

2 **E3SHB 3900** - S AMD TO S AMD (S-3171.1/97) - 421A
3 By Senators Long and Hargrove

4 ADOPTED 4/16/97

5 On page 1, beginning on line 29 of the amendment, after "(b)"
6 strike the remainder of the amendment and insert "No parent or guardian
7 of a minor child arrested on a criminal charge may be examined as to a
8 communication between the child and his or her attorney if the
9 communication was made in the presence of the parent or guardian. This
10 privilege does not extend to communications made prior to the arrest.

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

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

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

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

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

33 (6)(a) A peer support group counselor shall not, without consent of
34 the law enforcement officer making the communication, be compelled to
35 testify about any communication made to the counselor by the officer
36 while receiving counseling. The counselor must be designated as such
37 by the sheriff, police chief, or chief of the Washington state patrol,

1 prior to the incident that results in counseling. The privilege only
2 applies when the communication was made to the counselor while acting
3 in his or her capacity as a peer support group counselor. The
4 privilege does not apply if the counselor was an initial responding
5 officer, a witness, or a party to the incident which prompted the
6 delivery of peer support group counseling services to the law
7 enforcement officer.

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

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

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

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

23 (a) For purposes of this section, "sexual assault advocate" means
24 the employee or volunteer from a rape crisis center, victim assistance
25 unit, program, or association, that provides information, medical or
26 legal advocacy, counseling, or support to victims of sexual assault,
27 who is designated by the victim to accompany the victim to the hospital
28 or other health care facility and to proceedings concerning the alleged
29 assault, including police and prosecution interviews and court
30 proceedings.

31 (b) A sexual assault advocate may disclose a confidential
32 communication without the consent of the victim if failure to disclose
33 is likely to result in a clear, imminent risk of serious physical
34 injury or death of the victim or another person. Any sexual assault
35 advocate participating in good faith in the disclosing of records and
36 communications under this section shall have immunity from any
37 liability, civil, criminal, or otherwise, that might result from the
38 action. In any proceeding, civil or criminal, arising out of a
39 disclosure under this section, the good faith of the sexual assault

1 advocate who disclosed the confidential communication shall be
2 presumed.

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

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

15 (3) "Community corrections officer" means an employee of the
16 department who is responsible for carrying out specific duties in
17 supervision of sentenced offenders and monitoring of sentence
18 conditions.

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

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

31 (6) "Community service" means compulsory service, without
32 compensation, performed for the benefit of the community by the
33 offender.

34 (7) "Community supervision" means a period of time during which a
35 convicted offender is subject to crime-related prohibitions and other
36 sentence conditions imposed by a court pursuant to this chapter or RCW
37 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
38 may include crime-related prohibitions and other conditions imposed

1 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
2 for out-of-state supervision of parolees and probationers, RCW
3 9.95.270, community supervision is the functional equivalent of
4 probation and should be considered the same as probation by other
5 states.

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

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

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

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

31 (12)((a)) "Criminal history" means the list of a defendant's
32 prior convictions and juvenile adjudications, whether in this state, in
33 federal court, or elsewhere. The history shall include, where known,
34 for each conviction ((i)) (a) whether the defendant has been placed
35 on probation and the length and terms thereof; and ((ii)) (b) whether
36 the defendant has been incarcerated and the length of incarceration.

37 ~~((b) "Criminal history" shall always include juvenile convictions~~
38 ~~for sex offenses and serious violent offenses and shall also include a~~
39 ~~defendant's other prior convictions in juvenile court if: (i) The~~

1 conviction was for an offense which is a felony or a serious traffic
2 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
3 the defendant was fifteen years of age or older at the time the offense
4 was committed; and (iii) with respect to prior juvenile class B and C
5 felonies or serious traffic offenses, the defendant was less than
6 twenty-three years of age at the time the offense for which he or she
7 is being sentenced was committed.))

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

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

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

18 (16) "Determinate sentence" means a sentence that states with
19 exactitude the number of actual years, months, or days of total
20 confinement, of partial confinement, of community supervision, the
21 number of actual hours or days of community service work, or dollars or
22 terms of a legal financial obligation. The fact that an offender
23 through "earned early release" can reduce the actual period of
24 confinement shall not affect the classification of the sentence as a
25 determinate sentence.

