
SUBSTITUTE SENATE BILL 6276

State of Washington**54th Legislature****1996 Regular Session**

By Senate Committee on Law & Justice (originally sponsored by Senators Long, Smith, Roach, Haugen, Johnson, Quigley, Wood, Hargrove, Schow, Oke, A. Anderson, Rasmussen and McAuliffe)

Read first time 02/01/96.

1 AN ACT Relating to enhanced sentencing and supervision of sex
2 offenders; amending RCW 9.94A.120, 72.04A.070, 72.04A.080, 9A.20.021,
3 9A.44.060, 9A.44.079, 9A.44.086, 9A.44.089, 9A.44.100, 9A.64.020,
4 9.94.070, 9.94A.230, 9.94A.310, 9.94A.386, 9A.20.010, 9A.28.020,
5 9A.28.040, 9A.76.080, 9A.76.170, 13.40.0357, and 13.40.070; reenacting
6 and amending RCW 9.41.010, 9.94A.030, 9.94A.320, 9A.44.140, and
7 13.04.030; adding new sections to chapter 9.94A RCW; creating a new
8 section; prescribing penalties; and providing an effective date.

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

10 NEW SECTION. **Sec. 1.** Since passage of the sentencing reform act
11 of 1981, the legislature has recognized that certain offenders should
12 be subject to supervision after release from prison. Also, the
13 determinate sentencing system has been criticized for releasing
14 offenders at the end of their sentence even if they continue to pose a
15 substantial threat to public safety. In regard to sex offenders, more
16 information may be known about the offender at the time of release from
17 prison than was known by the judge at the time of sentencing. The
18 legislature finds that in order to further enhance public safety and
19 reduce recidivism by sex offenders, the sentencing reform act should be

1 revised to require consideration of the future dangerousness of sex
2 offenders before their release from prison. Also, the authority to
3 impose, monitor, and enforce conditions on the release of a sex
4 offender should be enhanced.

5 **Sec. 2.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read
6 as follows:

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

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

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

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

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

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

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

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

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

20 (c) Pursue a prescribed, secular course of study or vocational
21 training;

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

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

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

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

31 (i) The offender is convicted of the manufacture, delivery, or
32 possession with intent to manufacture or deliver a controlled substance
33 classified in Schedule I or II that is a narcotic drug or a felony that
34 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
35 criminal solicitation, or criminal conspiracy to commit such crimes,
36 and the violation does not involve a sentence enhancement under RCW
37 9.94A.310 (3) or (4);

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

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

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

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

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

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

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

29 (8)(a)(i) When an offender is convicted of any felony sex offense
30 committed on or after July 1, 1996, the court shall impose a sentence
31 that consists of a maximum term which shall be the maximum sentence
32 provided by RCW 9A.20.021 for the offense, and a minimum term of
33 confinement which shall be within the standard range for the offense,
34 except that the minimum term may be outside the standard sentence range
35 if the court finds justification to impose an exceptional sentence as
36 provided in RCW 9.94A.120(2). The court shall place the offender on
37 community supervision or community placement for the length of the
38 maximum sentence.

1 (ii) Except for offenders sentenced under the special sex offender
2 sentencing alternative, offenders sentenced to twelve or more months
3 shall not be released from custody until the sex offender sentence
4 review board has determined that the offender may be released. The
5 board shall review each offender's case and make a determination of
6 whether the offender will be released at least sixty days before the
7 expiration of the offender's minimum term of confinement, minus any
8 earned early release credits.

9 (iii) Offenders sentenced to twelve months or less shall be
10 released upon completion of the minimum term of confinement and shall
11 remain on community supervision until expiration of the maximum term.
12 If the offender is found by the sentencing court to have violated any
13 of the conditions of community supervision, the court may sentence the
14 offender to serve total confinement as follows:

15 (A) Up to sixty days confinement in the county jail for each
16 violation; or

17 (B) The court may sentence the offender to total confinement for
18 the maximum sentence allowed by statute for the offense. The court
19 shall also establish a minimum term of confinement for the offender.
20 The offender shall have credit for confinement time previously served
21 for the offense or violations of community supervision established for
22 that offense. This sentence shall be served in total confinement in a
23 facility or institution operated, or used under contract, by the state.
24 After serving the minimum term imposed by the court, the offender shall
25 be subject to the jurisdiction of the sex offender sentence review
26 board which shall determine whether the offender should be released.

27 (iv) When any sex offender is sentenced to a prison term, the sex
28 offender sentence review board shall establish release conditions. The
29 sentencing court and the prosecuting attorney may advise the board of
30 any recommended conditions. At the time of imposing the prison term,
31 the sentencing court may require that the offender not have any contact
32 with victims or witnesses during the period of the offender's
33 incarceration.

34 (b)(i) When an offender is convicted of a sex offense other than a
35 violation of RCW 9A.44.050 or a sex offense that is also a serious
36 violent offense and has no prior convictions for a sex offense or any
37 other felony sex offenses in this or any other state, the sentencing
38 court, on its own motion or the motion of the state or the defendant,

1 may order an examination to determine whether the defendant is amenable
2 to treatment.

3 The report of the examination shall include at a minimum the
4 following: The defendant's version of the facts and the official
5 version of the facts, the defendant's offense history, an assessment of
6 problems in addition to alleged deviant behaviors, the offender's
7 social and employment situation, and other evaluation measures used.
8 The report shall set forth the sources of the evaluator's information.

9 The examiner shall assess and report regarding the defendant's
10 amenability to treatment and relative risk to the community. A
11 proposed treatment plan shall be provided and shall include, at a
12 minimum:

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

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

16 (C) Monitoring plans, including any requirements regarding living
17 conditions, lifestyle requirements, and monitoring by family members
18 and others;

19 (D) Anticipated length of treatment; and

20 (E) Recommended crime-related prohibitions.

21 The court on its own motion may order, or on a motion by the state
22 shall order, a second examination regarding the offender's amenability
23 to treatment. The evaluator shall be selected by the party making the
24 motion. The defendant shall pay the cost of any second examination
25 ordered unless the court finds the defendant to be indigent in which
26 case the state shall pay the cost.

27 (ii) After receipt of the reports, the court shall consider whether
28 the offender and the community will benefit from use of this special
29 sexual offender sentencing alternative and consider the victim's
30 opinion whether the offender should receive a treatment disposition
31 under this subsection. If the court determines that this special sex
32 offender sentencing alternative is appropriate, the court shall then
33 impose a sentence (~~((within the sentence range))~~) that consists of a
34 maximum term and a minimum term as provided in (a)(i) of this
35 subsection. If (~~((this sentence))~~) the minimum term is less than eight
36 years of confinement, the court may suspend the execution of the
37 (~~((sentence))~~) minimum term and impose the following conditions of
38 suspension:

1 (A) The court shall place the defendant on community supervision
2 for the length of the (~~suspended~~) maximum sentence (~~(or three years,~~
3 ~~whichever is greater)~~); and

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

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

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

23 (III) Report as directed to the court and a community corrections
24 officer;

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

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

30 (iii) The sex offender therapist shall submit quarterly reports on
31 the defendant's progress in treatment to the court and the parties.
32 The report shall reference the treatment plan and include at a minimum
33 the following: Dates of attendance, defendant's compliance with
34 requirements, treatment activities, the defendant's relative progress
35 in treatment, and any other material as specified by the court at
36 sentencing.

37 (iv) At the time of sentencing, the court shall set a treatment
38 termination hearing for three months prior to the anticipated date for
39 completion of treatment. Prior to the treatment termination hearing,

1 the treatment professional and community corrections officer shall
2 submit written reports to the court and parties regarding the
3 defendant's compliance with treatment and monitoring requirements, and
4 recommendations regarding termination from treatment, including
5 proposed community supervision conditions. Either party may request
6 and the court may order another evaluation regarding the advisability
7 of termination from treatment. The defendant shall pay the cost of any
8 additional evaluation ordered unless the court finds the defendant to
9 be indigent in which case the state shall pay the cost. At the
10 treatment termination hearing the court may: (A) Modify conditions of
11 community supervision, and either (B) terminate treatment, or (C)
12 extend treatment for up to the ~~((remaining period of community
13 supervision))~~ maximum sentence.

14 (v) The court may revoke the suspended ~~((sentence))~~ minimum term at
15 any time ~~((during the period of community supervision))~~ before
16 expiration of the maximum sentence and order execution of the sentence
17 if: (A) The defendant violates the conditions of the suspended
18 sentence, or (B) the court finds that the defendant is failing to make
19 satisfactory progress in treatment. All confinement time served during
20 the period of community supervision shall be credited to the offender
21 if the suspended sentence is revoked.

22 (vi) If an offender's suspended minimum term is revoked, the
23 offender shall be required to serve the minimum term established by the
24 court in total confinement. The offender shall become subject to the
25 jurisdiction of the sex offender sentence review board which shall
26 determine whether the offender may be released upon completion of the
27 minimum term.

28 (vii) Except as provided in ~~((a)(vii))~~ (b)(viii) of this
29 subsection, after July 1, 1991, examinations and treatment ordered
30 pursuant to this subsection shall only be conducted by sex offender
31 treatment providers certified by the department of health pursuant to
32 chapter 18.155 RCW.

33 ~~((vii))~~ (viii) A sex offender therapist who examines or treats a
34 sex offender pursuant to this subsection (8) does not have to be
35 certified by the department of health pursuant to chapter 18.155 RCW if
36 the court finds that: (A) The offender has already moved to another
37 state or plans to move to another state for reasons other than
38 circumventing the certification requirements; (B) no certified
39 providers are available for treatment within a reasonable geographical

1 distance of the offender's home; and (C) the evaluation and treatment
2 plan comply with this subsection (8) and the rules adopted by the
3 department of health.

4 For purposes of this subsection, "victim" means any person who has
5 sustained emotional, psychological, physical, or financial injury to
6 person or property as a result of the crime charged. "Victim" also
7 means a parent or guardian of a victim who is a minor child unless the
8 parent or guardian is the perpetrator of the offense.

9 ~~((b))~~ (c) When an offender commits any felony sex offense on or
10 after July 1, 1987, and is sentenced to a term of confinement of more
11 than one year but less than six years, the sentencing court may, on its
12 own motion or on the motion of the offender or the state, request the
13 department of corrections to evaluate whether the offender is amenable
14 to treatment and the department may place the offender in a treatment
15 program within a correctional facility operated by the department.

