addressed in the treatment and
- 39 description of planned treatment modalities;



1 (C) Monitoring plans, including any requirements regarding living  
2 conditions, lifestyle requirements, and monitoring by family members  
3 and others;

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

6 The court on its own motion may order, or on a motion by the state  
7 shall order, a second examination regarding the offender's amenability  
8 to treatment. The evaluator shall be selected by the party making the  
9 motion. The defendant shall pay the cost of any second examination  
10 ordered unless the court finds the defendant to be indigent in which  
11 case the state shall pay the cost.

12 (ii) After receipt of the reports, the court shall consider whether  
13 the offender and the community will benefit from use of this special  
14 sex offender sentencing alternative and consider the victim's opinion  
15 whether the offender should receive a treatment disposition under this  
16 subsection. If the court determines that this special sex offender  
17 sentencing alternative is appropriate, the court shall then impose a  
18 sentence within the sentence range. If this sentence is less than  
19 eleven years of confinement, the court may suspend the execution of the  
20 sentence and impose the following conditions of suspension:

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

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

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

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

5 (III) Report as directed to the court and a community corrections  
6 officer;

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

10 (V) Make recoupment to the victim for the cost of any counseling  
11 required as a result of the offender's crime; and

12 (C) Sex offenders sentenced under this special sex offender  
13 sentencing alternative are not eligible to accrue any earned early  
14 release time while serving a suspended sentence.

15 (iii) The sex offender therapist shall submit quarterly reports on  
16 the defendant's progress in treatment to the court and the parties.  
17 The report shall reference the treatment plan and include at a minimum  
18 the following: Dates of attendance, defendant's compliance with  
19 requirements, treatment activities, the defendant's relative progress  
20 in treatment, and any other material as specified by the court at  
21 sentencing.

22 (iv) At the time of sentencing, the court shall set a treatment  
23 termination hearing for three months prior to the anticipated date for  
24 completion of treatment. Prior to the treatment termination hearing,  
25 the treatment professional and community corrections officer shall  
26 submit written reports to the court and parties regarding the  
27 defendant's compliance with treatment and monitoring requirements, and  
28 recommendations regarding termination from treatment, including  
29 proposed community supervision conditions. Either party may request  
30 and the court may order another evaluation regarding the advisability  
31 of termination from treatment. The defendant shall pay the cost of any  
32 additional evaluation ordered unless the court finds the defendant to  
33 be indigent in which case the state shall pay the cost. At the  
34 treatment termination hearing the court may: (A) Modify conditions of  
35 community custody, and either (B) terminate treatment, or (C) extend  
36 treatment for up to the remaining period of community custody.

37 (v) If a violation of conditions occurs during community custody,  
38 the department shall either impose sanctions as provided for in RCW  
39 9.94A.205(2)(a) or refer the violation to the court and recommend

1 revocation of the suspended sentence as provided for in (a)(vi) of this  
2 subsection.

3 (vi) The court may revoke the suspended sentence at any time during  
4 the period of community custody and order execution of the sentence if:  
5 (A) The defendant violates the conditions of the suspended sentence, or  
6 (B) the court finds that the defendant is failing to make satisfactory  
7 progress in treatment. All confinement time served during the period  
8 of community custody shall be credited to the offender if the suspended  
9 sentence is revoked.

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

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

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

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

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

38 Except for an offender who has been convicted of a violation of RCW  
39 9A.44.040 or 9A.44.050, if the offender completes the treatment program

1 before the expiration of his or her term of confinement, the department  
2 of corrections may request the court to convert the balance of  
3 confinement to community supervision and to place conditions on the  
4 offender including crime-related prohibitions and requirements that the  
5 offender perform any one or more of the following:

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

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

10 (iii) Report as directed to the court and a community corrections  
11 officer;

12 (iv) Undergo available outpatient treatment.

13 If the offender violates any of the terms of his or her community  
14 supervision, the court may order the offender to serve out the balance  
15 of his or her community supervision term in confinement in the custody  
16 of the department of corrections.

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

21 (c) Offenders convicted and sentenced for a sex offense committed  
22 prior to July 1, 1987, may, subject to available funds, request an  
23 evaluation by the department of corrections to determine whether they  
24 are amenable to treatment. If the offender is determined to be  
25 amenable to treatment, the offender may request placement in a  
26 treatment program within a correctional facility operated by the  
27 department. Placement in such treatment program is subject to  
28 available funds.

29 (9)(a) When a court sentences a person to a term of total  
30 confinement to the custody of the department of corrections for an  
31 offense categorized as a sex offense or a serious violent offense  
32 committed after July 1, 1988, but before July 1, 1990, assault in the  
33 second degree, assault of a child in the second degree, any crime  
34 against a person where it is determined in accordance with RCW  
35 9.94A.125 that the defendant or an accomplice was armed with a deadly  
36 weapon at the time of commission, or any felony offense under chapter  
37 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
38 committed on or after July 1, 1988, the court shall in addition to the  
39 other terms of the sentence, sentence the offender to a one-year term

1 of community placement beginning either upon completion of the term of  
2 confinement or at such time as the offender is transferred to community  
3 custody in lieu of earned early release in accordance with RCW  
4 9.94A.150 (1) and (2). When the court sentences an offender under this  
5 subsection to the statutory maximum period of confinement then the  
6 community placement portion of the sentence shall consist entirely of  
7 such community custody to which the offender may become eligible, in  
8 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
9 custody actually served shall be credited against the community  
10 placement portion of the sentence.

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

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

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

35 (iii) The offender shall not possess or consume controlled  
36 substances except pursuant to lawfully issued prescriptions;

37 (iv) The offender shall pay supervision fees as determined by the  
38 department of corrections;

1 (v) The residence location and living arrangements are subject to  
2 the prior approval of the department of corrections during the period  
3 of community placement; and

4 (vi) The offender shall submit to affirmative acts necessary to  
5 monitor compliance with the orders of the court as required by the  
6 department.

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

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

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

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

16 (iv) The offender shall not consume alcohol;

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

18 or

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

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

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

38 (b) Unless a condition is waived by the court, the terms of  
39 community custody shall be the same as those provided for in subsection

1 (9)(b) of this section and may include those provided for in subsection  
2 (9)(c) of this section. As part of any sentence that includes a term  
3 of community custody imposed under this subsection, the court shall  
4 also require the offender to comply with any conditions imposed by the  
5 department of corrections under subsection (14) of this section.