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

38 (18) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of
2 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
3 controlled substance (RCW 69.50.403);

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

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

10 (19) "Escape" means:

11 (a) Escape in the first degree (RCW 9A.76.110), escape in the
12 second degree (RCW 9A.76.120), willful failure to return from furlough
13 (RCW 72.66.060), willful failure to return from work release (RCW
14 72.65.070), or willful failure to be available for supervision by the
15 department while in community custody (RCW 72.09.310); or

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

19 (20) "Felony traffic offense" means:

20 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
21 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
22 and-run injury-accident (RCW 46.52.020(4)); or

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

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

28 (22)~~((a))~~ "First-time offender" means any person who is convicted
29 of a felony ~~((i))~~ (a) not classified as a violent offense or a sex
30 offense under this chapter, or ~~((ii))~~ (b) that is not the
31 manufacture, delivery, or possession with intent to manufacture or
32 deliver a controlled substance classified in schedule I or II that is
33 a narcotic drug, nor the manufacture, delivery, or possession with
34 intent to deliver methamphetamine, its salts, isomers, and salts of its
35 isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit
36 of any controlled substance or counterfeit substance classified in
37 schedule I, RCW 69.50.204, except leaves and flowering tops of
38 marihuana, ~~((and except as provided in (b) of this subsection,))~~ who
39 previously has never been convicted of a felony in this state, federal

1 court, or another state, and who has never participated in a program of
2 deferred prosecution for a felony offense.

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

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

10 (a) Any felony defined under any law as a class A felony or
11 criminal solicitation of or criminal conspiracy to commit a class A
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

28 (q) Vehicular assault;

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, as "sexual motivation" is defined under this section;

35 (t) Any other felony with a deadly weapon verdict under RCW
36 9.94A.125;

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
39 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a
2 most serious offense under this subsection.

3 (24) "Nonviolent offense" means an offense which is not a violent
4 offense.

5 (25) "Offender" means a person who has committed a felony
6 established by state law and is eighteen years of age or older or is
7 less than eighteen years of age but whose case is under superior court
8 jurisdiction under RCW 13.04.030 or has been transferred by the
9 appropriate juvenile court to a criminal court pursuant to RCW
10 13.40.110. Throughout this chapter, the terms "offender" and
11 "defendant" are used interchangeably.

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

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

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

23 (ii) Has, before the commission of the offense under (a) of this
24 subsection, been convicted as an offender on at least two separate
25 occasions, whether in this state or elsewhere, of felonies that under
26 the laws of this state would be considered most serious offenses and
27 would be included in the offender score under RCW 9.94A.360; provided
28 that of the two or more previous convictions, at least one conviction
29 must have occurred before the commission of any of the other most
30 serious offenses for which the offender was previously convicted; or

31 (b)(i) Has been convicted of (A) rape in the first degree, rape in
32 the second degree, or indecent liberties by forcible compulsion; (B)
33 murder in the first degree, murder in the second degree, kidnapping in
34 the first degree, kidnapping in the second degree, assault in the first
35 degree, assault in the second degree, or burglary in the first degree,
36 with a finding of sexual motivation; or (C) an attempt to commit any
37 crime listed in this subsection (27)(b)(i); and

38 (ii) Has, before the commission of the offense under (b)(i) of this
39 subsection, been convicted as an offender on at least one occasion,

1 whether in this state or elsewhere, of an offense listed in (b)(i) of
2 this subsection.

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

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

9 (30) "Serious traffic offense" means:

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

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

18 (31) "Serious violent offense" is a subcategory of violent offense
19 and means:

20 (a) Murder in the first degree, homicide by abuse, murder in the
21 second degree, assault in the first degree, kidnapping in the first
22 degree, or rape in the first degree, assault of a child in the first
23 degree, or an attempt, criminal solicitation, or criminal conspiracy to
24 commit one of these felonies; or

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

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

30 (33) "Sex offense" means:

31 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
32 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
33 criminal attempt, criminal solicitation, or criminal conspiracy to
34 commit such crimes;

35 (b) A felony with a finding of sexual motivation under RCW
36 9.94A.127 or 13.40.135; or

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

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

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

8 (36) "Transition training" means written and verbal instructions
9 and assistance provided by the department to the offender during the
10 two weeks prior to the offender's successful completion of the work
11 ethic camp program. The transition training shall include instructions
12 in the offender's requirements and obligations during the offender's
13 period of community custody.

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

17 (38) "Violent offense" means:

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

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

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

37 (39) "Work crew" means a program of partial confinement consisting
38 of civic improvement tasks for the benefit of the community of not less
39 than thirty-five hours per week that complies with RCW 9.94A.135. The

1 civic improvement tasks shall have minimal negative impact on existing
2 private industries or the labor force in the county where the service
3 or labor is performed. The civic improvement tasks shall not affect
4 employment opportunities for people with developmental disabilities
5 contracted through sheltered workshops as defined in RCW 82.04.385.
6 Only those offenders sentenced to a facility operated or utilized under
7 contract by a county or the state are eligible to participate on a work
8 crew. Offenders sentenced for a sex offense as defined in subsection
9 (33) of this section are not eligible for the work crew program.