16 Except for an offender who has been convicted of a violation of RCW
17 9A.44.040 or 9A.44.050, if the offender completes the treatment program
18 before the expiration of his or her term of confinement, the department
19 of corrections may request the court to convert the balance of
20 confinement to community supervision and to place conditions on the
21 offender including crime-related prohibitions and requirements that the
22 offender perform any one or more of the following:

- 23 (i) Devote time to a specific employment or occupation;
- 24 (ii) Remain within prescribed geographical boundaries and notify
25 the court or the community corrections officer prior to any change in
26 the offender's address or employment;
- 27 (iii) Report as directed to the court and a community corrections
28 officer;
- 29 (iv) Undergo available outpatient treatment.

30 If the offender violates any of the terms of his or her community
31 supervision, the court may order the offender to serve out the balance
32 of his or her community supervision term in confinement in the custody
33 of the department of corrections.

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

38 ~~((e))~~ (d) Offenders convicted and sentenced for a sex offense
39 committed prior to July 1, 1987, may, subject to available funds,

1 request an evaluation by the department of corrections to determine
2 whether they are amenable to treatment. If the offender is determined
3 to be amenable to treatment, the offender may request placement in a
4 treatment program within a correctional facility operated by the
5 department. Placement in such treatment program is subject to
6 available funds.

7 (9)(a) When a court sentences a person to a term of total
8 confinement to the custody of the department of corrections for an
9 offense categorized as a sex offense or a serious violent offense
10 committed after July 1, 1988, but before July 1, 1990, assault in the
11 second degree, assault of a child in the second degree, any crime
12 against a person where it is determined in accordance with RCW
13 9.94A.125 that the defendant or an accomplice was armed with a deadly
14 weapon at the time of commission, or any felony offense under chapter
15 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
16 committed on or after July 1, 1988, the court shall in addition to the
17 other terms of the sentence, sentence the offender to a one-year term
18 of community placement beginning either upon completion of the term of
19 confinement or at such time as the offender is transferred to community
20 custody in lieu of earned early release in accordance with RCW
21 9.94A.150 (1) and (2). When the court sentences an offender under this
22 subsection to the statutory maximum period of confinement then the
23 community placement portion of the sentence shall consist entirely of
24 such community custody to which the offender may become eligible, in
25 accordance with RCW 9.94A.150 (1) and (2). Any period of community
26 custody actually served shall be credited against the community
27 placement portion of the sentence.

28 (b) When a court sentences a person to a term of total confinement
29 to the custody of the department of corrections for an offense
30 categorized as a sex offense committed on or after July 1, 1990, but
31 before July 1, 1996, or serious violent offense committed on or after
32 July 1, 1990, the court shall in addition to other terms of the
33 sentence, sentence the offender to community placement for two years or
34 up to the period of earned early release awarded pursuant to RCW
35 9.94A.150 (1) and (2), whichever is longer. The community placement
36 shall begin either upon completion of the term of confinement or at
37 such time as the offender is transferred to community custody in lieu
38 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
39 When the court sentences an offender under this subsection to the

1 statutory maximum period of confinement then the community placement
2 portion of the sentence shall consist entirely of the community custody
3 to which the offender may become eligible, in accordance with RCW
4 9.94A.150 (1) and (2). Any period of community custody actually served
5 shall be credited against the community placement portion of the
6 sentence. Unless a condition is waived by the court, the terms of
7 community placement for offenders sentenced pursuant to this section
8 shall include the following conditions:

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

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

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

15 (iv) An offender in community custody shall not unlawfully possess
16 controlled substances;

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

19 (vi) The residence location and living arrangements are subject to
20 the prior approval of the department of corrections during the period
21 of community placement.

22 (c) The court may also order any of the following special
23 conditions:

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

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

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

30 (iv) The offender shall not consume alcohol; or

31 (v) The offender shall comply with any crime-related prohibitions.

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

36 (10) If the court imposes a sentence requiring confinement of
37 thirty days or less, the court may, in its discretion, specify that the
38 sentence be served on consecutive or intermittent days. A sentence
39 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered
2 intermittent sentences as space permits.

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

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

28 (13) All offenders sentenced to terms involving community
29 supervision, community service, community placement, or legal financial
30 obligation shall be under the supervision of the secretary of the
31 department of corrections or such person as the secretary may designate
32 and shall follow explicitly the instructions of the secretary including
33 reporting as directed to a community corrections officer, remaining
34 within prescribed geographical boundaries, notifying the community
35 corrections officer of any change in the offender's address or
36 employment, and paying the supervision fee assessment. The department
37 may require offenders to pay for special services rendered on or after
38 July 25, 1993, including electronic monitoring, day reporting, and
39 telephone reporting, dependent upon the offender's ability to pay. The

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

3 (14) 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 (15) 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 (16) 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 (17) 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 (18) 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 (19) 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 (20) 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 NEW SECTION. **Sec. 3.** A sex offender sentence review board is
6 created to:

7 (1) Review sentences of offenders convicted of a sex offense that
8 results in total confinement in prison, including offenders who were
9 sentenced under the special sex offender sentencing alternative whose
10 suspended minimum term was revoked, to determine whether the offender
11 should be released upon completion of the minimum sentence or if the
12 offender should remain in custody;

13 (2) Establish conditions of release for any offenders who are
14 released;

15 (3) Establish procedures to determine if an offender has violated
16 conditions of release, and impose sanctions for such violations; and

17 (4) Establish procedures for periodic review of offenders who
18 remain in confinement beyond the minimum term of confinement.

19 NEW SECTION. **Sec. 4.** (1) The sex offender sentence review board
20 shall consist of five members, each of whom shall be appointed by the
21 governor with the consent of the senate. The governor, in appointing
22 the members, shall designate one of them to serve as chair at the
23 governor's pleasure.

24 (2) All persons appointed by the governor shall have background,
25 education, training, or experience in the treatment, supervision,
26 investigation, or prosecution of sex offenders. The governor shall
27 seek recommendations from law enforcement and from prosecutors for at
28 least two of the positions on the board. At least one or more members
29 appointed by the governor shall have current experience in the
30 evaluation and treatment of sex offenders.

31 (3) Initial appointments to the board shall be for staggered terms
32 with two members appointed for five-year terms, two members appointed
33 for three-year terms, and one member appointed for a one-year term.
34 All subsequent appointments shall be for a term of five years.

35 (4) In the event of the inability of any member to act, the
36 governor shall appoint a competent person to act in the member's stead
37 during the continuance of such inability.

1 (5) Members of the board may not be removed during their respective
2 terms except for cause determined by the superior court of Thurston
3 county.

4 (6) The members of the board and its officers and employees shall
5 not engage in any other business or profession or hold any other public
6 office; nor shall they, at the time of appointment or employment or
7 during their incumbency, serve as the representative of any political
8 party on an executive committee or other governing body thereof, or as
9 an executive officer or employee of any political committee or
10 association.

11 (7) The members of the board shall each severally receive salaries
12 fixed by the governor in accordance with RCW 43.03.040, and in addition
13 shall receive travel expenses incurred in the discharge of their
14 official duties in accordance with RCW 43.03.050 and 43.03.060.

15 (8) The board may employ and fix, with the approval of the
16 governor, the compensation of and prescribe the duties of such
17 employees, assistants, or experts as necessary, and provide necessary
18 quarters, supplies, and equipment. The board also may hire on a
19 contract basis such experts as it may find necessary to assist it in
20 its duties.

21 NEW SECTION. **Sec. 5.** The sex offender sentence review board shall
22 meet at department of corrections' institutions at such times as may be
23 necessary for a full and complete study of the cases of all sex
24 offenders whose durations of confinement are to be determined by it or
25 whose applications for release come before it. Other times and places
26 of meetings may also be fixed by the board.

27 The superintendents of the different correctional institutions
28 shall provide suitable quarters for the board while in the discharge of
29 its duties.

30 NEW SECTION. **Sec. 6.** (1) When deciding whether an offender should
31 be released, the sex offender sentence review board shall give public
32 safety considerations the highest priority. An offender shall not be
33 released unless the board finds that the offender's rehabilitation has
34 been complete and the offender is a fit subject for release. All
35 relevant information shall be considered by the board, including but
36 not limited to, information relating to:

1 (a) The number and severity of the sex offenses and violent
2 offenses committed by the offender;

3 (b) Whether the offender has a history of substance abuse, the
4 extent of any such abuse, and the offender's performance in any
5 substance abuse treatment;

6 (c) Whether the offender has an adequate plan for his or her
7 residence and employment upon release;

8 (d) The offender's performance in any sex offender treatment,
9 refusal to participate in treatment, or lack of amenability to
10 treatment;

11 (e) The offender's future dangerousness;

12 (f) Infractions committed by the offender while in the custody of
13 the department; and

14 (g) Any other relevant information.

15 (2) The board shall not consider in any way factors relating to
16 prison population or prison overcrowding when deciding whether to
17 release a sex offender.

18 NEW SECTION. **Sec. 7.** The sex offender sentence review board may
19 meet and transact business in panels. Each board panel shall consist
20 of at least three members of the board. In all matters concerning the
21 internal affairs of the board and policy-making decisions, a majority
22 of the full board must concur. The chair of the board with the consent
23 of a majority of the board may designate any three members to exercise
24 all the powers and duties of the board in connection with any hearing
25 before the board. If the three members so designated cannot
26 unanimously agree as to the disposition of the hearing assigned to
27 them, the hearing shall be reheard by the full board. All actions of
28 the full board shall be by concurrence of a majority of the board
29 members.

30 NEW SECTION. **Sec. 8.** (1) At the time the sex offender is
31 transported to the custody of the department of corrections, the
32 prosecuting attorney shall provide the sex offender sentence review
33 board a statement of all the facts concerning the offender's crime and
34 any other information the prosecuting attorney has about the offender.

35 (2) The statement shall be signed by the prosecuting attorney and
36 approved by the sentencing judge and shall be delivered to the sheriff,
37 traveling guard, department of corrections personnel, or other officer

1 executing the sentence, and a copy of the statement shall be furnished
2 to the defendant or his or her attorney. The officer shall deliver the
3 statement, at the time of the offender's commitment, to the
4 superintendent of the institution to which the offender has been
5 sentenced. The superintendent shall make the statement available for
6 use by the sex offender sentence review board.

