
HOUSE BILL 1063

State of Washington 59th Legislature 2005 Regular Session

By Representatives Sommers and Kenney; by request of Office of
Financial Management

Read first time 01/12/2005. Referred to Committee on Criminal
Justice & Corrections.

1 AN ACT Relating to sentencing and supervision of adult offenders;
2 amending RCW 9.94A.501, 9.92.060, 9.95.204, 9.95.210, 9.95.214,
3 10.05.170, 35.20.255, 9.94A.728, 9.94A.728, 9.94A.030, 9.94A.340,
4 9.94A.500, 9.94A.530, 9.94A.533, 9.94A.585, 9.94A.680, and 9.94A.731;
5 reenacting and amending RCW 9.94A.505, 9.94A.515, and 9.94A.525; adding
6 new sections to chapter 9.94A RCW; creating a new section; prescribing
7 penalties; providing an effective date; providing an expiration date;
8 and declaring an emergency.

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

10 **Sec. 1.** RCW 9.94A.501 and 2003 c 379 s 3 are each amended to read
11 as follows:

12 (1) When the department performs a risk assessment pursuant to RCW
13 9.94A.500, or to determine a person's conditions of supervision, the
14 risk assessment shall classify the offender or probationer into one of
15 at least four risk categories.

16 (2) The department shall supervise every offender sentenced to a
17 term of community custody, community placement, or community
18 supervision and every misdemeanor and gross misdemeanor probationer

1 ordered to probation under the supervision of the department pursuant
2 to RCW 9.92.060, 9.95.204, or 9.95.210:

3 (a) Whose risk assessment places that offender or probationer in
4 one of the two highest risk categories; or

5 (b) Regardless of the offender's or probationer's risk category if:

6 (i) The offender's or probationer's current conviction is for:

7 (A) A sex offense; or

8 (B) A violent offense(~~(+~~

9 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

10 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

11 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

12 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~
13 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
14 ~~intent to deliver methamphetamine; or~~

15 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~
16 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a~~
17 ~~minor))));~~

18 (ii) The offender or probationer has a prior conviction for:

19 (A) A sex offense; or

20 (B) A violent offense(~~(+~~

21 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

22 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

23 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

24 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~
25 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
26 ~~intent to deliver methamphetamine; or~~

27 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~
28 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a~~
29 ~~minor))));~~

30 (iii) (~~The conditions of the offender's community custody,~~
31 ~~community placement, or community supervision include chemical~~
32 ~~dependency treatment;~~

33 ~~(iv))~~) The offender was sentenced under RCW 9.94A.650, 9.94A.660,
34 or 9.94A.670; or

35 (~~(v))~~) (iv) The offender or probationer is subject to supervision
36 pursuant to RCW 9.94A.745.

37 (3) The department is not authorized to, and may not, supervise any
38 offender sentenced to a term of community custody, community placement,

1 or community supervision, or any probationer, unless the offender or
2 probationer is one for whom supervision is required under subsection
3 (2) of this section.

4 (4) This section does not apply to offenders sentenced under
5 section 12 of this act.

6 (5) This section expires July 1, 2010.

7 **Sec. 2.** RCW 9.92.060 and 1996 c 298 s 5 are each amended to read
8 as follows:

9 (1) Whenever any person is convicted of any crime except murder,
10 burglary in the first degree, arson in the first degree, robbery, rape
11 of a child, or rape, the superior court may, in its discretion, at the
12 time of imposing sentence upon such person, direct that such sentence
13 be stayed and suspended until otherwise ordered by the superior court,
14 and that the sentenced person be placed under the charge of a community
15 corrections officer employed by the department of corrections, or if
16 the county elects to assume responsibility for the supervision of all
17 superior court misdemeanor probationers a probation officer employed
18 or contracted for by the county, upon such terms as the superior court
19 may determine.

20 (2) As a condition to suspension of sentence, the superior court
21 shall require the payment of the penalty assessment required by RCW
22 7.68.035. In addition, the superior court may require the convicted
23 person to make such monetary payments, on such terms as the superior
24 court deems appropriate under the circumstances, as are necessary: (a)
25 To comply with any order of the court for the payment of family
26 support; (b) to make restitution to any person or persons who may have
27 suffered loss or damage by reason of the commission of the crime in
28 question or when the offender pleads guilty to a lesser offense or
29 fewer offenses and agrees with the prosecutor's recommendation that the
30 offender be required to pay restitution to a victim of an offense or
31 offenses which are not prosecuted pursuant to a plea agreement; (c) to
32 pay any fine imposed and not suspended and the court or other costs
33 incurred in the prosecution of the case, including reimbursement of the
34 state for costs of extradition if return to this state by extradition
35 was required; and (d) to contribute to a county or interlocal drug
36 fund.

1 (3) As a condition of the suspended sentence, the superior court
2 may order the probationer to report to the secretary of corrections or
3 such officer as the secretary may designate and as a condition of the
4 probation to follow the instructions of the secretary. If the county
5 legislative authority has elected to assume responsibility for the
6 supervision of superior court misdemeanor probationers within its
7 jurisdiction, the superior court misdemeanor probationer shall report
8 to a probation officer employed or contracted for by the county. In
9 cases where a superior court misdemeanor probationer is sentenced in
10 one county, but resides within another county, there must be provisions
11 for the probationer to report to the agency having supervision
12 responsibility for the probationer's county of residence.

13 (4) If restitution to the victim has been ordered under subsection
14 (2)(b) of this section and the superior court has ordered supervision,
15 the officer supervising the probationer shall make a reasonable effort
16 to ascertain whether restitution has been made as ordered. If the
17 superior court has ordered supervision and restitution has not been
18 made, the officer shall inform the prosecutor of that violation of the
19 terms of the suspended sentence not less than three months prior to the
20 termination of the suspended sentence.

21 (5) The provisions of RCW 9.94A.501 apply to sentences imposed
22 under this section.

23 NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW
24 to read as follows:

25 (1) The department may supervise nonfelony offenders transferred to
26 Washington pursuant to RCW 9.94A.745, the interstate compact for adult
27 offender supervision, and shall supervise these offenders according to
28 the provisions of this chapter.

29 (2) The department shall process applications for interstate
30 transfer of felony and nonfelony offenders pursuant to RCW 9.94A.745,
31 the interstate compact for adult offender supervision, and may charge
32 offenders a reasonable fee for processing the application.

33 **Sec. 4.** RCW 9.95.204 and 1996 c 298 s 1 are each amended to read
34 as follows:

35 (1) When a superior court places a defendant convicted of a

1 misdemeanor or gross misdemeanor on probation and orders supervision
2 under RCW 9.92.060 or 9.95.210, the department of corrections has
3 initial responsibility for supervision of that defendant.

4 (2) A county legislative authority may assume responsibility for
5 the supervision of all defendants within its jurisdiction who have been
6 convicted of a misdemeanor or gross misdemeanor and sentenced to
7 probation by a superior court. The assumption of responsibility shall
8 be made by contract with the department of corrections on a biennial
9 basis.

10 (3) If a county assumes supervision responsibility, the county
11 shall supervise all superior court misdemeanant probationers within
12 that county for the duration of the biennium, as set forth in the
13 contract with the department of corrections.

14 (4) A contract between a county legislative authority and the
15 department of corrections for the transfer of supervision
16 responsibility must include, at a minimum, the following provisions:

17 (a) The county's agreement to supervise all misdemeanant
18 probationers who are sentenced by a superior court within that county
19 and who reside within that county;

20 (b) A reciprocal agreement regarding the supervision of superior
21 court misdemeanant probationers sentenced in one county but who reside
22 in another county;

23 (c) The county's agreement to comply with the minimum standards for
24 classification and supervision of offenders as required under RCW
25 9.95.206;

26 (d) The amount of funds available from the department of
27 corrections to the county for supervision of superior court
28 misdemeanant probationers, calculated according to a formula
29 established by the department of corrections;

30 (e) A method for the payment of funds by the department of
31 corrections to the county;

32 (f) The county's agreement that any funds received by the county
33 under the contract will be expended only to cover costs of supervision
34 of superior court misdemeanant probationers;

35 (g) The county's agreement to account to the department of
36 corrections for the expenditure of all funds received under the
37 contract and to submit to audits for compliance with the supervision
38 standards and financial requirements of this section;

1 (h) Provisions regarding rights and remedies in the event of a
2 possible breach of contract or default by either party; and

3 (i) Provisions allowing for voluntary termination of the contract
4 by either party, with good cause, after sixty days' written notice.

5 (5) If the contract between the county and the department of
6 corrections is terminated for any reason, the department of corrections
7 shall reassume responsibility for supervision of superior court
8 misdemeanor probationers within that county. In such an event, the
9 department of corrections retains any and all rights and remedies
10 available by law and under the contract.

11 (6) The state of Washington, the department of corrections and its
12 employees, community corrections officers, and volunteers who assist
13 community corrections officers are not liable for any harm caused by
14 the actions of a superior court misdemeanor probationer who is under
15 the supervision of a county. A county, its probation department and
16 employees, probation officers, and volunteers who assist probation
17 officers are not liable for any harm caused by the actions of a
18 superior court misdemeanor probationer who is under the supervision of
19 the department of corrections. This subsection applies regardless of
20 whether the supervising entity is in compliance with the standards of
21 supervision at the time of the misdemeanor probationer's actions.

22 (7) The state of Washington, the department of corrections and its
23 employees, community corrections officers, any county under contract
24 with the department of corrections pursuant to this section and its
25 employees, probation officers, and volunteers who assist community
26 corrections officers and probation officers in the superior court
27 misdemeanor probation program are not liable for civil damages
28 resulting from any act or omission in the rendering of superior court
29 misdemeanor probation activities unless the act or omission
30 constitutes gross negligence. For purposes of this section,
31 "volunteers" is defined according to RCW 51.12.035.

32 (8) If a misdemeanor probationer requests permission to travel or
33 transfer to another state, the assigned probation officer employed or
34 contracted for by the county shall determine whether the request is
35 subject to RCW 9.94A.745, the interstate compact for adult offender
36 supervision. If the request is subject to the compact, the probation
37 officer shall:

1 (a) Notify the department of corrections of the probationer's
2 request;

3 (b) Provide the department of corrections with the supporting
4 documentation it requests for processing an application for transfer;

5 (c) Notify the probationer of the fee due to the department of
6 corrections for processing an application under the compact;

7 (d) Cease supervision of the probationer while another state
8 supervises the probationer pursuant to the compact; and

9 (e) Resume supervision if the probationer returns to this state
10 before the term of probation expires. The probationer shall receive
11 credit for time served while being supervised by another state.

12 (9) The provisions of RCW 9.94A.501 apply to sentences imposed
13 under this section.

14 **Sec. 5.** RCW 9.95.210 and 1996 c 298 s 3 are each amended to read
15 as follows:

16 (1) In granting probation, the superior court may suspend the
17 imposition or the execution of the sentence and may direct that the
18 suspension may continue upon such conditions and for such time as it
19 shall designate, not exceeding the maximum term of sentence or two
20 years, whichever is longer.

21 (2) In the order granting probation and as a condition thereof, the
22 superior court may in its discretion imprison the defendant in the
23 county jail for a period not exceeding one year and may fine the
24 defendant any sum not exceeding the statutory limit for the offense
25 committed, and court costs. As a condition of probation, the superior
26 court shall require the payment of the penalty assessment required by
27 RCW 7.68.035. The superior court may also require the defendant to
28 make such monetary payments, on such terms as it deems appropriate
29 under the circumstances, as are necessary: (a) To comply with any
30 order of the court for the payment of family support; (b) to make
31 restitution to any person or persons who may have suffered loss or
32 damage by reason of the commission of the crime in question or when the
33 offender pleads guilty to a lesser offense or fewer offenses and agrees
34 with the prosecutor's recommendation that the offender be required to
35 pay restitution to a victim of an offense or offenses which are not
36 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be
37 imposed and court costs, including reimbursement of the state for costs

1 of extradition if return to this state by extradition was required; (d)
2 following consideration of the financial condition of the person
3 subject to possible electronic monitoring, to pay for the costs of
4 electronic monitoring if that monitoring was required by the court as
5 a condition of release from custody or as a condition of probation; (e)
6 to contribute to a county or interlocal drug fund; and (f) to make
7 restitution to a public agency for the costs of an emergency response
8 under RCW 38.52.430, and may require bonds for the faithful observance
9 of any and all conditions imposed in the probation.