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

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

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

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

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

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

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

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

34 (ii) The intent of the legislature to emphasize confinement for the
35 violent offender and alternatives to confinement for the nonviolent
36 offender.

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

4 (b) Recommend to the legislature revisions or modifications to the
5 standard sentence ranges, state sentencing policy, prosecuting
6 standards, and other standards. If implementation of the revisions or
7 modifications would result in exceeding the capacity of correctional
8 facilities, then the commission shall accompany its recommendation with
9 an additional list of standard sentence ranges which are consistent
10 with correction capacity;

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

13 (d)(i) Serve as a clearinghouse and information center for the
14 collection, preparation, analysis, and dissemination of information on
15 state and local adult and juvenile sentencing practices; (ii) develop
16 and maintain a computerized adult and juvenile sentencing information
17 system by individual superior court judge consisting of offender,
18 offense, history, and sentence information entered from judgment and
19 sentence forms for all adult felons; and (iii) conduct ongoing research
20 regarding adult and juvenile sentencing guidelines, use of total
21 confinement and alternatives to total confinement, plea bargaining, and
22 other matters relating to the improvement of the adult criminal justice
23 system and the juvenile justice system;

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

26 (f) Evaluate the effectiveness of existing disposition standards
27 and related statutes in implementing policies set forth in RCW
28 13.40.010 generally, specifically review the guidelines relating to the
29 confinement of minor and first offenders as well as the use of
30 diversion, and review the application of current and proposed juvenile
31 sentencing standards and guidelines for potential adverse impacts on
32 the sentencing outcomes of racial and ethnic minority youth;

33 (g) Solicit the comments and suggestions of the juvenile justice
34 community concerning disposition standards, and make recommendations to
35 the legislature regarding revisions or modifications of the standards
36 (~~in accordance with RCW 9.94A.045~~). The evaluations shall be
37 submitted to the legislature on December 1 of each odd-numbered year.
38 The department of social and health services shall provide the
39 commission with available data concerning the implementation of the

1 disposition standards and related statutes and their effect on the
2 performance of the department's responsibilities relating to juvenile
3 offenders, and with recommendations for modification of the disposition
4 standards. The office of the administrator for the courts shall
5 provide the commission with available data on diversion and
6 dispositions of juvenile offenders under chapter 13.40 RCW; and

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

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

11 (ii) The capacity of state and local juvenile and adult facilities
12 and resources; and

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

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

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

19 (a) If the maximum term in the range is one year or less, the
20 minimum term in the range shall be no less than one-third of the
21 maximum term in the range, except that if the maximum term in the range
22 is ninety days or less, the minimum term may be less than one-third of
23 the maximum;

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

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

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

31 **Sec. 4.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c
32 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as
33 follows:

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

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

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

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

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

34 (5) In sentencing a first-time offender the court may waive the
35 imposition of a sentence within the sentence range and impose a
36 sentence which may include up to ninety days of confinement in a
37 facility operated or utilized under contract by the county and a
38 requirement that the offender refrain from committing new offenses.
39 The sentence may also include up to two years of community supervision,

1 which, in addition to crime-related prohibitions, may include
2 requirements that the offender perform any one or more of the
3 following:

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

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

8 (c) Pursue a prescribed, secular course of study or vocational
9 training;

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

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

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

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

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

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

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

32 (b) If the midpoint of the standard range is greater than one year
33 and the sentencing judge determines that the offender is eligible for
34 this option and that the offender and the community will benefit from
35 the use of the special drug offender sentencing alternative, the judge
36 may waive imposition of a sentence within the standard range and impose
37 a sentence that must include a period of total confinement in a state
38 facility for one-half of the midpoint of the standard range. During
39 incarceration in the state facility, offenders sentenced under this

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

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

1 of community supervision shall be tolled by any period of time served
2 in total confinement as a result of a violation found by the court.

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

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

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

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

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

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

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

37 (C) Monitoring plans, including any requirements regarding living
38 conditions, lifestyle requirements, and monitoring by family members
39 and others;

- 1 (D) Anticipated length of treatment; and
- 2 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

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

33 (v) If a violation of conditions occurs during community custody,
34 the department shall either impose sanctions as provided for in RCW
35 9.94A.205(2)(a) or refer the violation to the court and recommend
36 revocation of the suspended sentence as provided for in (a)(vi) of this
37 subsection.

38 (vi) The court may revoke the suspended sentence at any time during
39 the period of community custody and order execution of the sentence if:

1 (A) The defendant violates the conditions of the suspended sentence, or
2 (B) the court finds that the defendant is failing to make satisfactory
3 progress in treatment. All confinement time served during the period
4 of community custody shall be credited to the offender if the suspended
5 sentence is revoked.