7 NEW SECTION. **Sec. 9.** If a sex offender under the jurisdiction of
8 the sex offender sentence review board serving a sentence in a state
9 correctional facility commits any infractions of the rules and
10 regulations of the institution, the board may revoke any order
11 determining the length of time the offender shall be imprisoned,
12 including the forfeiture of all or a portion of credits earned,
13 pursuant to RCW 9.94A.150, and make a new order determining the length
14 of time the offender shall serve, not exceeding the maximum penalty
15 provided by law for the crime for which the offender was convicted.
16 Revocation and redetermination shall not be had except upon a hearing
17 before the board. At the hearing the sex offender shall be present and
18 entitled to be heard and may present evidence and witnesses in his or
19 her behalf.

20 NEW SECTION. **Sec. 10.** At the time of release of a sex offender,
21 the sex offender sentence review board shall establish conditions of
22 release. When establishing the conditions of release, the board shall
23 consider any recommendations for release conditions made by the
24 department, the sentencing court, or the prosecutor. At a minimum, the
25 offender shall be required to comply with the following:

- 26 (1) No law violations;
27 (2) No illegal drug use;
28 (3) Report as required to the department; and
29 (4) No contact with any victims or witnesses except as specifically
30 allowed by the board.

31 NEW SECTION. **Sec. 11.** (1) Whenever the sex offender sentence
32 review board or a community corrections officer of this state has
33 reason to believe a sex offender has violated a condition of his or her
34 release, the law of any state, or the rules and regulations of the
35 board, any community corrections officer may arrest or cause the arrest
36 and detention and suspension of release of the offender pending a

1 determination by the board whether the release shall be revoked. All
2 facts and circumstances surrounding the violation by the offender shall
3 be reported to the board by the community corrections officer, with
4 recommendations. The board, after consultation with the secretary of
5 corrections, shall make rules concerning procedural matters, including
6 the time when community corrections officers shall file with the board
7 reports required by this section.

8 (2) On the basis of the report by the community corrections
9 officer, or at any time upon its own discretion, the board may revise
10 or modify the conditions of release or order the revocation of release
11 by the issuance of a written order. The order shall be sufficient
12 warrant for all peace officers to take into custody any offender who
13 may be on release and retain the offender in their custody until
14 arrangements can be made by the board for the offender's return to a
15 state correctional institution. Any revision or modification of the
16 conditions of release or the order revoking release shall be personally
17 served upon the offender.

18 (3) Any offender arrested and detained in physical custody by the
19 authority of a community corrections officer, or upon the written order
20 of the board, shall not be released from custody on bail or personal
21 recognizance, except upon approval of the board and the issuance by the
22 board of an order of reinstatement on release on the same or modified
23 conditions of release.

24 (4) Whenever a released sex offender is accused of a violation of
25 his or her release, other than conviction for a felony or misdemeanor
26 under the laws of this state or the laws of any other state, the
27 offender is entitled to a fair and impartial hearing on the violations
28 within thirty days from the time the offender is served with notice of
29 the violation of conditions of release. The hearing shall be held
30 before one or more members of the board at a place or places within
31 this state and reasonably near the site of the alleged violation.

32 (5) In the event that the board revokes a release by reason of an
33 alleged violation or pending the disposition of a new criminal charge,
34 the board may nullify the order of revocation and release the offender
35 under previous conditions or any new conditions that the board may
36 determine advisable. Before the board may nullify an order of
37 revocation and release an offender, the board must determine that the
38 best interests of society and the individual are best served by such
39 release rather than a return to total confinement.

1 NEW SECTION. **Sec. 12.** Within fifteen days from the date of notice
2 to the department of corrections of the arrest and detention of a sex
3 offender alleged to have violated conditions of release, the offender,
4 shall be personally served by a community corrections officer with a
5 copy of the factual allegations of the violation of the conditions of
6 release, and, at the same time shall be advised of his or her right to
7 an on-site release revocation hearing and other rights and privileges
8 as provided in sections 11 through 17 of this act. The offender, after
9 service of the allegations of violations of the conditions of release
10 and the advice of rights may waive the on-site release revocation
11 hearing, and admit one or more of the alleged violations. If the board
12 accepts the waiver it shall either, (1) reinstate the offender's
13 release under the same or modified conditions, or (2) revoke the
14 release of the offender and return the offender to state custody. A
15 determination of a new minimum sentence shall be made within thirty
16 days of return to state custody which shall not exceed the maximum
17 sentence as provided by law for the crime of which the offender was
18 originally convicted.

19 If the waiver made by the offender is rejected by the board it
20 shall hold an on-site release revocation hearing under sections 11
21 through 17 of this act.

22 NEW SECTION. **Sec. 13.** At any on-site release revocation hearing
23 the offender is entitled to be represented by an attorney of the
24 offender's choosing and at the offender's expense. Upon the
25 presentation of satisfactory evidence of indigency and the request for
26 the appointment of an attorney, the sex offender sentence review board
27 may cause the appointment of an attorney to represent the offender to
28 be paid for at state expense. The board may assume all or such other
29 expenses in the presentation of evidence on behalf of the offender as
30 it deems appropriate subject to available funds. Attorneys for the
31 representation of sex offenders in on-site hearings shall be appointed
32 by the superior courts for the counties wherein the on-site hearing is
33 to be held. The attorneys shall be compensated in the manner and
34 amount as is fixed in a schedule of fees adopted by rule of the board.

35 NEW SECTION. **Sec. 14.** (1) In conducting on-site release
36 revocation hearings, the sex offender sentence review board may
37 administer oaths and affirmations, examine witnesses, receive evidence,

1 and issue subpoenas for the compulsory attendance of witnesses and the
2 production of evidence for presentation at such hearings. Subpoenas
3 issued by the board shall be effective throughout the state. Witnesses
4 in attendance at any on-site hearing shall be paid the same fees as
5 provided for witnesses in chapter 2.40 RCW.

6 (2) If any person fails or refuses to obey a subpoena issued by the
7 board, or obeys the subpoena but refuses to testify concerning any
8 matter under examination at the hearing, the board may petition the
9 superior court of the county where the hearing is being conducted for
10 enforcement of the subpoena. The petition shall be accompanied by a
11 copy of the subpoena and proof of service, and shall state specifically
12 how the subpoena has not been complied with, and shall ask an order of
13 the court to compel the witness to appear and testify before the board.
14 The court, upon such petition, shall enter an order directing the
15 witness to appear before the court at a time and place to be fixed in
16 the order to show cause why he or she has not responded to the subpoena
17 or has refused to testify. A copy of the order shall be served upon
18 the witness. If it appears to the court that the subpoena was properly
19 issued and that the particular questions the witness refuses to answer
20 are reasonable and relevant, the court shall enter an order that the
21 witness appear at the time and place fixed in the order and testify or
22 produce the required papers. Upon failure to obey the order, the
23 witness may be found in contempt of court.

24 NEW SECTION. **Sec. 15.** (1) At all on-site release revocation
25 hearings the community corrections officers of the department of
26 corrections, having made the allegations of the violations of the
27 conditions of release, may be represented by the attorney general. The
28 attorney general may make independent recommendations to the sex
29 offender sentence review board about whether the violations constitute
30 sufficient cause for the revocation of the release and the return of
31 the sex offender to total confinement.

32 (2) The hearings shall be open to the public unless the board for
33 specifically stated reasons closes the hearing in whole or in part.
34 The hearings shall be recorded either manually or by a mechanical
35 recording device. The offender may be requested to testify and any
36 such testimony shall not be used against him or her in any criminal
37 prosecution.

1 (3) The board shall adopt rules governing the procedures authorized
2 by chapter . . . , Laws of 1996 (this act) and make rules of practice
3 before the board in on-site release revocation hearings, together with
4 forms and instructions.

5 NEW SECTION. **Sec. 16.** After the on-site release revocation
6 hearing has been concluded, the members of the sex offender sentence
7 review board having heard the matter shall enter their decision of
8 record within ten days, and make findings and conclusions upon the
9 allegations of the violations of the conditions of release. If the
10 member, or members having heard the matter, should conclude that the
11 allegations have not been proven by a preponderance of the evidence,
12 or, those which have been proven by a preponderance of the evidence are
13 not sufficient cause for the revocation of release, then the release
14 shall be reinstated on the same or modified conditions of release. For
15 violations not resulting in new convictions, modified conditions of
16 release may include sanctions according to an administrative sanction
17 grid. If the member or members having heard the matter should conclude
18 that the allegations have been proven by a preponderance of the
19 evidence and constitute sufficient cause for the revocation of release,
20 then such member or members shall enter an order of release revocation
21 and return the offender to state custody. Within thirty days of the
22 return of the offender to a state correctional institution the board
23 shall enter an order determining a new minimum term not exceeding the
24 maximum penalty provided by law for the crime for which the offender
25 was originally convicted.

26 NEW SECTION. **Sec. 17.** All officers and employees of the state,
27 counties, cities and political subdivisions of this state shall
28 cooperate with the sex offender sentence review board in making
29 available suitable facilities for conducting release revocation
30 hearings.

31 NEW SECTION. **Sec. 18.** After the revocation of the release of any
32 sex offender and until his or her return to custody, the offender shall
33 be deemed an escapee and a fugitive from justice. The sex offender
34 sentence review board may deny credit against the maximum sentence for
35 any time during which the offender is an escapee and a fugitive from
36 justice.

1 NEW SECTION. **Sec. 19.** The sex offender sentence review board
2 shall keep a complete record of every sex offender under the
3 jurisdiction of the board. The records shall be organized so that
4 there will always be complete information about each offender
5 immediately available. The board may make rules as to the privacy of
6 the records and their use by others than the board and its staff. The
7 board shall be immune from liability for the release of information
8 concerning sex offenders as provided in RCW 4.24.550.

9 The superintendents of state correctional facilities and all
10 officers and employees thereof and all other public officials shall
11 cooperate with the board and furnish to the board, its officers, and
12 employees case files, investigation reports, or other information as
13 may be necessary to enable it to perform its functions. Such
14 superintendents and other employees shall at all times give the members
15 of the board, its officers, and employees free access to all sex
16 offenders confined in the state correctional facilities.

17 In addition to any other information required to be released under
18 this chapter, the board may, pursuant to RCW 4.24.550, release
19 information concerning offenders under the jurisdiction of the board
20 who are convicted of sex offenses as defined in RCW 9.94A.030.

21 NEW SECTION. **Sec. 20.** The sex offender sentence review board
22 shall make all necessary rules to carry out the provisions of sections
23 3 through 22 of this act, and may provide the forms of all necessary
24 documents.

25 NEW SECTION. **Sec. 21.** The sex offender sentence review board may
26 deputize any person regularly employed by another state to act as an
27 officer and agent of this state in effecting the return of any sex
28 offender who has violated the conditions of release as granted by this
29 state. In any matter relating to the return of the offender, any agent
30 so deputized shall have all the powers of a police officer of this
31 state.

