

2 **E3SHB 3900** - S AMD - 407
3 By Senators Roach and Johnson

4 ADOPTED AS AMENDED BY 421A & 439 4/16/97

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 5.60.060 and 1996 c 156 s 1 are each amended to read
8 as follows:

9 (1) A husband shall not be examined for or against his wife,
10 without the consent of the wife, nor a wife for or against her husband
11 without the consent of the husband; nor can either during marriage or
12 afterward, be without the consent of the other, examined as to any
13 communication made by one to the other during marriage. But this
14 exception shall not apply to a civil action or proceeding by one
15 against the other, nor to a criminal action or proceeding for a crime
16 committed by one against the other, nor to a criminal action or
17 proceeding against a spouse if the marriage occurred subsequent to the
18 filing of formal charges against the defendant, nor to a criminal
19 action or proceeding for a crime committed by said husband or wife
20 against any child of whom said husband or wife is the parent or
21 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:
22 PROVIDED, That the spouse of a person sought to be detained under
23 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall
24 be so informed by the court prior to being called as a witness.

25 (2)(a) An attorney or counselor shall not, without the consent of
26 his or her client, be examined as to any communication made by the
27 client to him or her, or his or her advice given thereon in the course
28 of professional employment.

29 (b) No parent or guardian of a minor child arrested on a criminal
30 charge may be examined as to a communication between the child and his
31 or her attorney if the communication was made in the presence of the
32 parent or guardian. This privilege does not extend to communications
33 made prior to the arrest.

34 (3) A member of the clergy or a priest shall not, without the
35 consent of a person making the confession, be examined as to any
36 confession made to him or her in his or her professional character, in

1 the course of discipline enjoined by the church to which he or she
2 belongs.

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

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

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

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

20 (6)(a) A peer support group counselor shall not, without consent of
21 the law enforcement officer making the communication, be compelled to
22 testify about any communication made to the counselor by the officer
23 while receiving counseling. The counselor must be designated as such
24 by the sheriff, police chief, or chief of the Washington state patrol,
25 prior to the incident that results in counseling. The privilege only
26 applies when the communication was made to the counselor while acting
27 in his or her capacity as a peer support group counselor. The
28 privilege does not apply if the counselor was an initial responding
29 officer, a witness, or a party to the incident which prompted the
30 delivery of peer support group counseling services to the law
31 enforcement officer.

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

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

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

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

9 (a) For purposes of this section, "sexual assault advocate" means
10 the employee or volunteer from a rape crisis center, victim assistance
11 unit, program, or association, that provides information, medical or
12 legal advocacy, counseling, or support to victims of sexual assault,
13 who is designated by the victim to accompany the victim to the hospital
14 or other health care facility and to proceedings concerning the alleged
15 assault, including police and prosecution interviews and court
16 proceedings.

17 (b) A sexual assault advocate may disclose a confidential
18 communication without the consent of the victim if failure to disclose
19 is likely to result in a clear, imminent risk of serious physical
20 injury or death of the victim or another person. Any sexual assault
21 advocate participating in good faith in the disclosing of records and
22 communications under this section shall have immunity from any
23 liability, civil, criminal, or otherwise, that might result from the
24 action. In any proceeding, civil or criminal, arising out of a
25 disclosure under this section, the good faith of the sexual assault
26 advocate who disclosed the confidential communication shall be
27 presumed.

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

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

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

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

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

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

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

18 (6) "Community service" means compulsory service, without
19 compensation, performed for the benefit of the community by the
20 offender.

21 (7) "Community supervision" means a period of time during which a
22 convicted offender is subject to crime-related prohibitions and other
23 sentence conditions imposed by a court pursuant to this chapter or RCW
24 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
25 may include crime-related prohibitions and other conditions imposed
26 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
27 for out-of-state supervision of parolees and probationers, RCW
28 9.95.270, community supervision is the functional equivalent of
29 probation and should be considered the same as probation by other
30 states.

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

33 (9) "Conviction" means an adjudication of guilt pursuant to Titles
34 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
35 acceptance of a plea of guilty.

36 (10) "Court-ordered legal financial obligation" means a sum of
37 money that is ordered by a superior court of the state of Washington
38 for legal financial obligations which may include restitution to the
39 victim, statutorily imposed crime victims' compensation fees as

1 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
2 drug funds, court-appointed attorneys' fees, and costs of defense,
3 fines, and any other financial obligation that is assessed to the
4 offender as a result of a felony conviction. Upon conviction for
5 vehicular assault while under the influence of intoxicating liquor or
6 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
7 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
8 legal financial obligations may also include payment to a public agency
9 of the expense of an emergency response to the incident resulting in
10 the conviction, subject to the provisions in RCW 38.52.430.

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

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

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

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

37 (14) "Day reporting" means a program of enhanced supervision
38 designed to monitor the defendant's daily activities and compliance
39 with sentence conditions, and in which the defendant is required to

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

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

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

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

24 (18) "Drug offense" means:

25 (a) Any felony violation of chapter 69.50 RCW except possession of
26 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
27 controlled substance (RCW 69.50.403);

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

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

34 (19) "Escape" means:

35 (a) Escape in the first degree (RCW 9A.76.110), escape in the
36 second degree (RCW 9A.76.120), willful failure to return from furlough
37 (RCW 72.66.060), willful failure to return from work release (RCW
38 72.65.070), or willful failure to be available for supervision by the
39 department while in community custody (RCW 72.09.310); or

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

4 (20) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
6 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
7 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

34 (a) Any felony defined under any law as a class A felony or
35 criminal solicitation of or criminal conspiracy to commit a class A
36 felony;

37 (b) Assault in the second degree;

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

39 (d) Child molestation in the second degree;

1 (e) Controlled substance homicide;
2 (f) Extortion in the first degree;
3 (g) Incest when committed against a child under age fourteen;
4 (h) Indecent liberties;
5 (i) Kidnapping in the second degree;
6 (j) Leading organized crime;
7 (k) Manslaughter in the first degree;
8 (l) Manslaughter in the second degree;
9 (m) Promoting prostitution in the first degree;
10 (n) Rape in the third degree;
11 (o) Robbery in the second degree;
12 (p) Sexual exploitation;
13 (q) Vehicular assault;
14 (r) 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 (s) Any other class B felony offense with a finding of sexual
19 motivation, as "sexual motivation" is defined under this section;
20 (t) Any other felony with a deadly weapon verdict under RCW
21 9.94A.125;
22 (u) Any felony offense in effect at any time prior to December 2,
23 1993, that is comparable to a most serious offense under this
24 subsection, or any federal or out-of-state conviction for an offense
25 that under the laws of this state would be a felony classified as a
26 most serious offense under this subsection.
27 (24) "Nonviolent offense" means an offense which is not a violent
28 offense.
29 (25) "Offender" means a person who has committed a felony
30 established by state law and is eighteen years of age or older or is
31 less than eighteen years of age but whose case is under superior court
32 jurisdiction under RCW 13.04.030 or has been transferred by the
33 appropriate juvenile court to a criminal court pursuant to RCW
34 13.40.110. Throughout this chapter, the terms "offender" and
35 "defendant" are used interchangeably.
36 (26) "Partial confinement" means confinement for no more than one
37 year in a facility or institution operated or utilized under contract
38 by the state or any other unit of government, or, if home detention or
39 work crew has been ordered by the court, in an approved residence, for