10 (3) The superior court shall order restitution in all cases where
11 the victim is entitled to benefits under the crime victims'
12 compensation act, chapter 7.68 RCW. If the superior court does not
13 order restitution and the victim of the crime has been determined to be
14 entitled to benefits under the crime victims' compensation act, the
15 department of labor and industries, as administrator of the crime
16 victims' compensation program, may petition the superior court within
17 one year of imposition of the sentence for entry of a restitution
18 order. Upon receipt of a petition from the department of labor and
19 industries, the superior court shall hold a restitution hearing and
20 shall enter a restitution order.

21 (4) In granting probation, the superior court may order the
22 probationer to report to the secretary of corrections or such officer
23 as the secretary may designate and as a condition of the probation to
24 follow the instructions of the secretary. If the county legislative
25 authority has elected to assume responsibility for the supervision of
26 superior court misdemeanor probationers within its jurisdiction, the
27 superior court misdemeanor probationer shall report to a probation
28 officer employed or contracted for by the county. In cases where a
29 superior court misdemeanor probationer is sentenced in one county, but
30 resides within another county, there must be provisions for the
31 probationer to report to the agency having supervision responsibility
32 for the probationer's county of residence.

33 (5) If the probationer has been ordered to make restitution and the
34 superior court has ordered supervision, the officer supervising the
35 probationer shall make a reasonable effort to ascertain whether
36 restitution has been made. If the superior court has ordered
37 supervision and restitution has not been made as ordered, the officer
38 shall inform the prosecutor of that violation of the terms of probation

1 not less than three months prior to the termination of the probation
2 period. The secretary of corrections will promulgate rules and
3 regulations for the conduct of the person during the term of probation.
4 For defendants found guilty in district court, like functions as the
5 secretary performs in regard to probation may be performed by probation
6 officers employed for that purpose by the county legislative authority
7 of the county wherein the court is located.

8 (6) The provisions of RCW 9.94A.501 apply to sentences imposed
9 under this section.

10 **Sec. 6.** RCW 9.95.214 and 1996 c 298 s 4 are each amended to read
11 as follows:

12 Whenever a defendant convicted of a misdemeanor or gross
13 misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and
14 the defendant is supervised by the department of corrections or a
15 county probation department, the department or county probation
16 department may assess and collect from the defendant for the duration
17 of the term of supervision a monthly assessment not to exceed one
18 hundred dollars per month. This assessment shall be paid to the agency
19 supervising the defendant and shall be applied, along with funds
20 appropriated by the legislature, toward the payment or part payment of
21 the cost of supervising the defendant. The department or county
22 probation department shall suspend the assessment while the defendant
23 is being supervised by another state pursuant to RCW 9.94A.745, the
24 interstate compact for adult offender supervision.

25 **Sec. 7.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to read
26 as follows:

27 As a condition of granting deferred prosecution, the court may
28 order supervision of the petitioner during the period of deferral and
29 may levy a monthly assessment upon the petitioner as provided in RCW
30 10.64.120. The court shall suspend the assessment while the petitioner
31 is being supervised by another state pursuant to RCW 9.94A.745, the
32 interstate compact for adult offender supervision. In a jurisdiction
33 with a probation department, the court may appoint the probation
34 department to supervise the petitioner. In a jurisdiction without a
35 probation department, the court may appoint an appropriate person or

1 agency to supervise the petitioner. A supervisor appointed under this
2 section shall be required to do at least the following:

3 (1) If the charge for which deferral is granted relates to
4 operation of a motor vehicle, at least once every six months request
5 from the department of licensing an abstract of the petitioner's
6 driving record; (~~and~~)

7 (2) At least once every month make contact with the petitioner or
8 with any agency to which the petitioner has been directed for treatment
9 as a part of the deferral; and

10 (3) If a petitioner requests permission to travel or transfer to
11 another state, determine whether the request is subject to RCW
12 9.94A.745, the interstate compact for adult offender supervision. If
13 the request is subject to the compact, the supervisor shall:

14 (a) Notify the department of corrections of the petitioner's
15 request;

16 (b) Provide the department of corrections with the supporting
17 documentation it requests for processing an application for transfer;

18 (c) Notify the petitioner of the fee due to the department of
19 corrections for processing an application under the compact;

20 (d) Cease supervision of the petitioner while another state
21 supervises the petitioner pursuant to the compact; and

22 (e) Resume supervision if the petitioner returns to this state
23 before the period of deferral expires. The petitioner shall receive
24 credit for time served while being supervised by another state.

25 **Sec. 8.** RCW 35.20.255 and 2001 c 94 s 3 are each amended to read
26 as follows:

27 (1) Judges of the municipal court, in their discretion, shall have
28 the power in all criminal proceedings within their jurisdiction
29 including violations of city ordinances, to defer imposition of any
30 sentence, suspend all or part of any sentence including installment
31 payment of fines, fix the terms of any such deferral or suspension, and
32 provide for such probation as in their opinion is reasonable and
33 necessary under the circumstances of the case, but in no case shall it
34 extend for more than five years from the date of conviction for a
35 defendant to be sentenced under RCW 46.61.5055 and two years from the
36 date of conviction for all other offenses. A defendant who has been
37 sentenced, or whose sentence has been deferred, and who then fails to

1 appear for any hearing to address the defendant's compliance with the
2 terms of probation when ordered to do so by the court, shall have the
3 term of probation tolled until such time as the defendant makes his or
4 her presence known to the court on the record. However, the
5 jurisdiction period in this section does not apply to the enforcement
6 of orders issued under RCW 46.20.720. Any time before entering an
7 order terminating probation, the court may modify or revoke its order
8 suspending or deferring the imposition or execution of the sentence.

9 (2) If a defendant whose sentence has been deferred requests
10 permission to travel or transfer to another state, the director of
11 probation services or a designee of the director shall determine
12 whether such travel is subject to RCW 9.94A.745, the interstate compact
13 for adult offender supervision. If such travel is subject to the
14 compact, the director or designee shall:

15 (a) Notify the department of corrections of the defendant's
16 request;

17 (b) Provide the department of corrections with the supporting
18 documentation it requests for processing an application for transfer;

19 (c) Notify the defendant of the fee due to the department of
20 corrections for processing an application under the compact;

21 (d) Cease supervision of the defendant while another state
22 supervises the defendant pursuant to the compact; and

23 (e) Resume supervision of the defendant if the defendant returns to
24 this state before the period of deferral expires. The defendant shall
25 receive credit for time served while being supervised by another state.

26 **Sec. 9.** RCW 9.94A.728 and 2003 c 379 s 1 are each amended to read
27 as follows:

28 No person serving a sentence imposed pursuant to this chapter and
29 committed to the custody of the department shall leave the confines of
30 the correctional facility or be released prior to the expiration of the
31 sentence except as follows:

32 (1) Except as otherwise provided for in subsection (2) of this
33 section, the term of the sentence of an offender committed to a
34 correctional facility operated by the department may be reduced by
35 earned release time in accordance with procedures that shall be
36 developed and promulgated by the correctional agency having
37 jurisdiction in which the offender is confined. The earned release

1 time shall be for good behavior and good performance, as determined by
2 the correctional agency having jurisdiction. The correctional agency
3 shall not credit the offender with earned release credits in advance of
4 the offender actually earning the credits. Any program established
5 pursuant to this section shall allow an offender to earn early release
6 credits for presentence incarceration. If an offender is transferred
7 from a county jail to the department, the administrator of a county
8 jail facility shall certify to the department the amount of time spent
9 in custody at the facility and the amount of earned release time. An
10 offender who has been convicted of a felony committed after July 23,
11 1995, that involves any applicable deadly weapon enhancements under RCW
12 9.94A.533 (3) or (4), or both, shall not receive any good time credits
13 or earned release time for that portion of his or her sentence that
14 results from any deadly weapon enhancements.

15 (a) In the case of an offender convicted of a serious violent
16 offense, or a sex offense that is a class A felony, committed on or
17 after July 1, 1990, and before July 1, 2003, the aggregate earned
18 release time may not exceed fifteen percent of the sentence. In the
19 case of an offender convicted of a serious violent offense, or a sex
20 offense that is a class A felony, committed on or after July 1, 2003,
21 the aggregate earned release time may not exceed ten percent of the
22 sentence.

23 (b)(i) In the case of an offender who qualifies under (b)(ii) of
24 this subsection, the aggregate earned release time may not exceed fifty
25 percent of the sentence.

26 (ii) An offender is qualified to earn up to fifty percent of
27 aggregate earned release time under this subsection (1)(b) if he or
28 she:

29 (A) Is classified in one of the two lowest risk categories under
30 (b)(iii) of this subsection;

31 (B) Is not confined pursuant to a sentence for:

32 (I) A sex offense; or

33 (II) A violent offense(†

34 ~~(III) A crime against persons as defined in RCW 9.94A.411;~~

35 ~~(IV) A felony that is domestic violence as defined in RCW~~
36 ~~10.99.020;~~

37 ~~(V) A violation of RCW 9A.52.025 (residential burglary);~~

1 ~~(VI) A violation of, or an attempt, solicitation, or conspiracy to~~
2 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
3 ~~intent to deliver methamphetamine; or~~

4 ~~(VII) A violation of, or an attempt, solicitation, or conspiracy to~~
5 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a~~
6 ~~minor)); and~~

7 (C) Has no prior conviction for:

8 (I) A sex offense; or

9 (II) A violent offense(~~(~~;

10 ~~(III) A crime against persons as defined in RCW 9.94A.411;~~

11 ~~(IV) A felony that is domestic violence as defined in RCW~~
12 ~~10.99.020;~~

13 ~~(V) A violation of RCW 9A.52.025 (residential burglary);~~

14 ~~(VI) A violation of, or an attempt, solicitation, or conspiracy to~~
15 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
16 ~~intent to deliver methamphetamine; or~~

17 ~~(VII) A violation of, or an attempt, solicitation, or conspiracy to~~
18 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a~~
19 ~~minor)))).~~

20 (iii) For purposes of determining an offender's eligibility under
21 this subsection (1)(b), the department shall perform a risk assessment
22 of every offender committed to a correctional facility operated by the
23 department who has no current or prior conviction for a sex
24 offense(~~(~~) or a violent offense(~~(~~, ~~a crime against persons as defined~~
25 ~~in RCW 9.94A.411, a felony that is domestic violence as defined in RCW~~
26 ~~10.99.020, a violation of RCW 9A.52.025 (residential burglary), a~~
27 ~~violation of, or an attempt, solicitation, or conspiracy to violate,~~
28 ~~RCW 69.50.401 by manufacture or delivery or possession with intent to~~
29 ~~deliver methamphetamine, or a violation of, or an attempt,~~
30 ~~solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a~~
31 ~~controlled substance to a minor)))). The department must classify each~~
32 ~~assessed offender in one of four risk categories between highest and~~
33 ~~lowest risk.~~

34 (iv) The department shall recalculate the earned release time and
35 reschedule the expected release dates for each qualified offender under
36 this subsection (1)(b).

37 (v) This subsection (1)(b) applies retroactively to eligible

1 offenders serving terms of total confinement in a state correctional
2 facility as of July 1, 2003.

3 (vi) This subsection (1)(b) does not apply to offenders convicted
4 after July 1, 2010.