32 Any deputization shall be in writing and the person deputized shall
33 carry formal evidence of his or her deputization and shall produce the
34 same upon demand.

35 NEW SECTION. **Sec. 22.** The sex offender sentence review board may
36 enter into contracts with similar officials of any other state or

1 states for the purpose of sharing an equitable portion of the cost of
2 effecting the return of any sex offender who has violated the terms and
3 conditions of release as granted by this state.

4 **Sec. 23.** RCW 72.04A.070 and 1981 c 136 s 82 are each amended to
5 read as follows:

6 The secretary of corrections shall cause to be prepared plans and
7 recommendations for the conditions of supervision under which each
8 inmate of any state penal institutions who is eligible for parole or
9 release may be released from custody. Such plans and recommendations
10 shall be submitted to the indeterminate sentence review board (~~(of~~
11 ~~prison terms and paroles)~~) or the sex offender sentence review board
12 which may, at its discretion, approve, reject, or revise or amend such
13 plans and recommendations for the conditions of supervision of release
14 of inmates on parole or release, and, in addition, (~~(the)~~) either
15 board may stipulate any special conditions of supervision to be carried
16 out by a probation and parole officer or community corrections officer.

17 **Sec. 24.** RCW 72.04A.080 and 1981 c 136 s 83 are each amended to
18 read as follows:

19 Each inmate hereafter released on parole and each sex offender
20 released by the sex offender sentence review board shall be subject to
21 the supervision of the department of corrections, and the probation and
22 parole officers or community corrections officers of the department
23 shall be charged with the preparation of progress reports of parolees
24 or sex offenders and to give guidance and supervision to such parolees
25 and sex offenders within the conditions of a parolee's or sex
26 offender's release from custody. Copies of all progress reports
27 prepared by the probation and parole officers and community corrections
28 officers shall be supplied to the indeterminate sentence review board
29 (~~(of prison terms and paroles for their files and records)~~) or the sex
30 offender sentence review board according to which board has
31 jurisdiction over the offender.

32 **Sec. 25.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to
33 read as follows:

34 (1) Felony. No person convicted of a classified felony shall be
35 punished by confinement or fine exceeding the following:

1 (a) For a class A felony, by confinement in a state correctional
2 institution for a term of life imprisonment, or by a fine in an amount
3 fixed by the court of fifty thousand dollars, or by both such
4 confinement and fine;

5 (b) For a class B+ felony, by confinement in a state correctional
6 institution for a term of twenty years, or by a fine in an amount fixed
7 by the court of thirty thousand dollars, or by both such confinement
8 and fine;

9 (c) For a class B felony, by confinement in a state correctional
10 institution for a term of ten years, or by a fine in an amount fixed by
11 the court of twenty thousand dollars, or by both such confinement and
12 fine;

13 ((+e)) (d) For a class C felony, by confinement in a state
14 correctional institution for five years, or by a fine in an amount
15 fixed by the court of ten thousand dollars, or by both such confinement
16 and fine.

17 (2) Gross misdemeanor. Every person convicted of a gross
18 misdemeanor defined in Title 9A RCW shall be punished by imprisonment
19 in the county jail for a maximum term fixed by the court of not more
20 than one year, or by a fine in an amount fixed by the court of not more
21 than five thousand dollars, or by both such imprisonment and fine.

22 (3) Misdemeanor. Every person convicted of a misdemeanor defined
23 in Title 9A RCW shall be punished by imprisonment in the county jail
24 for a maximum term fixed by the court of not more than ninety days, or
25 by a fine in an amount fixed by the court of not more than one thousand
26 dollars, or by both such imprisonment and fine.

27 (4) This section applies to only those crimes committed on or after
28 July 1, 1984.

29 **Sec. 26.** RCW 9A.44.060 and 1979 ex.s. c 244 s 3 are each amended
30 to read as follows:

31 (1) A person is guilty of rape in the third degree when, under
32 circumstances not constituting rape in the first or second degrees,
33 such person engages in sexual intercourse with another person, not
34 married to the perpetrator:

35 (a) Where the victim did not consent, as defined in RCW
36 ((9A.44.010(6))) 9A.44.010, to sexual intercourse with the perpetrator
37 and such lack of consent was clearly expressed by the victim's words or
38 conduct, or

1 (b) Where there is threat of substantial unlawful harm to property
2 rights of the victim.

3 (2) Rape in the third degree is a class ((C)) B felony.

4 **Sec. 27.** RCW 9A.44.079 and 1988 c 145 s 4 are each amended to read
5 as follows:

6 (1) A person is guilty of rape of a child in the third degree when
7 the person has sexual intercourse with another who is at least fourteen
8 years old but less than sixteen years old and not married to the
9 perpetrator and the perpetrator is at least forty-eight months older
10 than the victim.

11 (2) Rape of a child in the third degree is a class ((C)) B felony.

12 **Sec. 28.** RCW 9A.44.086 and 1994 c 271 s 304 are each amended to
13 read as follows:

14 (1) A person is guilty of child molestation in the second degree
15 when the person has, or knowingly causes another person under the age
16 of eighteen to have, sexual contact with another who is at least twelve
17 years old but less than fourteen years old and not married to the
18 perpetrator and the perpetrator is at least thirty-six months older
19 than the victim.

20 (2) Child molestation in the second degree is a class B+ felony.

21 **Sec. 29.** RCW 9A.44.089 and 1994 c 271 s 305 are each amended to
22 read as follows:

23 (1) A person is guilty of child molestation in the third degree
24 when the person has, or knowingly causes another person under the age
25 of eighteen to have, sexual contact with another who is at least
26 fourteen years old but less than sixteen years old and not married to
27 the perpetrator and the perpetrator is at least forty-eight months
28 older than the victim.

29 (2) Child molestation in the third degree is a class ((C)) B
30 felony.

31 **Sec. 30.** RCW 9A.44.100 and 1993 c 477 s 3 are each amended to read
32 as follows:

33 (1) A person is guilty of indecent liberties when he knowingly
34 causes another person who is not his spouse to have sexual contact with
35 him or another:

1 (a) By forcible compulsion; or
2 (b) When the other person is incapable of consent by reason of
3 being mentally defective, mentally incapacitated, or physically
4 helpless;

5 (c) When the victim is developmentally disabled and the perpetrator
6 is a person who is not married to the victim and who has supervisory
7 authority over the victim;

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

15 (e) When the victim is a resident of a facility for mentally
16 disordered or chemically dependent persons and the perpetrator is a
17 person who is not married to the victim and has supervisory authority
18 over the victim.

19 (2) Indecent liberties is a class B+ felony if committed by
20 forcible compulsion under subsection (1)(a) of this section, and a
21 class B felony in all other circumstances.

22 **Sec. 31.** RCW 9A.64.020 and 1985 c 53 s 1 are each amended to read
23 as follows:

24 (1) A person is guilty of incest in the first degree if he engages
25 in sexual intercourse with a person whom he knows to be related to him,
26 either legitimately or illegitimately, as an ancestor, descendant,
27 brother, or sister of either the whole or the half blood.

28 (2) A person is guilty of incest in the second degree if he engages
29 in sexual contact with a person whom he knows to be related to him,
30 either legitimately or illegitimately, as an ancestor, descendant,
31 brother, or sister of either the whole or the half blood.

32 (3) As used in this section, "descendant" includes stepchildren and
33 adopted children under eighteen years of age.

34 (4) As used in this section, "sexual contact" has the same meaning
35 as in RCW (~~9A.44.100(2)~~) 9A.44.010.

36 (5) As used in this section, "sexual intercourse" has the same
37 meaning as in RCW 9A.44.010(1).

38 (6) Incest in the first degree is a class B+ felony.

1 (7) Incest in the second degree is a class ((E)) B felony.

2 **Sec. 32.** RCW 9.41.010 and 1994 sp.s. c 7 s 401 and 1994 c 121 s 1
3 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

37 (8) "Antique firearm" means a firearm or replica of a firearm not
38 designed or redesigned for using rim fire or conventional center fire

1 ignition with fixed ammunition and manufactured in or before 1898,
2 including any matchlock, flintlock, percussion cap, or similar type of
3 ignition system and also any firearm using fixed ammunition
4 manufactured in or before 1898, for which ammunition is no longer
5 manufactured in the United States and is not readily available in the
6 ordinary channels of commercial trade.

7 (9) "Loaded" means:

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

9 (b) Bullets are in a clip that is locked in place in the firearm;

10 (c) There is a cartridge in the cylinder of the firearm, if the
11 firearm is a revolver; or

12 (d) There is a cartridge in the tube, magazine, or other
13 compartment of the firearm.

14 (10) "Dealer" means a person engaged in the business of selling
15 firearms or ammunition at wholesale or retail who has, or is required
16 to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A
17 person who does not have, and is not required to have, a federal
18 firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that
19 person makes only occasional sales, exchanges, or purchases of firearms
20 for the enhancement of a personal collection or for a hobby, or sells
21 all or part of his or her personal collection of firearms.

22 (11) "Crime of violence" means:

23 (a) Any of the following felonies, as now existing or hereafter
24 amended: Any felony defined under any law as a class A felony or an
25 attempt to commit a class A felony, criminal solicitation of or
26 criminal conspiracy to commit a class A felony, manslaughter in the
27 first degree, manslaughter in the second degree, indecent liberties if
28 committed by forcible compulsion, rape in the second degree, kidnapping
29 in the second degree, arson in the second degree, assault in the second
30 degree, assault of a child in the second degree, extortion in the first
31 degree, burglary in the second degree, residential burglary, and
32 robbery in the second degree;

33 (b) Any conviction for a felony offense in effect at any time prior
34 to July 1, 1976, which is comparable to a felony classified as a crime
35 of violence in (a) of this subsection; and

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

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

4 (a) Any crime of violence;

5 (b) Child molestation in the second degree;

6 (c) Controlled substance homicide;

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

8 (e) Indecent liberties;

9 (f) Leading organized crime;

10 (g) Promoting prostitution in the first degree;

11 (h) Rape in the third degree;

12 (i) Sexual exploitation;

13 (j) Vehicular assault;

14 (k) Vehicular homicide, when proximately caused by the driving of
15 any vehicle by any person while under the influence of intoxicating
16 liquor or any drug as defined by RCW 46.61.502, or by the operation of
17 any vehicle in a reckless manner;

18 (l) Any other class B or B+ felony offense with a finding of sexual
19 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

20 (m) Any other felony with a deadly weapon verdict under RCW
21 9.94A.125; or

22 (n) Any felony offense in effect at any time prior to July 1, 1994,
23 that is comparable to a serious offense, or any federal or out-of-state
24 conviction for an offense that under the laws of this state would be a
25 felony classified as a serious offense.