1 a substantial portion of each day with the balance of the day spent in
2 the community. Partial confinement includes work release, home
3 detention, work crew, and a combination of work crew and home detention
4 as defined in this section.

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

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

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

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

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

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

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

33 (30) "Serious traffic offense" means:

34 (a) Driving while under the influence of intoxicating liquor or any
35 drug (RCW 46.61.502), actual physical control while under the influence
36 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
37 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
38 or

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

4 (31) "Serious violent offense" is a subcategory of violent offense
5 and means:

6 (a) Murder in the first degree, homicide by abuse, murder in the
7 second degree, assault in the first degree, kidnapping in the first
8 degree, or rape in the first degree, assault of a child in the first
9 degree, or an attempt, criminal solicitation, or criminal conspiracy to
10 commit one of these felonies; or

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

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

16 (33) "Sex offense" means:

17 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
18 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
19 criminal attempt, criminal solicitation, or criminal conspiracy to
20 commit such crimes;

21 (b) A felony with a finding of sexual motivation under RCW
22 9.94A.127 or 13.40.135; or

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

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

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

33 (36) "Transition training" means written and verbal instructions
34 and assistance provided by the department to the offender during the
35 two weeks prior to the offender's successful completion of the work
36 ethic camp program. The transition training shall include instructions
37 in the offender's requirements and obligations during the offender's
38 period of community custody.

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

4 (38) "Violent offense" means:

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

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

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

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

36 (40) "Work ethic camp" means an alternative incarceration program
37 designed to reduce recidivism and lower the cost of corrections by
38 requiring offenders to complete a comprehensive array of real-world job
39 and vocational experiences, character-building work ethics training,

1 life management skills development, substance abuse rehabilitation,
2 counseling, literacy training, and basic adult education.

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

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

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

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

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

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

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

21 (ii) The intent of the legislature to emphasize confinement for the
22 violent offender and alternatives to confinement for the nonviolent
23 offender.

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

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

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

36 (d)(i) Serve as a clearinghouse and information center for the
37 collection, preparation, analysis, and dissemination of information on
38 state and local adult and juvenile sentencing practices; (ii) develop

1 and maintain a computerized adult and juvenile sentencing information
2 system by individual superior court judge consisting of offender,
3 offense, history, and sentence information entered from judgment and
4 sentence forms for all adult felons; and (iii) conduct ongoing research
5 regarding adult and juvenile sentencing guidelines, use of total
6 confinement and alternatives to total confinement, plea bargaining, and
7 other matters relating to the improvement of the adult criminal justice
8 system and the juvenile justice system;

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

11 (f) Evaluate the effectiveness of existing disposition standards
12 and related statutes in implementing policies set forth in RCW
13 13.40.010 generally, specifically review the guidelines relating to the
14 confinement of minor and first offenders as well as the use of
15 diversion, and review the application of current and proposed juvenile
16 sentencing standards and guidelines for potential adverse impacts on
17 the sentencing outcomes of racial and ethnic minority youth;

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

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

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

35 (ii) The capacity of state and local juvenile and adult facilities
36 and resources; and

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

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

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

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

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

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

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

18 **Sec. 4.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c
19 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as
20 follows:

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

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

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

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

34 (4) A persistent offender shall be sentenced to a term of total
35 confinement for life without the possibility of parole or, when
36 authorized by RCW 10.95.030 for the crime of aggravated murder in the
37 first degree, sentenced to death, notwithstanding the maximum sentence
38 under any other law. An offender convicted of the crime of murder in

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

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

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

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

34 (c) Pursue a prescribed, secular course of study or vocational
35 training;

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

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

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

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

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

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

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

20 (b) If the midpoint of the standard range is greater than one year
21 and the sentencing judge determines that the offender is eligible for
22 this option and that the offender and the community will benefit from
23 the use of the special drug offender sentencing alternative, the judge
24 may waive imposition of a sentence within the standard range and impose
25 a sentence that must include a period of total confinement in a state
26 facility for one-half of the midpoint of the standard range. During
27 incarceration in the state facility, offenders sentenced under this
28 subsection shall undergo a comprehensive substance abuse assessment and
29 receive, within available resources, treatment services appropriate for
30 the offender. The treatment services shall be designed by the division
31 of alcohol and substance abuse of the department of social and health
32 services, in cooperation with the department of corrections. If the
33 midpoint of the standard range is twenty-four months or less, no more
34 than three months of the sentence may be served in a work release
35 status. The court shall also impose one year of concurrent community
36 custody and community supervision that must include appropriate
37 outpatient substance abuse treatment, crime-related prohibitions
38 including a condition not to use illegal controlled substances, and a
39 requirement to submit to urinalysis or other testing to monitor that

1 status. The court may require that the monitoring for controlled
2 substances be conducted by the department or by a treatment
3 alternatives to street crime program or a comparable court or agency-
4 referred program. The offender may be required to pay thirty dollars
5 per month while on community custody to offset the cost of monitoring.
6 In addition, the court shall impose three or more of the following
7 conditions:

8 (i) Devote time to a specific employment or training;

9 (ii) Remain within prescribed geographical boundaries and notify
10 the court or the community corrections officer before any change in the
11 offender's address or employment;

12 (iii) Report as directed to a community corrections officer;

13 (iv) Pay all court-ordered legal financial obligations;

14 (v) Perform community service work;

15 (vi) Stay out of areas designated by the sentencing judge.

16 (c) If the offender violates any of the sentence conditions in (b)
17 of this subsection, the department shall impose sanctions
18 administratively, with notice to the prosecuting attorney and the
19 sentencing court. Upon motion of the court or the prosecuting
20 attorney, a violation hearing shall be held by the court. If the court
21 finds that conditions have been willfully violated, the court may
22 impose confinement consisting of up to the remaining one-half of the
23 midpoint of the standard range. All total confinement served during
24 the period of community custody shall be credited to the offender,
25 regardless of whether the total confinement is served as a result of
26 the original sentence, as a result of a sanction imposed by the
27 department, or as a result of a violation found by the court. The term
28 of community supervision shall be tolled by any period of time served
29 in total confinement as a result of a violation found by the court.