5 (c) In no other case shall the aggregate earned release time exceed
6 one-third of the total sentence;

7 (2)(a) A person convicted of a sex offense or an offense
8 categorized as a serious violent offense, assault in the second degree,
9 vehicular homicide, vehicular assault, assault of a child in the second
10 degree, any crime against persons where it is determined in accordance
11 with RCW 9.94A.602 that the offender or an accomplice was armed with a
12 deadly weapon at the time of commission, or any felony offense under
13 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
14 eligible, in accordance with a program developed by the department, for
15 transfer to community custody status in lieu of earned release time
16 pursuant to subsection (1) of this section;

17 (b) A person convicted of a sex offense, a violent offense, any
18 crime against persons under RCW 9.94A.411(2), or a felony offense under
19 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
20 become eligible, in accordance with a program developed by the
21 department, for transfer to community custody status in lieu of earned
22 release time pursuant to subsection (1) of this section;

23 (c) The department shall, as a part of its program for release to
24 the community in lieu of earned release, require the offender to
25 propose a release plan that includes an approved residence and living
26 arrangement. All offenders with community placement or community
27 custody terms eligible for release to community custody status in lieu
28 of earned release shall provide an approved residence and living
29 arrangement prior to release to the community;

30 (d) The department may deny transfer to community custody status in
31 lieu of earned release time pursuant to subsection (1) of this section
32 if the department determines an offender's release plan, including
33 proposed residence location and living arrangements, may violate the
34 conditions of the sentence or conditions of supervision, place the
35 offender at risk to violate the conditions of the sentence, place the
36 offender at risk to reoffend, or present a risk to victim safety or
37 community safety. The department's authority under this section is

1 independent of any court-ordered condition of sentence or statutory
2 provision regarding conditions for community custody or community
3 placement;

4 (3) An offender may leave a correctional facility pursuant to an
5 authorized furlough or leave of absence. In addition, offenders may
6 leave a correctional facility when in the custody of a corrections
7 officer or officers;

8 (4)(a) The secretary may authorize an extraordinary medical
9 placement for an offender when all of the following conditions exist:

10 (i) The offender has a medical condition that is serious enough to
11 require costly care or treatment;

12 (ii) The offender poses a low risk to the community because he or
13 she is physically incapacitated due to age or the medical condition;
14 and

15 (iii) Granting the extraordinary medical placement will result in
16 a cost savings to the state.

17 (b) An offender sentenced to death or to life imprisonment without
18 the possibility of release or parole is not eligible for an
19 extraordinary medical placement.

20 (c) The secretary shall require electronic monitoring for all
21 offenders in extraordinary medical placement unless the electronic
22 monitoring equipment interferes with the function of the offender's
23 medical equipment or results in the loss of funding for the offender's
24 medical care. The secretary shall specify who shall provide the
25 monitoring services and the terms under which the monitoring shall be
26 performed.

27 (d) The secretary may revoke an extraordinary medical placement
28 under this subsection at any time;

29 (5) The governor, upon recommendation from the clemency and pardons
30 board, may grant an extraordinary release for reasons of serious health
31 problems, senility, advanced age, extraordinary meritorious acts, or
32 other extraordinary circumstances;

33 (6) No more than the final (~~six~~) twelve months of the sentence
34 may be served in partial confinement designed to aid the offender in
35 finding work and reestablishing himself or herself in the community;

36 (7) The governor may pardon any offender;

37 (8) The department may release an offender from confinement any

1 time within ten days before a release date calculated under this
2 section; (~~and~~)

3 (9) An offender may leave a correctional facility prior to
4 completion of his or her sentence if the sentence has been reduced as
5 provided in RCW 9.94A.870; and

6 (10) The secretary may grant up to thirty days earned release
7 credit, in addition to credit earned otherwise under this section, to
8 any offender who:

9 (a) Is classified in one of the two lowest risk categories under
10 subsection (1)(b)(iii) of this section;

11 (b) Is housed, immediately prior to release, in a minimum security
12 correctional facility as defined by the department;

13 (c) Has less than twelve months of total confinement time remaining
14 in the offender's sentence; and

15 (d) Has successfully completed all training, physical ability
16 testing, and a minimum of six months' continuous employment in a work
17 crew supervised by the department of natural resources.

18 Notwithstanding any other provisions of this section, an offender
19 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
20 mandatory minimum sentence of total confinement shall not be released
21 from total confinement before the completion of the listed mandatory
22 minimum sentence for that felony crime of conviction unless allowed
23 under RCW 9.94A.540, however persistent offenders are not eligible for
24 extraordinary medical placement.

25 **Sec. 10.** RCW 9.94A.728 and 2004 c 176 s 6 are each amended to read
26 as follows:

27 No person serving a sentence imposed pursuant to this chapter and
28 committed to the custody of the department shall leave the confines of
29 the correctional facility or be released prior to the expiration of the
30 sentence except as follows:

31 (1) Except as otherwise provided for in subsection (2) of this
32 section, the term of the sentence of an offender committed to a
33 correctional facility operated by the department may be reduced by
34 earned release time in accordance with procedures that shall be
35 developed and promulgated by the correctional agency having
36 jurisdiction in which the offender is confined. The earned release
37 time shall be for good behavior and good performance, as determined by

1 the correctional agency having jurisdiction. The correctional agency
2 shall not credit the offender with earned release credits in advance of
3 the offender actually earning the credits. Any program established
4 pursuant to this section shall allow an offender to earn early release
5 credits for presentence incarceration. If an offender is transferred
6 from a county jail to the department, the administrator of a county
7 jail facility shall certify to the department the amount of time spent
8 in custody at the facility and the amount of earned release time. An
9 offender who has been convicted of a felony committed after July 23,
10 1995, that involves any applicable deadly weapon enhancements under RCW
11 9.94A.533 (3) or (4), or both, shall not receive any good time credits
12 or earned release time for that portion of his or her sentence that
13 results from any deadly weapon enhancements.

14 (a) In the case of an offender convicted of a serious violent
15 offense, or a sex offense that is a class A felony, committed on or
16 after July 1, 1990, and before July 1, 2003, the aggregate earned
17 release time may not exceed fifteen percent of the sentence. In the
18 case of an offender convicted of a serious violent offense, or a sex
19 offense that is a class A felony, committed on or after July 1, 2003,
20 the aggregate earned release time may not exceed ten percent of the
21 sentence.

22 (b)(i) In the case of an offender who qualifies under (b)(ii) of
23 this subsection, the aggregate earned release time may not exceed fifty
24 percent of the sentence.

25 (ii) An offender is qualified to earn up to fifty percent of
26 aggregate earned release time under this subsection (1)(b) if he or
27 she:

28 (A) Is classified in one of the two lowest risk categories under
29 (b)(iii) of this subsection;

30 (B) Is not confined pursuant to a sentence for:

31 (I) A sex offense; or

32 (II) A violent offense(;

33 ~~(III) A crime against persons as defined in RCW 9.94A.411;~~

34 ~~(IV) A felony that is domestic violence as defined in RCW~~
35 ~~10.99.020;~~

36 ~~(V) A violation of RCW 9A.52.025 (residential burglary);~~

37 ~~(VI) A violation of, or an attempt, solicitation, or conspiracy to~~

1 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
2 ~~intent to deliver methamphetamine; or~~

3 ~~(VII) A violation of, or an attempt, solicitation, or conspiracy to~~
4 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a~~
5 ~~minor)); and~~

6 (C) Has no prior conviction for:

7 (I) A sex offense; or

8 (II) A violent offense(~~(~~

9 ~~(III) A crime against persons as defined in RCW 9.94A.411;~~

10 ~~(IV) A felony that is domestic violence as defined in RCW~~
11 ~~10.99.020;~~

12 ~~(V) A violation of RCW 9A.52.025 (residential burglary);~~

13 ~~(VI) A violation of, or an attempt, solicitation, or conspiracy to~~
14 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
15 ~~intent to deliver methamphetamine; or~~

16 ~~(VII) A violation of, or an attempt, solicitation, or conspiracy to~~
17 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a~~
18 ~~minor)))).~~

19 (iii) For purposes of determining an offender's eligibility under
20 this subsection (1)(b), the department shall perform a risk assessment
21 of every offender committed to a correctional facility operated by the
22 department who has no current or prior conviction for a sex
23 offense(~~(~~) or a violent offense(~~(~~, ~~a crime against persons as defined~~
24 ~~in RCW 9.94A.411, a felony that is domestic violence as defined in RCW~~
25 ~~10.99.020, a violation of RCW 9A.52.025 (residential burglary), a~~
26 ~~violation of, or an attempt, solicitation, or conspiracy to violate,~~
27 ~~RCW 69.50.401 by manufacture or delivery or possession with intent to~~
28 ~~deliver methamphetamine, or a violation of, or an attempt,~~
29 ~~solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a~~
30 ~~controlled substance to a minor)))). The department must classify each~~
31 ~~assessed offender in one of four risk categories between highest and~~
32 ~~lowest risk.~~

33 (iv) The department shall recalculate the earned release time and
34 reschedule the expected release dates for each qualified offender under
35 this subsection (1)(b).

36 (v) This subsection (1)(b) applies retroactively to eligible
37 offenders serving terms of total confinement in a state correctional
38 facility as of July 1, 2003.

1 (vi) This subsection (1)(b) does not apply to offenders convicted
2 after July 1, 2010.

3 (c) In no other case shall the aggregate earned release time exceed
4 one-third of the total sentence;

5 (2)(a) A person convicted of a sex offense or an offense
6 categorized as a serious violent offense, assault in the second degree,
7 vehicular homicide, vehicular assault, assault of a child in the second
8 degree, any crime against persons where it is determined in accordance
9 with RCW 9.94A.602 that the offender or an accomplice was armed with a
10 deadly weapon at the time of commission, or any felony offense under
11 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
12 eligible, in accordance with a program developed by the department, for
13 transfer to community custody status in lieu of earned release time
14 pursuant to subsection (1) of this section;

15 (b) A person convicted of a sex offense, a violent offense, any
16 crime against persons under RCW 9.94A.411(2), or a felony offense under
17 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
18 become eligible, in accordance with a program developed by the
19 department, for transfer to community custody status in lieu of earned
20 release time pursuant to subsection (1) of this section;

21 (c) The department shall, as a part of its program for release to
22 the community in lieu of earned release, require the offender to
23 propose a release plan that includes an approved residence and living
24 arrangement. All offenders with community placement or community
25 custody terms eligible for release to community custody status in lieu
26 of earned release shall provide an approved residence and living
27 arrangement prior to release to the community;

28 (d) The department may deny transfer to community custody status in
29 lieu of earned release time pursuant to subsection (1) of this section
30 if the department determines an offender's release plan, including
31 proposed residence location and living arrangements, may violate the
32 conditions of the sentence or conditions of supervision, place the
33 offender at risk to violate the conditions of the sentence, place the
34 offender at risk to reoffend, or present a risk to victim safety or
35 community safety. The department's authority under this section is
36 independent of any court-ordered condition of sentence or statutory
37 provision regarding conditions for community custody or community
38 placement;

1 (e) An offender serving a term of confinement imposed under RCW
2 9.94A.670(4)(a) is not eligible for earned release credits under this
3 section;

4 (3) An offender may leave a correctional facility pursuant to an
5 authorized furlough or leave of absence. In addition, offenders may
6 leave a correctional facility when in the custody of a corrections
7 officer or officers;

8 (4)(a) The secretary may authorize an extraordinary medical
9 placement for an offender when all of the following conditions exist:

10 (i) The offender has a medical condition that is serious enough to
11 require costly care or treatment;

12 (ii) The offender poses a low risk to the community because he or
13 she is physically incapacitated due to age or the medical condition;
14 and

15 (iii) Granting the extraordinary medical placement will result in
16 a cost savings to the state.

17 (b) An offender sentenced to death or to life imprisonment without
18 the possibility of release or parole is not eligible for an
19 extraordinary medical placement.

20 (c) The secretary shall require electronic monitoring for all
21 offenders in extraordinary medical placement unless the electronic
22 monitoring equipment interferes with the function of the offender's
23 medical equipment or results in the loss of funding for the offender's
24 medical care. The secretary shall specify who shall provide the
25 monitoring services and the terms under which the monitoring shall be
26 performed.

27 (d) The secretary may revoke an extraordinary medical placement
28 under this subsection at any time;

29 (5) The governor, upon recommendation from the clemency and pardons
30 board, may grant an extraordinary release for reasons of serious health
31 problems, senility, advanced age, extraordinary meritorious acts, or
32 other extraordinary circumstances;

33 (6) No more than the final (~~six~~) twelve months of the sentence
34 may be served in partial confinement designed to aid the offender in
35 finding work and reestablishing himself or herself in the community;

36 (7) The governor may pardon any offender;

37 (8) The department may release an offender from confinement any

1 time within ten days before a release date calculated under this
2 section; (~~and~~)

3 (9) An offender may leave a correctional facility prior to
4 completion of his or her sentence if the sentence has been reduced as
5 provided in RCW 9.94A.870; and

6 (10) The secretary may grant up to thirty days earned release
7 credit, in addition to credit earned otherwise under this section, to
8 any offender who:

9 (a) Is classified in one of the two lowest risk categories under
10 subsection (1)(b)(iii) of this section;

11 (b) Is housed, immediately prior to release, in a minimum security
12 correctional facility as defined by the department;

13 (c) Has less than twelve months of total confinement time remaining
14 in the offender's sentence; and

15 (d) Has successfully completed all training, physical ability
16 testing, and a minimum of six months' continuous employment in a work
17 crew supervised by the department of natural resources.