26 **Sec. 33.** RCW 9.94.070 and 1995 c 385 s 1 are each amended to read
27 as follows:

28 (1) An inmate of a state correctional institution who is serving a
29 sentence for an offense committed on or after August 1, 1995, commits
30 the crime of persistent prison misbehavior if the inmate knowingly
31 commits a serious infraction, that does not constitute a class A, class
32 B+, or class B felony, after losing all potential earned early release
33 time credit.

34 (2) "Serious infraction" means misconduct that has been designated
35 as a serious infraction by department of corrections rules adopted
36 under RCW 72.09.130.

37 (3) "State correctional institution" has the same meaning as in RCW
38 9.94.049.

1 (4) The crime of persistent prison misbehavior is a class C felony
2 punishable as provided in RCW 9A.20.021. The sentence imposed for this
3 crime must be served consecutive to any sentence being served at the
4 time the crime is committed.

5 **Sec. 34.** RCW 9.94A.030 and 1995 c 268 s 2, 1995 c 108 s 1, and
6 1995 c 101 s 2 are each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

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

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

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

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

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

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

36 (7) "Community supervision" means a period of time during which a
37 convicted offender is subject to crime-related prohibitions and other
38 sentence conditions imposed by a court pursuant to this chapter or RCW

1 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
2 may include crime-related prohibitions and other conditions imposed
3 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
4 for out-of-state supervision of parolees and probationers, RCW
5 9.95.270, community supervision is the functional equivalent of
6 probation and should be considered the same as probation by other
7 states.

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

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

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

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

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

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

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

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

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

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

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

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
2 or Title 74 RCW.

3 (18) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of
5 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
6 controlled substance (RCW 69.50.403);

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

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

13 (19) "Escape" means:

14 (a) Escape in the first degree (RCW 9A.76.110), escape in the
15 second degree (RCW 9A.76.120), willful failure to return from furlough
16 (RCW 72.66.060), willful failure to return from work release (RCW
17 72.65.070), or willful failure to be available for supervision by the
18 department while in community custody (RCW 72.09.310); or

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

22 (20) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
24 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
25 and-run injury-accident (RCW 46.52.020(4)); or

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

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

31 (22)(a) "First-time offender" means any person who is convicted of
32 a felony (i) not classified as a violent offense or a sex offense under
33 this chapter, or (ii) that is not the manufacture, delivery, or
34 possession with intent to manufacture or deliver a controlled substance
35 classified in schedule I or II that is a narcotic drug, nor the
36 manufacture, delivery, or possession with intent to deliver
37 methamphetamine, its salts, isomers, and salts of its isomers as
38 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
39 controlled substance or counterfeit substance classified in schedule I,

1 RCW 69.50.204, except leaves and flowering tops of marihuana, and
2 except as provided in (b) of this subsection, who previously has never
3 been convicted of a felony in this state, federal court, or another
4 state, and who has never participated in a program of deferred
5 prosecution for a felony offense.

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

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

13 (a) Any felony defined under any law as a class A felony or
14 criminal solicitation of or criminal conspiracy to commit a class A
15 felony;

16 (b) Assault in the second degree;

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

18 (d) Child molestation in the second degree;

19 (e) Controlled substance homicide;

20 (f) Extortion in the first degree;

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

22 (h) Indecent liberties;

23 (i) Kidnapping in the second degree;

24 (j) Leading organized crime;

25 (k) Manslaughter in the first degree;

26 (l) Manslaughter in the second degree;

27 (m) Promoting prostitution in the first degree;

28 (n) Rape in the third degree;

29 (o) Robbery in the second degree;

30 (p) Sexual exploitation;

31 (q) Vehicular assault;

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

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

38 (t) Any other felony with a deadly weapon verdict under RCW
39 9.94A.125;

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

6 (24) "Nonviolent offense" means an offense which is not a violent
7 offense.

8 (25) "Offender" means a person who has committed a felony
9 established by state law and is eighteen years of age or older or is
10 less than eighteen years of age but whose case has been transferred by
11 the appropriate juvenile court to a criminal court pursuant to RCW
12 13.40.110. Throughout this chapter, the terms "offender" and
13 "defendant" are used interchangeably.

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

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

23 (a) Has been convicted in this state of any felony considered a
24 most serious offense; and

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

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

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

39 (30) "Serious traffic offense" means:

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

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

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

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

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

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

21 (33) "Sex offense" means:

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

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

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

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

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

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

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

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

8 (38) "Violent offense" means:

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

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

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

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

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

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

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

15 **Sec. 35.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read
16 as follows:

17 (1) Every offender who has been discharged under RCW 9.94A.220 may
18 apply to the sentencing court for a vacation of the offender's record
19 of conviction. If the court finds the offender meets the tests
20 prescribed in subsection (2) of this section, the court may clear the
21 record of conviction by: (a) Permitting the offender to withdraw the
22 offender's plea of guilty and to enter a plea of not guilty; or (b) if
23 the offender has been convicted after a plea of not guilty, by the
24 court setting aside the verdict of guilty; and (c) by the court
25 dismissing the information or indictment against the offender.

26 (2) An offender may not have the record of conviction cleared if:
27 (a) There are any criminal charges against the offender pending in any
28 court of this state or another state, or in any federal court; (b) the
29 offense was a violent offense as defined in RCW 9.94A.030; (c) the
30 offense was a crime against persons as defined in RCW 43.43.830; (d)
31 the offender has been convicted of a new crime in this state, another
32 state, or federal court since the date of the offender's discharge
33 under RCW 9.94A.220; (e) the offense is a class B+ felony and less than
34 twenty years have passed since the date the applicant was discharged
35 under RCW 9.94A.220; (f) the offense is a class B felony and less than
36 ten years have passed since the date the applicant was discharged under
37 RCW 9.94A.220; and (~~(f)~~) (g) the offense was a class C felony and

1 less than five years have passed since the date the applicant was
2 discharged under RCW 9.94A.220.

3 (3) Once the court vacates a record of conviction under subsection
4 (1) of this section, the fact that the offender has been convicted of
5 the offense shall not be included in the offender's criminal history
6 for purposes of determining a sentence in any subsequent conviction,
7 and the offender shall be released from all penalties and disabilities
8 resulting from the offense. For all purposes, including responding to
9 questions on employment applications, an offender whose conviction has
10 been vacated may state that the offender has never been convicted of
11 that crime. Nothing in this section affects or prevents the use of an
12 offender's prior conviction in a later criminal prosecution.

13 **Sec. 36.** RCW 9.94A.310 and 1995 c 129 s 2 (Initiative Measure No.
14 159) are each amended to read as follows:

15 (1) TABLE 1
16 Sentencing Grid

17 SERIOUSNESS	18 OFFENDER SCORE									
18 SCORE	0	1	2	3	4	5	6	7	8	9 or 20 more
21	<hr/>									
22 XV	Life Sentence without Parole/Death Penalty									
23	<hr/>									
24 XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
25	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
26	320	333	347	361	374	388	416	450	493	548
27	<hr/>									
28 XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
29	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
30	164	178	192	205	219	233	260	288	342	397
31	<hr/>									
32 XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
33	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
34	123	136	147	160	171	184	216	236	277	318
35	<hr/>									

1	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
2		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
3		102	114	125	136	147	158	194	211	245	280
4											
5	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
6		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
7		68	75	82	89	96	102	130	144	171	198
8											
9	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
10		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
11		41	48	54	61	68	75	102	116	144	171
12											
13	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
14		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
15		27	34	41	48	54	61	89	102	116	144
16											
17	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
18		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
19		20	27	34	41	48	54	75	89	102	116
20											
21	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
22		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
23		14	20	27	34	41	48	61	75	89	102
24											
25	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
26		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
27		12	14	17	20	29	43	54	68	82	96
28											
29	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
30		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
31		9	12	14	17	20	29	43	57	70	84
32											
33	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
34		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
35		3	8	12	12	16	22	29	43	57	68
36											
37	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
38		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
39		Days	6	9	12	14	18	22	29	43	57

1
2
3
4
5

I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

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

10 (2) For persons convicted of the anticipatory offenses of criminal
11 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
12 presumptive sentence is determined by locating the sentencing grid
13 sentence range defined by the appropriate offender score and the
14 seriousness level of the completed crime, and multiplying the range by
15 75 percent.

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

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

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

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

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

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

12 (f) The firearm enhancements in this section shall apply to all
13 felony crimes except the following: Possession of a machine gun,
14 possessing a stolen firearm, reckless endangerment in the first degree,
15 theft of a firearm, unlawful possession of a firearm in the first and
16 second degree, and use of a machine gun in a felony.

17 (g) If the presumptive sentence under this section exceeds the
18 statutory maximum for the offense, the statutory maximum sentence shall
19 be the presumptive sentence unless the offender is a persistent
20 offender as defined in RCW 9.94A.030.

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

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

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

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

7 (d) If the offender is being sentenced under (a), (b), and/or (c)
8 of this subsection for any deadly weapon enhancements and the offender
9 has previously been sentenced for any deadly weapon enhancements after
10 July 23, 1995, under (a), (b), and/or (c) of this subsection or
11 subsection (3) (a), (b), and/or (c) of this section, or both, any and
12 all deadly weapon enhancements under this subsection shall be twice the
13 amount of the enhancement listed.

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

18 (f) The deadly weapon enhancements in this section shall apply to
19 all felony crimes except the following: Possession of a machine gun,
20 possessing a stolen firearm, reckless endangerment in the first degree,
21 theft of a firearm, unlawful possession of a firearm in the first and
22 second degree, and use of a machine gun in a felony.

23 (g) If the presumptive sentence under this section exceeds the
24 statutory maximum for the offense, the statutory maximum sentence shall
25 be the presumptive sentence unless the offender is a persistent
26 offender as defined in RCW 9.94A.030.