30 (d) The department shall determine the rules for calculating the
31 value of a day fine based on the offender's income and reasonable
32 obligations which the offender has for the support of the offender and
33 any dependents. These rules shall be developed in consultation with
34 the administrator for the courts, the office of financial management,
35 and the commission.

36 (7) If a sentence range has not been established for the
37 defendant's crime, the court shall impose a determinate sentence which
38 may include not more than one year of confinement, community service
39 work, a term of community supervision not to exceed one year, and/or

1 other legal financial obligations. The court may impose a sentence
2 which provides more than one year of confinement if the court finds,
3 considering the purpose of this chapter, that there are substantial and
4 compelling reasons justifying an exceptional sentence.

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

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

18 The examiner shall assess and report regarding the defendant's
19 amenability to treatment and relative risk to the community. A
20 proposed treatment plan shall be provided and shall include, at a
21 minimum:

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

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

25 (C) Monitoring plans, including any requirements regarding living
26 conditions, lifestyle requirements, and monitoring by family members
27 and others;

28 (D) Anticipated length of treatment; and

29 (E) Recommended crime-related prohibitions.

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

36 (ii) After receipt of the reports, the court shall consider whether
37 the offender and the community will benefit from use of this special
38 sexual offender sentencing alternative and consider the victim's
39 opinion whether the offender should receive a treatment disposition

1 under this subsection. If the court determines that this special sex
2 offender sentencing alternative is appropriate, the court shall then
3 impose a sentence within the sentence range. If this sentence is less
4 than eight years of confinement, the court may suspend the execution of
5 the sentence and impose the following conditions of suspension:

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

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

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

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

30 (III) Report as directed to the court and a community corrections
31 officer;

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

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

37 (iii) The sex offender therapist shall submit quarterly reports on
38 the defendant's progress in treatment to the court and the parties.
39 The report shall reference the treatment plan and include at a minimum

1 the following: Dates of attendance, defendant's compliance with
2 requirements, treatment activities, the defendant's relative progress
3 in treatment, and any other material as specified by the court at
4 sentencing.

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

20 (v) If a violation of conditions occurs during community custody,
21 the department shall either impose sanctions as provided for in RCW
22 9.94A.205(2)(a) or refer the violation to the court and recommend
23 revocation of the suspended sentence as provided for in (a)(vi) of this
24 subsection.

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

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

36 (viii) A sex offender therapist who examines or treats a sex
37 offender pursuant to this subsection (8) does not have to be certified
38 by the department of health pursuant to chapter 18.155 RCW if the court
39 finds that: (A) The offender has already moved to another state or

1 plans to move to another state for reasons other than circumventing the
2 certification requirements; (B) no certified providers are available
3 for treatment within a reasonable geographical distance of the
4 offender's home; and (C) the evaluation and treatment plan comply with
5 this subsection (8) and the rules adopted by the department of health.

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

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

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

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

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

35 If the offender violates any of the terms of his or her community
36 supervision, the court may order the offender to serve out the balance
37 of his or her community supervision term in confinement in the custody
38 of the department of corrections.

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

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

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

34 (b) When a court sentences a person to a term of total confinement
35 to the custody of the department of corrections for an offense
36 categorized as a sex offense committed on or after July 1, 1990, but
37 before June 6, 1996, a serious violent offense, vehicular homicide, or
38 vehicular assault, committed on or after July 1, 1990, the court shall
39 in addition to other terms of the sentence, sentence the offender to

1 community placement for two years or up to the period of earned early
2 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
3 longer. The community placement shall begin either upon completion of
4 the term of confinement or at such time as the offender is transferred
5 to community custody in lieu of earned early release in accordance with
6 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
7 this subsection to the statutory maximum period of confinement then the
8 community placement portion of the sentence shall consist entirely of
9 the community custody to which the offender may become eligible, in
10 accordance with RCW 9.94A.150 (1) and (2). Any period of community
11 custody actually served shall be credited against the community
12 placement portion of the sentence. Unless a condition is waived by the
13 court, the terms of community placement for offenders sentenced
14 pursuant to this section shall include the following conditions:

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

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

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

21 (iv) An offender in community custody shall not unlawfully possess
22 controlled substances;

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

25 (vi) The residence location and living arrangements are subject to
26 the prior approval of the department of corrections during the period
27 of community placement.

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

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

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

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

37 (iv) The offender shall not consume alcohol;

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

39 or

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

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

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

20 (b) Unless a condition is waived by the court, the terms of
21 community custody shall be the same as those provided for in subsection
22 (9)(b) of this section and may include those provided for in subsection
23 (9)(c) of this section. As part of any sentence that includes a term
24 of community custody imposed under this subsection, the court shall
25 also require the offender to comply with any conditions imposed by the
26 department of corrections under subsection (14) of this section.

27 (c) At any time prior to the completion of a sex offender's term of
28 community custody, if the court finds that public safety would be
29 enhanced, the court may impose and enforce an order extending any or
30 all of the conditions imposed pursuant to this section for a period up
31 to the maximum allowable sentence for the crime as it is classified in
32 chapter 9A.20 RCW, regardless of the expiration of the offender's term
33 of community custody. If a violation of a condition extended under
34 this subsection occurs after the expiration of the offender's term of
35 community custody, it shall be deemed a violation of the sentence for
36 the purposes of RCW 9.94A.195 and may be punishable as contempt of
37 court as provided for in RCW 7.21.040.

38 (11) If the court imposes a sentence requiring confinement of
39 thirty days or less, the court may, in its discretion, specify that the

1 sentence be served on consecutive or intermittent days. A sentence
2 requiring more than thirty days of confinement shall be served on
3 consecutive days. Local jail administrators may schedule court-ordered
4 intermittent sentences as space permits.

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

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

30 (14) All offenders sentenced to terms involving community
31 supervision, community service, community placement, or legal financial
32 obligation shall be under the supervision of the department of
33 corrections and shall follow explicitly the instructions and conditions
34 of the department of corrections.

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

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

20 The department may require offenders to pay for special services
21 rendered on or after July 25, 1993, including electronic monitoring,
22 day reporting, and telephone reporting, dependent upon the offender's
23 ability to pay. The department may pay for these services for
24 offenders who are not able to pay.