18 Notwithstanding any other provisions of this section, an offender
19 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
20 mandatory minimum sentence of total confinement shall not be released
21 from total confinement before the completion of the listed mandatory
22 minimum sentence for that felony crime of conviction unless allowed
23 under RCW 9.94A.540, however persistent offenders are not eligible for
24 extraordinary medical placement.

25 **Sec. 11.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
26 as follows:

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

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

31 (2) "Collect," or any derivative thereof, "collect and remit," or
32 "collect and deliver," when used with reference to the department,
33 means that the department, either directly or through a collection
34 agreement authorized by RCW 9.94A.760, is responsible for monitoring
35 and enforcing the offender's sentence with regard to the legal
36 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

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

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

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

18 (6) "Community custody range" means the minimum and maximum period
19 of community custody included as part of a sentence under RCW
20 9.94A.715, as established by the commission or the legislature under
21 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

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

1 supervision of parolees and probationers, RCW 9.95.270, community
2 supervision is the functional equivalent of probation and should be
3 considered the same as probation by other states.

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

5 (11) "Conviction" means an adjudication of guilt pursuant to Titles
6 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
7 acceptance of a plea of guilty.

8 (12) "Crime-related prohibition" means an order of a court
9 prohibiting conduct that directly relates to the circumstances of the
10 crime for which the offender has been convicted, and shall not be
11 construed to mean orders directing an offender affirmatively to
12 participate in rehabilitative programs or to otherwise perform
13 affirmative conduct. However, affirmative acts necessary to monitor
14 compliance with the order of a court may be required by the department.

15 (13) "Criminal history" means the list of a defendant's prior
16 convictions and juvenile adjudications, whether in this state, in
17 federal court, or elsewhere.

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

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

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

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

35 (15) "Day reporting" means a program of enhanced supervision
36 designed to monitor the offender's daily activities and compliance with
37 sentence conditions, and in which the offender is required to report

1 daily to a specific location designated by the department or the
2 sentencing court.

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

4 (17) "Determinate sentence" means a sentence that states with
5 exactitude the number of actual years, months, or days of total
6 confinement, of partial confinement, of community supervision, the
7 number of actual hours or days of community restitution work, or
8 dollars or terms of a legal financial obligation. The fact that an
9 offender through earned release can reduce the actual period of
10 confinement shall not affect the classification of the sentence as a
11 determinate sentence.

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

24 (19) "Drug offender sentencing alternative" is a sentencing option
25 available to persons convicted of a felony offense other than a violent
26 offense or a sex offense and who are eligible for the option under RCW
27 9.94A.660.

28 (20) "Drug offense" means:

29 (a) Any felony violation of chapter 69.50 RCW except possession of
30 a controlled substance (RCW 69.50.4013) or forged prescription for a
31 controlled substance (RCW 69.50.403);

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

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

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

3 (22) "Escape" means:

4 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
5 first degree (RCW 9A.76.110), escape in the second degree (RCW
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
7 willful failure to return from work release (RCW 72.65.070), or willful
8 failure to be available for supervision by the department while in
9 community custody (RCW 72.09.310); or

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

13 (23) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
16 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

29 (27) "Legal financial obligation" means a sum of money that is
30 ordered by a superior court of the state of Washington for legal
31 financial obligations which may include restitution to the victim,
32 statutorily imposed crime victims' compensation fees as assessed
33 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
34 court-appointed attorneys' fees, and costs of defense, fines, and any
35 other financial obligation that is assessed to the offender as a result
36 of a felony conviction. Upon conviction for vehicular assault while
37 under the influence of intoxicating liquor or any drug, RCW
38 46.61.522(1)(b), or vehicular homicide while under the influence of

1 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
2 obligations may also include payment to a public agency of the expense
3 of an emergency response to the incident resulting in the conviction,
4 subject to RCW 38.52.430.

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

7 (a) Any felony defined under any law as a class A felony or
8 criminal solicitation of or criminal conspiracy to commit a class A
9 felony;

10 (b) Assault in the second degree;

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

12 (d) Child molestation in the second degree;

13 (e) Controlled substance homicide;

14 (f) Extortion in the first degree;

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

16 (h) Indecent liberties;

17 (i) Kidnapping in the second degree;

18 (j) Leading organized crime;

19 (k) Manslaughter in the first degree;

20 (l) Manslaughter in the second degree;

21 (m) Promoting prostitution in the first degree;

22 (n) Rape in the third degree;

23 (o) Robbery in the second degree;

24 (p) Sexual exploitation;

25 (q) Vehicular assault, when caused by the operation or driving of
26 a vehicle by a person while under the influence of intoxicating liquor
27 or any drug or by the operation or driving of a vehicle in a reckless
28 manner;

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

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

35 (t) Any other felony with a deadly weapon verdict under RCW
36 9.94A.602;

37 (u) Any felony offense in effect at any time prior to December 2,
38 1993, that is comparable to a most serious offense under this

1 subsection, or any federal or out-of-state conviction for an offense
2 that under the laws of this state would be a felony classified as a
3 most serious offense under this subsection;

4 (v)(i) A prior conviction for indecent liberties under RCW
5 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
6 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
7 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
8 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

9 (ii) A prior conviction for indecent liberties under RCW
10 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
11 if: (A) The crime was committed against a child under the age of
12 fourteen; or (B) the relationship between the victim and perpetrator is
13 included in the definition of indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
15 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
16 through July 27, 1997.

17 (29) "Nonviolent offense" means an offense which is not a violent
18 offense.

19 (30) "Offender" means a person who has committed a felony
20 established by state law and is eighteen years of age or older or is
21 less than eighteen years of age but whose case is under superior court
22 jurisdiction under RCW 13.04.030 or has been transferred by the
23 appropriate juvenile court to a criminal court pursuant to RCW
24 13.40.110. Throughout this chapter, the terms "offender" and
25 "defendant" are used interchangeably.

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

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

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

37 (ii) Has, before the commission of the offense under (a) of this
38 subsection, been convicted as an offender on at least two separate

1 occasions, whether in this state or elsewhere, of felonies that under
2 the laws of this state would be considered most serious offenses and
3 would be included in the offender score under RCW 9.94A.525; provided
4 that of the two or more previous convictions, at least one conviction
5 must have occurred before the commission of any of the other most
6 serious offenses for which the offender was previously convicted; or

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

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

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

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

35 (35) "Risk assessment" means the application of an objective
36 instrument supported by research and either: (a) Adopted by the
37 department for the purpose of assessing an offender's risk of
38 reoffense, taking into consideration the nature of the harm done by the

1 offender, place and circumstances of the offender related to risk, the
2 offender's relationship to any victim, and any information provided to
3 the department by victims; or (b) adopted by the sentencing guidelines
4 commission for use in sentencing under section 12 of this act. The
5 results of a risk assessment shall not be based on unconfirmed or
6 unconfirmable allegations.

7 (36) "Serious traffic offense" means:

8 (a) Driving while under the influence of intoxicating liquor or any
9 drug (RCW 46.61.502), actual physical control while under the influence
10 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
11 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
12 or

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

16 (37) "Serious violent offense" is a subcategory of violent offense
17 and means:

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

19 (ii) Homicide by abuse;

20 (iii) Murder in the second degree;

21 (iv) Manslaughter in the first degree;

22 (v) Assault in the first degree;

23 (vi) Kidnapping in the first degree;

24 (vii) Rape in the first degree;

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

26 (ix) An attempt, criminal solicitation, or criminal conspiracy to
27 commit one of these felonies; or

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

31 (38) "Sex offense" means:

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

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

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

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

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 sex
3 offense in (a) of this subsection;

4 (c) A felony with a finding of sexual motivation under RCW
5 9.94A.835 or 13.40.135; or

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

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

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

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

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

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

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

31 (45) "Violent offense" means:

32 (a) Any of the following felonies:

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

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

37 (iii) Manslaughter in the first degree;

38 (iv) Manslaughter in the second degree;

- 1 (v) Indecent liberties if committed by forcible compulsion;
2 (vi) Kidnapping in the second degree;
3 (vii) Arson in the second degree;
4 (viii) Assault in the second degree;
5 (ix) Assault of a child in the second degree;
6 (x) Extortion in the first degree;
7 (xi) Robbery in the second degree;
8 (xii) Drive-by shooting;
9 (xiii) Vehicular assault, when caused by the operation or driving
10 of a vehicle by a person while under the influence of intoxicating
11 liquor or any drug or by the operation or driving of a vehicle in a
12 reckless manner; and
13 (xiv) Vehicular homicide, when proximately caused by the driving of
14 any vehicle by any person while under the influence of intoxicating
15 liquor or any drug as defined by RCW 46.61.502, or by the operation of
16 any vehicle in a reckless manner;
17 (b) Any conviction for a felony offense in effect at any time prior
18 to July 1, 1976, that is comparable to a felony classified as a violent
19 offense in (a) of this subsection; and
20 (c) Any federal or out-of-state conviction for an offense that
21 under the laws of this state would be a felony classified as a violent
22 offense under (a) or (b) of this subsection.
23 (46) "Work crew" means a program of partial confinement consisting
24 of civic improvement tasks for the benefit of the community that
25 complies with RCW 9.94A.725.
26 (47) "Work ethic camp" means an alternative incarceration program
27 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
28 the cost of corrections by requiring offenders to complete a
29 comprehensive array of real-world job and vocational experiences,
30 character-building work ethics training, life management skills
31 development, substance abuse rehabilitation, counseling, literacy
32 training, and basic adult education.
33 (48) "Work release" means a program of partial confinement
34 available to offenders who are employed or engaged as a student in a
35 regular course of study at school.

36 NEW SECTION. **Sec. 12.** A new section is added to chapter 9.94A RCW
37 to read as follows:

(1) This section applies to offenders sentenced, on or after July 1, 2005, for an offense which is not a violent offense, sex offense, or drug offense, or a crime against persons as defined in RCW 9.94A.411. Before sentencing such an offender, the court shall apply a static risk assessment, and classify the offender as high, moderate, or low risk, using the instrument described in subsection (2) of this section.

(2)(a) The static risk assessment instrument used in sentencing under this section shall be developed by the Washington state institute for public policy and approved by the sentencing guidelines commission for use under this section. The instrument shall be based on static risk factors, such as age and criminal history, which are readily available to the court at the time of sentencing. It shall identify high, moderate, and low risk categories in relation to the risk of committing a violent offense in the future. The institute, at the request of the commission, may modify the instrument and scoring system as necessary. Modifications shall have no effect on sentences imposed before the effective date of modification.

(b) The department shall adopt the static risk assessment instrument and any modifications for purposes of this section, and the department may adopt and use other risk assessment instruments for other purposes under this chapter and chapter 72.09 RCW. The department, in consultation with the Washington state institute for public policy, shall develop a scoring form, based on the static risk assessment instrument, for the court to use in sentencing offenders under this section.

(3)(a) The standard sentence range for an offender to whom this section applies shall be based on the seriousness level determined under RCW 9.94A.515 and the offender score determined under RCW 9.94A.525.

TABLE 1A

SERIOUSNESS LEVEL	OFFENDER SCORE		
	0-2	3-5	6-9+
IX	31-54 months	46-75 months	77-171 months
VIII	21-41 months	36-61 months	67-144 months
VII	15-34 months	31-54 months	57-116 months
VI	12+-27 months	26-48 months	46-102 months

V	6-17 months	15-43 months	41-96 months
IV	3-14 months	13-29 months	33-84 months
III	1-12 months	9-22 months	22-68 months
II	0-9 months	4-18 months	17-57 months
I	0-5 months	2-12 months	12+-29 months
Unranked	0-12 months	0-12 months	0-12 months

(b) The standard sentence range for an offender assessed as high risk is the top of the range. The standard sentence range for an offender assessed as moderate risk is the range shown in (a) of this subsection. The standard sentence range for an offender assessed as low risk is the bottom of the range, subject to (c) of this subsection.