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

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

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

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

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

34 Except for an offender who has been convicted of a violation of RCW
35 9A.44.040 or 9A.44.050, if the offender completes the treatment program
36 before the expiration of his or her term of confinement, the department
37 of corrections may request the court to convert the balance of
38 confinement to community supervision and to place conditions on the

1 offender including crime-related prohibitions and requirements that the
2 offender perform any one or more of the following:

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

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

7 (iii) Report as directed to the court and a community corrections
8 officer;

9 (iv) Undergo available outpatient treatment.

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

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

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

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

1 9.94A.150 (1) and (2). When the court sentences an offender under this
2 subsection to the statutory maximum period of confinement then the
3 community placement portion of the sentence shall consist entirely of
4 such community custody to which the offender may become eligible, in
5 accordance with RCW 9.94A.150 (1) and (2). Any period of community
6 custody actually served shall be credited against the community
7 placement portion of the sentence.

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

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

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

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

34 (iv) An offender in community custody shall not unlawfully possess
35 controlled substances;

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

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

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

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

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

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

13 (iv) The offender shall not consume alcohol;

14 (v) The offender shall comply with any crime-related prohibitions;
15 or

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

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

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

35 (b) Unless a condition is waived by the court, the terms of
36 community custody shall be the same as those provided for in subsection
37 (9)(b) of this section and may include those provided for in subsection
38 (9)(c) of this section. As part of any sentence that includes a term
39 of community custody imposed under this subsection, the court shall

1 also require the offender to comply with any conditions imposed by the
2 department of corrections under subsection (14) of this section.

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

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

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

1 restitution as one of the monetary assessments, the county clerk shall
2 make disbursements to victims named in the order.

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

7 (14) All offenders sentenced to terms involving community
8 supervision, community service, community placement, or legal financial
9 obligation shall be under the supervision of the department of
10 corrections and shall follow explicitly the instructions and conditions
11 of the department of corrections.

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

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

36 The department may require offenders to pay for special services
37 rendered on or after July 25, 1993, including electronic monitoring,
38 day reporting, and telephone reporting, dependent upon the offender's

1 ability to pay. The department may pay for these services for
2 offenders who are not able to pay.

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

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

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

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

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

36 (20) In any sentence of partial confinement, the court may require
37 the defendant to serve the partial confinement in work release, in a
38 program of home detention, on work crew, or in a combined program of
39 work crew and home detention.

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

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

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

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

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

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

37 (3) Out-of-state convictions for offenses shall be classified
38 according to the comparable offense definitions and sentences provided

1 by Washington law. Federal convictions for offenses shall be
2 classified according to the comparable offense definitions and
3 sentences provided by Washington law. If there is no clearly
4 comparable offense under Washington law or the offense is one that is
5 usually considered subject to exclusive federal jurisdiction, the
6 offense shall be scored as a class C felony equivalent if it was a
7 felony under the relevant federal statute.

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

15 ~~(5))~~ Score prior convictions for felony anticipatory offenses
16 (attempts, criminal solicitations, and criminal conspiracies) the same
17 as if they were convictions for completed offenses.

18 ~~((6))~~ (5)(a) In the case of multiple prior convictions, for the
19 purpose of computing the offender score, count all convictions
20 separately, except:

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

36 (ii) ~~((Juvenile prior convictions entered or sentenced on the same~~
37 ~~date shall count as one offense, the offense that yields the highest~~
38 ~~offender score, except for juvenile prior convictions for violent~~

1 ~~offenses with separate victims, which shall count as separate offenses;~~
2 ~~and~~

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

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

15 ~~((+7))~~ (6) If the present conviction is one of the anticipatory
16 offenses of criminal attempt, solicitation, or conspiracy, count each
17 prior conviction as if the present conviction were for a completed
18 offense.

19 ~~((+8))~~ (7) If the present conviction is for a nonviolent offense
20 and not covered by subsection ~~((+12))~~ (11) or ~~((+13))~~ (12) of this
21 section, count one point for each adult prior felony conviction and one
22 point for each juvenile prior violent felony conviction and « point for
23 each juvenile prior nonviolent felony conviction.

24 ~~((+9))~~ (8) If the present conviction is for a violent offense and
25 not covered in subsection ~~((+10), (11), (12), or (13))~~ (9), (10),
26 (11), or (12) of this section, count two points for each prior adult
27 and juvenile violent felony conviction, one point for each prior adult
28 nonviolent felony conviction, and « point for each prior juvenile
29 nonviolent felony conviction.