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

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

23 (12) If a sentence imposed includes payment of a legal financial  
24 obligation, the sentence shall specify the total amount of the legal  
25 financial obligation owed, and shall require the offender to pay a  
26 specified monthly sum toward that legal financial obligation.  
27 Restitution to victims shall be paid prior to any other payments of  
28 monetary obligations. Any legal financial obligation that is imposed  
29 by the court may be collected by the department, which shall deliver  
30 the amount paid to the county clerk for credit. The offender's  
31 compliance with payment of legal financial obligations shall be  
32 supervised by the department for ten years following the entry of the  
33 judgment and sentence or ten years following the offender's release  
34 from total confinement. All monetary payments ordered shall be paid no  
35 later than ten years after the last date of release from confinement  
36 pursuant to a felony conviction or the date the sentence was entered  
37 unless the superior court extends the criminal judgment an additional  
38 ten years. If the legal financial obligations including crime victims'  
39 assessments are not paid during the initial ten-year period, the

1 superior court may extend jurisdiction under the criminal judgment an  
2 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and  
3 9.94A.145. If jurisdiction under the criminal judgment is extended,  
4 the department is not responsible for supervision of the offender  
5 during the subsequent period. Independent of the department, the party  
6 or entity to whom the legal financial obligation is owed shall have the  
7 authority to utilize any other remedies available to the party or  
8 entity to collect the legal financial obligation. Nothing in this  
9 section makes the department, the state, or any of its employees,  
10 agents, or other persons acting on their behalf liable under any  
11 circumstances for the payment of these legal financial obligations. If  
12 an order includes restitution as one of the monetary assessments, the  
13 county clerk shall make disbursements to victims named in the order.

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

18 (14) All offenders sentenced to terms involving community  
19 supervision, community service, community placement, or legal financial  
20 obligation shall be under the supervision of the department of  
21 corrections and shall follow explicitly the instructions and conditions  
22 of the department of corrections. The department may require an  
23 offender to perform affirmative acts it deems appropriate to monitor  
24 compliance with the conditions of the sentence imposed.

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

30 (b) For offenders sentenced to terms involving community custody  
31 for crimes committed on or after June 6, 1996, the department may  
32 include, in addition to the instructions in (a) of this subsection, any  
33 appropriate conditions of supervision, including but not limited to,  
34 prohibiting the offender from having contact with any other specified  
35 individuals or specific class of individuals. The conditions  
36 authorized under this subsection (14)(b) may be imposed by the  
37 department prior to or during an offender's community custody term. If  
38 a violation of conditions imposed by the court or the department  
39 pursuant to subsection (10) of this section occurs during community



1 custody, it shall be deemed a violation of community placement for the  
2 purposes of RCW 9.94A.207 and shall authorize the department to  
3 transfer an offender to a more restrictive confinement status as  
4 provided in RCW 9.94A.205. At any time prior to the completion of a  
5 sex offender's term of community custody, the department may recommend  
6 to the court that any or all of the conditions imposed by the court or  
7 the department pursuant to subsection (10) of this section be continued  
8 beyond the expiration of the offender's term of community custody as  
9 authorized in subsection (10)(c) of this section.

10 The department may require offenders to pay for special services  
11 rendered on or after July 25, 1993, including electronic monitoring,  
12 day reporting, and telephone reporting, dependent upon the offender's  
13 ability to pay. The department may pay for these services for  
14 offenders who are not able to pay.

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

25 (16) The sentencing court shall give the offender credit for all  
26 confinement time served before the sentencing if that confinement was  
27 solely in regard to the offense for which the offender is being  
28 sentenced.

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

34 (18) The court shall order restitution whenever the offender is  
35 convicted of a felony that results in injury to any person or damage to  
36 or loss of property, whether the offender is sentenced to confinement  
37 or placed under community supervision, unless extraordinary  
38 circumstances exist that make restitution inappropriate in the court's

1 judgment. The court shall set forth the extraordinary circumstances in  
2 the record if it does not order restitution.

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

10 (20) In any sentence of partial confinement, the court may require  
11 the defendant to serve the partial confinement in work release, in a  
12 program of home detention, on work crew, or in a combined program of  
13 work crew and home detention.

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

18 (22)(a) If the offense is not one for which the conviction results  
19 in the offender's being a persistent offender, the court shall, at the  
20 time of sentencing, impose as a condition of release such treatment,  
21 including the use of medroxyprogesterone acetate together with any  
22 other mental health or chemical dependency treatment, as the court  
23 finds appropriate to reduce the likelihood of the offender's commission  
24 of a subsequent sex offense upon release, for any of the following  
25 offenses:

26 (i) Rape in the first degree;

27 (ii) Rape in the second degree;

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

29 (iv) Child molestation in the first degree, if it is the person's  
30 second conviction for child molestation in the first degree.

31 (b)(i) At least thirty days before the department sets a release  
32 date for an offender who has had a treatment regimen imposed as a  
33 condition of release under (a) of this subsection, the offender must be  
34 brought back before the court for a hearing, including an examination  
35 by medical experts, for the purpose of determining whether to impose  
36 the regimen. At the hearing, the offender has the right to all due  
37 process rights including counsel, cross-examination, testimony,  
38 experts, and the provision of counsel if the offender is indigent, but  
39 not the presence of a jury.

1       (ii) At the hearing under (b)(i) of this subsection, the court  
2 shall determine, by a preponderance of the evidence, whether a proposed  
3 treatment regimen, including treatment with medroxyprogesterone  
4 acetate, makes it likely that the regimen will reduce the chance that  
5 the offender will commit a sex offense upon release. In making its  
6 determination, the court shall consider:

7       (A) Whether the offender has a mental abnormality as defined in RCW  
8 71.09.020;

9       (B) Whether the offender is likely to engage in predatory acts, as  
10 defined in RCW 71.09.020, if the regimen is not required; and

11       (C) Whether the regimen is likely to decrease the offender's  
12 likelihood to engage in predatory acts, as defined in RCW 71.09.020.

13       (c) If the court decides that the offender and the treatment  
14 regimen meet the criteria in (b) of this subsection, the court shall  
15 impose the requirement of the treatment regimen as a condition of  
16 release and the treatment must begin before the release of the  
17 offender. The court may set the treatment regimen period for as long  
18 as the court finds it necessary. If the court decides that the  
19 criteria are not met, then the court shall suspend the imposition of  
20 the treatment regimen, but may reimpose it if, following a hearing, the  
21 court finds the offender meets the criteria in (b)(ii) of this  
22 subsection. The offender, to the extent private resources are  
23 available, shall bear the cost of the treatment regimen.