(c) For an offender assessed at low risk whose only current offense is at seriousness level V with an offender score of 0 through 5, or at seriousness level IV, III, II, I, or an unranked offense, regardless of offender score, the court shall impose a sentence consisting only of alternative sanctions as authorized in (d) of this subsection.

(d) The numbers of hours and months in this subsection (3)(d) are maximum amounts that the court may impose, but the court may impose lesser amounts in its discretion. Where home detention and work crew are authorized, the court may impose either or both concurrently.

Bottom of standard range	Maximum alternative sanction
0 months	240 hours community restitution
1 month	1 month work crew
2 months	1 month work crew
3 months	1 month work crew
4 months	1 month home detention, 1 month work crew
6 months	1 month home detention, 1 month work crew
9 months	1 month home detention, 1 month work crew
12+ months	3 months home detention, 1 month work crew
13 months	3 months home detention, 3 months work crew
15 months	3 months home detention, 3 months work crew
17 months	3 months home detention, 6 months work crew
22 months	6 months home detention, 6 months work crew
33 months	6 months home detention, 6 months work crew

1 (e) The department shall monitor offender compliance with
2 alternative sanctions, and sanction violations under RCW 9.94A.634, but
3 no sentence under (c) of this subsection shall include community
4 custody, or any other form of supervision, after completion of
5 alternative sanctions.

6 **Sec. 13.** RCW 9.94A.340 and 1983 c 115 s 5 are each amended to read
7 as follows:

8 The sentencing guidelines and prosecuting standards apply equally
9 to offenders in all parts of the state, without discrimination as to
10 any element that does not relate to the crime or the previous record of
11 the defendant or to the risk of reoffending based on risk assessment as
12 defined in this chapter.

13 **Sec. 14.** RCW 9.94A.500 and 2000 c 75 s 8 are each amended to read
14 as follows:

15 (1) Before imposing a sentence upon a defendant, the court shall
16 conduct a sentencing hearing. The sentencing hearing shall be held
17 within forty court days following conviction. Upon the motion of
18 either party for good cause shown, or on its own motion, the court may
19 extend the time period for conducting the sentencing hearing.

20 Except in cases where the defendant shall be sentenced to a term of
21 total confinement for life without the possibility of release or, when
22 authorized by RCW 10.95.030 for the crime of aggravated murder in the
23 first degree, sentenced to death, the court may order the department to
24 complete a risk assessment report. If available before sentencing, the
25 risk assessment report shall be provided to the court.

26 Unless specifically waived by the court, the court shall order the
27 department to complete a chemical dependency screening report before
28 imposing a sentence upon a defendant who has been convicted of a
29 violation of the uniform controlled substances act under chapter 69.50
30 RCW or a criminal solicitation to commit such a violation under chapter
31 9A.28 RCW where the court finds that the offender has a chemical
32 dependency that has contributed to his or her offense. In addition,
33 the court shall, at the time of plea or conviction, order the
34 department to complete a (~~presentence~~) risk assessment report before
35 imposing a sentence upon a defendant who has been convicted of a felony
36 sexual offense. The department of corrections shall give priority to

1 ((~~presentence~~)) risk assessment investigations for sexual offenders.
2 If the court determines that the defendant may be a mentally ill person
3 as defined in RCW 71.24.025, although the defendant has not established
4 that at the time of the crime he or she lacked the capacity to commit
5 the crime, was incompetent to commit the crime, or was insane at the
6 time of the crime, the court shall order the department to complete a
7 presentence report before imposing a sentence.

8 The court shall consider the static risk assessment instrument, and
9 the risk assessment report ((~~and presentence reports~~)), if any,
10 including any victim impact statement and criminal history, and allow
11 arguments from the prosecutor, the defense counsel, the offender, the
12 victim, the survivor of the victim, or a representative of the victim
13 or survivor, and an investigative law enforcement officer as to the
14 sentence to be imposed.

15 If the court is satisfied by a preponderance of the evidence that
16 the defendant has a criminal history, the court shall specify the
17 convictions it has found to exist. All of this information shall be
18 part of the record. Copies of all risk assessment reports ((~~and~~
19 ~~presentence reports~~)) presented to the sentencing court and all written
20 findings of facts and conclusions of law as to sentencing entered by
21 the court shall be sent to the department by the clerk of the court at
22 the conclusion of the sentencing and shall accompany the offender if
23 the offender is committed to the custody of the department. Court
24 clerks shall provide, without charge, certified copies of documents
25 relating to criminal convictions requested by prosecuting attorneys.

26 (2) To prevent wrongful disclosure of information related to mental
27 health services, as defined in RCW 71.05.445 and 71.34.225, a court may
28 take only those steps necessary during a sentencing hearing or any
29 hearing in which the department presents information related to mental
30 health services to the court. The steps may be taken on motion of the
31 defendant, the prosecuting attorney, or on the court's own motion. The
32 court may seal the portion of the record relating to information
33 relating to mental health services, exclude the public from the hearing
34 during presentation or discussion of information relating to mental
35 health services, or grant other relief to achieve the result intended
36 by this subsection, but nothing in this subsection shall be construed
37 to prevent the subsequent release of information related to mental
38 health services as authorized by RCW 71.05.445, 71.34.225, or

1 72.09.585. Any person who otherwise is permitted to attend any hearing
2 pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the
3 hearing solely because the department intends to disclose or discloses
4 information related to mental health services.

5 **Sec. 15.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
6 2002 c 175 s 6 are each reenacted and amended to read as follows:

7 (1) When a person is convicted of a felony, the court shall impose
8 punishment as provided in this chapter.

9 (2)(a) The court shall impose a sentence as provided in the
10 following sections and as applicable in the case:

11 (i) Unless another term of confinement applies, the court shall
12 impose a sentence within the standard sentence range established in RCW
13 9.94A.510 or 9.94A.517;

14 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

15 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

16 (iv) RCW 9.94A.545, relating to community custody for offenders
17 whose term of confinement is one year or less;

18 (v) RCW 9.94A.570, relating to persistent offenders;

19 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

20 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

21 (viii) RCW 9.94A.660, relating to the drug offender sentencing
22 alternative;

23 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
24 alternative;

25 (x) RCW 9.94A.712, relating to certain sex offenses;

26 (xi) RCW 9.94A.535, relating to exceptional sentences;

27 (xii) RCW 9.94A.589, relating to consecutive and concurrent
28 sentences;

29 (xiii) Section 12 of this act, relating to offenses which are not
30 violent offenses, sex offenses, or drug offenses, or crimes against
31 persons.

32 (b) If a standard sentence range has not been established for the
33 offender's crime, the court shall impose a determinate sentence which
34 may include not more than one year of confinement; community
35 restitution work; until July 1, 2000, a term of community supervision
36 not to exceed one year and on and after July 1, 2000, a term of
37 community custody not to exceed one year, subject to conditions and

1 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
2 legal financial obligations. The court may impose a sentence which
3 provides more than one year of confinement if the court finds reasons
4 justifying an exceptional sentence as provided in RCW 9.94A.535.

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

11 (4) If a sentence imposed includes payment of a legal financial
12 obligation, it shall be imposed as provided in RCW 9.94A.750,
13 9.94A.753, 9.94A.760, and 43.43.7541.

14 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
15 court may not impose a sentence providing for a term of confinement or
16 community supervision, community placement, or community custody which
17 exceeds the statutory maximum for the crime as provided in chapter
18 9A.20 RCW.

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

23 (7) The court shall order restitution as provided in RCW 9.94A.750
24 and 9.94A.753.

25 (8) As a part of any sentence, the court may impose and enforce
26 crime-related prohibitions and affirmative conditions as provided in
27 this chapter.

28 (9) The court may order an offender whose sentence includes
29 community placement or community supervision to undergo a mental status
30 evaluation and to participate in available outpatient mental health
31 treatment, if the court finds that reasonable grounds exist to believe
32 that the offender is a mentally ill person as defined in RCW 71.24.025,
33 and that this condition is likely to have influenced the offense. An
34 order requiring mental status evaluation or treatment must be based on
35 a presentence report and, if applicable, mental status evaluations that
36 have been filed with the court to determine the offender's competency
37 or eligibility for a defense of insanity. The court may order
38 additional evaluations at a later date if deemed appropriate.

1 (10) In any sentence of partial confinement, the court may require
2 the offender to serve the partial confinement in work release, in a
3 program of home detention, on work crew, or in a combined program of
4 work crew and home detention.

5 (11) In sentencing an offender convicted of a crime of domestic
6 violence, as defined in RCW 10.99.020, if the offender has a minor
7 child, or if the victim of the offense for which the offender was
8 convicted has a minor child, the court may, as part of any term of
9 community supervision, community placement, or community custody, order
10 the offender to participate in a domestic violence perpetrator program
11 approved under RCW 26.50.150.

12 **Sec. 16.** RCW 9.94A.530 and 2002 c 290 s 18 are each amended to
13 read as follows:

14 (1) The intersection of the column defined by the offender score
15 and the row defined by the offense seriousness (~~score~~) level
16 determines the standard sentence range (see RCW 9.94A.510, (Table 1),
17 section 12 of this act (Table 1A), and RCW 9.94A.517, (Table 3)). The
18 additional time for deadly weapon findings or for those offenses
19 enumerated in RCW 9.94A.533(4) that were committed in a state
20 correctional facility or county jail shall be added to the entire
21 standard sentence range. Except as provided in section 12(3) of this
22 act, the court may impose any sentence within the range that it deems
23 appropriate. Except as provided in section 12(3) of this act, all
24 standard sentence ranges are expressed in terms of total confinement.

25 (2) In determining any sentence, the trial court may rely on no
26 more information than is admitted by the plea agreement, or admitted,
27 acknowledged, or proved in a trial or at the time of sentencing.
28 Acknowledgement includes not objecting to information stated in the
29 presentence reports or the static risk assessment instrument under
30 section 12 of this act. Where the defendant disputes material facts,
31 the court must either not consider the fact or grant an evidentiary
32 hearing on the point. The facts shall be deemed proved at the hearing
33 by a preponderance of the evidence. Facts that establish the elements
34 of a more serious crime or additional crimes may not be used to go
35 outside the standard sentence range except upon stipulation or when
36 specifically provided for in RCW 9.94A.535(2) (d), (e), (g), and (h).

1 **Sec. 17.** RCW 9.94A.533 and 2003 c 53 s 58 are each amended to read
2 as follows:

3 (1) The provisions of this section apply to the standard sentence
4 ranges determined by RCW 9.94A.510, section 12 of this act, or
5 9.94A.517.

6 (2) For persons convicted of the anticipatory offenses of criminal
7 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
8 standard sentence range is determined by locating the sentencing grid
9 sentence range defined by the appropriate offender score and the
10 seriousness level of the completed crime, and multiplying the range by
11 seventy-five percent.

12 (3) The following additional times shall be added to the standard
13 sentence range for felony crimes committed after July 23, 1995, if the
14 offender or an accomplice was armed with a firearm as defined in RCW
15 9.41.010 and the offender is being sentenced for one of the crimes
16 listed in this subsection as eligible for any firearm enhancements
17 based on the classification of the completed felony crime. If the
18 offender is being sentenced for more than one offense, the firearm
19 enhancement or enhancements must be added to the total period of
20 confinement for all offenses, regardless of which underlying offense is
21 subject to a firearm enhancement. If the offender or an accomplice was
22 armed with a firearm as defined in RCW 9.41.010 and the offender is
23 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
24 commit one of the crimes listed in this subsection as eligible for any
25 firearm enhancements, the following additional times shall be added to
26 the standard sentence range determined under subsection (2) of this
27 section based on the felony crime of conviction as classified under RCW
28 9A.28.020:

29 (a) Five years for any felony defined under any law as a class A
30 felony or with a statutory maximum sentence of at least twenty years,
31 or both, and not covered under (f) of this subsection;

32 (b) Three years for any felony defined under any law as a class B
33 felony or with a statutory maximum sentence of ten years, or both, and
34 not covered under (f) of this subsection;

35 (c) Eighteen months for any felony defined under any law as a class
36 C felony or with a statutory maximum sentence of five years, or both,
37 and not covered under (f) of this subsection;

1 (d) If the offender is being sentenced for any firearm enhancements
2 under (a), (b), and/or (c) of this subsection and the offender has
3 previously been sentenced for any deadly weapon enhancements after July
4 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
5 (4)(a), (b), and/or (c) of this section, or both, all firearm
6 enhancements under this subsection shall be twice the amount of the
7 enhancement listed;

8 (e) Notwithstanding any other provision of law, all firearm
9 enhancements under this section are mandatory, shall be served in total
10 confinement, and shall run consecutively to all other sentencing
11 provisions, including other firearm or deadly weapon enhancements, for
12 all offenses sentenced under this chapter. However, whether or not a
13 mandatory minimum term has expired, an offender serving a sentence
14 under this subsection may be granted an extraordinary medical placement
15 when authorized under RCW 9.94A.728(4);

16 (f) The firearm enhancements in this section shall apply to all
17 felony crimes except the following: Possession of a machine gun,
18 possessing a stolen firearm, drive-by shooting, theft of a firearm,
19 unlawful possession of a firearm in the first and second degree, and
20 use of a machine gun in a felony;

21 (g) If the standard sentence range under this section exceeds the
22 statutory maximum sentence for the offense, the statutory maximum
23 sentence shall be the presumptive sentence unless the offender is a
24 persistent offender. If the addition of a firearm enhancement
25 increases the sentence so that it would exceed the statutory maximum
26 for the offense, the portion of the sentence representing the
27 enhancement may not be reduced.