25 (15) All offenders sentenced to terms involving community
26 supervision, community service, or community placement under the
27 supervision of the department of corrections shall not own, use, or
28 possess firearms or ammunition. Offenders who own, use, or are found
29 to be in actual or constructive possession of firearms or ammunition
30 shall be subject to the appropriate violation process and sanctions.
31 "Constructive possession" as used in this subsection means the power
32 and intent to control the firearm or ammunition. "Firearm" as used in
33 this subsection means a weapon or device from which a projectile may be
34 fired by an explosive such as gunpowder.

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

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

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

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

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

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

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

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

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

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

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

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

31 (4) (~~Always include juvenile convictions for sex offenses and~~
32 ~~serious violent offenses. Include other class A juvenile felonies only~~
33 ~~if the offender was 15 or older at the time the juvenile offense was~~
34 ~~committed. Include other class B and C juvenile felony convictions~~
35 ~~only if the offender was 15 or older at the time the juvenile offense~~
36 ~~was committed and the offender was less than 23 at the time the offense~~
37 ~~for which he or she is being sentenced was committed.~~

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

4 ~~((6))~~ (5)(a) In the case of multiple prior convictions, for the
5 purpose of computing the offender score, count all convictions
6 separately, except:

7 (i) Prior ~~((adult))~~ offenses which were found, under RCW
8 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
9 counted as one offense, the offense that yields the highest offender
10 score. The current sentencing court shall determine with respect to
11 other prior adult offenses for which sentences were served concurrently
12 or prior juvenile offenses for which sentences were served
13 consecutively, whether those offenses shall be counted as one offense
14 or as separate offenses using the "same criminal conduct" analysis
15 found in RCW 9.94A.400(1)(a), and if the court finds that they shall be
16 counted as one offense, then the offense that yields the highest
17 offender score shall be used. The current sentencing court may presume
18 that such other prior ~~((adult))~~ offenses were not the same criminal
19 conduct from sentences imposed on separate dates, or in separate
20 counties or jurisdictions, or in separate complaints, indictments, or
21 informations;

22 (ii) ~~((Juvenile prior convictions entered or sentenced on the same~~
23 ~~date shall count as one offense, the offense that yields the highest~~
24 ~~offender score, except for juvenile prior convictions for violent~~
25 ~~offenses with separate victims, which shall count as separate offenses;~~
26 and

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

33 (b) As used in this subsection ~~((6))~~ (5), "served concurrently"
34 means that: (i) The latter sentence was imposed with specific
35 reference to the former; (ii) the concurrent relationship of the
36 sentences was judicially imposed; and (iii) the concurrent timing of
37 the sentences was not the result of a probation or parole revocation on
38 the former offense.

1 (~~(7)~~) (6) If the present conviction is one of the anticipatory
2 offenses of criminal attempt, solicitation, or conspiracy, count each
3 prior conviction as if the present conviction were for a completed
4 offense.

5 (~~(8)~~) (7) If the present conviction is for a nonviolent offense
6 and not covered by subsection (~~(12)~~) (11) or (~~(13)~~) (12) of this
7 section, count one point for each adult prior felony conviction and one
8 point for each juvenile prior violent felony conviction and « point for
9 each juvenile prior nonviolent felony conviction.

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

16 (~~(10)~~) (9) If the present conviction is for Murder 1 or 2,
17 Assault 1, Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or
18 Rape 1, count three points for prior adult and juvenile convictions for
19 crimes in these categories, two points for each prior adult and
20 juvenile violent conviction (not already counted), one point for each
21 prior adult nonviolent felony conviction, and « point for each prior
22 juvenile nonviolent felony conviction.

23 (~~(11)~~) (10) If the present conviction is for Burglary 1, count
24 prior convictions as in subsection (~~(9)~~) (8) of this section; however
25 count two points for each prior adult Burglary 2 or residential
26 burglary conviction, and one point for each prior juvenile Burglary 2
27 or residential burglary conviction.

28 (~~(12)~~) (11) If the present conviction is for a felony traffic
29 offense count two points for each adult or juvenile prior conviction
30 for Vehicular Homicide or Vehicular Assault; for each felony offense or
31 serious traffic offense, count one point for each adult and « point for
32 each juvenile prior conviction.

33 (~~(13)~~) (12) If the present conviction is for a drug offense count
34 three points for each adult prior felony drug offense conviction and
35 two points for each juvenile drug offense. All other adult and
36 juvenile felonies are scored as in subsection (~~(9)~~) (8) of this
37 section if the current drug offense is violent, or as in subsection
38 (~~(8)~~) (7) of this section if the current drug offense is nonviolent.

1 (~~(14)~~) (13) If the present conviction is for Willful Failure to
2 Return from Furlough, RCW 72.66.060, Willful Failure to Return from
3 Work Release, RCW 72.65.070, or Escape from Community Custody, RCW
4 72.09.310, count only prior escape convictions in the offender score.
5 Count adult prior escape convictions as one point and juvenile prior
6 escape convictions as « point.

7 (~~(15)~~) (14) If the present conviction is for Escape 1, RCW
8 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as
9 one point and juvenile prior convictions as « point.

10 (~~(16)~~) (15) If the present conviction is for Burglary 2 or
11 residential burglary, count priors as in subsection (~~(8)~~) (7) of this
12 section; however, count two points for each adult and juvenile prior
13 Burglary 1 conviction, two points for each adult prior Burglary 2 or
14 residential burglary conviction, and one point for each juvenile prior
15 Burglary 2 or residential burglary conviction.

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

20 (~~(18)~~) (17) If the present conviction is for an offense committed
21 while the offender was under community placement, add one point.

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

24 For purposes of this title:

25 (1) "Adjudication" has the same meaning as "conviction" in RCW
26 9.94A.030, and the terms must be construed identically and used
27 interchangeably;

28 (2) Except as specifically provided in RCW 13.40.020 and chapter
29 13.24 RCW, (~~as now or hereafter amended,~~) "juvenile," "youth," and
30 "child" mean any individual who is under the chronological age of
31 eighteen years;

32 (~~(2)~~) (3) "Juvenile offender" and "juvenile offense" have the
33 meaning ascribed in RCW 13.40.020;

34 (~~(3)~~) (4) "Court" when used without further qualification means
35 the juvenile court judge(s) or commissioner(s);

36 (~~(4)~~) (5) "Parent" or "parents," except as used in chapter 13.34
37 RCW, (~~as now or hereafter amended,~~) means that parent or parents who
38 have the right of legal custody of the child. "Parent" or "parents" as

1 used in chapter 13.34 RCW, means the biological or adoptive parents of
2 a child unless the legal rights of that person have been terminated by
3 judicial proceedings;

4 ~~((+5+))~~ (6) "Custodian" means that person who has the legal right
5 to custody of the child.