24       (d) Imposition and successful use of the treatment regimen shall in  
25 no way otherwise reduce the time in confinement an offender would  
26 otherwise serve.

27       (e) The court may require the offender to return at any time in  
28 order for the court to monitor the progress and effect of the treatment  
29 regimen.

30       (f) An offender may appeal any determination made under this  
31 subsection, but a determination under this subsection is of record and  
32 the offender shall continue any treatment regimen imposed under this  
33 subsection pending a decision on the appeal.

34       (g) An offender may at any time seek early termination of a  
35 treatment regimen imposed under this subsection, but an early  
36 termination may not be granted unless, by clear and convincing  
37 evidence, the offender proves that the offender no longer has a mental  
38 abnormality, as defined in RCW 71.09.020, and that a continued

1 treatment regimen is not necessary to prevent the offender's commission  
2 of a predatory act, as defined in RCW 71.09.020.

3 (h) The offender may at any time agree to surgical alternatives to  
4 medroxyprogesterone acetate treatment if the offender voluntarily,  
5 knowingly, and intelligently petitions the court in writing.

6 (i) An offender who unlawfully stops treatment imposed under this  
7 subsection is guilty of a class B felony.

8 **Sec. 5.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c  
9 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each  
10 reenacted and amended to read as follows:

11 TABLE 2

12 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

13	XV	Aggravated Murder 1 (RCW 10.95.020)
14	XIV	Murder 1 (RCW 9A.32.030)
15		Homicide by abuse (RCW 9A.32.055)
16		Malicious explosion 1 (RCW 70.74.280(1))
17	XIII	Murder 2 (RCW 9A.32.050)
18		Malicious explosion 2 (RCW 70.74.280(2))
19		Malicious placement of an explosive 1 (RCW
20		70.74.270(1))
21	XII	Assault 1 (RCW 9A.36.011)
22		Assault of a Child 1 (RCW 9A.36.120)
23		Rape 1 (RCW 9A.44.040)
24		Rape of a Child 1 (RCW 9A.44.073)
25		Malicious placement of an imitation device
26		1 (RCW 70.74.272(1)(a))
27	XI	Rape 2 (RCW 9A.44.050)
28		Rape of a Child 2 (RCW 9A.44.076)
29		Manslaughter 1 (RCW 9A.32.060)
30	X	Kidnapping 1 (RCW 9A.40.020)
31		Child Molestation 1 (RCW 9A.44.083)
32		Malicious explosion 3 (RCW 70.74.280(3))
33		Over 18 and deliver heroin ( <del>(or)</del> ), <u>a</u>
34		narcotic from Schedule I or II, <u>or</u>

1                    flunitrazepam from Schedule IV to  
2                    someone under 18 (RCW 69.50.406)  
3                    Leading Organized Crime (RCW  
4                    9A.82.060(1)(a))  
5                    Indecent Liberties (with forcible  
6                    compulsion) (RCW 9A.44.100(1)(a))  
7                    IX Assault of a Child 2 (RCW 9A.36.130)  
8                    Robbery 1 (RCW 9A.56.200)  
9                    Explosive devices prohibited (RCW  
10                    70.74.180)  
11                    Malicious placement of an explosive 2 (RCW  
12                    70.74.270(2))  
13                    Over 18 and deliver narcotic from Schedule  
14                    III, IV, or V or a nonnarcotic except  
15                    for flunitrazepam from Schedule I-V to  
16                    someone under 18 and 3 years junior  
17                    (RCW 69.50.406)  
18                    Controlled Substance Homicide (RCW  
19                    69.50.415)  
20                    Sexual Exploitation (RCW 9.68A.040)  
21                    Inciting Criminal Profiteering (RCW  
22                    9A.82.060(1)(b))  
23                    Vehicular Homicide, by being under the  
24                    influence of intoxicating liquor or  
25                    any drug (RCW 46.61.520)  
26                    VIII Arson 1 (RCW 9A.48.020)  
27                    Promoting Prostitution 1 (RCW 9A.88.070)  
28                    Selling for profit (controlled or  
29                    counterfeit) any controlled substance  
30                    (RCW 69.50.410)  
31                    Manufacture, deliver, or possess with  
32                    intent to deliver heroin or cocaine  
33                    (RCW 69.50.401(a)(1)(i))  
34                    Manufacture, deliver, or possess with  
35                    intent to deliver methamphetamine (RCW  
36                    69.50.401(a)(1)(ii))

1 Possession of ephedrine or pseudoephedrine  
2 with intent to manufacture  
3 methamphetamine (RCW 69.50.440)  
4 Vehicular Homicide, by the operation of any  
5 vehicle in a reckless manner (RCW  
6 46.61.520)  
7 Manslaughter 2 (RCW 9A.32.070)

8 VII Burglary 1 (RCW 9A.52.020)  
9 Vehicular Homicide, by disregard for the  
10 safety of others (RCW 46.61.520)  
11 Introducing Contraband 1 (RCW 9A.76.140)  
12 Indecent Liberties (without forcible  
13 compulsion) (RCW 9A.44.100(1) (b) and  
14 (c))  
15 Child Molestation 2 (RCW 9A.44.086)  
16 Dealing in depictions of minor engaged in  
17 sexually explicit conduct (RCW  
18 9.68A.050)  
19 Sending, bringing into state depictions of  
20 minor engaged in sexually explicit  
21 conduct (RCW 9.68A.060)  
22 Involving a minor in drug dealing (RCW  
23 69.50.401(f))  
24 Drive-by Shooting (RCW 9A.36.045)  
25 Unlawful Possession of a Firearm in the  
26 first degree (RCW 9.41.040(1)(a))  
27 Malicious placement of an explosive 3 (RCW  
28 70.74.270(3))

29 VI Bribery (RCW 9A.68.010)  
30 Rape of a Child 3 (RCW 9A.44.079)  
31 Intimidating a Juror/Witness (RCW  
32 9A.72.110, 9A.72.130)  
33 Malicious placement of an imitation device  
34 2 (RCW 70.74.272(1)(b))  
35 Incest 1 (RCW 9A.64.020(1))  
36 Manufacture, deliver, or possess with  
37 intent to deliver narcotics from  
38 Schedule I or II (except heroin or