27 (5) The following additional times shall be added to the
28 presumptive sentence if the offender or an accomplice committed the
29 offense while in a county jail or state correctional facility as that
30 term is defined in this chapter and the offender is being sentenced for
31 one of the crimes listed in this subsection. If the offender or an
32 accomplice committed one of the crimes listed in this subsection while
33 in a county jail or state correctional facility as that term is defined
34 in this chapter, and the offender is being sentenced for an
35 anticipatory offense under chapter 9A.28 RCW to commit one of the
36 crimes listed in this subsection, the following additional times shall
37 be added to the presumptive sentence determined under subsection (2) of
38 this section:

1 (a) Eighteen months for offenses committed under RCW
2 69.50.401(a)(1)(i) or 69.50.410;

3 (b) Fifteen months for offenses committed under RCW
4 69.50.401(a)(1)(ii), (iii), and (iv);

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

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

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

12 **Sec. 37.** RCW 9.94A.320 and 1995 c 385 s 2, 1995 c 285 s 28, and
13 1995 c 129 s 3 (Initiative Measure No. 159) are each reenacted and
14 amended to read as follows:

15 TABLE 2

16 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

17	XV	Aggravated Murder 1 (RCW 10.95.020)
18	XIV	Murder 1 (RCW 9A.32.030)
19		Homicide by abuse (RCW 9A.32.055)
20	XIII	Murder 2 (RCW 9A.32.050)
21	XII	Assault 1 (RCW 9A.36.011)
22		Assault of a Child 1 (RCW 9A.36.120)
23	XI	Rape 1 (RCW 9A.44.040)
24		Rape of a Child 1 (RCW 9A.44.073)
25	X	Kidnapping 1 (RCW 9A.40.020)
26		Rape 2 (RCW 9A.44.050)
27		Rape of a Child 2 (RCW 9A.44.076)
28		Child Molestation 1 (RCW 9A.44.083)
29		Damaging building, etc., by explosion with
30		threat to human being (RCW
31		70.74.280(1))

1 Over 18 and deliver heroin or narcotic from
2 Schedule I or II to someone under 18
3 (RCW 69.50.406)
4 Leading Organized Crime (RCW
5 9A.82.060(1)(a))

6 IX Assault of a Child 2 (RCW 9A.36.130)
7 Robbery 1 (RCW 9A.56.200)
8 Manslaughter 1 (RCW 9A.32.060)
9 Explosive devices prohibited (RCW 70.74.180)
10 Indecent Liberties (with forcible
11 compulsion) (RCW 9A.44.100(1)(a))
12 Endangering life and property by explosives
13 with threat to human being (RCW
14 70.74.270)
15 Over 18 and deliver narcotic from Schedule
16 III, IV, or V or a nonnarcotic from
17 Schedule I-V to someone under 18 and 3
18 years junior (RCW 69.50.406)
19 Controlled Substance Homicide (RCW
20 69.50.415)
21 Sexual Exploitation (RCW 9.68A.040)
22 Inciting Criminal Profiteering (RCW
23 9A.82.060(1)(b))
24 Vehicular Homicide, by being under the
25 influence of intoxicating liquor or any
26 drug (RCW 46.61.520)

27 VIII Arson 1 (RCW 9A.48.020)
28 Promoting Prostitution 1 (RCW 9A.88.070)
29 Selling for profit (controlled or
30 counterfeit) any controlled substance
31 (RCW 69.50.410)
32 Manufacture, deliver, or possess with intent
33 to deliver heroin or cocaine (RCW
34 69.50.401(a)(1)(i))
35 Manufacture, deliver, or possess with intent
36 to deliver methamphetamine (RCW
37 69.50.401(a)(1)(ii))

1 Vehicular Homicide, by the operation of any
2 vehicle in a reckless manner (RCW
3 46.61.520)

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

23 VI Bribery (RCW 9A.68.010)
24 Manslaughter 2 (RCW 9A.32.070)
25 Rape of a Child 3 (RCW 9A.44.079)
26 Intimidating a Juror/Witness (RCW 9A.72.110,
27 9A.72.130)
28 Damaging building, etc., by explosion with
29 no threat to human being (RCW
30 70.74.280(2))
31 Endangering life and property by explosives
32 with no threat to human being (RCW
33 70.74.270)
34 Incest 1 (RCW 9A.64.020(1))
35 Manufacture, deliver, or possess with intent
36 to deliver narcotics from Schedule I or
37 II (except heroin or cocaine) (RCW
38 69.50.401(a)(1)(i))

1 Intimidating a Judge (RCW 9A.72.160)
2 Bail Jumping with Murder 1 (RCW
3 9A.76.170(2)(a))
4 Theft of a Firearm (RCW 9A.56.300)

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

32 IV Residential Burglary (RCW 9A.52.025)
33 Theft of Livestock 1 (RCW 9A.56.080)
34 Robbery 2 (RCW 9A.56.210)
35 Assault 2 (RCW 9A.36.021)
36 Escape 1 (RCW 9A.76.110)
37 Arson 2 (RCW 9A.48.030)
38 Commercial Bribery (RCW 9A.68.060)

1 Bribing a Witness/Bribe Received by Witness
2 (RCW 9A.72.090, 9A.72.100)
3 Malicious Harassment (RCW 9A.36.080)
4 Threats to Bomb (RCW 9.61.160)
5 Willful Failure to Return from Furlough (RCW
6 72.66.060)
7 Hit and Run « Injury Accident (RCW
8 46.52.020(4))
9 Vehicular Assault (RCW 46.61.522)
10 Manufacture, deliver, or possess with intent
11 to deliver narcotics from Schedule III,
12 IV, or V or nonnarcotics from Schedule
13 I-V (except marijuana or
14 methamphetamines) (RCW
15 69.50.401(a)(1)(ii) through (iv))
16 Influencing Outcome of Sporting Event (RCW
17 9A.82.070)
18 Use of Proceeds of Criminal Profiteering
19 (RCW 9A.82.080 (1) and (2))
20 Knowingly Trafficking in Stolen Property
21 (RCW 9A.82.050(2))
22 III Criminal Mistreatment 2 (RCW 9A.42.030)
23 Extortion 2 (RCW 9A.56.130)
24 Unlawful Imprisonment (RCW 9A.40.040)
25 Assault 3 (RCW 9A.36.031)
26 Assault of a Child 3 (RCW 9A.36.140)
27 Custodial Assault (RCW 9A.36.100)
28 Unlawful possession of firearm in the second
29 degree (RCW 9.41.040(1)(b))
30 Harassment (RCW 9A.46.020)
31 Promoting Prostitution 2 (RCW 9A.88.080)
32 Willful Failure to Return from Work Release
33 (RCW 72.65.070)
34 Burglary 2 (RCW 9A.52.030)
35 Introducing Contraband 2 (RCW 9A.76.150)
36 Communication with a Minor for Immoral
37 Purposes (RCW 9.68A.090)
38 Patronizing a Juvenile Prostitute (RCW
39 9.68A.100)

1 Escape 2 (RCW 9A.76.120)
2 Perjury 2 (RCW 9A.72.030)
3 Bail Jumping with class B, B+, or C Felony
4 (RCW 9A.76.170(2)(c))
5 Intimidating a Public Servant (RCW
6 9A.76.180)
7 Tampering with a Witness (RCW 9A.72.120)
8 Manufacture, deliver, or possess with intent
9 to deliver marijuana (RCW
10 69.50.401(a)(1)(ii))
11 Delivery of a material in lieu of a
12 controlled substance (RCW 69.50.401(c))
13 Manufacture, distribute, or possess with
14 intent to distribute an imitation
15 controlled substance (RCW 69.52.030(1))
16 Recklessly Trafficking in Stolen Property
17 (RCW 9A.82.050(1))
18 Theft of livestock 2 (RCW 9A.56.080)
19 Securities Act violation (RCW 21.20.400)
20 II Unlawful Practice of Law (RCW 2.48.180)
21 Malicious Mischief 1 (RCW 9A.48.070)
22 Possession of Stolen Property 1 (RCW
23 9A.56.150)
24 Theft 1 (RCW 9A.56.030)
25 Trafficking in Insurance Claims (RCW
26 48.30A.015)
27 Unlicensed Practice of a Profession or
28 Business (RCW 18.130.190(7))
29 Health Care False Claims (RCW 48.80.030)
30 Possession of controlled substance that is
31 either heroin or narcotics from
32 Schedule I or II (RCW 69.50.401(d))
33 Possession of phencyclidine (PCP) (RCW
34 69.50.401(d))
35 Create, deliver, or possess a counterfeit
36 controlled substance (RCW 69.50.401(b))

1 Computer Trespass 1 (RCW 9A.52.110)
2 Escape from Community Custody (RCW
3 72.09.310)
4 I Theft 2 (RCW 9A.56.040)
5 Possession of Stolen Property 2 (RCW
6 9A.56.160)
7 Forgery (RCW 9A.60.020)
8 Taking Motor Vehicle Without Permission (RCW
9 9A.56.070)
10 Vehicle Prowl 1 (RCW 9A.52.095)
11 Attempting to Elude a Pursuing Police
12 Vehicle (RCW 46.61.024)
13 Malicious Mischief 2 (RCW 9A.48.080)
14 Reckless Burning 1 (RCW 9A.48.040)
15 Unlawful Issuance of Checks or Drafts (RCW
16 9A.56.060)
17 Unlawful Use of Food Stamps (RCW 9.91.140
18 (2) and (3))
19 False Verification for Welfare (RCW
20 74.08.055)
21 Forged Prescription (RCW 69.41.020)
22 Forged Prescription for a Controlled
23 Substance (RCW 69.50.403)
24 Possess Controlled Substance that is a
25 Narcotic from Schedule III, IV, or V or
26 Non-narcotic from Schedule I-V (except
27 phencyclidine) (RCW 69.50.401(d))

28 **Sec. 38.** RCW 9.94A.386 and 1984 c 209 s 23 are each amended to
29 read as follows:

30 On all sentences under this chapter the court may impose fines
31 according to the following ranges:

32	Class A felonies	\$0 - 50,000
33	<u>Class B+ felonies</u>	<u>\$0 - 30,000</u>
34	Class B felonies	\$0 - 20,000
35	Class C felonies	\$0 - 10,000

1 **Sec. 39.** RCW 9A.20.010 and 1984 c 258 s 808 are each amended to
2 read as follows:

3 (1) Classified Felonies. (a) The particular classification of
4 each felony defined in Title 9A RCW is expressly designated in the
5 section defining it.

6 (b) For purposes of sentencing, classified felonies are designated
7 as one of (~~three~~) four classes, as follows:

8 (i) Class A felony; or

9 (ii) Class B+ felony; or

10 (~~iii~~) Class B felony; or

11 (~~iii~~) (iv) Class C felony.

12 (2) Misdemeanors and Gross Misdemeanors. (a) Any crime punishable
13 by a fine of not more than one thousand dollars, or by imprisonment in
14 a county jail for not more than ninety days, or by both such fine and
15 imprisonment is a misdemeanor. Whenever the performance of any act is
16 prohibited by any statute, and no penalty for the violation of such
17 statute is imposed, the committing of such act shall be a misdemeanor.