28 (4) The following additional times shall be added to the standard
29 sentence range for felony crimes committed after July 23, 1995, if the
30 offender or an accomplice was armed with a deadly weapon other than a
31 firearm as defined in RCW 9.41.010 and the offender is being sentenced
32 for one of the crimes listed in this subsection as eligible for any
33 deadly weapon enhancements based on the classification of the completed
34 felony crime. If the offender is being sentenced for more than one
35 offense, the deadly weapon enhancement or enhancements must be added to
36 the total period of confinement for all offenses, regardless of which
37 underlying offense is subject to a deadly weapon enhancement. If the
38 offender or an accomplice was armed with a deadly weapon other than a

1 firearm as defined in RCW 9.41.010 and the offender is being sentenced
2 for an anticipatory offense under chapter 9A.28 RCW to commit one of
3 the crimes listed in this subsection as eligible for any deadly weapon
4 enhancements, the following additional times shall be added to the
5 standard sentence range determined under subsection (2) of this section
6 based on the felony crime of conviction as classified under RCW
7 9A.28.020:

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

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

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

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

24 (e) Notwithstanding any other provision of law, all deadly weapon
25 enhancements under this section are mandatory, shall be served in total
26 confinement, and shall run consecutively to all other sentencing
27 provisions, including other firearm or deadly weapon enhancements, for
28 all offenses sentenced under this chapter. However, whether or not a
29 mandatory minimum term has expired, an offender serving a sentence
30 under this subsection may be granted an extraordinary medical placement
31 when authorized under RCW 9.94A.728(4);

32 (f) The deadly weapon enhancements in this section shall apply to
33 all felony crimes except the following: Possession of a machine gun,
34 possessing a stolen firearm, drive-by shooting, theft of a firearm,
35 unlawful possession of a firearm in the first and second degree, and
36 use of a machine gun in a felony;

37 (g) If the standard sentence range under this section exceeds the
38 statutory maximum sentence for the offense, the statutory maximum

1 sentence shall be the presumptive sentence unless the offender is a
2 persistent offender. If the addition of a deadly weapon enhancement
3 increases the sentence so that it would exceed the statutory maximum
4 for the offense, the portion of the sentence representing the
5 enhancement may not be reduced.

6 (5) The following additional times shall be added to the standard
7 sentence range if the offender or an accomplice committed the offense
8 while in a county jail or state correctional facility and the offender
9 is being sentenced for one of the crimes listed in this subsection. If
10 the offender or an accomplice committed one of the crimes listed in
11 this subsection while in a county jail or state correctional facility,
12 and the offender is being sentenced for an anticipatory offense under
13 chapter 9A.28 RCW to commit one of the crimes listed in this
14 subsection, the following additional times shall be added to the
15 standard sentence range determined under subsection (2) of this
16 section:

17 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
18 (a) or (b) or 69.50.410;

19 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
20 (c), (d), or (e);

21 (c) Twelve months for offenses committed under RCW 69.50.4013.

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

25 (6) An additional twenty-four months shall be added to the standard
26 sentence range for any ranked offense involving a violation of chapter
27 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
28 9.94A.605.

29 (7) An additional two years shall be added to the standard sentence
30 range for vehicular homicide committed while under the influence of
31 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
32 prior offense as defined in RCW 46.61.5055.

33 **Sec. 18.** RCW 9.94A.585 and 2002 c 290 s 19 are each amended to
34 read as follows:

35 (1) A sentence within the standard sentence range, under RCW
36 9.94A.510, section 12 of this act, or 9.94A.517, for an offense shall
37 not be appealed. For purposes of this section, a sentence imposed on

1 a first-time offender under RCW 9.94A.650 shall also be deemed to be
2 within the standard sentence range for the offense and shall not be
3 appealed.

4 (2) A sentence outside the standard sentence range for the offense
5 is subject to appeal by the defendant or the state. The appeal shall
6 be to the court of appeals in accordance with rules adopted by the
7 supreme court.

8 (3) Pending review of the sentence, the sentencing court or the
9 court of appeals may order the defendant confined or placed on
10 conditional release, including bond.

11 (4) To reverse a sentence which is outside the standard sentence
12 range, the reviewing court must find: (a) Either that the reasons
13 supplied by the sentencing court are not supported by the record which
14 was before the judge or that those reasons do not justify a sentence
15 outside the standard sentence range for that offense; or (b) that the
16 sentence imposed was clearly excessive or clearly too lenient.

17 (5) A review under this section shall be made solely upon the
18 record that was before the sentencing court. Written briefs shall not
19 be required and the review and decision shall be made in an expedited
20 manner according to rules adopted by the supreme court.

21 (6) The court of appeals shall issue a written opinion in support
22 of its decision whenever the judgment of the sentencing court is
23 reversed and may issue written opinions in any other case where the
24 court believes that a written opinion would provide guidance to
25 sentencing courts and others in implementing this chapter and in
26 developing a common law of sentencing within the state.

27 (7) The department may petition for a review of a sentence
28 committing an offender to the custody or jurisdiction of the
29 department. The review shall be limited to errors of law. Such
30 petition shall be filed with the court of appeals no later than ninety
31 days after the department has actual knowledge of terms of the
32 sentence. The petition shall include a certification by the department
33 that all reasonable efforts to resolve the dispute at the superior
34 court level have been exhausted.

35 **Sec. 19.** RCW 9.94A.680 and 2002 c 175 s 12 are each amended to
36 read as follows:

37 Alternatives to total confinement are available for offenders with

1 sentences of one year or less or under section 12 of this act. These
2 alternatives include the following sentence conditions that the court
3 may order as substitutes for total confinement:

4 (1) One day of partial confinement may be substituted for one day
5 of total confinement;

6 (2) In addition, for offenders convicted of nonviolent offenses
7 only, eight hours of community restitution may be substituted for one
8 day of total confinement, with a maximum conversion limit of two
9 hundred forty hours or thirty days. Community restitution hours must
10 be completed within the period of community supervision or a time
11 period specified by the court, which shall not exceed twenty-four
12 months, pursuant to a schedule determined by the department; ~~((and))~~

13 (3) For offenders convicted of nonviolent and nonsex offenses, the
14 court may authorize county jails to convert jail confinement to an
15 available county supervised community option and may require the
16 offender to perform affirmative conduct pursuant to RCW 9.94A.607; and

17 (4) The court shall order alternatives to total confinement as
18 required in section 12 of this act.

19 For sentences of nonviolent offenders for one year or less, the
20 court shall consider and give priority to available alternatives to
21 total confinement and shall state its reasons in writing on the
22 judgment and sentence form if the alternatives are not used.

23 **Sec. 20.** RCW 9.94A.731 and 2003 c 254 s 2 are each amended to read
24 as follows:

25 (1) An offender sentenced to a term of partial confinement shall be
26 confined in the facility for at least eight hours per day or, if
27 serving a work crew sentence shall comply with the conditions of that
28 sentence as set forth in RCW 9.94A.030(31) and 9.94A.725. The offender
29 shall be required as a condition of partial confinement to report to
30 the facility at designated times. During the period of partial
31 confinement, an offender may be required to comply with crime-related
32 prohibitions and affirmative conditions imposed by the court or the
33 department pursuant to this chapter.

34 (2) An offender in a county jail sentenced under section 12 of this
35 act or ordered to serve all or part of a term of less than one year in
36 work release, work crew, or a program of home detention who violates
37 the rules of the work release facility, work crew, or program of home

1 detention or fails to remain employed or enrolled in school may be
2 transferred to the appropriate county detention facility without
3 further court order but shall, upon request, be notified of the right
4 to request an administrative hearing on the issue of whether or not the
5 offender failed to comply with the order and relevant conditions.
6 Pending such hearing, or in the absence of a request for the hearing,
7 the offender shall serve the remainder of the term of confinement as
8 total confinement. This subsection shall not affect transfer or
9 placement of offenders committed to the department.

10 (3) Participation in work release shall be conditioned upon the
11 offender attending work or school at regularly defined hours and
12 abiding by the rules of the work release facility.

13 **Sec. 21.** RCW 9.94A.515 and 2004 c 176 s 2 and 2004 c 94 s 3 are
14 each reenacted and amended to read as follows:

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)

1 Trafficking 2 (RCW 9A.40.100(2))

2 XI Manslaughter 1 (RCW 9A.32.060)

3 Rape 2 (RCW 9A.44.050)

4 Rape of a Child 2 (RCW 9A.44.076)

5 X Child Molestation 1 (RCW 9A.44.083)

6 Indecent Liberties (with forcible

7 compulsion) (RCW

8 9A.44.100(1)(a))

9 Kidnapping 1 (RCW 9A.40.020)

10 Leading Organized Crime (RCW

11 9A.82.060(1)(a))

12 Malicious explosion 3 (RCW

13 70.74.280(3))

14 Sexually Violent Predator Escape

15 (RCW 9A.76.115)

16 IX Assault of a Child 2 (RCW 9A.36.130)

17 Explosive devices prohibited (RCW

18 70.74.180)

19 ~~((Hit and Run--Death (RCW-~~

20 ~~46.52.020(4)(a))))~~

21 Homicide by Watercraft, by being

22 under the influence of intoxicating

23 liquor or any drug (RCW

24 79A.60.050)

25 ~~((Inciting Criminal Profiteering (RCW-~~

26 ~~9A.82.060(1)(b))))~~

27 ~~Malicious placement of an explosive 2-~~

28 ~~(RCW 70.74.270(2))))~~

29 Robbery 1 (RCW 9A.56.200)

30 Sexual Exploitation (RCW 9.68A.040)

31 Vehicular Homicide, by being under

32 the influence of intoxicating

33 liquor or any drug (RCW

34 46.61.520)

35 VIII Arson 1 (RCW 9A.48.020)

36 Hit and Run--Death (RCW

37 46.52.020(4)(a))

1 Homicide by Watercraft, by the
2 operation of any vessel in a
3 reckless manner (RCW
4 79A.60.050)
5 Inciting Criminal Profiteering (RCW
6 9A.82.060(1)(b))
7 Malicious placement of an explosive 2
8 (RCW 70.74.270(2))
9 Manslaughter 2 (RCW 9A.32.070)
10 Promoting Prostitution 1 (RCW
11 9A.88.070)
12 ~~((Theft of Ammonia (RCW~~
13 ~~69.55.010)))~~
14 Vehicular Homicide, by the operation
15 of any vehicle in a reckless
16 manner (RCW 46.61.520)
17 VII Burglary 1 (RCW 9A.52.020)
18 Child Molestation 2 (RCW 9A.44.086)
19 ~~((Civil Disorder Training (RCW~~
20 ~~9A.48.120)))~~
21 Dealing in depictions of minor
22 engaged in sexually explicit
23 conduct (RCW 9.68A.050)
24 Drive-by Shooting (RCW 9A.36.045)
25 Homicide by Watercraft, by disregard
26 for the safety of others (RCW
27 79A.60.050)
28 Indecent Liberties (without forcible
29 compulsion) (RCW 9A.44.100(1)
30 (b) and (c))
31 ~~((Introducing Contraband 1 (RCW~~
32 ~~9A.76.140)~~
33 ~~Malicious placement of an explosive 3~~
34 ~~(RCW 70.74.270(3)))~~

