
ENGROSSED HOUSE BILL 1096

State of Washington 55th Legislature 1997 Regular Session

By Representatives Sheahan, Costa, Lambert, Scott and Hatfield

Read first time 01/14/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to the payment of fees; amending RCW 6.17.020,
2 9.94A.140, 9.94A.145, 13.40.145, 13.40.080, and 13.40.190; reenacting
3 and amending RCW 9.94A.120 and 9.94A.142; and adding a new section to
4 chapter 13.40 RCW.

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

6 **Sec. 1.** RCW 6.17.020 and 1995 c 231 s 4 are each amended to read
7 as follows:

8 (1) Except as provided in subsections (2), (3), and (4) of this
9 section, the party in whose favor a judgment of a court of record of
10 this state or a district court of this state has been or may be
11 rendered, or the assignee, may have an execution issued for the
12 collection or enforcement of the judgment at any time within ten years
13 from entry of the judgment.

14 (2) After July 23, 1989, a party who obtains a judgment or order of
15 a court of record of any state, or an administrative order entered as
16 defined in RCW 74.20A.020(6) for accrued child support, may have an
17 execution issued upon that judgment or order at any time within ten
18 years of the eighteenth birthday of the youngest child named in the
19 order for whom support is ordered.

1 (3) After June 9, 1994, a party in whose favor a judgment has been
2 rendered pursuant to subsection (1) or (4) of this section may, within
3 ninety days before the expiration of the original ten-year period,
4 apply to the court that rendered the judgment for an order granting an
5 additional ten years during which an execution may be issued. The
6 petitioner shall pay to the court a filing fee equal to the filing fee
7 for filing the first or initial paper in a civil action in the court.
8 When application is made to the court to grant an additional ten years,
9 the application shall be accompanied by a current and updated judgment
10 summary as outlined in RCW 4.64.030. The filing fee required under
11 this subsection shall be included in the judgment summary and shall be
12 a recoverable cost.

13 (4) A party who obtains a judgment or order for restitution ~~((or))~~,
14 crime victims' assessment, or other court-ordered legal financial
15 obligations pursuant to a criminal judgment and sentence may execute
16 the judgment or order any time within ten years subsequent to the entry
17 of the judgment and sentence or ten years following the offender's
18 release from total confinement as provided in chapter 9.94A RCW. The
19 clerk of superior court may seek extension under subsection (3) of this
20 section for purposes of collection as allowed under RCW 36.18.190.

21 **Sec. 2.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c
22 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as
23 follows:

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

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

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

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

37 (4) A persistent offender shall be sentenced to a term of total
38 confinement for life without the possibility of parole or, when

1 authorized by RCW 10.95.030 for the crime of aggravated murder in the
2 first degree, sentenced to death, notwithstanding the maximum sentence
3 under any other law. An offender convicted of the crime of murder in
4 the first degree shall be sentenced to a term of total confinement not
5 less than twenty years. An offender convicted of the crime of assault
6 in the first degree or assault of a child in the first degree where the
7 offender used force or means likely to result in death or intended to
8 kill the victim shall be sentenced to a term of total confinement not
9 less than five years. An offender convicted of the crime of rape in
10 the first degree shall be sentenced to a term of total confinement not
11 less than five years. The foregoing minimum terms of total confinement
12 are mandatory and shall not be varied or modified as provided in
13 subsection (2) of this section. In addition, all offenders subject to
14 the provisions of this subsection shall not be eligible for community
15 custody, earned early release time, furlough, home detention, partial
16 confinement, work crew, work release, or any other form of early
17 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
18 or any other form of authorized leave of absence from the correctional
19 facility while not in the direct custody of a corrections officer or
20 officers during such minimum terms of total confinement except in the
21 case of an offender in need of emergency medical treatment or for the
22 purpose of commitment to an inpatient treatment facility in the case of
23 an offender convicted of the crime of rape in the first degree.