1 cocaine) or flunitrazepam from  
2 Schedule IV (RCW 69.50.401(a)(1)(i))  
3 Intimidating a Judge (RCW 9A.72.160)  
4 Bail Jumping with Murder 1 (RCW  
5 9A.76.170(2)(a))  
6 Theft of a Firearm (RCW 9A.56.300)  
7 V Persistent prison misbehavior (RCW  
8 9.94.070)  
9 Criminal Mistreatment 1 (RCW 9A.42.020)  
10 Abandonment of dependent person 1 (RCW  
11 9A.42.060)  
12 Rape 3 (RCW 9A.44.060)  
13 Sexual Misconduct with a Minor 1 (RCW  
14 9A.44.093)  
15 Child Molestation 3 (RCW 9A.44.089)  
16 Kidnapping 2 (RCW 9A.40.030)  
17 Extortion 1 (RCW 9A.56.120)  
18 Incest 2 (RCW 9A.64.020(2))  
19 Perjury 1 (RCW 9A.72.020)  
20 Extortionate Extension of Credit (RCW  
21 9A.82.020)  
22 Advancing money or property for  
23 extortionate extension of credit (RCW  
24 9A.82.030)  
25 Extortionate Means to Collect Extensions of  
26 Credit (RCW 9A.82.040)  
27 Rendering Criminal Assistance 1 (RCW  
28 9A.76.070)  
29 Bail Jumping with class A Felony (RCW  
30 9A.76.170(2)(b))  
31 Sexually Violating Human Remains (RCW  
32 9A.44.105)  
33 Delivery of imitation controlled substance  
34 by person eighteen or over to person  
35 under eighteen (RCW 69.52.030(2))  
36 Possession of a Stolen Firearm (RCW  
37 9A.56.310)

1 Unlawful termination of sex offender  
2 reoffense reduction treatment (RCW  
3 9.94A.120(22))

4 IV

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



1     III           Criminal Gang Intimidation (RCW 9A.46.120)  
2                   Criminal Mistreatment 2 (RCW 9A.42.030)  
3                   Abandonment of dependent person 2 (RCW  
4                   9A.42.070)  
5                   Extortion 2 (RCW 9A.56.130)  
6                   Unlawful Imprisonment (RCW 9A.40.040)  
7                   Assault 3 (RCW 9A.36.031)  
8                   Assault of a Child 3 (RCW 9A.36.140)  
9                   Custodial Assault (RCW 9A.36.100)  
10                  Unlawful possession of firearm in the  
11                  second degree (RCW 9.41.040(1)(b))  
12                  Harassment (RCW 9A.46.020)  
13                  Promoting Prostitution 2 (RCW 9A.88.080)  
14                  Willful Failure to Return from Work Release  
15                  (RCW 72.65.070)  
16                  Burglary 2 (RCW 9A.52.030)  
17                  Introducing Contraband 2 (RCW 9A.76.150)  
18                  Communication with a Minor for Immoral  
19                  Purposes (RCW 9.68A.090)  
20                  Patronizing a Juvenile Prostitute (RCW  
21                  9.68A.100)  
22                  Escape 2 (RCW 9A.76.120)  
23                  Perjury 2 (RCW 9A.72.030)  
24                  Bail Jumping with class B or C Felony (RCW  
25                  9A.76.170(2)(c))  
26                  Intimidating a Public Servant (RCW  
27                  9A.76.180)  
28                  Tampering with a Witness (RCW 9A.72.120)  
29                  Manufacture, deliver, or possess with  
30                  intent to deliver marijuana (RCW  
31                  69.50.401(a)(1)(iii))  
32                  Delivery of a material in lieu of a  
33                  controlled substance (RCW  
34                  69.50.401(c))  
35                  Manufacture, distribute, or possess with  
36                  intent to distribute an imitation  
37                  controlled substance (RCW  
38                  69.52.030(1))

1 Recklessly Trafficking in Stolen Property  
2 (RCW 9A.82.050(1))  
3 Theft of livestock 2 (RCW 9A.56.080)  
4 Securities Act violation (RCW 21.20.400)

5 II Unlawful Practice of Law (RCW 2.48.180)  
6 Malicious Mischief 1 (RCW 9A.48.070)  
7 Possession of Stolen Property 1 (RCW  
8 9A.56.150)  
9 Theft 1 (RCW 9A.56.030)  
10 Class B Felony Theft of Rental, Leased, or  
11 Lease-purchased Property (RCW  
12 9A.56.096(4))  
13 Trafficking in Insurance Claims (RCW  
14 48.30A.015)  
15 Unlicensed Practice of a Profession or  
16 Business (RCW 18.130.190(7))  
17 Health Care False Claims (RCW 48.80.030)  
18 Possession of controlled substance that is  
19 either heroin or narcotics from  
20 Schedule I or II or flunitrazepam from  
21 Schedule IV (RCW 69.50.401(d))  
22 Possession of phencyclidine (PCP) (RCW  
23 69.50.401(d))  
24 Create, deliver, or possess a counterfeit  
25 controlled substance (RCW  
26 69.50.401(b))  
27 Computer Trespass 1 (RCW 9A.52.110)  
28 Escape from Community Custody (RCW  
29 72.09.310)

30 I Theft 2 (RCW 9A.56.040)  
31 Class C Felony Theft of Rental, Leased, or  
32 Lease-purchased Property (RCW  
33 9A.56.096(4))  
34 Possession of Stolen Property 2 (RCW  
35 9A.56.160)  
36 Forgery (RCW 9A.60.020)  
37 Taking Motor Vehicle Without Permission  
38 (RCW 9A.56.070)

1 Vehicle Prowl 1 (RCW 9A.52.095)  
 2 Attempting to Elude a Pursuing Police  
 3 Vehicle (RCW 46.61.024)  
 4 Malicious Mischief 2 (RCW 9A.48.080)  
 5 Reckless Burning 1 (RCW 9A.48.040)  
 6 Unlawful Issuance of Checks or Drafts (RCW  
 7 9A.56.060)  
 8 Unlawful Use of Food Stamps (RCW 9.91.140  
 9 (2) and (3))  
 10 False Verification for Welfare (RCW  
 11 74.08.055)  
 12 Forged Prescription (RCW 69.41.020)  
 13 Forged Prescription for a Controlled  
 14 Substance (RCW 69.50.403)  
 15 Possess Controlled Substance that is a  
 16 Narcotic from Schedule III, IV, or V  
 17 or Non-narcotic from Schedule I-V  
 18 (except phencyclidine or  
 19 flunitrazepam) (RCW 69.50.401(d))

20 **Sec. 6.** RCW 13.40.0357 and 1996 c 205 s 6 are each amended to read  
 21 as follows:

22 **SCHEDULE A**

23 **DESCRIPTION AND OFFENSE CATEGORY**

24	<i>JUVENILE</i>	<i>JUVENILE DISPOSITION</i>
25	<i>DISPOSITION</i>	<i>CATEGORY FOR ATTEMPT,</i>
26	<i>OFFENSE</i>	<i>BAILJUMP, CONSPIRACY,</i>
27	<i>CATEGORY DESCRIPTION (RCW CITATION)</i>	<i>OR SOLICITATION</i>
28	.....	