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

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

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

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

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

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

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

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

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

26 (iii) The alleged offense or infraction is a traffic, fish,
27 boating, or game offense, or traffic or civil infraction committed by
28 a juvenile sixteen years of age or older and would, if committed by an
29 adult, be tried or heard in a court of limited jurisdiction, in which
30 instance the appropriate court of limited jurisdiction shall have
31 jurisdiction over the alleged offense or infraction, and no guardian ad
32 litem is required in any such proceeding due to the juvenile's age:

33 PROVIDED, That if such an alleged offense or infraction and an alleged
34 offense or infraction subject to juvenile court jurisdiction arise out
35 of the same event or incident, the juvenile court may have jurisdiction
36 of both matters: PROVIDED FURTHER, That the jurisdiction under this
37 subsection does not constitute "transfer" or a "decline" for purposes
38 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,

1 That courts of limited jurisdiction which confine juveniles for an
2 alleged offense or infraction may place juveniles in juvenile detention
3 facilities under an agreement with the officials responsible for the
4 administration of the juvenile detention facility in RCW 13.04.035 and
5 13.20.060; or

6 (iv) The juvenile is sixteen or seventeen years old and the alleged
7 offense is:

8 (A) A serious violent offense as defined in RCW 9.94A.030
9 (~~committed on or after June 13, 1994; or~~);

10 (B) A violent offense as defined in RCW 9.94A.030 (~~committed on or~~
11 after June 13, 1994,) and the juvenile has a criminal history
12 consisting of: (I) One or more prior serious violent offenses; (II)
13 two or more prior violent offenses; or (III) three or more of any
14 combination of the following offenses: Any class A felony, any class
15 B felony, vehicular assault, or manslaughter in the second degree, all
16 of which must have been committed after the juvenile's thirteenth
17 birthday and prosecuted separately;

18 (C) Robbery in the first degree, rape of a child in the first
19 degree, or drive-by shooting, committed on or after the effective date
20 of this section;

21 (D) Burglary in the first degree committed on or after the
22 effective date of this section, and the juvenile has a criminal history
23 consisting of one or more prior felony or misdemeanor offenses; or

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

27 In such a case the adult criminal court shall have exclusive
28 original jurisdiction.

29 If the juvenile challenges the state's determination of the
30 juvenile's criminal history under (e)(iv) of this subsection, the state
31 may establish the offender's criminal history by a preponderance of the
32 evidence. If the criminal history consists of adjudications entered
33 upon a plea of guilty, the state shall not bear a burden of
34 establishing the knowing and voluntariness of the plea;

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

37 (g) Relating to termination of a diversion agreement under RCW
38 13.40.080, including a proceeding in which the divertee has attained
39 eighteen years of age;

1 (h) Relating to court validation of a voluntary consent to an out-
2 of-home placement under chapter 13.34 RCW, by the parent or Indian
3 custodian of an Indian child, except if the parent or Indian custodian
4 and child are residents of or domiciled within the boundaries of a
5 federally recognized Indian reservation over which the tribe exercises
6 exclusive jurisdiction; and

7 (i) Relating to petitions to compel disclosure of information filed
8 by the department of social and health services pursuant to RCW
9 74.13.042.

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

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

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

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

22 (2) It is the intent of the legislature that a system capable of
23 having primary responsibility for, being accountable for, and
24 responding to the needs of youthful offenders, as defined by this
25 chapter, be established. It is the further intent of the legislature
26 that youth, in turn, be held accountable for their offenses and that
27 ((both)) communities, families, and the juvenile courts carry out their
28 functions consistent with this intent. To effectuate these policies,
29 the legislature declares the following to be equally important purposes
30 of this chapter:

31 (a) Protect the citizenry from criminal behavior;

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

34 (c) Make the juvenile offender accountable for his or her criminal
35 behavior;

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

1 (e) Provide due process for juveniles alleged to have committed an
2 offense;

3 (f) Provide necessary treatment, supervision, and custody for
4 juvenile offenders;

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

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

8 (i) Develop effective standards and goals for the operation,
9 funding, and evaluation of all components of the juvenile justice
10 system and related services at the state and local levels; ((and))

11 (j) Provide for a clear policy to determine what types of offenders
12 shall receive punishment, treatment, or both, and to determine the
13 jurisdictional limitations of the courts, institutions, and community
14 services; and

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

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

19 For the purposes of this chapter:

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

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

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

25 ~~(c) Assault in the second degree, extortion in the first degree,~~
26 ~~child molestation in the second degree, kidnapping in the second~~
27 ~~degree, robbery in the second degree, residential burglary, or burglary~~
28 ~~in the second degree, where such offenses include the infliction of~~
29 ~~bodily harm upon another or where during the commission of or immediate~~
30 ~~withdrawal from such an offense the perpetrator is armed with a deadly~~
31 ~~weapon;~~

32 ~~(2))~~ "Community service" means compulsory service, without
33 compensation, performed for the benefit of the community by the
34 offender as punishment for committing an offense. Community service
35 may be performed through public or private organizations or through
36 work crews;

37 ~~((3))~~ (2) "Community supervision" means an order of disposition
38 by the court of an adjudicated youth not committed to the department or

1 an order granting a deferred ((~~adjudication~~)) disposition pursuant to
2 RCW 13.40.125. A community supervision order for a single offense may
3 be for a period of up to two years for a sex offense as defined by RCW
4 9.94A.030 and up to one year for other offenses. As a mandatory
5 condition of any term of community supervision, the court shall order
6 the juvenile to refrain from committing new offenses. As a mandatory
7 condition of community supervision, the court shall order the juvenile
8 to comply with the mandatory school attendance provisions of chapter
9 28A.225 RCW and to inform the school of the existence of this
10 requirement. Community supervision is an individualized program
11 comprised of one or more of the following:

- 12 (a) Community-based sanctions;
- 13 (b) Community-based rehabilitation;
- 14 (c) Monitoring and reporting requirements;
- 15 (d) Posting of a probation bond ((~~imposed pursuant to RCW~~
16 ~~13.40.0357~~));

17 ((~~4~~)) (3) Community-based sanctions may include one or more of
18 the following:

- 19 (a) A fine, not to exceed ((~~one~~)) five hundred dollars;
- 20 (b) Community service not to exceed one hundred fifty hours of
21 service;