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

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

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

37 (c) Pursue a prescribed, secular course of study or vocational
38 training;

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

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

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

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

10 (i) The offender is convicted of the manufacture, delivery, or
11 possession with intent to manufacture or deliver a controlled substance
12 classified in Schedule I or II that is a narcotic drug or a felony that
13 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
14 criminal solicitation, or criminal conspiracy to commit such crimes,
15 and the violation does not involve a sentence enhancement under RCW
16 9.94A.310 (3) or (4);

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

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

23 (b) If the midpoint of the standard range is greater than one year
24 and the sentencing judge determines that the offender is eligible for
25 this option and that the offender and the community will benefit from
26 the use of the special drug offender sentencing alternative, the judge
27 may waive imposition of a sentence within the standard range and impose
28 a sentence that must include a period of total confinement in a state
29 facility for one-half of the midpoint of the standard range. During
30 incarceration in the state facility, offenders sentenced under this
31 subsection shall undergo a comprehensive substance abuse assessment and
32 receive, within available resources, treatment services appropriate for
33 the offender. The treatment services shall be designed by the division
34 of alcohol and substance abuse of the department of social and health
35 services, in cooperation with the department of corrections. If the
36 midpoint of the standard range is twenty-four months or less, no more
37 than three months of the sentence may be served in a work release
38 status. The court shall also impose one year of concurrent community
39 custody and community supervision that must include appropriate

1 outpatient substance abuse treatment, crime-related prohibitions
2 including a condition not to use illegal controlled substances, and a
3 requirement to submit to urinalysis or other testing to monitor that
4 status. The court may require that the monitoring for controlled
5 substances be conducted by the department or by a treatment
6 alternatives to street crime program or a comparable court or agency-
7 referred program. The offender may be required to pay thirty dollars
8 per month while on community custody to offset the cost of monitoring.
9 In addition, the court shall impose three or more of the following
10 conditions:

- 11 (i) Devote time to a specific employment or training;
- 12 (ii) Remain within prescribed geographical boundaries and notify
13 the court or the community corrections officer before any change in the
14 offender's address or employment;
- 15 (iii) Report as directed to a community corrections officer;
- 16 (iv) Pay all court-ordered legal financial obligations;
- 17 (v) Perform community service work;
- 18 (vi) Stay out of areas designated by the sentencing judge.

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

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

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

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

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

22 The examiner shall assess and report regarding the defendant's
23 amenability to treatment and relative risk to the community. A
24 proposed treatment plan shall be provided and shall include, at a
25 minimum:

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

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

29 (C) Monitoring plans, including any requirements regarding living
30 conditions, lifestyle requirements, and monitoring by family members
31 and others;

32 (D) Anticipated length of treatment; and

33 (E) Recommended crime-related prohibitions.

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

1 (ii) After receipt of the reports, the court shall consider whether
2 the offender and the community will benefit from use of this special
3 sexual offender sentencing alternative and consider the victim's
4 opinion whether the offender should receive a treatment disposition
5 under this subsection. If the court determines that this special sex
6 offender sentencing alternative is appropriate, the court shall then
7 impose a sentence within the sentence range. If this sentence is less
8 than eight years of confinement, the court may suspend the execution of
9 the sentence and impose the following conditions of suspension:

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

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

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

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

34 (III) Report as directed to the court and a community corrections
35 officer;

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

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

3 (iii) The sex offender therapist shall submit quarterly reports on
4 the defendant's progress in treatment to the court and the parties.
5 The report shall reference the treatment plan and include at a minimum
6 the following: Dates of attendance, defendant's compliance with
7 requirements, treatment activities, the defendant's relative progress
8 in treatment, and any other material as specified by the court at
9 sentencing.

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

25 (v) If a violation of conditions occurs during community custody,
26 the department shall either impose sanctions as provided for in RCW
27 9.94A.205(2)(a) or refer the violation to the court and recommend
28 revocation of the suspended sentence as provided for in (a)(vi) of this
29 subsection.

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

37 (vii) Except as provided in (a) (viii) of this subsection, after
38 July 1, 1991, examinations and treatment ordered pursuant to this

1 subsection shall only be conducted by sex offender treatment providers
2 certified by the department of health pursuant to chapter 18.155 RCW.

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

12 For purposes of this subsection, "victim" means any person who has
13 sustained emotional, psychological, physical, or financial injury to
14 person or property as a result of the crime charged. "Victim" also
15 means a parent or guardian of a victim who is a minor child unless the
16 parent or guardian is the perpetrator of the offense.

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

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

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

38 If the offender violates any of the terms of his or her community
39 supervision, the court may order the offender to serve out the balance

1 of his or her community supervision term in confinement in the custody
2 of the department of corrections.