29 ***Arson and Malicious Mischief***

30	<i>A Arson 1 (9A.48.020)</i>	<i>B+</i>
31	<i>B Arson 2 (9A.48.030)</i>	<i>C</i>
32	<i>C Reckless Burning 1 (9A.48.040)</i>	<i>D</i>
33	<i>D Reckless Burning 2 (9A.48.050)</i>	<i>E</i>
34	<i>B Malicious Mischief 1 (9A.48.070)</i>	<i>C</i>
35	<i>C Malicious Mischief 2 (9A.48.080)</i>	<i>D</i>

1	<i>D</i>	<i>Malicious Mischief 3 (&lt;\$50 is</i>	
2		<i>E class) (9A.48.090)</i>	<i>E</i>
3	<i>E</i>	<i>Tampering with Fire Alarm</i>	
4		<i>Apparatus (9.40.100)</i>	<i>E</i>
5	<i>A</i>	<i>Possession of Incendiary Device</i>	
6		<i>(9.40.120)</i>	<i>B+</i>
7		<b><i>Assault and Other Crimes</i></b>	
8		<b><i>Involving Physical Harm</i></b>	
9	<i>A</i>	<i>Assault 1 (9A.36.011)</i>	<i>B+</i>
10	<i>B+</i>	<i>Assault 2 (9A.36.021)</i>	<i>C+</i>
11	<i>C+</i>	<i>Assault 3 (9A.36.031)</i>	<i>D+</i>
12	<i>D+</i>	<i>Assault 4 (9A.36.041)</i>	<i>E</i>
13	<i>D+</i>	<i>Reckless Endangerment</i>	
14		<i>(9A.36.050)</i>	<i>E</i>
15	<i>C+</i>	<i>Promoting Suicide Attempt</i>	
16		<i>(9A.36.060)</i>	<i>D+</i>
17	<i>D+</i>	<i>Coercion (9A.36.070)</i>	<i>E</i>
18	<i>C+</i>	<i>Custodial Assault (9A.36.100)</i>	<i>D+</i>
19		<b><i>Burglary and Trespass</i></b>	
20	<i>B+</i>	<i>Burglary 1 (9A.52.020)</i>	<i>C+</i>
21	<i>B</i>	<i>Burglary 2 (9A.52.030)</i>	<i>C</i>
22	<i>D</i>	<i>Burglary Tools (Possession of)</i>	
23		<i>(9A.52.060)</i>	<i>E</i>
24	<i>D</i>	<i>Criminal Trespass 1 (9A.52.070)</i>	<i>E</i>
25	<i>E</i>	<i>Criminal Trespass 2 (9A.52.080)</i>	<i>E</i>
26	<i>D</i>	<i>Vehicle Prowling (9A.52.100)</i>	<i>E</i>
27		<b><i>Drugs</i></b>	
28	<i>E</i>	<i>Possession/Consumption of Alcohol</i>	
29		<i>(66.44.270)</i>	<i>E</i>
30	<i>C</i>	<i>Illegally Obtaining Legend Drug</i>	
31		<i>(69.41.020)</i>	<i>D</i>
32	<i>C+</i>	<i>Sale, Delivery, Possession of Legend</i>	
33		<i>Drug with Intent to Sell</i>	
34		<i>(69.41.030)</i>	<i>D+</i>
35	<i>E</i>	<i>Possession of Legend Drug</i>	
36		<i>(69.41.030)</i>	<i>E</i>

1	<b>B+</b>	<b>Violation of Uniform Controlled</b>	
2		<b>Substances Act - Narcotic ((<del>or</del>)),</b>	
3		<b><u>Methamphetamine, or Flunitrazepam</u> Sale</b>	
4		<b>(69.50.401(a)(1)(i) or (ii))</b>	<b>B+</b>
5	<b>C</b>	<b>Violation of Uniform Controlled</b>	
6		<b>Substances Act - Nonnarcotic Sale</b>	
7		<b>(69.50.401(a)(1)(iii))</b>	<b>C</b>
8	<b>E</b>	<b>Possession of Marihuana &lt;40 grams</b>	
9		<b>(69.50.401(e))</b>	<b>E</b>
10	<b>C</b>	<b>Fraudulently Obtaining Controlled</b>	
11		<b>Substance (69.50.403)</b>	<b>C</b>
12	<b>C+</b>	<b>Sale of Controlled Substance</b>	
13		<b>for Profit (69.50.410)</b>	<b>C+</b>
14	<b>E</b>	<b>Unlawful Inhalation (9.47A.020)</b>	<b>E</b>
15	<b>B</b>	<b>Violation of Uniform Controlled</b>	
16		<b>Substances Act - Narcotic ((<del>or</del>)),</b>	
17		<b><u>Methamphetamine, or Flunitrazepam</u></b>	
18		<b>Counterfeit Substances</b>	
19		<b>(69.50.401(b)(1)(i) or (ii))</b>	<b>B</b>
20	<b>C</b>	<b>Violation of Uniform Controlled</b>	
21		<b>Substances Act - Nonnarcotic</b>	
22		<b>Counterfeit Substances</b>	
23		<b>(69.50.401(b)(1) (iii), (iv),</b>	
24		<b>(v))</b>	<b>C</b>
25	<b>C</b>	<b>Violation of Uniform Controlled</b>	
26		<b>Substances Act - Possession of a</b>	
27		<b>Controlled Substance</b>	
28		<b>(69.50.401(d))</b>	<b>C</b>
29	<b>C</b>	<b>Violation of Uniform Controlled</b>	
30		<b>Substances Act - Possession of a</b>	
31		<b>Controlled Substance</b>	
32		<b>(69.50.401(c))</b>	<b>C</b>
33		<b><i>Firearms and Weapons</i></b>	
34	<b>E</b>	<b>Carrying Loaded Pistol Without</b>	
35		<b>Permit (9.41.050)</b>	<b>E</b>
36	<b>C</b>	<b>Possession of Firearms by</b>	
37		<b>Minor (&lt;18) (9.41.040(1) (b)((<del>iv</del>)))</b>	
38		<b>(iii))</b>	<b>C</b>