30 ~~((+10))~~ (9) If the present conviction is for Murder 1 or 2,
31 Assault 1, Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or
32 Rape 1, count three points for prior adult and juvenile convictions for
33 crimes in these categories, two points for each prior adult and
34 juvenile violent conviction (not already counted), one point for each
35 prior adult nonviolent felony conviction, and « point for each prior
36 juvenile nonviolent felony conviction.

37 ~~((+11))~~ (10) If the present conviction is for Burglary 1, count
38 prior convictions as in subsection ~~((+9))~~ (8) of this section; however
39 count two points for each prior adult Burglary 2 or residential

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

3 ~~((12))~~ (11) If the present conviction is for a felony traffic
4 offense count two points for each adult or juvenile prior conviction
5 for Vehicular Homicide or Vehicular Assault; for each felony offense or
6 serious traffic offense, count one point for each adult and « point for
7 each juvenile prior conviction.

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

14 ~~((14))~~ (13) If the present conviction is for Willful Failure to
15 Return from Furlough, RCW 72.66.060, Willful Failure to Return from
16 Work Release, RCW 72.65.070, or Escape from Community Custody, RCW
17 72.09.310, count only prior escape convictions in the offender score.
18 Count adult prior escape convictions as one point and juvenile prior
19 escape convictions as « point.

20 ~~((15))~~ (14) If the present conviction is for Escape 1, RCW
21 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as
22 one point and juvenile prior convictions as « point.

23 ~~((16))~~ (15) If the present conviction is for Burglary 2 or
24 residential burglary, count priors as in subsection ~~((8))~~ (7) of this
25 section; however, count two points for each adult and juvenile prior
26 Burglary 1 conviction, two points for each adult prior Burglary 2 or
27 residential burglary conviction, and one point for each juvenile prior
28 Burglary 2 or residential burglary conviction.

29 ~~((17))~~ (16) If the present conviction is for a sex offense, count
30 priors as in subsections ~~((8))~~ (7) through ~~((16))~~ (15) of this
31 section; however count three points for each adult and juvenile prior
32 sex offense conviction.

33 ~~((18))~~ (17) If the present conviction is for an offense committed
34 while the offender was under community placement, add one point.

35 **Sec. 6.** RCW 13.04.011 and 1992 c 205 s 119 are each amended to
36 read as follows:

37 For purposes of this title:

1 (1) "Adjudication" has the same meaning as "conviction" in RCW
2 9.94A.030, and the terms must be construed identically and used
3 interchangeably;

4 (2) Except as specifically provided in RCW 13.40.020 and chapter
5 13.24 RCW, (~~as now or hereafter amended,~~) "juvenile," "youth," and
6 "child" mean any individual who is under the chronological age of
7 eighteen years;

8 (~~(3)~~) (3) "Juvenile offender" and "juvenile offense" have the
9 meaning ascribed in RCW 13.40.020;

10 (~~(4)~~) (4) "Court" when used without further qualification means
11 the juvenile court judge(s) or commissioner(s);

12 (~~(5)~~) (5) "Parent" or "parents," except as used in chapter 13.34
13 RCW, (~~as now or hereafter amended,~~) means that parent or parents who
14 have the right of legal custody of the child. "Parent" or "parents" as
15 used in chapter 13.34 RCW, means the biological or adoptive parents of
16 a child unless the legal rights of that person have been terminated by
17 judicial proceedings;

18 (~~(6)~~) (6) "Custodian" means that person who has the legal right
19 to custody of the child.

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

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

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

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

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

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

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

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

1 (ii) The statute of limitations applicable to adult prosecution for
2 the offense, traffic infraction, or violation has expired; or
3 (iii) The alleged offense or infraction is a traffic, fish,
4 boating, or game offense, or traffic or civil infraction committed by
5 a juvenile sixteen years of age or older and would, if committed by an
6 adult, be tried or heard in a court of limited jurisdiction, in which
7 instance the appropriate court of limited jurisdiction shall have
8 jurisdiction over the alleged offense or infraction, and no guardian ad
9 litem is required in any such proceeding due to the juvenile's age:
10 PROVIDED, That if such an alleged offense or infraction and an alleged
11 offense or infraction subject to juvenile court jurisdiction arise out
12 of the same event or incident, the juvenile court may have jurisdiction
13 of both matters: PROVIDED FURTHER, That the jurisdiction under this
14 subsection does not constitute "transfer" or a "decline" for purposes
15 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,
16 That courts of limited jurisdiction which confine juveniles for an
17 alleged offense or infraction may place juveniles in juvenile detention
18 facilities under an agreement with the officials responsible for the
19 administration of the juvenile detention facility in RCW 13.04.035 and
20 13.20.060; or
21 (iv) The juvenile is sixteen or seventeen years old and the alleged
22 offense is:
23 (A) A serious violent offense as defined in RCW 9.94A.030
24 (~~committed on or after June 13, 1994; or~~);
25 (B) A violent offense as defined in RCW 9.94A.030 (~~committed on or~~
26 ~~after June 13, 1994,~~) and the juvenile has a criminal history
27 consisting of: (I) One or more prior serious violent offenses; (II)
28 two or more prior violent offenses; or (III) three or more of any
29 combination of the following offenses: Any class A felony, any class
30 B felony, vehicular assault, or manslaughter in the second degree, all
31 of which must have been committed after the juvenile's thirteenth
32 birthday and prosecuted separately;
33 (C) Robbery in the first degree, rape of a child in the first
34 degree, or drive-by shooting, committed on or after the effective date
35 of this section;
36 (D) Burglary in the first degree committed on or after the
37 effective date of this section, and the juvenile has a criminal history
38 consisting of one or more prior felony or misdemeanor offenses; or