22 ((~~5~~)) (4) "Community-based rehabilitation" means one or more of
23 the following: Employment; attendance of information classes; literacy
24 classes; counseling, outpatient substance abuse treatment programs,
25 outpatient mental health programs, anger management classes, education
26 or outpatient treatment programs to prevent animal cruelty, or other
27 services; or attendance at school or other educational programs
28 appropriate for the juvenile as determined by the school district.
29 Placement in community-based rehabilitation programs is subject to
30 available funds;

31 ((~~6~~)) (5) "Monitoring and reporting requirements" means one or
32 more of the following: Curfews; requirements to remain at home,
33 school, work, or court-ordered treatment programs during specified
34 hours; restrictions from leaving or entering specified geographical
35 areas; requirements to report to the probation officer as directed and
36 to remain under the probation officer's supervision; and other
37 conditions or limitations as the court may require which may not
38 include confinement;

1 (~~(7)~~) (6) "Confinement" means physical custody by the department
2 of social and health services in a facility operated by or pursuant to
3 a contract with the state, or physical custody in a detention facility
4 operated by or pursuant to a contract with any county. The county may
5 operate or contract with vendors to operate county detention
6 facilities. The department may operate or contract to operate
7 detention facilities for juveniles committed to the department.
8 Pretrial confinement or confinement of less than thirty-one days
9 imposed as part of a disposition or modification order may be served
10 consecutively or intermittently, in the discretion of the court;

11 (~~(8)~~) (7) "Court,"(~~(7)~~) when used without further qualification,
12 means the juvenile court judge(s) or commissioner(s);

13 (~~(9)~~) (8) "Criminal history" includes all criminal complaints
14 against the respondent for which, prior to the commission of a current
15 offense:

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

20 (b) The criminal complaint was diverted by a prosecutor pursuant to
21 the provisions of this chapter on agreement of the respondent and after
22 an advisement to the respondent that the criminal complaint would be
23 considered as part of the respondent's criminal history. A
24 successfully completed deferred adjudication that was entered before
25 the effective date of this section or a deferred disposition shall not
26 be considered part of the respondent's criminal history;

27 (~~(10)~~) (9) "Department" means the department of social and health
28 services;

29 (~~(11)~~) (10) "Detention facility" means a county facility, paid
30 for by the county, for the physical confinement of a juvenile alleged
31 to have committed an offense or an adjudicated offender subject to a
32 disposition or modification order. "Detention facility" includes
33 county group homes, inpatient substance abuse programs, juvenile basic
34 training camps, and electronic monitoring;

35 (~~(12)~~) (11) "Diversion unit" means any probation counselor who
36 enters into a diversion agreement with an alleged youthful offender, or
37 any other person, community accountability board, or other entity
38 except a law enforcement official or entity, with whom the juvenile
39 court administrator has contracted to arrange and supervise such

1 agreements pursuant to RCW 13.40.080, or any person, community
2 accountability board, or other entity specially funded by the
3 legislature to arrange and supervise diversion agreements in accordance
4 with the requirements of this chapter. For purposes of this
5 subsection, "community accountability board" means a board comprised of
6 members of the local community in which the juvenile offender resides.
7 The superior court shall appoint the members. The boards shall consist
8 of at least three and not more than seven members. If possible, the
9 board should include a variety of representatives from the community,
10 such as a law enforcement officer, teacher or school administrator,
11 high school student, parent, and business owner, and should represent
12 the cultural diversity of the local community;

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

15 ~~((14))~~ (13) "Intensive supervision program" means a parole
16 program that requires intensive supervision and monitoring, offers an
17 array of individualized treatment and transitional services, and
18 emphasizes community involvement and support in order to reduce the
19 likelihood a juvenile offender will commit further offenses;

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

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

28 (16) "Local sanctions" means one or more of the following: (a)
29 0-30 days of confinement; (b) 0-12 months of community supervision; (c)
30 0-150 hours of community service; or (d) \$0-\$500 fine;

31 ~~((16))~~ (17) "Manifest injustice" means a disposition that would
32 either impose an excessive penalty on the juvenile or would impose a
33 serious, and clear danger to society in light of the purposes of this
34 chapter;

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

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

4 ~~(a) Four misdemeanors;~~

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

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

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

8 ~~For purposes of this definition, current violations shall be~~
9 ~~counted as misdemeanors;~~

10 ~~(19))~~ (18) "Offense" means an act designated a violation or a
11 crime if committed by an adult under the law of this state, under any
12 ordinance of any city or county of this state, under any federal law,
13 or under the law of another state if the act occurred in that state;

14 ~~((20))~~ (19) "Respondent" means a juvenile who is alleged or
15 proven to have committed an offense;

16 ~~((21))~~ (20) "Restitution" means financial reimbursement by the
17 offender to the victim, and shall be limited to easily ascertainable
18 damages for injury to or loss of property, actual expenses incurred for
19 medical treatment for physical injury to persons, lost wages resulting
20 from physical injury, and costs of the victim's counseling reasonably
21 related to the offense if the offense is a sex offense. Restitution
22 shall not include reimbursement for damages for mental anguish, pain
23 and suffering, or other intangible losses. Nothing in this chapter
24 shall limit or replace civil remedies or defenses available to the
25 victim or offender;

26 ~~((22))~~ (21) "Secretary" means the secretary of the department of
27 social and health services. "Assistant secretary" means the assistant
28 secretary for juvenile rehabilitation for the department;

29 ~~((23))~~ (22) "Services" means services which provide alternatives
30 to incarceration for those juveniles who have pleaded or been
31 adjudicated guilty of an offense or have signed a diversion agreement
32 pursuant to this chapter;

33 ~~((24))~~ (23) "Sex offense" means an offense defined as a sex
34 offense in RCW 9.94A.030;

35 ~~((25))~~ (24) "Sexual motivation" means that one of the purposes
36 for which the respondent committed the offense was for the purpose of
37 his or her sexual gratification;

1 ((+26+)) (25) "Foster care" means temporary physical care in a
2 foster family home or group care facility as defined in RCW 74.15.020
3 and licensed by the department, or other legally authorized care;

4 ((+27+)) (26) "Violation" means an act or omission, which if
5 committed by an adult, must be proven beyond a reasonable doubt, and is
6 punishable by sanctions which do not include incarceration;

7 ((+28+)) (27) "Violent offense" means a violent offense as defined
8 in RCW 9.94A.030;

9 ((+29+)) (28) "Probation bond" means a bond, posted with sufficient
10 security by a surety justified and approved by the court, to secure the
11 offender's appearance at required court proceedings and compliance with
12 court-ordered community supervision or conditions of release ordered
13 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
14 cash or posting of other collateral in lieu of a bond if approved by
15 the court;

16 ((+30+)) (29) "Surety" means an entity licensed under state
17 insurance laws or by the state department of licensing, to write
18 corporate, property, or probation bonds within the state, and justified
19 and approved by the superior court of the county having jurisdiction of
20 the case.