1	<i>D+</i>	<i>Possession of Dangerous Weapon</i>	
2		<i>(9.41.250)</i>	<i>E</i>
3	<i>D</i>	<i>Intimidating Another Person by use</i>	
4		<i>of Weapon (9.41.270)</i>	<i>E</i>
5		<b><i>Homicide</i></b>	
6	<i>A+</i>	<i>Murder 1 (9A.32.030)</i>	<i>A</i>
7	<i>A+</i>	<i>Murder 2 (9A.32.050)</i>	<i>B+</i>
8	<i>B+</i>	<i>Manslaughter 1 (9A.32.060)</i>	<i>C+</i>
9	<i>C+</i>	<i>Manslaughter 2 (9A.32.070)</i>	<i>D+</i>
10	<i>B+</i>	<i>Vehicular Homicide (46.61.520)</i>	<i>C+</i>
11		<b><i>Kidnapping</i></b>	
12	<i>A</i>	<i>Kidnap 1 (9A.40.020)</i>	<i>B+</i>
13	<i>B+</i>	<i>Kidnap 2 (9A.40.030)</i>	<i>C+</i>
14	<i>C+</i>	<i>Unlawful Imprisonment</i>	
15		<i>(9A.40.040)</i>	<i>D+</i>
16		<b><i>Obstructing Governmental Operation</i></b>	
17	<i>E</i>	<i>Obstructing a</i>	
18		<i>Law Enforcement Officer</i>	
19		<i>(9A.76.020)</i>	<i>E</i>
20	<i>E</i>	<i>Resisting Arrest (9A.76.040)</i>	<i>E</i>
21	<i>B</i>	<i>Introducing Contraband 1</i>	
22		<i>(9A.76.140)</i>	<i>C</i>
23	<i>C</i>	<i>Introducing Contraband 2</i>	
24		<i>(9A.76.150)</i>	<i>D</i>
25	<i>E</i>	<i>Introducing Contraband 3</i>	
26		<i>(9A.76.160)</i>	<i>E</i>
27	<i>B+</i>	<i>Intimidating a Public Servant</i>	
28		<i>(9A.76.180)</i>	<i>C+</i>
29	<i>B+</i>	<i>Intimidating a Witness</i>	
30		<i>(9A.72.110)</i>	<i>C+</i>
31		<b><i>Public Disturbance</i></b>	
32	<i>C+</i>	<i>Riot with Weapon (9A.84.010)</i>	<i>D+</i>
33	<i>D+</i>	<i>Riot Without Weapon</i>	
34		<i>(9A.84.010)</i>	<i>E</i>
35	<i>E</i>	<i>Failure to Disperse (9A.84.020)</i>	<i>E</i>
36	<i>E</i>	<i>Disorderly Conduct (9A.84.030)</i>	<i>E</i>

1		<b>Sex Crimes</b>	
2	A	<i>Rape 1 (9A.44.040)</i>	<b>B+</b>
3	A-	<i>Rape 2 (9A.44.050)</i>	<b>B+</b>
4	C+	<i>Rape 3 (9A.44.060)</i>	<b>D+</b>
5	A-	<i>Rape of a Child 1 (9A.44.073)</i>	<b>B+</b>
6	B	<i>Rape of a Child 2 (9A.44.076)</i>	<b>C+</b>
7	B	<i>Incest 1 (9A.64.020(1))</i>	<b>C</b>
8	C	<i>Incest 2 (9A.64.020(2))</i>	<b>D</b>
9	D+	<i>Indecent Exposure</i>	
10		<i>(Victim &lt;14) (9A.88.010)</i>	<b>E</b>
11	E	<i>Indecent Exposure</i>	
12		<i>(Victim 14 or over) (9A.88.010)</i>	<b>E</b>
13	B+	<i>Promoting Prostitution 1</i>	
14		<i>(9A.88.070)</i>	<b>C+</b>
15	C+	<i>Promoting Prostitution 2</i>	
16		<i>(9A.88.080)</i>	<b>D+</b>
17	E	<i>O &amp; A (Prostitution) (9A.88.030)</i>	<b>E</b>
18	B+	<i>Indecent Liberties (9A.44.100)</i>	<b>C+</b>
19	B+	<i>Child Molestation 1 (9A.44.083)</i>	<b>C+</b>
20	C+	<i>Child Molestation 2 (9A.44.086)</i>	<b>C</b>
21		<b>Theft, Robbery, Extortion, and Forgery</b>	
22	B	<i>Theft 1 (9A.56.030)</i>	<b>C</b>
23	C	<i>Theft 2 (9A.56.040)</i>	<b>D</b>
24	D	<i>Theft 3 (9A.56.050)</i>	<b>E</b>
25	B	<i>Theft of Livestock (9A.56.080)</i>	<b>C</b>
26	C	<i>Forgery (9A.60.020)</i>	<b>D</b>
27	A	<i>Robbery 1 (9A.56.200)</i>	<b>B+</b>
28	B+	<i>Robbery 2 (9A.56.210)</i>	<b>C+</b>
29	B+	<i>Extortion 1 (9A.56.120)</i>	<b>C+</b>
30	C+	<i>Extortion 2 (9A.56.130)</i>	<b>D+</b>
31	B	<i>Possession of Stolen Property 1</i>	
32		<i>(9A.56.150)</i>	<b>C</b>
33	C	<i>Possession of Stolen Property 2</i>	
34		<i>(9A.56.160)</i>	<b>D</b>
35	D	<i>Possession of Stolen Property 3</i>	
36		<i>(9A.56.170)</i>	<b>E</b>
37	C	<i>Taking Motor Vehicle Without</i>	
38		<i>Owner's Permission (9A.56.070)</i>	<b>D</b>