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

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

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

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

1 vehicular assault, committed on or after July 1, 1990, the court shall
2 in addition to other terms of the sentence, sentence the offender to
3 community placement for two years or up to the period of earned early
4 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
5 longer. The community placement shall begin either upon completion of
6 the term of confinement or at such time as the offender is transferred
7 to community custody in lieu of earned early release in accordance with
8 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
9 this subsection to the statutory maximum period of confinement then the
10 community placement portion of the sentence shall consist entirely of
11 the community custody to which the offender may become eligible, in
12 accordance with RCW 9.94A.150 (1) and (2). Any period of community
13 custody actually served shall be credited against the community
14 placement portion of the sentence. Unless a condition is waived by the
15 court, the terms of community placement for offenders sentenced
16 pursuant to this section shall include the following conditions:

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

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

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

23 (iv) An offender in community custody shall not unlawfully possess
24 controlled substances;

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

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

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

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

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

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

39 (iv) The offender shall not consume alcohol;

1 (v) The offender shall comply with any crime-related prohibitions;
2 or

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

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

12 (10)(a) When a court sentences a person to the custody of the
13 department of corrections for an offense categorized as a sex offense
14 committed on or after June 6, 1996, the court shall, in addition to
15 other terms of the sentence, sentence the offender to community custody
16 for three years or up to the period of earned early release awarded
17 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
18 community custody shall begin either upon completion of the term of
19 confinement or at such time as the offender is transferred to community
20 custody in lieu of earned early release in accordance with RCW
21 9.94A.150 (1) and (2).

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

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

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

7 (12) If a sentence imposed includes payment of a legal financial
8 obligation, the sentence shall specify the total amount of the legal
9 financial obligation owed, and shall require the offender to pay a
10 specified monthly sum toward that legal financial obligation.
11 Restitution to victims shall be paid prior to any other payments of
12 monetary obligations. Any legal financial obligation that is imposed
13 by the court may be collected by the department, which shall deliver
14 the amount paid to the county clerk for credit. The offender's
15 compliance with payment of legal financial obligations shall be
16 supervised by the department for ten years following the entry of the
17 judgment and sentence or ten years following the offender's release
18 from total confinement. All monetary payments ordered shall be paid no
19 later than ten years after the last date of release from confinement
20 pursuant to a felony conviction or the date the sentence was entered
21 unless the superior court extends the criminal judgment an additional
22 ten years. If the legal financial obligations including crime victims'
23 assessments are not paid during the initial ten-year period, the
24 superior court may extend jurisdiction under the criminal judgment an
25 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
26 9.94A.145. If jurisdiction under the criminal judgment is extended,
27 the department is not responsible for supervision of the offender
28 during the subsequent period. Independent of the department, the party
29 or entity to whom the legal financial obligation is owed shall have the
30 authority to utilize any other remedies available to the party or
31 entity to collect the legal financial obligation. Nothing in this
32 section makes the department, the state, or any of its employees,
33 agents, or other persons acting on their behalf liable under any
34 circumstances for the payment of these legal financial obligations. If
35 an order includes restitution as one of the monetary assessments, the
36 county clerk shall make disbursements to victims named in the order.

37 (13) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a
38 court may not impose a sentence providing for a term of confinement or

1 community supervision or community placement which exceeds the
2 statutory maximum for the crime as provided in chapter 9A.20 RCW.

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

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

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

32 The department may require offenders to pay for special services
33 rendered on or after July 25, 1993, including electronic monitoring,
34 day reporting, and telephone reporting, dependent upon the offender's
35 ability to pay. The department may pay for these services for
36 offenders who are not able to pay.

37 (15) All offenders sentenced to terms involving community
38 supervision, community service, or community placement under the
39 supervision of the department of corrections shall not own, use, or

1 possess firearms or ammunition. Offenders who own, use, or are found
2 to be in actual or constructive possession of firearms or ammunition
3 shall be subject to the appropriate violation process and sanctions.
4 "Constructive possession" as used in this subsection means the power
5 and intent to control the firearm or ammunition. "Firearm" as used in
6 this subsection means a weapon or device from which a projectile may be
7 fired by an explosive such as gunpowder.