1 (E) Any violent offense as defined in RCW 9.94A.030 committed on or
2 after the effective date of this section, and the juvenile is alleged
3 to have been armed with a firearm.

4 In such a case the adult criminal court shall have exclusive
5 original jurisdiction.

6 If the juvenile challenges the state's determination of the
7 juvenile's criminal history under (e)(iv) of this subsection, the state
8 may establish the offender's criminal history by a preponderance of the
9 evidence. If the criminal history consists of adjudications entered
10 upon a plea of guilty, the state shall not bear a burden of
11 establishing the knowing and voluntariness of the plea;

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

14 (g) Relating to termination of a diversion agreement under RCW
15 13.40.080, including a proceeding in which the divertee has attained
16 eighteen years of age;

17 (h) Relating to court validation of a voluntary consent to an out-
18 of-home placement under chapter 13.34 RCW, by the parent or Indian
19 custodian of an Indian child, except if the parent or Indian custodian
20 and child are residents of or domiciled within the boundaries of a
21 federally recognized Indian reservation over which the tribe exercises
22 exclusive jurisdiction; and

23 (i) Relating to petitions to compel disclosure of information filed
24 by the department of social and health services pursuant to RCW
25 74.13.042.

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

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

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

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

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

10 (a) Protect the citizenry from criminal behavior;

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

13 (c) Make the juvenile offender accountable for his or her criminal
14 behavior;

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

17 (e) Provide due process for juveniles alleged to have committed an
18 offense;

19 (f) Provide necessary treatment, supervision, and custody for
20 juvenile offenders;

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

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

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

27 (j) Provide for a clear policy to determine what types of offenders
28 shall receive punishment, treatment, or both, and to determine the
29 jurisdictional limitations of the courts, institutions, and community
30 services; and

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

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

35 For the purposes of this chapter:

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

1 ~~(a) A class A felony, or an attempt to commit a class A felony;~~
2 ~~(b) Manslaughter in the first degree; or~~
3 ~~(c) Assault in the second degree, extortion in the first degree,~~
4 ~~child molestation in the second degree, kidnapping in the second~~
5 ~~degree, robbery in the second degree, residential burglary, or burglary~~
6 ~~in the second degree, where such offenses include the infliction of~~
7 ~~bodily harm upon another or where during the commission of or immediate~~
8 ~~withdrawal from such an offense the perpetrator is armed with a deadly~~
9 ~~weapon;~~

10 ~~(2))~~ "Community service" means compulsory service, without
11 compensation, performed for the benefit of the community by the
12 offender as punishment for committing an offense. Community service
13 may be performed through public or private organizations or through
14 work crews;

15 ~~((3))~~ (2) "Community supervision" means an order of disposition
16 by the court of an adjudicated youth not committed to the department or
17 an order granting a deferred ~~((adjudication))~~ disposition pursuant to
18 RCW 13.40.125. A community supervision order for a single offense may
19 be for a period of up to two years for a sex offense as defined by RCW
20 9.94A.030 and up to one year for other offenses. As a mandatory
21 condition of any term of community supervision, the court shall order
22 the juvenile to refrain from committing new offenses. As a mandatory
23 condition of community supervision, the court shall order the juvenile
24 to comply with the mandatory school attendance provisions of chapter
25 28A.225 RCW and to inform the school of the existence of this
26 requirement. Community supervision is an individualized program
27 comprised of one or more of the following:

28 (a) Community-based sanctions;
29 (b) Community-based rehabilitation;
30 (c) Monitoring and reporting requirements;
31 (d) Posting of a probation bond ~~((imposed pursuant to RCW~~
32 ~~13.40.0357))~~;

33 ~~((4))~~ (3) Community-based sanctions may include one or more of
34 the following:

35 (a) A fine, not to exceed ~~((one))~~ five hundred dollars;
36 (b) Community service not to exceed one hundred fifty hours of
37 service;