1		<b>Motor Vehicle Related Crimes</b>	
2	<i>E</i>	<i>Driving Without a License</i>	
3		<i>(46.20.021)</i>	<i>E</i>
4	<i>C</i>	<i>Hit and Run - Injury</i>	
5		<i>(46.52.020(4))</i>	<i>D</i>
6	<i>D</i>	<i>Hit and Run-Attended</i>	
7		<i>(46.52.020(5))</i>	<i>E</i>
8	<i>E</i>	<i>Hit and Run-Unattended</i>	
9		<i>(46.52.010)</i>	<i>E</i>
10	<i>C</i>	<i>Vehicular Assault (46.61.522)</i>	<i>D</i>
11	<i>C</i>	<i>Attempting to Elude Pursuing</i>	
12		<i>Police Vehicle (46.61.024)</i>	<i>D</i>
13	<i>E</i>	<i>Reckless Driving (46.61.500)</i>	<i>E</i>
14	<i>D</i>	<i>Driving While Under the Influence</i>	
15		<i>(46.61.502 and 46.61.504)</i>	<i>E</i>
16	<i>D</i>	<i>Vehicle Prowling (9A.52.100)</i>	<i>E</i>
17	<i>C</i>	<i>Taking Motor Vehicle Without</i>	
18		<i>Owner's Permission (9A.56.070)</i>	<i>D</i>
19		<b>Other</b>	
20	<i>B</i>	<i>Bomb Threat (9.61.160)</i>	<i>C</i>
21	<i>C</i>	<i>Escape 1 (9A.76.110)</i>	<i>C</i>
22	<i>C</i>	<i>Escape 2 (9A.76.120)</i>	<i>C</i>
23	<i>D</i>	<i>Escape 3 (9A.76.130)</i>	<i>E</i>
24	<i>E</i>	<i>Obscene, Harassing, Etc.,</i>	
25		<i>Phone Calls (9.61.230)</i>	<i>E</i>
26	<i>A</i>	<i>Other Offense Equivalent to an</i>	
27		<i>Adult Class A Felony</i>	<i>B+</i>
28	<i>B</i>	<i>Other Offense Equivalent to an</i>	
29		<i>Adult Class B Felony</i>	<i>C</i>
30	<i>C</i>	<i>Other Offense Equivalent to an</i>	
31		<i>Adult Class C Felony</i>	<i>D</i>
32	<i>D</i>	<i>Other Offense Equivalent to an</i>	
33		<i>Adult Gross Misdemeanor</i>	<i>E</i>
34	<i>E</i>	<i>Other Offense Equivalent to an</i>	
35		<i>Adult Misdemeanor</i>	<i>E</i>
36	<i>V</i>	<i>Violation of Order of Restitution,</i>	
37		<i>Community Supervision, or</i>	
38		<i>Confinement (13.40.200)</i>	<i>V</i>



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

3 1st escape or attempted escape during 12-month period - 4 weeks  
4 confinement

5 2nd escape or attempted escape during 12-month period - 8 weeks  
6 confinement

7 3rd and subsequent escape or attempted escape during 12-month  
8 period - 12 weeks confinement

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

11 **SCHEDULE B**

12 **PRIOR OFFENSE INCREASE FACTOR**

13 For use with all CURRENT OFFENSES occurring on or after July 1,  
14 1989.

15 **TIME SPAN**

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

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

33 **SCHEDULE C**

34 **CURRENT OFFENSE POINTS**

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

3 **AGE**

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

17 **JUVENILE SENTENCING STANDARDS**  
 18 **SCHEDULE D-1**

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

22 **MINOR/FIRST OFFENDER**

23 **OPTION A**  
 24 **STANDARD RANGE**

25	26 <i>Community</i>			
	27 <i>Points</i>	<i>Supervision</i>	<i>Service Hours</i>	<i>Fine</i>
28	.....			
29	<i>1-9</i>	<i>0-3 months</i>	<i>and/or 0-8</i>	<i>and/or 0-\$10</i>
30	<i>10-19</i>	<i>0-3 months</i>	<i>and/or 0-8</i>	<i>and/or 0-\$10</i>
31	<i>20-29</i>	<i>0-3 months</i>	<i>and/or 0-16</i>	<i>and/or 0-\$10</i>
32	<i>30-39</i>	<i>0-3 months</i>	<i>and/or 8-24</i>	<i>and/or 0-\$25</i>
33	<i>40-49</i>	<i>3-6 months</i>	<i>and/or 16-32</i>	<i>and/or 0-\$25</i>
34	<i>50-59</i>	<i>3-6 months</i>	<i>and/or 24-40</i>	<i>and/or 0-\$25</i>

1	<i>60-69</i>	<i>6-9 months</i>	<i>and/or 32-48</i>	<i>and/or 0-\$50</i>
2	<i>70-79</i>	<i>6-9 months</i>	<i>and/or 40-56</i>	<i>and/or 0-\$50</i>
3	<i>80-89</i>	<i>9-12 months</i>	<i>and/or 48-64</i>	<i>and/or 10-\$100</i>
4	<i>90-109</i>	<i>9-12 months</i>	<i>and/or 56-72</i>	<i>and/or 10-\$100</i>

5 **OR**

6 **OPTION B**  
7 **STATUTORY OPTION**

- 8 0-12 Months Community Supervision
- 9 0-150 Hours Community Service
- 10 0-100 Fine
- 11 Posting of a Probation Bond
- 12 A term of community supervision with a maximum of 150 hours, \$100.00
- 13 fine, and 12 months supervision.

14 **OR**

15 **OPTION C**  
16 **MANIFEST INJUSTICE**

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

22 **JUVENILE SENTENCING STANDARDS**  
23 **SCHEDULE D-2**

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

27 **MIDDLE OFFENDER**

28 **OPTION A**  
29 **STANDARD RANGE**

	<i>Points</i>	<i>Community Supervision</i>	<i>Community Service Hours</i>	<i>Fine</i>	<i>Confinement Days Weeks</i>
1					
2					
3					
4	.....				
5	1-9	0-3 months	and/or 0-8	and/or 0-\$10	and/or 0
6	10-19	0-3 months	and/or 0-8	and/or 0-\$10	and/or 0
7	20-29	0-3 months	and/or 0-16	and/or 0-\$10	and/or 0
8	30-39	0-3 months	and/or 8-24	and/or 0-\$25	and/or 2-4
9	40-49	3-6 months	and/or 16-32	and/or 0-\$25	and/or 2-4
10	50-59	3-6 months	and/or 24-40	and/or 0-\$25	and/or 5-10
11	60-69	6-9 months	and/or 32-48	and/or 0-\$50	and/or 5-10
12	70-79	6-9 months	and/or 40-56	and/or 0-\$50	and/or 10-20
13	80-89	9-12 months	and/or 48-64	and/or 0-\$100	and/or 10-20
14	90-109	9-12 months	and/or 56-72	and/or 0-\$100	and/or 15-30
15	110-129				8-12
16	130-149				13-16
17	150-199				21-28
18	200-249				30-40
19	250-299				52-65
20	300-374				80-100
21	375+				103-129