18 (b) All crimes other than felonies and misdemeanors are gross
19 misdemeanors.

20 **Sec. 40.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to
21 read as follows:

22 (1) A person is guilty of an attempt to commit crime if, with
23 intent to commit a specific crime, he or she does any act which is a
24 substantial step toward the commission of that crime.

25 (2) If the conduct in which a person engages otherwise constitutes
26 an attempt to commit a crime, it is no defense to a prosecution of such
27 attempt that the crime charged to have been attempted was, under the
28 attendant circumstances, factually or legally impossible of commission.

29 (3) An attempt to commit a crime is a:

30 (a) Class A felony when the crime attempted is murder in the first
31 degree, murder in the second degree, or arson in the first degree;

32 (b) Class B felony when the crime attempted is a class B+ felony
33 or a class A felony other than murder in the first degree, murder in
34 the second degree, or arson in the first degree;

35 (c) Class C felony when the crime attempted is a class B felony;

36 (d) Gross misdemeanor when the crime attempted is a class C
37 felony;

1 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
2 misdemeanor.

3 **Sec. 41.** RCW 9A.28.040 and 1975 1st ex.s. c 260 s 9A.28.040 are
4 each amended to read as follows:

5 (1) A person is guilty of criminal conspiracy when, with intent
6 that conduct constituting a crime be performed, he or she agrees with
7 one or more persons to engage in or cause the performance of such
8 conduct, and any one of them takes a substantial step in pursuance of
9 such agreement.

10 (2) It shall not be a defense to criminal conspiracy that the
11 person or persons with whom the accused is alleged to have conspired:

12 (a) Has not been prosecuted or convicted; or

13 (b) Has been convicted of a different offense; or

14 (c) Is not amenable to justice; or

15 (d) Has been acquitted; or

16 (e) Lacked the capacity to commit an offense.

17 (3) Criminal conspiracy is a:

18 (a) Class A felony when an object of the conspiratorial agreement
19 is murder in the first degree;

20 (b) Class B felony when an object of the conspiratorial agreement
21 is a class B+ felony or a class A felony other than murder in the first
22 degree;

23 (c) Class C felony when an object of the conspiratorial agreement
24 is a class B felony;

25 (d) Gross misdemeanor when an object of the conspiratorial
26 agreement is a class C felony;

27 (e) Misdemeanor when an object of the conspiratorial agreement is
28 a gross misdemeanor or misdemeanor.

29 **Sec. 42.** RCW 9A.44.140 and 1995 c 268 s 4, 1995 c 248 s 2, and
30 1995 c 195 s 2 are each reenacted and amended to read as follows:

31 (1) The duty to register under RCW 9A.44.130 shall end:

32 (a) For a person convicted of a class A felony: Such person may
33 only be relieved of the duty to register under subsection (3) or (4) of
34 this section.

35 (b) For a person convicted of a class B+ felony: Twenty years
36 after the last date of release from confinement, if any, (including
37 full-time residential treatment) pursuant to the conviction, or entry

1 of the judgment and sentence, if the person has spent twenty
2 consecutive years in the community without being convicted of any new
3 offenses.

4 (c) For a person convicted of a class B felony: Fifteen years
5 after the last date of release from confinement, if any, (including
6 full-time residential treatment) pursuant to the conviction, or entry
7 of the judgment and sentence, if the person has spent fifteen
8 consecutive years in the community without being convicted of any new
9 offenses.

10 ~~((e))~~ (d) For a person convicted of a class C felony or any
11 violation of RCW 9.68A.090 or an attempt, solicitation, or conspiracy
12 to commit a class C felony: Ten years after the last date of release
13 from confinement, if any, (including full-time residential treatment)
14 pursuant to the conviction, or entry of the judgment and sentence, if
15 the person has spent ten consecutive years in the community without
16 being convicted of any new offenses.

17 (2) The provisions of subsection (1) of this section shall apply
18 equally to a person who has been found not guilty by reason of insanity
19 under chapter 10.77 RCW of a sex offense.

20 (3) Any person having a duty to register under RCW 9A.44.130 may
21 petition the superior court to be relieved of that duty. The petition
22 shall be made to the court in which the petitioner was convicted of the
23 offense that subjects him or her to the duty to register, or, in the
24 case of convictions in other states, a foreign country, or a federal or
25 military court, to the court in Thurston county. The prosecuting
26 attorney of the county shall be named and served as the respondent in
27 any such petition. The court shall consider the nature of the
28 registrable offense committed, and the criminal and relevant
29 noncriminal behavior of the petitioner both before and after
30 conviction, and may consider other factors. Except as provided in
31 subsection (4) of this section, the court may relieve the petitioner of
32 the duty to register only if the petitioner shows, with clear and
33 convincing evidence, that future registration of the petitioner will
34 not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540,
35 46.20.187, 70.48.470, and 72.09.330.

36 (4) An offender having a duty to register under RCW 9A.44.130 for
37 a sex offense committed when the offender was a juvenile may petition
38 the superior court to be relieved of that duty. The court shall
39 consider the nature of the registrable offense committed, and the

1 criminal and relevant noncriminal behavior of the petitioner both
2 before and after adjudication, and may consider other factors. The
3 court may relieve the petitioner of the duty to register for a sex
4 offense that was committed while the petitioner was fifteen years of
5 age or older only if the petitioner shows, with clear and convincing
6 evidence, that future registration of the petitioner will not serve the
7 purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470,
8 and 72.09.330. The court may relieve the petitioner of the duty to
9 register for a sex offense that was committed while the petitioner was
10 under the age of fifteen if the petitioner (a) has not been adjudicated
11 of any additional sex offenses during the twenty-four months following
12 the adjudication for the sex offense giving rise to the duty to
13 register, and (b) the petitioner proves by a preponderance of the
14 evidence that future registration of the petitioner will not serve the
15 purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470,
16 and 72.09.330.

17 (5) Unless relieved of the duty to register pursuant to this
18 section, a violation of RCW 9A.44.130 is an ongoing offense for
19 purposes of the statute of limitations under RCW 9A.04.080.

20 (6) Nothing in RCW 9.94A.220 relating to discharge of an offender
21 shall be construed as operating to relieve the offender of his or her
22 duty to register pursuant to RCW 9A.44.130.

23 **Sec. 43.** RCW 9A.76.080 and 1982 1st ex.s. c 47 s 22 are each
24 amended to read as follows:

25 (1) A person is guilty of rendering criminal assistance in the
26 second degree if he or she renders criminal assistance to a person who
27 has committed or is being sought for a class B+, class B, or class C
28 felony or an equivalent juvenile offense or to someone being sought for
29 violation of parole, probation, or community supervision.

30 (2) Rendering criminal assistance in the second degree is:

31 (a) A misdemeanor if it is established by a preponderance of the
32 evidence that the actor is a relative as defined in RCW 9A.76.060;

33 (b) A gross misdemeanor in all other cases.

34 **Sec. 44.** RCW 9A.76.170 and 1983 1st ex.s. c 4 s 3 are each
35 amended to read as follows:

36 (1) Any person having been released by court order or admitted to
37 bail with the requirement of a subsequent personal appearance before

1 any court of this state, and who knowingly fails to appear as required
2 is guilty of bail jumping.

3 (2) Bail jumping is:

4 (a) A class A felony if the person was held for, charged with, or
5 convicted of murder in the first degree;

6 (b) A class B felony if the person was held for, charged with, or
7 convicted of a class A felony other than murder in the first degree;

8 (c) A class C felony if the person was held for, charged with, or
9 convicted of a class B+, class B, or class C felony;

10 (d) A misdemeanor if the person was held for, charged with, or
11 convicted of a gross misdemeanor or misdemeanor.

12 **Sec. 45.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15
13 are each reenacted and amended to read as follows:

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

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

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

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

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

25 (e) Relating to juveniles alleged or found to have committed
26 offenses, traffic infractions, or violations as provided in RCW
27 13.40.020 through 13.40.230, unless:

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

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

32 (iii) The alleged offense or infraction is a traffic, fish,
33 boating, or game offense or traffic infraction committed by a juvenile
34 sixteen years of age or older and would, if committed by an adult, be
35 tried or heard in a court of limited jurisdiction, in which instance
36 the appropriate court of limited jurisdiction shall have jurisdiction
37 over the alleged offense or infraction: PROVIDED, That if such an
38 alleged offense or infraction and an alleged offense or infraction

1 subject to juvenile court jurisdiction arise out of the same event or
2 incident, the juvenile court may have jurisdiction of both matters:
3 PROVIDED FURTHER, That the jurisdiction under this subsection does not
4 constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1)
5 or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited
6 jurisdiction which confine juveniles for an alleged offense or
7 infraction may place juveniles in juvenile detention facilities under
8 an agreement with the officials responsible for the administration of
9 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

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

22 If the juvenile challenges the state's determination of the
23 juvenile's criminal history, the state may establish the offender's
24 criminal history by a preponderance of the evidence. If the criminal
25 history consists of adjudications entered upon a plea of guilty, the
26 state shall not bear a burden of establishing the knowing and
27 voluntariness of the plea;

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

30 (g) Relating to termination of a diversion agreement under RCW
31 13.40.080, including a proceeding in which the divertee has attained
32 eighteen years of age;

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

1 (i) Relating to petitions to compel disclosure of information
2 filed by the department of social and health services pursuant to RCW
3 74.13.042.