38 ~~((5))~~ (4) "Community-based rehabilitation" means one or more of
39 the following: Employment; attendance of information classes; literacy

1 classes; counseling, outpatient substance abuse treatment programs,
2 outpatient mental health programs, anger management classes, education
3 or outpatient treatment programs to prevent animal cruelty, or other
4 services; or attendance at school or other educational programs
5 appropriate for the juvenile as determined by the school district.
6 Placement in community-based rehabilitation programs is subject to
7 available funds;

8 ((+6)) (5) "Monitoring and reporting requirements" means one or
9 more of the following: Curfews; requirements to remain at home,
10 school, work, or court-ordered treatment programs during specified
11 hours; restrictions from leaving or entering specified geographical
12 areas; requirements to report to the probation officer as directed and
13 to remain under the probation officer's supervision; and other
14 conditions or limitations as the court may require which may not
15 include confinement;

16 ((+7)) (6) "Confinement" means physical custody by the department
17 of social and health services in a facility operated by or pursuant to
18 a contract with the state, or physical custody in a detention facility
19 operated by or pursuant to a contract with any county. The county may
20 operate or contract with vendors to operate county detention
21 facilities. The department may operate or contract to operate
22 detention facilities for juveniles committed to the department.
23 Pretrial confinement or confinement of less than thirty-one days
24 imposed as part of a disposition or modification order may be served
25 consecutively or intermittently, in the discretion of the court;

26 ((+8)) (7) "Court," ((-)) when used without further qualification,
27 means the juvenile court judge(s) or commissioner(s);

28 ((+9)) (8) "Criminal history" includes all criminal complaints
29 against the respondent for which, prior to the commission of a current
30 offense:

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

35 (b) The criminal complaint was diverted by a prosecutor pursuant to
36 the provisions of this chapter on agreement of the respondent and after
37 an advisement to the respondent that the criminal complaint would be
38 considered as part of the respondent's criminal history. A
39 successfully completed deferred adjudication that was entered before

1 the effective date of this section or a deferred disposition shall not
2 be considered part of the respondent's criminal history;

3 ~~((10))~~ (9) "Department" means the department of social and health
4 services;

5 ~~((11))~~ (10) "Detention facility" means a county facility, paid
6 for by the county, for the physical confinement of a juvenile alleged
7 to have committed an offense or an adjudicated offender subject to a
8 disposition or modification order. "Detention facility" includes
9 county group homes, inpatient substance abuse programs, juvenile basic
10 training camps, and electronic monitoring;

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

28 ~~((13))~~ (12) "Institution" means a juvenile facility established
29 pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

30 ~~((14))~~ (13) "Intensive supervision program" means a parole
31 program that requires intensive supervision and monitoring, offers an
32 array of individualized treatment and transitional services, and
33 emphasizes community involvement and support in order to reduce the
34 likelihood a juvenile offender will commit further offenses;

35 (14) "Juvenile," "youth," and "child" mean any individual who is
36 under the chronological age of eighteen years and who has not been
37 previously transferred to adult court pursuant to RCW 13.40.110 or who
38 is otherwise under adult court jurisdiction;

1 (15) "Juvenile offender" means any juvenile who has been found by
2 the juvenile court to have committed an offense, including a person
3 eighteen years of age or older over whom jurisdiction has been extended
4 under RCW 13.40.300;

5 (16) "Local sanctions" means one or more of the following: (a)
6 0-30 days of confinement; (b) 0-12 months of community supervision; (c)
7 0-150 hours of community service; or (d) \$0-\$500 fine;

8 ~~((16))~~ (17) "Manifest injustice" means a disposition that would
9 either impose an excessive penalty on the juvenile or would impose a
10 serious, and clear danger to society in light of the purposes of this
11 chapter;

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

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

18 ~~(a) Four misdemeanors;~~

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

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

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

22 ~~For purposes of this definition, current violations shall be~~
23 ~~counted as misdemeanors;~~

24 ~~(19))~~ (18) "Offense" means an act designated a violation or a
25 crime if committed by an adult under the law of this state, under any
26 ordinance of any city or county of this state, under any federal law,
27 or under the law of another state if the act occurred in that state;

28 ~~((20))~~ (19) "Respondent" means a juvenile who is alleged or
29 proven to have committed an offense;

30 ~~((21))~~ (20) "Restitution" means financial reimbursement by the
31 offender to the victim, and shall be limited to easily ascertainable
32 damages for injury to or loss of property, actual expenses incurred for
33 medical treatment for physical injury to persons, lost wages resulting
34 from physical injury, and costs of the victim's counseling reasonably
35 related to the offense if the offense is a sex offense. Restitution
36 shall not include reimbursement for damages for mental anguish, pain
37 and suffering, or other intangible losses. Nothing in this chapter
38 shall limit or replace civil remedies or defenses available to the
39 victim or offender;