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

25 **OR**

26 **OPTION B**  
 27 **STATUTORY OPTION**

- 28 0-12 Months Community Supervision
- 29 0-150 Hours Community Service
- 30 0-100 Fine
- 31 Posting of a Probation Bond

32 If the offender has less than 110 points, the court may impose a  
 33 determinate disposition of community supervision and/or up to 30 days  
 34 confinement; in which case, if confinement has been imposed, the court  
 35 shall state either aggravating or mitigating factors as set forth in  
 36 RCW 13.40.150.

37 If the middle offender has 110 points or more, the court may impose  
 38 a disposition under option A and may suspend the disposition on the  
 39 condition that the offender serve up to thirty days of confinement and

1 follow all conditions of community supervision. If the offender fails  
2 to comply with the terms of community supervision, the court may impose  
3 sanctions pursuant to RCW 13.40.200 or may revoke the suspended  
4 disposition and order execution of the disposition. If the court  
5 imposes confinement for offenders with 110 points or more, the court  
6 shall state either aggravating or mitigating factors set forth in RCW  
7 13.40.150.

8 OR

9 OPTION C

10 MANIFEST INJUSTICE

11 If the court determines that a disposition under A or B would  
12 effectuate a manifest injustice, the court shall sentence the juvenile  
13 to a maximum term and the provisions of RCW 13.40.030(2) shall be used  
14 to determine the range.

15 JUVENILE SENTENCING STANDARDS

16 SCHEDULE D-3

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

20 SERIOUS OFFENDER

21 OPTION A

22 STANDARD RANGE

23 *Points* *Institution Time*

24 .....

25 <i>0-129</i>	<i>8-12 weeks</i>
26 <i>130-149</i>	<i>13-16 weeks</i>
27 <i>150-199</i>	<i>21-28 weeks</i>
28 <i>200-249</i>	<i>30-40 weeks</i>
29 <i>250-299</i>	<i>52-65 weeks</i>
30 <i>300-374</i>	<i>80-100 weeks</i>
31 <i>375+</i>	<i>103-129 weeks</i>
32 <i>All A+ Offenses</i>	<i>180-224 weeks</i>

33 OR

1   **OPTION B**

2   **MANIFEST INJUSTICE**

3   A disposition outside the standard range shall be determined and shall  
4   be comprised of confinement or community supervision including posting  
5   a probation bond or a combination thereof.   When a judge finds a  
6   manifest injustice and imposes a sentence of confinement exceeding 30  
7   days, the court shall sentence the juvenile to a maximum term, and the  
8   provisions of RCW 13.40.030(2) shall be used to determine the range.

9           **Sec. 7.**   RCW 9A.44.050 and 1997 c 392 s 514 are each amended to  
10   read as follows:

11           (1) A person is guilty of rape in the second degree when, under  
12   circumstances not constituting rape in the first degree, the person  
13   engages in sexual intercourse with another person:

14           (a) By forcible compulsion;

15           (b) When the victim is incapable of consent by reason of being  
16   physically helpless or mentally incapacitated, including controlled  
17   substance-induced physical helplessness or mental incapacity caused by  
18   the perpetrator of the rape;

19           (c) When the victim is developmentally disabled and the perpetrator  
20   is a person who is not married to the victim and who has supervisory  
21   authority over the victim;

22           (d) When the perpetrator is a health care provider, the victim is  
23   a client or patient, and the sexual intercourse occurs during a  
24   treatment session, consultation, interview, or examination. It is an  
25   affirmative defense that the defendant must prove by a preponderance of  
26   the evidence that the client or patient consented to the sexual  
27   intercourse with the knowledge that the sexual intercourse was not for  
28   the purpose of treatment;

29           (e) When the victim is a resident of a facility for mentally  
30   disordered or chemically dependent persons and the perpetrator is a  
31   person who is not married to the victim and has supervisory authority  
32   over the victim; or

33           (f) When the victim is a frail elder or vulnerable adult and the  
34   perpetrator is a person who is not married to the victim and who has a  
35   significant relationship with the victim.

36           (2) Rape in the second degree is a class A felony.

1       **Sec. 8.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to  
2 read as follows:

3       (1) A person is guilty of indecent liberties when he or she  
4 knowingly causes another person who is not his or her spouse to have  
5 sexual contact with him or her or another:

6       (a) By forcible compulsion;

7       (b) When the other person is incapable of consent by reason of  
8 being mentally defective, mentally incapacitated, or physically  
9 helpless, including controlled substance-induced physical helplessness  
10 or mental incapacity caused by the perpetrator of the rape;

11       (c) When the victim is developmentally disabled and the perpetrator  
12 is a person who is not married to the victim and who has supervisory  
13 authority over the victim;

14       (d) When the perpetrator is a health care provider, the victim is  
15 a client or patient, and the sexual contact occurs during a treatment  
16 session, consultation, interview, or examination. It is an affirmative  
17 defense that the defendant must prove by a preponderance of the  
18 evidence that the client or patient consented to the sexual contact  
19 with the knowledge that the sexual contact was not for the purpose of  
20 treatment;

21       (e) When the victim is a resident of a facility for mentally  
22 disordered or chemically dependent persons and the perpetrator is a  
23 person who is not married to the victim and has supervisory authority  
24 over the victim; or

25       (f) When the victim is a frail elder or vulnerable adult and the  
26 perpetrator is a person who is not married to the victim and who has a  
27 significant relationship with the victim.

28       (2) Indecent liberties is a class B felony.

29       NEW SECTION. **Sec. 9.** A new section is added to chapter 9A.44 RCW  
30 to read as follows:

31       Rape crisis centers, law enforcement, and hospital emergency rooms  
32 shall provide to all personnel investigating cases of sexual assault  
33 training on how to recognize the presence of sedating substances, how  
34 to test for such substances, and the appropriate chain of custody  
35 procedure to follow so that such evidence may be used in a court of

1 law. The training required by this section may be incorporated into  
2 existing training programs.

--- END ---