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

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

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

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

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

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

1 **Sec. 3.** RCW 9.94A.140 and 1995 c 231 s 1 are each amended to read
2 as follows:

3 (1) If restitution is ordered, the court shall determine the amount
4 of restitution due at the sentencing hearing or within one hundred
5 eighty days. The court may continue the hearing beyond the one hundred
6 eighty days for good cause. The court shall then set a minimum monthly
7 payment that the offender is required to make towards the restitution
8 that is ordered. The court should take into consideration the total
9 amount of the restitution owed, the offender's present, past, and
10 future ability to pay, as well as any assets that the offender may
11 have. During the period of supervision, the community corrections
12 officer may examine the offender to determine if there has been a
13 change in circumstances that warrants an amendment of the monthly
14 payment schedule. The community corrections officer may recommend a
15 change to the schedule of payment and shall inform the court of the
16 recommended change and the reasons for the change. The sentencing
17 court may then reset the monthly minimum payments based on the report
18 from the community corrections officer of the change in circumstances.
19 Restitution ordered by a court pursuant to a criminal conviction shall
20 be based on easily ascertainable damages for injury to or loss of
21 property, actual expenses incurred for treatment for injury to persons,
22 and lost wages resulting from injury. Restitution shall not include
23 reimbursement for damages for mental anguish, pain and suffering, or
24 other intangible losses, but may include the costs of counseling
25 reasonably related to the offense. The amount of restitution shall not
26 exceed double the amount of the offender's gain or the victim's loss
27 from the commission of the crime. For the purposes of this section,
28 the offender shall remain under the court's jurisdiction for a
29 ((maximum)) term of ten years following the offender's release from
30 total confinement or ten years subsequent to the entry of the judgment
31 and sentence, whichever period is longer. Prior to the expiration of
32 the initial ten-year period, the superior court may extend jurisdiction
33 under the criminal judgment an additional ten years for payment of
34 restitution. If jurisdiction under the criminal judgment is extended,
35 the department is not responsible for supervision of the offender
36 during the subsequent period. The portion of the sentence concerning
37 restitution may be modified as to amount, terms and conditions during
38 either the initial ten-year period or subsequent ten-year period if the
39 criminal judgment is extended, regardless of the expiration of the

1 offender's term of community supervision and regardless of the
2 statutory maximum for the crime. The court may not reduce the total
3 amount of restitution ordered because the offender may lack the ability
4 to pay the total amount. The offender's compliance with the
5 restitution shall be supervised by the department.

6 (2) Restitution may be ordered whenever the offender is convicted
7 of an offense which results in injury to any person or damage to or
8 loss of property. In addition, restitution may be ordered to pay for
9 an injury, loss, or damage if the offender pleads guilty to a lesser
10 offense or fewer offenses and agrees with the prosecutor's
11 recommendation that the offender be required to pay restitution to a
12 victim of an offense or offenses which are not prosecuted pursuant to
13 a plea agreement.

14 (3) In addition to any sentence that may be imposed, a defendant
15 who has been found guilty of an offense involving fraud or other
16 deceptive practice or an organization which has been found guilty of
17 any such offense may be ordered by the sentencing court to give notice
18 of the conviction to the class of persons or to the sector of the
19 public affected by the conviction or financially interested in the
20 subject matter of the offense by mail, by advertising in designated
21 areas or through designated media, or by other appropriate means.

22 (4) This section does not limit civil remedies or defenses
23 available to the victim or defendant. The court shall identify in the
24 judgment and sentence the victim or victims entitled to restitution and
25 what amount is due each victim. The state or victim may enforce the
26 court-ordered restitution in the same manner as a judgment in a civil
27 action. Restitution collected through civil enforcement must be paid
28 through the registry of the court and must be distributed
29 proportionately according to each victim's loss when there is more than
30 one victim.

31 **Sec. 4.** RCW 9.94A.142 and 1995 c 231 s 2 and 1995 c 33 s 4 are
32 each reenacted and amended to read as follows:

33 (1) When restitution is ordered, the court shall determine the
34 amount of restitution due at the sentencing hearing or within one
35 hundred eighty days except as provided in subsection (3) of this
36 section. The court may continue the hearing beyond the one hundred
37 eighty days for good cause. The court shall then set a minimum monthly
38 payment that the offender is required to make towards the restitution