1 Sending, bringing into state depictions
2 of minor engaged in sexually
3 explicit conduct (RCW
4 9.68A.060)
5 ~~((Unlawful Possession of a Firearm in
6 the first degree (RCW
7 9.41.040(1))))~~
8 Theft of Ammonia (RCW 69.55.010)
9 Use of a Machine Gun in Commission
10 of a Felony (RCW 9.41.225)
11 Vehicular Homicide, by disregard for
12 the safety of others (RCW
13 46.61.520)
14 VI Bail Jumping with Murder 1 (RCW
15 9A.76.170(3)(a)
16 ~~((Bribery (RCW 9A.68.010)))~~
17 Civil Disorder Training (RCW
18 9A.48.120)
19 Incest 1 (RCW 9A.64.020(1))
20 ~~((Intimidating a Judge (RCW
21 9A.72.160)))~~
22 Intimidating a Juror/Witness (RCW
23 9A.72.110, 9A.72.130)
24 ~~((Malicious placement of an imitation
25 device 2 (RCW 70.74.272(1)(b))))~~
26 Introducing Contraband 1 (RCW
27 9A.76.140)
28 Malicious placement of an explosive 3
29 (RCW 70.74.270(3))
30 Rape of a Child 3 (RCW 9A.44.079)
31 ~~((Theft of a Firearm (RCW 9A.56.300)~~
32 ~~Unlawful Storage of Ammonia (RCW
33 69.55.020)))~~
34 Unlawful Possession of a Firearm in
35 the first degree (RCW
36 9.41.040(1))

1 V ((Abandonment of dependent person 1-
2 (RCW 9A.42.060)
3 ~~Advancing money or property for~~
4 ~~extortionate extension of credit~~
5 (RCW 9A.82.030)
6 ~~Bail Jumping with class A Felony~~
7 (RCW 9A.76.170(3)(b)))
8 Bribery (RCW 9A.68.010)
9 Child Molestation 3 (RCW 9A.44.089)
10 ((Criminal Mistreatment 1 (RCW
11 9A.42.020)))
12 Custodial Sexual Misconduct 1 (RCW
13 9A.44.160)
14 Domestic Violence Court Order
15 Violation (RCW 10.99.040,
16 10.99.050, 26.09.300, 26.10.220,
17 26.26.138, 26.50.110, 26.52.070,
18 or 74.34.145)
19 Extortion 1 (RCW 9A.56.120)
20 ((Extortionate Extension of Credit
21 (RCW 9A.82.020)
22 Extortionate Means to Collect
23 Extensions of Credit (RCW
24 9A.82.040)))
25 Incest 2 (RCW 9A.64.020(2))
26 Intimidating a Judge (RCW
27 9A.72.160)
28 Kidnapping 2 (RCW 9A.40.030)
29 ((Perjury 1 (RCW 9A.72.020)
30 Persistent prison misbehavior (RCW
31 9.94.070)
32 Possession of a Stolen Firearm (RCW
33 9A.56.310)))
34 Malicious placement of an imitation
35 device 2 (RCW 70.74.272(1)(b))
36 Rape 3 (RCW 9A.44.060)

1 ((~~Rendering Criminal Assistance 1~~
2 (~~RCW 9A.76.070~~)))
3 Sexual Misconduct with a Minor 1
4 (RCW 9A.44.093)
5 Sexually Violating Human Remains
6 (RCW 9A.44.105)
7 Stalking (RCW 9A.46.110)
8 ((~~Taking Motor Vehicle Without~~
9 ~~Permission 1 (RCW 9A.56.070)~~))
10 Theft of a Firearm (RCW 9A.56.300)
11 Unlawful Storage of Ammonia (RCW
12 69.55.020)
13 IV Abandonment of dependent person 1
14 (RCW 9A.42.060)
15 Advancing money or property for
16 extortionate extension of credit
17 (RCW 9A.82.030)
18 Arson 2 (RCW 9A.48.030)
19 Assault 2 (RCW 9A.36.021)
20 ((~~Assault by Watercraft (RCW~~
21 ~~79A.60.060)~~)
22 ~~Bribing a Witness/Bribe Received by~~
23 ~~Witness (RCW 9A.72.090,~~
24 ~~9A.72.100)~~
25 Cheating 1 (RCW 9A.46.1961)
26 Commercial Bribery (RCW
27 9A.68.060)
28 ~~Counterfeiting (RCW 9A.16.035(4))~~
29 ~~Endangerment with a Controlled~~
30 ~~Substance (RCW 9A.42.100)~~
31 ~~Escape 1 (RCW 9A.76.110)~~
32 ~~Hit and Run - Injury (RCW~~
33 ~~46.52.020(4)(b))~~
34 ~~Hit and Run with Vessel - Injury~~
35 ~~Accident (RCW 79A.60.200(3))~~
36 Identity Theft 1 (RCW 9A.35.020(2))

1 ~~Indecent Exposure to Person Under~~
2 ~~Age Fourteen (subsequent sex~~
3 ~~offense) (RCW 9A.88.010)~~
4 ~~Influencing Outcome of Sporting~~
5 ~~Event (RCW 9A.82.070)~~
6 ~~Malicious Harassment (RCW~~
7 ~~9A.36.080)~~
8 ~~Residential Burglary (RCW~~
9 ~~9A.52.025))~~
10 ~~Bail Jumping with class A Felony~~
11 ~~(RCW 9A.76.170(3)(b))~~
12 ~~Criminal Mistreatment 1 (RCW~~
13 ~~9A.42.020)~~
14 ~~Extortionate Extension of Credit~~
15 ~~(RCW 9A.82.020)~~
16 ~~Extortionate Means to Collect~~
17 ~~Extensions of Credit (RCW~~
18 ~~9A.82.040)~~
19 ~~Perjury 1 (RCW 9A.72.020)~~
20 ~~Persistent prison misbehavior (RCW~~
21 ~~9.94.070)~~
22 ~~Possession of a Stolen Firearm (RCW~~
23 ~~9A.56.310)~~
24 ~~Rendering Criminal Assistance 1~~
25 ~~(RCW 9A.76.070)~~
26 ~~Robbery 2 (RCW 9A.56.210)~~
27 ~~((Theft of Livestock 1 (RCW~~
28 ~~9A.56.080)))~~
29 ~~Taking Motor Vehicle Without~~
30 ~~Permission 1 (RCW 9A.56.070)~~
31 ~~Threats to Bomb (RCW 9.61.160)~~
32 ~~((Trafficking in Stolen Property 1~~
33 ~~(RCW 9A.82.050)~~
34 ~~Unlawful factoring of a credit card or~~
35 ~~payment card transaction (RCW~~
36 ~~9A.56.290(4)(b))~~

1 Unlawful transaction of health
2 coverage as a health care service
3 contractor (RCW 48.44.016(3))
4 Unlawful transaction of health
5 coverage as a health maintenance
6 organization (RCW 48.46.033(3))
7 Unlawful transaction of insurance
8 business (RCW 48.15.023(3))
9 Unlicensed practice as an insurance
10 professional (RCW 48.17.063(3))
11 Use of Proceeds of Criminal
12 Profiteering (RCW 9A.82.080 (1)
13 and (2)))
14 Vehicular Assault, by being under the
15 influence of intoxicating liquor or
16 any drug, or by the operation or
17 driving of a vehicle in a reckless
18 manner (RCW 46.61.522)
19 ((Willful Failure to Return from
20 Furlough (RCW 72.66.060)))
21 III ((Abandonment of dependent person 2-
22 (RCW 9A.42.070)))
23 Assault 3 (RCW 9A.36.031)
24 Assault by Watercraft (RCW
25 79A.60.060)
26 Assault of a Child 3 (RCW 9A.36.140)
27 ((Bail Jumping with class B or C
28 Felony (RCW 9A.76.170(3)(e))
29 Burglary 2 (RCW 9A.52.030)))
30 Bribing a Witness/Bribe Received by
31 Witness (RCW 9A.72.090,
32 9A.72.100)
33 Cheating 1 (RCW 9.46.1961)
34 Commercial Bribery (RCW
35 9A.68.060)

1 Communication with a Minor for
2 Immoral Purposes (RCW
3 9.68A.090)
4 ~~((Criminal Gang Intimidation (RCW-~~
5 ~~9A.46.120)~~
6 ~~Criminal Mistreatment 2 (RCW-~~
7 ~~9A.42.030)))~~
8 Counterfeiting (RCW 9.16.035(4))
9 Custodial Assault (RCW 9A.36.100)
10 ~~((Cyberstalking (subsequent conviction~~
11 ~~or threat of death) (RCW~~
12 ~~9.61.260(3))~~
13 ~~Escape 2 (RCW 9A.76.120)))~~
14 Endangerment with a Controlled
15 Substance (RCW 9A.42.100)
16 Escape 1 (RCW 9A.76.110)
17 Extortion 2 (RCW 9A.56.130)
18 ~~((Harassment (RCW 9A.46.020)))~~
19 Hit and Run--Injury (RCW
20 46.52.020(4)(b))
21 Hit and Run with Vessel--Injury
22 Accident (RCW 79A.60.200(3))
23 Identity Theft 1 (RCW 9.35.020(2))
24 Indecent Exposure to Person Under
25 Age Fourteen (subsequent sex
26 offense) (RCW 9A.88.010)
27 Influencing Outcome of Sporting
28 Event (RCW 9A.82.070)
29 Intimidating a Public Servant (RCW
30 9A.76.180)
31 ~~((Introducing Contraband 2 (RCW-~~
32 ~~9A.76.150)~~
33 ~~Malicious Injury to Railroad Property-~~
34 ~~(RCW 81.60.070)))~~
35 Malicious Harassment (RCW
36 9A.36.080)

1 Patronizing a Juvenile Prostitute
2 (RCW 9.68A.100)
3 ((Perjury 2 (RCW 9A.72.030)
4 Possession of Incendiary Device (RCW-
5 9.40.120)
6 Possession of Machine Gun or
7 Short-Barreled Shotgun or Rifle-
8 (RCW 9.41.190)
9 Promoting Prostitution 2 (RCW-
10 9A.88.080)
11 Securities Act violation (RCW-
12 21.20.400)
13 Tampering with a Witness (RCW-
14 9A.72.120)
15 Telephone Harassment (subsequent-
16 conviction or threat of death)
17 (RCW 9.61.230(2))
18 Theft of Livestock 2 (RCW 9A.56.083)
19 Trafficking in Stolen Property 2 (RCW-
20 9A.82.055)))
21 Residential Burglary (RCW
22 9A.52.025)
23 Theft of Livestock 1 (RCW 9A.56.080)
24 Trafficking in Stolen Property 1 (RCW
25 9A.82.050)
26 Unlawful factoring of a credit card or
27 payment card transaction (RCW
28 9A.56.290(4)(b))
29 Unlawful Imprisonment (RCW
30 9A.40.040)
31 ((Unlawful possession of firearm in the
32 second degree (RCW
33 9.41.040(2))))
34 Unlawful transaction of health
35 coverage as a health care service
36 contractor (RCW 48.44.016(3))

1 Unlawful transaction of health
2 coverage as a health maintenance
3 organization (RCW 48.46.033(3))
4 Unlawful transaction of insurance
5 business (RCW 48.15.023(3))
6 Unlicensed practice as an insurance
7 professional (RCW 48.17.063(3))
8 Use of Proceeds of Criminal
9 Profiteering (RCW 9A.82.080 (1)
10 and (2))
11 Vehicular Assault, by the operation or
12 driving of a vehicle with disregard
13 for the safety of others (RCW
14 46.61.522)
15 ~~((Willful Failure to Return from Work-~~
16 ~~Release (RCW 72.65.070)))~~
17 Willful Failure to Return from
18 Furlough (RCW 72.66.060)
19 II ~~((Computer Trespass 1 (RCW-~~
20 ~~9A.52.110)~~
21 ~~Counterfeiting (RCW 9.16.035(3))~~
22 ~~Escape from Community Custody-~~
23 ~~(RCW 72.09.310)~~
24 ~~Health Care False Claims (RCW-~~
25 ~~48.80.030)~~
26 ~~Identity Theft 2 (RCW 9.35.020(3))~~
27 ~~Improperly Obtaining Financial-~~
28 ~~Information (RCW 9.35.010)~~
29 ~~Malicious Mischief 1 (RCW-~~
30 ~~9A.48.070)~~
31 ~~Possession of Stolen Property 1 (RCW-~~
32 ~~9A.56.150)~~
33 ~~Theft 1 (RCW 9A.56.030)~~