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

23 (1) ((SCHEDULE A))
24 **DESCRIPTION AND OFFENSE CATEGORY**

25	JUVENILE	JUVENILE DISPOSITION	
26	DISPOSITION	CATEGORY FOR ATTEMPT,	
27	OFFENSE	BAILJUMP, CONSPIRACY,	
28	CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
29		

30 **Arson and Malicious Mischief**

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

1	D	Malicious Mischief 3 (<\$50 is	
2		E class) (9A.48.090)	E
3	E	Tampering with Fire Alarm	
4		Apparatus (9.40.100)	E
5	A	Possession of Incendiary Device	
6		(9.40.120)	B+
7		Assault and Other Crimes	
8		Involving Physical Harm	
9	A	Assault 1 (9A.36.011)	B+
10	B+	Assault 2 (9A.36.021)	C+
11	C+	Assault 3 (9A.36.031)	D+
12	D+	Assault 4 (9A.36.041)	E
13	<u>B+</u>	<u>Drive-By Shooting</u>	
14		<u>(9A.36.045)</u>	<u>C+</u>
15	D+	Reckless Endangerment	
16		(9A.36.050)	E
17	C+	Promoting Suicide Attempt	
18		(9A.36.060)	D+
19	D+	Coercion (9A.36.070)	E
20	C+	Custodial Assault (9A.36.100)	D+
21		Burglary and Trespass	
22	B+	Burglary 1 (9A.52.020)	C+
23	<u>B</u>	<u>Residential Burglary</u>	
24		<u>(9A.52.025)</u>	<u>C</u>
25	B	Burglary 2 (9A.52.030)	C
26	D	Burglary Tools (Possession of)	
27		(9A.52.060)	E
28	D	Criminal Trespass 1 (9A.52.070)	E
29	E	Criminal Trespass 2 (9A.52.080)	E
30	<u>C</u>	<u>Vehicle Prowling 1 (9A.52.095)</u>	<u>D</u>
31	D	Vehicle Prowling 2 (9A.52.100)	E
32		Drugs	
33	E	Possession/Consumption of Alcohol	
34		(66.44.270)	E
35	C	Illegally Obtaining Legend Drug	
36		(69.41.020)	D

1	C+	Sale, Delivery, Possession of Legend	
2		Drug with Intent to Sell	
3		(69.41.030)	D+
4	E	Possession of Legend Drug	
5		(69.41.030)	E
6	B+	Violation of Uniform Controlled	
7		Substances Act - Narcotic or	
8		Methamphetamine Sale	
9		(69.50.401(a)(1)(i) or (ii))	B+
10	C	Violation of Uniform Controlled	
11		Substances Act - Nonnarcotic Sale	
12		(69.50.401(a)(1)(iii))	C
13	E	Possession of Marihuana <40 grams	
14		(69.50.401(e))	E
15	C	Fraudulently Obtaining Controlled	
16		Substance (69.50.403)	C
17	C+	Sale of Controlled Substance	
18		for Profit (69.50.410)	C+
19	E	Unlawful Inhalation (9.47A.020)	E
20	B	Violation of Uniform Controlled	
21		Substances Act - Narcotic or	
22		Methamphetamine	
23		Counterfeit Substances	
24		(69.50.401(b)(1)(i) or (ii))	B
25	C	Violation of Uniform Controlled	
26		Substances Act - Nonnarcotic	
27		Counterfeit Substances	
28		(69.50.401(b)(1) (iii), (iv),	
29		(v))	C
30	C	Violation of Uniform Controlled	
31		Substances Act - Possession of a	
32		Controlled Substance	
33		(69.50.401(d))	C
34	C	Violation of Uniform Controlled	
35		Substances Act - Possession of a	
36		Controlled Substance	
37		(69.50.401(c))	C
38		Firearms and Weapons	
39	B	<u>Theft of Firearm (9A.56.300)</u>	C

1	B	<u>Possession of Stolen Firearm</u>	
2		<u>(9A.56.310)</u>	<u>C</u>
3	E	Carrying Loaded Pistol Without	
4		Permit (9.41.050)	E
5	C	Possession of Firearms by Minor (<18)	
6		(9.41.040(1) (b)((iv)) (iii))	C
7	D+	Possession of Dangerous Weapon	
8		(9.41.250)	E
9	D	Intimidating Another Person by use	
10		of Weapon (9.41.270)	E
11		Homicide	
12	A+	Murder 1 (9A.32.030)	A
13	A+	Murder 2 (9A.32.050)	B+
14	B+	Manslaughter 1 (9A.32.060)	C+
15	C+	Manslaughter 2 (9A.32.070)	D+
16	B+	Vehicular Homicide (46.61.520)	C+
17		Kidnapping	
18	A	Kidnap 1 (9A.40.020)	B+
19	B+	Kidnap 2 (9A.40.030)	C+
20	C+	Unlawful Imprisonment	
21		(9A.40.040)	D+
22		Obstructing Governmental Operation	
23	((E))		
24	D	Obstructing a Law Enforcement	
25		Officer (9A.76.020)	E
26	E	Resisting Arrest (9A.76.040)	E
27	B	Introducing Contraband 1	
28		(9A.76.140)	C
29	C	Introducing Contraband 2	
30		(9A.76.150)	D
31	E	Introducing Contraband 3	
32		(9A.76.160)	E
33	B+	Intimidating a Public Servant	
34		(9A.76.180)	C+
35	B+	Intimidating a Witness	
36		(9A.72.110)	C+