1 that is ordered. The court should take into consideration the total
2 amount of the restitution owed, the offender's present, past, and
3 future ability to pay, as well as any assets that the offender may
4 have. During the period of supervision, the community corrections
5 officer may examine the offender to determine if there has been a
6 change in circumstances that warrants an amendment of the monthly
7 payment schedule. The community corrections officer may recommend a
8 change to the schedule of payment and shall inform the court of the
9 recommended change and the reasons for the change. The sentencing
10 court may then reset the monthly minimum payments based on the report
11 from the community corrections officer of the change in circumstances.
12 Restitution ordered by a court pursuant to a criminal conviction shall
13 be based on easily ascertainable damages for injury to or loss of
14 property, actual expenses incurred for treatment for injury to persons,
15 and lost wages resulting from injury. Restitution shall not include
16 reimbursement for damages for mental anguish, pain and suffering, or
17 other intangible losses, but may include the costs of counseling
18 reasonably related to the offense. The amount of restitution shall not
19 exceed double the amount of the offender's gain or the victim's loss
20 from the commission of the crime. For the purposes of this section,
21 the offender shall remain under the court's jurisdiction for a
22 ((maximum)) term of ten years following the offender's release from
23 total confinement or ten years subsequent to the entry of the judgment
24 and sentence, whichever period is longer. Prior to the expiration of
25 the initial ten-year period, the superior court may extend jurisdiction
26 under the criminal judgment an additional ten years for payment of
27 restitution. The portion of the sentence concerning restitution may be
28 modified as to amount, terms and conditions during either the initial
29 ten-year period or subsequent ten-year period if the criminal judgment
30 is extended, regardless of the expiration of the offender's term of
31 community supervision and regardless of the statutory maximum for the
32 crime. The court may not reduce the total amount of restitution
33 ordered because the offender may lack the ability to pay the total
34 amount. The offender's compliance with the restitution shall be
35 supervised by the department for ten years following the entry of the
36 judgment and sentence or ten years following the offender's release
37 from total confinement. If jurisdiction under the criminal judgment is
38 extended, the department is not responsible for supervision of the
39 offender during the subsequent period.

1 (2) Restitution shall be ordered whenever the offender is convicted
2 of an offense which results in injury to any person or damage to or
3 loss of property unless extraordinary circumstances exist which make
4 restitution inappropriate in the court's judgment and the court sets
5 forth such circumstances in the record. In addition, restitution shall
6 be ordered to pay for an injury, loss, or damage if the offender pleads
7 guilty to a lesser offense or fewer offenses and agrees with the
8 prosecutor's recommendation that the offender be required to pay
9 restitution to a victim of an offense or offenses which are not
10 prosecuted pursuant to a plea agreement.

11 (3) Regardless of the provisions of subsections (1) and (2) of this
12 section, the court shall order restitution in all cases where the
13 victim is entitled to benefits under the crime victims' compensation
14 act, chapter 7.68 RCW. If the court does not order restitution and the
15 victim of the crime has been determined to be entitled to benefits
16 under the crime victims' compensation act, the department of labor and
17 industries, as administrator of the crime victims' compensation
18 program, may petition the court within one year of entry of the
19 judgment and sentence for entry of a restitution order. Upon receipt
20 of a petition from the department of labor and industries, the court
21 shall hold a restitution hearing and shall enter a restitution order.

22 (4) In addition to any sentence that may be imposed, a defendant
23 who has been found guilty of an offense involving fraud or other
24 deceptive practice or an organization which has been found guilty of
25 any such offense may be ordered by the sentencing court to give notice
26 of the conviction to the class of persons or to the sector of the
27 public affected by the conviction or financially interested in the
28 subject matter of the offense by mail, by advertising in designated
29 areas or through designated media, or by other appropriate means.

30 (5) This section does not limit civil remedies or defenses
31 available to the victim, survivors of the victim, or defendant. The
32 court shall identify in the judgment and sentence the victim or victims
33 entitled to restitution and what amount is due each victim. The state
34 or victim may enforce the court-ordered restitution in the same manner
35 as a judgment in a civil action. Restitution collected through civil
36 enforcement must be paid through the registry of the court and must be
37 distributed proportionately according to each victim's loss when there
38 is more than one victim.

1 (6) This section shall apply to offenses committed after July 1,
2 1985.

3 **Sec. 5.** RCW 9.94A.145 and 1995 c 231 s 3 are each amended to read
4 as follows:

5 (1) Whenever a person is convicted of a felony, the court may order
6 the payment of a legal financial obligation as part of the sentence.
7 The court must on either the judgment and sentence or on a subsequent
8 order to pay, designate the total amount of a legal financial
9 obligation and segregate this amount among the separate assessments
10 made for restitution, costs, fines, and other assessments required by
11 law. On the same order, the court is also to set a sum that the
12 offender is required to pay on a monthly basis towards satisfying the
13 legal financial obligation. If the court fails to set the offender
14 monthly payment amount, the department shall set the amount. Upon
15 receipt of an offender's monthly payment, after restitution is
16 satisfied, the county clerk shall distribute the payment proportionally
17 among all other fines, costs, and assessments imposed, unless otherwise
18 ordered by the court.