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

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

12 **Sec. 46.** RCW 13.40.0357 and 1995 c 395 s 3 are each amended to
13 read as follows:

14 **SCHEDULE A**

15 **DESCRIPTION AND OFFENSE CATEGORY**

16	JUVENILE		JUVENILE DISPOSITION
17	DISPOSITION		CATEGORY FOR ATTEMPT,
18	OFFENSE		BAILJUMP, CONSPIRACY,
19	CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
20		

21 **Arson and Malicious Mischief**

22	A	Arson 1 (9A.48.020)	B+
23	B	Arson 2 (9A.48.030)	C
24	C	Reckless Burning 1 (9A.48.040)	D
25	D	Reckless Burning 2 (9A.48.050)	E
26	B	Malicious Mischief 1 (9A.48.070)	C
27	C	Malicious Mischief 2 (9A.48.080)	D
28	D	Malicious Mischief 3 (<\$50 is	
29		E class) (9A.48.090)	E
30	E	Tampering with Fire Alarm	
31		Apparatus (9.40.100)	E
32	A	Possession of Incendiary Device	
33		(9.40.120)	B+

34 **Assault and Other Crimes**

35 **Involving Physical Harm**

36	A	Assault 1 (9A.36.011)	B+
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1	B+	Assault 2 (9A.36.021)	C+
2	C+	Assault 3 (9A.36.031)	D+
3	D+	Assault 4 (9A.36.041)	E
4	D+	Reckless Endangerment	
5		(9A.36.050)	E
6	C+	Promoting Suicide Attempt	
7		(9A.36.060)	D+
8	D+	Coercion (9A.36.070)	E
9	C+	Custodial Assault (9A.36.100)	D+
10		Burglary and Trespass	
11	B+	Burglary 1 (9A.52.020)	C+
12	B	Burglary 2 (9A.52.030)	C
13	D	Burglary Tools (Possession of)	
14		(9A.52.060)	E
15	D	Criminal Trespass 1 (9A.52.070)	E
16	E	Criminal Trespass 2 (9A.52.080)	E
17	D	Vehicle Prowling (9A.52.100)	E
18		Drugs	
19	E	Possession/Consumption of Alcohol	
20		(66.44.270)	E
21	C	Illegally Obtaining Legend Drug	
22		(69.41.020)	D
23	C+	Sale, Delivery, Possession of Legend	
24		Drug with Intent to Sell	
25		(69.41.030)	D+
26	E	Possession of Legend Drug	
27		(69.41.030)	E
28	B+	Violation of Uniform Controlled	
29		Substances Act - Narcotic Sale	
30		(69.50.401(a)(1)(i))	B+
31	C	Violation of Uniform Controlled	
32		Substances Act - Nonnarcotic Sale	
33		(69.50.401(a)(1)(ii))	C
34	E	Possession of Marihuana <40 grams	
35		(69.50.401(e))	E
36	C	Fraudulently Obtaining Controlled	
37		Substance (69.50.403)	C

1	C+	Sale of Controlled Substance	
2		for Profit (69.50.410)	C+
3	E	Unlawful Inhalation (9.47A.020)	E
4	B	Violation of Uniform Controlled	
5		Substances Act - Narcotic	
6		Counterfeit Substances	
7		(69.50.401(b)(1)(i))	B
8	C	Violation of Uniform Controlled	
9		Substances Act - Nonnarcotic	
10		Counterfeit Substances	
11		(69.50.401(b)(1) (ii), (iii), (iv))	C
12	C	Violation of Uniform Controlled	
13		Substances Act - Possession of a	
14		Controlled Substance	
15		(69.50.401(d))	C
16	C	Violation of Uniform Controlled	
17		Substances Act - Possession of a	
18		Controlled Substance	
19		(69.50.401(c))	C
20		Firearms and Weapons	
21	E	Carrying Loaded Pistol Without	
22		Permit (9.41.050)	E
23	C	Possession of Firearms by	
24		Minor (<18) (9.41.040(1)((e))) (b)(iv))C	
25	D+	Possession of Dangerous Weapon	
26		(9.41.250)	E
27	D	Intimidating Another Person by use	
28		of Weapon (9.41.270)	E
29		Homicide	
30	A+	Murder 1 (9A.32.030)	A
31	A+	Murder 2 (9A.32.050)	B+
32	B+	Manslaughter 1 (9A.32.060)	C+
33	C+	Manslaughter 2 (9A.32.070)	D+
34	B+	Vehicular Homicide (46.61.520)	C+
35		Kidnapping	
36	A	Kidnap 1 (9A.40.020)	B+
37	B+	Kidnap 2 (9A.40.030)	C+

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

1	C+	Promoting Prostitution 2	
2		(9A.88.080)	D+
3	E	O & A (Prostitution) (9A.88.030)	E
4	B+	Indecent Liberties (9A.44.100)	C+
5	B+	Child Molestation 1 (9A.44.083)	C+
6	C+	Child Molestation 2 (9A.44.086)	C
7		Theft, Robbery, Extortion, and Forgery	
8	B	Theft 1 (9A.56.030)	C
9	C	Theft 2 (9A.56.040)	D
10	D	Theft 3 (9A.56.050)	E
11	B	Theft of Livestock (9A.56.080)	C
12	C	Forgery (9A.60.020)	D
13	A	Robbery 1 (9A.56.200)	B+
14	B+	Robbery 2 (9A.56.210)	C+
15	B+	Extortion 1 (9A.56.120)	C+
16	C+	Extortion 2 (9A.56.130)	D+
17	B	Possession of Stolen Property 1	
18		(9A.56.150)	C
19	C	Possession of Stolen Property 2	
20		(9A.56.160)	D
21	D	Possession of Stolen Property 3	
22		(9A.56.170)	E
23	C	Taking Motor Vehicle Without	
24		Owner's Permission (9A.56.070)	D
25		Motor Vehicle Related Crimes	
26	E	Driving Without a License	
27		(46.20.021)	E
28	C	Hit and Run - Injury	
29		(46.52.020(4))	D
30	D	Hit and Run-Attended	
31		(46.52.020(5))	E
32	E	Hit and Run-Unattended	
33		(46.52.010)	E
34	C	Vehicular Assault (46.61.522)	D
35	C	Attempting to Elude Pursuing	
36		Police Vehicle (46.61.024)	D
37	E	Reckless Driving (46.61.500)	E

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

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

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

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

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

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

3 **SCHEDULE B**

4 **PRIOR OFFENSE INCREASE FACTOR**

5 For use with all CURRENT OFFENSES occurring on or after July 1,
6 1989.

7 **TIME SPAN**

8	OFFENSE	0-12	13-24	25 Months
9	CATEGORY	Months	Months	or More
10	.....		
11	A+	.9	.9	.9
12	A	.9	.8	.6
13	A-	.9	.8	.5
14	B+	.9	.7	.4
15	B	.9	.6	.3
16	C+	.6	.3	.2
17	C	.5	.2	.2
18	D+	.3	.2	.1
19	D	.2	.1	.1
20	E	.1	.1	.1

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

25 **SCHEDULE C**

26 **CURRENT OFFENSE POINTS**

27 For use with all CURRENT OFFENSES occurring on or after July 1,
28 1989.

29 **AGE**

30	OFFENSE	12 &					
31	CATEGORY	Under	13	14	15	16	17
32	.....					
33	A+	STANDARD RANGE 180-224 WEEKS					
34	A	250	300	350	375	375	375

1	A-	150	150	150	200	200	200
2	B+	110	110	120	130	140	150
3	B	45	45	50	50	57	57
4	C+	44	44	49	49	55	55
5	C	40	40	45	45	50	50
6	D+	16	18	20	22	24	26
7	D	14	16	18	20	22	24
8	E	4	4	4	6	8	10

9 **JUVENILE SENTENCING STANDARDS**

10 **SCHEDULE D-1**

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

14 **MINOR/FIRST OFFENDER**

15 **OPTION A**

16 **STANDARD RANGE**

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

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OR

OPTION B

STATUTORY OPTION

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

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

OR

OPTION C

MANIFEST INJUSTICE

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

JUVENILE SENTENCING STANDARDS

SCHEDULE D-2

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

MIDDLE OFFENDER

OPTION A

STANDARD RANGE

Points	Community			Fine	Confinement	
	Supervision	Service Hours	Hours		Days	Weeks
1-9	0-3 months	and/or 0-8	and/or 0-8	and/or 0-\$10	and/or 0	and/or 0
10-19	0-3 months	and/or 0-8	and/or 0-8	and/or 0-\$10	and/or 0	and/or 0
20-29	0-3 months	and/or 0-16	and/or 0-16	and/or 0-\$10	and/or 0	and/or 0
30-39	0-3 months	and/or 8-24	and/or 8-24	and/or 0-\$25	and/or 2-4	and/or 2-4
40-49	3-6 months	and/or 16-32	and/or 16-32	and/or 0-\$25	and/or 2-4	and/or 2-4
50-59	3-6 months	and/or 24-40	and/or 24-40	and/or 0-\$25	and/or 5-10	and/or 5-10

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

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

15 **OR**

16 **OPTION B**

17 **STATUTORY OPTION**

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

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

27 If the middle offender has 110 points or more, the court may
28 impose a disposition under option A and may suspend the disposition on
29 the condition that the offender serve up to thirty days of confinement
30 and follow all conditions of community supervision. If the offender
31 fails to comply with the terms of community supervision, the court may
32 impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended
33 disposition and order execution of the disposition. If the court
34 imposes confinement for offenders with 110 points or more, the court
35 shall state either aggravating or mitigating factors set forth in RCW
36 13.40.150.

37 **OR**

38 **OPTION C**

1 **MANIFEST INJUSTICE**

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

6 **JUVENILE SENTENCING STANDARDS**
7 **SCHEDULE D-3**

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

11 **SERIOUS OFFENDER**
12 **OPTION A**
13 **STANDARD RANGE**

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

24 **OR**

25 **OPTION B**
26 **MANIFEST INJUSTICE**

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

1 **Sec. 47.** RCW 13.40.070 and 1994 sp.s. c 7 s 543 are each amended
2 to read as follows:

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

7 (a) The alleged facts bring the case within the jurisdiction of
8 the court; and

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

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

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

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

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

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

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

1 (c) An alleged offender has previously been committed to the
2 department; or

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

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

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

9 (6) Where a case is legally sufficient the prosecutor shall divert
10 the case if the alleged offense is a misdemeanor or gross misdemeanor
11 or violation and the alleged offense is the offender's first offense or
12 violation. If the alleged offender is charged with a related offense
13 that must or may be filed under subsections (5) and (7) of this
14 section, a case under this subsection may also be filed.

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

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

29 (9) The responsibilities of the prosecutor under subsections (1)
30 through (8) of this section may be performed by a juvenile court
31 probation counselor for any complaint referred to the court alleging
32 the commission of an offense which would not be a felony if committed
33 by an adult, if the prosecutor has given sufficient written notice to
34 the juvenile court that the prosecutor will not review such complaints.

35 (10) The prosecutor, juvenile court probation counselor, or
36 diversion unit may, in exercising their authority under this section or
37 RCW 13.40.080, refer juveniles to mediation or victim offender
38 reconciliation programs. Such mediation or victim offender
39 reconciliation programs shall be voluntary for victims.

1 NEW SECTION. **Sec. 48.** Sections 3 through 22 of this act are each
2 added to chapter 9.94A RCW.

3 NEW SECTION. **Sec. 49.** This act shall take effect July 1, 1996.

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