1 Theft of Rental, Leased, or
2 Lease-purchased Property (valued
3 at one thousand five hundred
4 dollars or more) (RCW
5 9A.56.096(5)(a))
6 Trafficking in Insurance Claims
7 (RCW 48.30A.015)
8 Unlawful factoring of a credit card or
9 payment card transaction (RCW
10 9A.56.290(4)(a))
11 Unlawful Practice of Law (RCW
12 2.48.180)
13 Unlicensed Practice of a Profession or
14 Business (RCW 18.130.190(7)))
15 Abandonment of dependent person 2
16 (RCW 9A.42.070)
17 Bail Jumping with class B or C Felony
18 (RCW 9A.76.170(3)(c))
19 Burglary 2 (RCW 9A.52.030)
20 Criminal Gang Intimidation (RCW
21 9A.46.120)
22 Criminal Mistreatment 2 (RCW
23 9A.42.030)
24 Cyberstalking (subsequent conviction
25 or threat of death) (RCW
26 9.61.260(3))
27 Escape 2 (RCW 9A.76.120)
28 Harassment (RCW 9A.46.020)
29 Introducing Contraband 2 (RCW
30 9A.76.150)
31 Malicious Injury to Railroad Property
32 (RCW 81.60.070)
33 Perjury 2 (RCW 9A.72.030)
34 Possession of Incendiary Device (RCW
35 9.40.120)

1 Possession of Machine Gun or
2 Short-Barreled Shotgun or Rifle
3 (RCW 9.41.190)
4 Promoting Prostitution 2 (RCW
5 9A.88.080)
6 Securities Act violation (RCW
7 21.20.400)
8 Tampering with a Witness (RCW
9 9A.72.120)
10 Telephone Harassment (subsequent
11 conviction or threat of death)
12 (RCW 9.61.230(2))
13 Theft of Livestock 2 (RCW 9A.56.083)
14 Trafficking in Stolen Property 2 (RCW
15 9A.82.055)
16 Unlawful possession of firearm in the
17 second degree (RCW 9.41.040(2))
18 Willful Failure to Return from Work
19 Release (RCW 72.65.070)
20 I Attempting to Elude a Pursuing Police
21 Vehicle (RCW 46.61.024)
22 Computer Trespass 1 (RCW
23 9A.52.110)
24 Counterfeiting (RCW 9.16.035(3))
25 Escape from Community Custody
26 (RCW 72.09.310)
27 False Verification for Welfare (RCW
28 74.08.055)
29 Forgery (RCW 9A.60.020)
30 Fraudulent Creation or Revocation of a
31 Mental Health Advance Directive
32 (RCW 9A.60.060)
33 Health Care False Claims (RCW
34 48.80.030)
35 Identity Theft 2 (RCW 9.35.020(3))
36 Improperly Obtaining Financial
37 Information (RCW 9.35.010)

1 Malicious Mischief 1 (RCW
2 9A.48.070)
3 Malicious Mischief 2 (RCW
4 9A.48.080)
5 Mineral Trespass (RCW 78.44.330)
6 Possession of Stolen Property 1 (RCW
7 9A.56.150)
8 Possession of Stolen Property 2 (RCW
9 9A.56.160)
10 Reckless Burning 1 (RCW 9A.48.040)
11 Taking Motor Vehicle Without
12 Permission 2 (RCW 9A.56.075)
13 Theft 1 (RCW 9A.56.030)
14 Theft 2 (RCW 9A.56.040)
15 Theft of Rental, Leased, or
16 Lease-purchased Property (valued
17 at one thousand five hundred
18 dollars or more) (RCW
19 9A.56.096(5)(a))
20 Theft of Rental, Leased, or Lease-
21 purchased Property (valued at two
22 hundred fifty dollars or more but
23 less than one thousand five
24 hundred dollars) (RCW
25 9A.56.096(5)(b))
26 Trafficking in Insurance Claims (RCW
27 48.30A.015)
28 Transaction of insurance business
29 beyond the scope of licensure
30 (RCW 48.17.063(4))
31 Unlawful factoring of a credit card or
32 payment card transaction (RCW
33 9A.56.290(4)(a))
34 Unlawful Issuance of Checks or Drafts
35 (RCW 9A.56.060)
36 Unlawful Possession of Fictitious
37 Identification (RCW 9A.56.320)

1 Unlawful Possession of Instruments of
2 Financial Fraud (RCW
3 9A.56.320)
4 Unlawful Possession of Payment
5 Instruments (RCW 9A.56.320)
6 Unlawful Possession of a Personal
7 Identification Device (RCW
8 9A.56.320)
9 Unlawful Practice of Law (RCW
10 2.48.180)
11 Unlawful Production of Payment
12 Instruments (RCW 9A.56.320)
13 Unlawful Trafficking in Food Stamps
14 (RCW 9.91.142)
15 Unlawful Use of Food Stamps (RCW
16 9.91.144)
17 Unlicensed Practice of a Profession or
18 Business (RCW 18.130.190(7))
19 Vehicle Prowl 1 (RCW 9A.52.095)

20 **Sec. 22.** RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are
21 each reenacted and amended to read as follows:

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

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

26 (1) A prior conviction is a conviction which exists before the date
27 of sentencing for the offense for which the offender score is being
28 computed. Convictions entered or sentenced on the same date as the
29 conviction for which the offender score is being computed shall be
30 deemed "other current offenses" within the meaning of RCW 9.94A.589.

31 (2) Class A and sex prior felony convictions shall always be
32 included in the offender score. Class B prior felony convictions other
33 than sex offenses shall not be included in the offender score, if since
34 the last date of release from confinement (including full-time
35 residential treatment) pursuant to a felony conviction, if any, or
36 entry of judgment and sentence, the offender had spent ten consecutive
37 years in the community without committing any crime that subsequently

1 results in a conviction. Class C prior felony convictions other than
2 sex offenses shall not be included in the offender score if, since the
3 last date of release from confinement (including full-time residential
4 treatment) pursuant to a felony conviction, if any, or entry of
5 judgment and sentence, the offender had spent five consecutive years in
6 the community without committing any crime that subsequently results in
7 a conviction. Serious traffic convictions shall not be included in the
8 offender score if, since the last date of release from confinement
9 (including full-time residential treatment) pursuant to a felony
10 conviction, if any, or entry of judgment and sentence, the offender
11 spent five years in the community without committing any crime that
12 subsequently results in a conviction. This subsection applies to both
13 adult and juvenile prior convictions.

14 (3) Out-of-state convictions for offenses shall be classified
15 according to the comparable offense definitions and sentences provided
16 by Washington law. Federal convictions for offenses shall be
17 classified according to the comparable offense definitions and
18 sentences provided by Washington law. If there is no clearly
19 comparable offense under Washington law or the offense is one that is
20 usually considered subject to exclusive federal jurisdiction, the
21 offense shall be scored as a class C felony equivalent if it was a
22 felony under the relevant federal statute.

23 (4) Score prior convictions for felony anticipatory offenses
24 (attempts, criminal solicitations, and criminal conspiracies) the same
25 as if they were convictions for completed offenses.

26 (5)(a) In the case of multiple prior convictions, for the purpose
27 of computing the offender score, count all convictions separately,
28 except:

29 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
30 encompass the same criminal conduct, shall be counted as one offense,
31 the offense that yields the highest offender score. The current
32 sentencing court shall determine with respect to other prior adult
33 offenses for which sentences were served concurrently or prior juvenile
34 offenses for which sentences were served consecutively, whether those
35 offenses shall be counted as one offense or as separate offenses using
36 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
37 if the court finds that they shall be counted as one offense, then the
38 offense that yields the highest offender score shall be used. The

1 current sentencing court may presume that such other prior offenses
2 were not the same criminal conduct from sentences imposed on separate
3 dates, or in separate counties or jurisdictions, or in separate
4 complaints, indictments, or informations;

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

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

17 (6) If the present conviction is one of the anticipatory offenses
18 of criminal attempt, solicitation, or conspiracy, count each prior
19 conviction as if the present conviction were for a completed offense.
20 When these convictions are used as criminal history, score them the
21 same as a completed crime.

22 (7)(a) If the present conviction is for a nonviolent offense and
23 not covered by (b) of this subsection, or by subsection (11) or (12) of
24 this section, count one point for each adult prior felony conviction
25 and one point for each juvenile prior violent felony conviction and 1/2
26 point for each juvenile prior nonviolent felony conviction.

27 (b) If the present conviction is for an offense sentenced under
28 section 12 of this act, count one point for each prior adult felony
29 conviction, and no points for prior juvenile convictions.

30 (8) If the present conviction is for a violent offense and not
31 covered in subsection (9), (10), (11), or (12) of this section, count
32 two points for each prior adult and juvenile violent felony conviction,
33 one point for each prior adult nonviolent felony conviction, and 1/2
34 point for each prior juvenile nonviolent felony conviction.

35 (9) If the present conviction is for a serious violent offense,
36 count three points for prior adult and juvenile convictions for crimes
37 in this category, two points for each prior adult and juvenile violent

1 conviction (not already counted), one point for each prior adult
2 nonviolent felony conviction, and 1/2 point for each prior juvenile
3 nonviolent felony conviction.

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

9 (11) If the present conviction is for a felony traffic offense
10 count two points for each adult or juvenile prior conviction for
11 Vehicular Homicide or Vehicular Assault; for each felony offense count
12 one point for each adult and 1/2 point for each juvenile prior
13 conviction; for each serious traffic offense, other than those used for
14 an enhancement pursuant to RCW 46.61.520(2), count one point for each
15 adult and 1/2 point for each juvenile prior conviction.

16 (12) If the present conviction is for manufacture of
17 methamphetamine count three points for each adult prior manufacture of
18 methamphetamine conviction and two points for each juvenile manufacture
19 of methamphetamine offense. If the present conviction is for a drug
20 offense and the offender has a criminal history that includes a sex
21 offense or serious violent offense, count three points for each adult
22 prior felony drug offense conviction and two points for each juvenile
23 drug offense. All other adult and juvenile felonies are scored as in
24 subsection (8) of this section if the current drug offense is violent,
25 or as in subsection (7) of this section if the current drug offense is
26 nonviolent.

27 (13) If the present conviction is for Escape from Community
28 Custody, RCW 72.09.310, count only prior escape convictions in the
29 offender score. Count adult prior escape convictions as one point and
30 juvenile prior escape convictions as 1/2 point.

31 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or
32 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
33 juvenile prior convictions as 1/2 point.

34 ~~(15) ((If the present conviction is for Burglary 2 or residential~~
35 ~~burglary, count priors as in subsection (7) of this section; however,~~
36 ~~count two points for each adult and juvenile prior Burglary 1~~
37 ~~conviction, two points for each adult prior Burglary 2 or residential~~

1 ~~burglary conviction, and one point for each juvenile prior Burglary 2~~
2 ~~or residential burglary conviction.~~

3 ~~(16))~~ If the present conviction is for a sex offense, count priors
4 as in subsections (7) through ~~((15))~~ (14) of this section; however
5 count three points for each adult and juvenile prior sex offense
6 conviction.

7 ~~((17))~~ (16) If the present conviction is for an offense committed
8 while the offender was under community placement, add one point.

9 ~~((18))~~ (17) The fact that a prior conviction was not included in
10 an offender's offender score or criminal history at a previous
11 sentencing shall have no bearing on whether it is included in the
12 criminal history or offender score for the current offense.
13 Accordingly, prior convictions that were not counted in the offender
14 score or included in criminal history under repealed or previous
15 versions of the sentencing reform act shall be included in criminal
16 history and shall count in the offender score if the current version of
17 the sentencing reform act requires including or counting those
18 convictions.

19 NEW SECTION. **Sec. 23.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 24.** Section 9 of this act expires July 1, 2005.

24 NEW SECTION. **Sec. 25.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately, except that sections 10 through 22 of this act take effect
28 July 1, 2005.

29 NEW SECTION. **Sec. 26.** Sections 12 through 22 of this act apply
30 only to sentences imposed on or after July 1, 2005.

--- END ---