19 (2) If the court determines that the offender, at the time of
20 sentencing, has the means to pay for the cost of incarceration, the
21 court may require the offender to pay for the cost of incarceration at
22 a rate of fifty dollars per day of incarceration. Payment of other
23 court-ordered financial obligations, including all legal financial
24 obligations and costs of supervision shall take precedence over the
25 payment of the cost of incarceration ordered by the court. All funds
26 recovered from offenders for the cost of incarceration in the county
27 jail shall be remitted to the county and the costs of incarceration in
28 a prison shall be remitted to the department of corrections.

29 (3) The court may add to the judgment and sentence or subsequent
30 order to pay a statement that a notice of payroll deduction is to be
31 immediately issued. If the court chooses not to order the immediate
32 issuance of a notice of payroll deduction at sentencing, the court
33 shall add to the judgment and sentence or subsequent order to pay a
34 statement that a notice of payroll deduction may be issued or other
35 income-withholding action may be taken, without further notice to the
36 offender if a monthly court-ordered legal financial obligation payment
37 is not paid when due, and an amount equal to or greater than the amount
38 payable for one month is owed.

1 If a judgment and sentence or subsequent order to pay does not
2 include the statement that a notice of payroll deduction may be issued
3 or other income-withholding action may be taken if a monthly legal
4 financial obligation payment is past due, the department may serve a
5 notice on the offender stating such requirements and authorizations.
6 Service shall be by personal service or any form of mail requiring a
7 return receipt.

8 (4) All legal financial obligations that are ordered as a result of
9 a conviction for a felony, may also be enforced in the same manner as
10 a judgment in a civil action by the party or entity to whom the legal
11 financial obligation is owed. Restitution collected through civil
12 enforcement must be paid through the registry of the court and must be
13 distributed proportionately according to each victim's loss when there
14 is more than one victim. The judgment and sentence shall identify the
15 party or entity to whom restitution is owed so that the state, party,
16 or entity may enforce the judgment. These obligations may be enforced
17 at any time during the ten-year period following the offender's release
18 from total confinement or within ten years of entry of the judgment and
19 sentence, whichever period is longer. Prior to the expiration of the
20 initial ten-year period, the superior court may extend the criminal
21 judgment an additional ten years for payment of legal financial
22 obligations including crime victims' assessments. If jurisdiction
23 under the criminal judgment is extended, the department is not
24 responsible for supervision of the offender during the subsequent
25 period. Independent of the department, the party or entity to whom the
26 legal financial obligation is owed shall have the authority to utilize
27 any other remedies available to the party or entity to collect the
28 legal financial obligation.

29 (5) In order to assist the court in setting a monthly sum that the
30 offender must pay during the period of supervision, the offender is
31 required to report to the department for purposes of preparing a
32 recommendation to the court. When reporting, the offender is required,
33 under oath, to truthfully and honestly respond to all questions
34 concerning present, past, and future earning capabilities and the
35 location and nature of all property or financial assets. The offender
36 is further required to bring any and all documents as requested by the
37 department.

38 (6) After completing the investigation, the department shall make
39 a report to the court on the amount of the monthly payment that the

1 offender should be required to make towards a satisfied legal financial
2 obligation.

3 (7) During the period of supervision, the department may make a
4 recommendation to the court that the offender's monthly payment
5 schedule be modified so as to reflect a change in financial
6 circumstances. If the department sets the monthly payment amount, the
7 department may modify the monthly payment amount without the matter
8 being returned to the court. Also, during the period of supervision,
9 the offender may be required at the request of the department to report
10 to the department for the purposes of reviewing the appropriateness of
11 the collection schedule for the legal financial obligation. During
12 this reporting, the offender is required under oath to truthfully and
13 honestly respond to all questions concerning earning capabilities and
14 the location and nature of all property or financial assets. Also, the
15 offender is required to bring any and all documents as requested by the
16 department in order to prepare the collection schedule.

17 (8) After the judgment and sentence or payment order is entered,
18 the department shall for any period of supervision be authorized to
19 collect the legal financial obligation from the offender. Any amount
20 collected by the department shall be remitted daily to the county clerk
21 for the purposes of disbursements. The department is authorized to
22 accept credit cards as payment for a legal financial obligation, and
23 any costs incurred related to accepting credit card payments shall be
24 the responsibility of the offender.