1		Public Disturbance	
2	C+	Riot with Weapon (9A.84.010)	D+
3	D+	Riot Without Weapon	
4		(9A.84.010)	E
5	E	Failure to Disperse (9A.84.020)	E
6	E	Disorderly Conduct (9A.84.030)	E
7		Sex Crimes	
8	A	Rape 1 (9A.44.040)	B+
9	A-	Rape 2 (9A.44.050)	B+
10	C+	Rape 3 (9A.44.060)	D+
11	A-	Rape of a Child 1 (9A.44.073)	B+
12	B±	Rape of a Child 2 (9A.44.076)	C+
13	B	Incest 1 (9A.64.020(1))	C
14	C	Incest 2 (9A.64.020(2))	D
15	D+	Indecent Exposure	
16		(Victim <14) (9A.88.010)	E
17	E	Indecent Exposure	
18		(Victim 14 or over) (9A.88.010)	E
19	B+	Promoting Prostitution 1	
20		(9A.88.070)	C+
21	C+	Promoting Prostitution 2	
22		(9A.88.080)	D+
23	E	O & A (Prostitution) (9A.88.030)	E
24	B+	Indecent Liberties (9A.44.100)	C+
25	((B+))		((C+))
26	<u>A-</u>	Child Molestation 1 (9A.44.083)	<u>B±</u>
27	((C+))		
28	<u>B</u>	Child Molestation 2 (9A.44.086)	<u>C±</u>
29		Theft, Robbery, Extortion, and Forgery	
30	B	Theft 1 (9A.56.030)	C
31	C	Theft 2 (9A.56.040)	D
32	D	Theft 3 (9A.56.050)	E
33	B	Theft of Livestock (9A.56.080)	C
34	C	Forgery (9A.60.020)	D
35	A	Robbery 1 (9A.56.200)	B+
36	B+	Robbery 2 (9A.56.210)	C+
37	B+	Extortion 1 (9A.56.120)	C+
38	C+	Extortion 2 (9A.56.130)	D+

1	B	Possession of Stolen Property 1	
2		(9A.56.150)	C
3	C	Possession of Stolen Property 2	
4		(9A.56.160)	D
5	D	Possession of Stolen Property 3	
6		(9A.56.170)	E
7	C	Taking Motor Vehicle Without	
8		Owner's Permission (9A.56.070)	D
9		Motor Vehicle Related Crimes	
10	E	Driving Without a License	
11		(46.20.021)	E
12	C	Hit and Run - Injury	
13		(46.52.020(4))	D
14	D	Hit and Run-Attended	
15		(46.52.020(5))	E
16	E	Hit and Run-Unattended	
17		(46.52.010)	E
18	C	Vehicular Assault (46.61.522)	D
19	C	Attempting to Elude Pursuing	
20		Police Vehicle (46.61.024)	D
21	E	Reckless Driving (46.61.500)	E
22	D	Driving While Under the Influence	
23		(46.61.502 and 46.61.504)	E
24	(D)	Vehicle Prowling (9A.52.100)	E
25	C	Taking Motor Vehicle Without	
26		Owner's Permission (9A.56.070)	D))
27		Other	
28	B	Bomb Threat (9.61.160)	C
29	C	Escape 1 (9A.76.110)	C
30	C	Escape 2 (9A.76.120)	C
31	D	Escape 3 (9A.76.130)	E
32	E	Obscene, Harassing, Etc.,	
33		Phone Calls (9.61.230)	E
34	A	Other Offense Equivalent to an	
35		Adult Class A Felony	B+
36	B	Other Offense Equivalent to an	
37		Adult Class B Felony	C

1	C	Other Offense Equivalent to an	
2		Adult Class C Felony	D
3	D	Other Offense Equivalent to an	
4		Adult Gross Misdemeanor	E
5	E	Other Offense Equivalent to an	
6		Adult Misdemeanor	E
7	V	Violation of Order of Restitution,	
8		Community Supervision, or	
9		Confinement (13.40.200)	V

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

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

14 2nd escape or attempted escape during 12-month period - 8 weeks
 15 confinement

16 3rd and subsequent escape or attempted escape during 12-month
 17 period - 12 weeks confinement

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

20 ((SCHEDULE B
 21 PRIOR OFFENSE INCREASE FACTOR

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

24 TIME SPAN

25 OFFENSE 0-12 13-24 25 Months
 26 CATEGORY Months Months or More

27			
28	A+	.9	.9	.9
29	A	.9	.8	.6
30	A-	.9	.8	.5
31	B+	.9	.7	.4
32	B	.9	.6	.3
33	C+	.6	.3	.2
34	C	.5	.2	.2
35	D+	.3	.2	.1
36	D	.2	.1	.1

E .1 .1 .1

1
2 ~~Prior history -- Any offense in which a diversion agreement or counsel~~
3 ~~and release form was signed, or any offense which has been adjudicated~~
4 ~~by court to be correct prior to the commission of the current~~
5 ~~offense(s).~~

6 **SCHEDULE C**
7 **CURRENT OFFENSE POINTS**

8 For use with all CURRENT OFFENSES occurring on or after July 1,
9 1989.

10 **AGE**

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

24 (2) **JUVENILE SENTENCING STANDARDS**
25 **((SCHEDULE D-1))**

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

30 **((MINOR/FIRST OFFENDER**

31 **OPTION A**
32 **STANDARD RANGE**

33 Community
34 Community Service

	Points	Supervision	Hours	Fine
1				
2			
3	1-9	0-3 months	and/or 0-8	and/or 0-\$10
4	10-19	0-3 months	and/or 0-8	and/or 0-\$10
5	20-29	0-3 months	and/or 0-16	and/or 0-\$10
6	30-39	0-3 months	and/or 8-24	and/or 0-\$25
7	40-49	3-6 months	and/or 16-32	and/or 0-\$25
8	50-59	3-6 months	and/or 24-40	and/or 0-\$25
9	60-69	6-9 months	and/or 32-48	and/or 0-\$50
10	70-79	6-9 months	and/or 40-56	and/or 0-\$50
11	80-89	9-12 months	and/or 48-64	and/or 10-\$100
12	90-109	9-12 months	and/or 56-72	and/or 10-\$100

13 **OR**

14 **OPTION B**
 15 **STATUTORY OPTION**

- 16 ~~0-12 Months Community Supervision~~
- 17 ~~0-150 Hours Community Service~~
- 18 ~~0-100 Fine~~
- 19 ~~Posting of a Probation Bond~~
- 20 ~~A term of community supervision with a maximum of 150 hours, \$100.00~~
- 21 ~~fine, and 12 months supervision.~~

22 **OR**

23 **OPTION C**
 24 **MANIFEST INJUSTICE**

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

30 **JUVENILE SENTENCING STANDARDS**
 31 **SCHEDULE D-2**

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

MIDDLE OFFENDER

OPTION A

STANDARD RANGE

Community

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

25 ~~Middle offenders with 110 points or more do not have to be committed.~~
 26 ~~They may be assigned community supervision under option B.~~
 27 ~~All A+ offenses 180-224 weeks))~~

1
2
3
4
5
6
7
8

OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE

<u>A+</u>	<u>180 WEEKS TO AGE 21 YEARS</u>
<u>A</u>	<u>103 WEEKS TO 129 WEEKS</u>
<u>A-</u>	<u>15-36</u>