1 (~~(22)~~) (21) "Secretary" means the secretary of the department of
2 social and health services. "Assistant secretary" means the assistant
3 secretary for juvenile rehabilitation for the department;

4 (~~(23)~~) (22) "Services" means services which provide alternatives
5 to incarceration for those juveniles who have pleaded or been
6 adjudicated guilty of an offense or have signed a diversion agreement
7 pursuant to this chapter;

8 (~~(24)~~) (23) "Sex offense" means an offense defined as a sex
9 offense in RCW 9.94A.030;

10 (~~(25)~~) (24) "Sexual motivation" means that one of the purposes
11 for which the respondent committed the offense was for the purpose of
12 his or her sexual gratification;

13 (~~(26)~~) (25) "Foster care" means temporary physical care in a
14 foster family home or group care facility as defined in RCW 74.15.020
15 and licensed by the department, or other legally authorized care;

16 (~~(27)~~) (26) "Violation" means an act or omission, which if
17 committed by an adult, must be proven beyond a reasonable doubt, and is
18 punishable by sanctions which do not include incarceration;

19 (~~(28)~~) (27) "Violent offense" means a violent offense as defined
20 in RCW 9.94A.030;

21 (~~(29)~~) (28) "Probation bond" means a bond, posted with sufficient
22 security by a surety justified and approved by the court, to secure the
23 offender's appearance at required court proceedings and compliance with
24 court-ordered community supervision or conditions of release ordered
25 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
26 cash or posting of other collateral in lieu of a bond if approved by
27 the court;

28 (~~(30)~~) (29) "Surety" means an entity licensed under state
29 insurance laws or by the state department of licensing, to write
30 corporate, property, or probation bonds within the state, and justified
31 and approved by the superior court of the county having jurisdiction of
32 the case.

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

(1)

((SCHEDULE A))

DESCRIPTION AND OFFENSE CATEGORY

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

Arson and Malicious Mischief

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

Assault and Other Crimes

Involving Physical Harm

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

Burglary and Trespass

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

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

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

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

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

3 **TIME SPAN**

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

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

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

21 **SCHEDULE C**

22 **CURRENT OFFENSE POINTS**

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

25 **AGE**

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

	Under	13	14	15	16	17
A+	STANDARD RANGE 180-224 WEEKS					
A	250	300	350	375	375	375
A-	150	150	150	200	200	200
B+	110	110	120	130	140	150
B	45	45	50	50	57	57
C+	44	44	49	49	55	55
C	40	40	45	45	50	50
D+	16	18	20	22	24	26

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

3 (2) JUVENILE SENTENCING STANDARDS
4 ((SCHEDULE D-1))

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

9 ((MINOR/FIRST OFFENDER

10 OPTION A

11 STANDARD RANGE

12 Community

13 Community Service

14 Points — Supervision — Hours — Fine

15

16	1-9	0-3 months	and/or 0-8	and/or 0-\$10
17	10-19	0-3 months	and/or 0-8	and/or 0-\$10
18	20-29	0-3 months	and/or 0-16	and/or 0-\$10
19	30-39	0-3 months	and/or 8-24	and/or 0-\$25
20	40-49	3-6 months	and/or 16-32	and/or 0-\$25
21	50-59	3-6 months	and/or 24-40	and/or 0-\$25
22	60-69	6-9 months	and/or 32-48	and/or 0-\$50
23	70-79	6-9 months	and/or 40-56	and/or 0-\$50
24	80-89	9-12 months	and/or 48-64	and/or 10-\$100
25	90-109	9-12 months	and/or 56-72	and/or 10-\$100

26 OR

27 OPTION B

28 STATUTORY OPTION

29 ~~0-12 Months Community Supervision~~

30 ~~0-150 Hours Community Service~~

31 ~~0-100 Fine~~

32 ~~Posting of a Probation Bond~~

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

1 OR

2 OPTION C

3 ~~MANIFEST INJUSTICE~~

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

9 JUVENILE SENTENCING STANDARDS

10 SCHEDULE D-2

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

14 MIDDLE OFFENDER

15 OPTION A

16 STANDARD RANGE

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

38 Middle offenders with 110 points or more do not have to be committed.
39 They may be assigned community supervision under option B.

1 All A+ offenses 180-224 weeks))

2

OPTION A

3

JUVENILE OFFENDER SENTENCING GRID

4

STANDARD RANGE

5

A+ 180 WEEKS TO AGE 21 YEARS

7

A 103 WEEKS TO 129 WEEKS

8

9

A- 15-36