25 (9) The department or any obligee of the legal financial obligation
26 may seek a mandatory wage assignment for the purposes of obtaining
27 satisfaction for the legal financial obligation pursuant to RCW
28 9.94A.2001.

29 (10) The requirement that the offender pay a monthly sum towards a
30 legal financial obligation constitutes a condition or requirement of a
31 sentence and the offender is subject to the penalties as provided in
32 RCW 9.94A.200 for noncompliance.

33 (11) The county clerk shall provide the department with
34 individualized monthly billings for each offender with an unsatisfied
35 legal financial obligation and shall provide the department with notice
36 of payments by such offenders no less frequently than weekly.

37 **Sec. 6.** RCW 13.40.145 and 1995 c 275 s 4 are each amended to read
38 as follows:

1 Upon disposition or at the time of a modification or at the time an
2 appellate court remands the case to the trial court following a ruling
3 in favor of the state the court may order the juvenile or a parent or
4 another person legally obligated to support the juvenile to appear, and
5 the court may inquire into the ability of those persons to pay a
6 reasonable sum representing in whole or in part the fees for legal
7 services provided by publicly funded counsel and the costs incurred by
8 the public in producing a verbatim report of proceedings and clerk's
9 papers for use in the appellate courts.

10 If, after hearing, the court finds the juvenile, parent, or other
11 legally obligated person able to pay part or all of the attorney's fees
12 and costs incurred on appeal, the court may enter such order or decree
13 as is equitable and may enforce the order or decree by execution, or in
14 any way in which a court of equity may enforce its decrees.

15 In no event may the court order an amount to be paid for attorneys'
16 fees that exceeds the average per case fee allocation for juvenile
17 proceedings in the county where the services have been provided or the
18 average per case fee allocation for juvenile appeals established by the
19 Washington supreme court.

20 In any case in which there is no compliance with an order or decree
21 of the court requiring a juvenile, parent, or other person legally
22 obligated to support the juvenile to pay for legal services provided by
23 publicly funded counsel, the court may, upon such person or persons
24 being properly summoned or voluntarily appearing, proceed to inquire
25 into the amount due upon the order or decree and enter judgment for
26 that amount against the defaulting party or parties. Judgment shall be
27 docketed in the same manner as are other judgments for the payment of
28 money.

29 The county in which such judgments are entered shall be denominated
30 the judgment creditor, and the judgments may be enforced by the
31 prosecuting attorney of that county. Any moneys recovered thereon
32 shall be paid into the registry of the court and shall be disbursed to
33 such person, persons, agency, or governmental entity as the court finds
34 entitled thereto.

35 Such judgments shall remain valid and enforceable for a period of
36 ten years subsequent to entry.

37 When the juvenile reaches the age of eighteen or at the conclusion
38 of juvenile court jurisdiction, whichever occurs later, the superior
39 court clerk must docket the remaining balance of the juvenile's legal

1 financial obligations in the same manner as other judgments for the
2 payment of money. The judgment remains valid and enforceable until ten
3 years from the date of its imposition. The clerk of superior court may
4 seek extension of the judgment for legal financial obligations,
5 including crime victims' assessments, in the same manner as RCW
6 6.17.020 for purposes of collection as allowed under RCW 36.18.190.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 13.40 RCW
8 to read as follows:

9 If a juvenile is ordered to pay legal financial obligations,
10 including fines, penalty assessments, attorneys' fees, court costs, and
11 restitution, the money judgment remains enforceable for a period of ten
12 years. When the juvenile reaches the age of eighteen years or at the
13 conclusion of juvenile court jurisdiction, whichever occurs later, the
14 superior court clerk must docket the remaining balance of the
15 juvenile's legal financial obligations in the same manner as other
16 judgments for the payment of money. The judgment remains valid and
17 enforceable until ten years from the date of its imposition. The clerk
18 of the superior court may seek extension of the judgment for legal
19 financial obligations, including crime victims' assessments, in the
20 same manner as RCW 6.17.020 for purposes of collection as allowed under
21 RCW 36.18.190.

22 **Sec. 8.** RCW 13.40.080 and 1996 c 124 s 1 are each amended to read
23 as follows:

24 (1) A diversion agreement shall be a contract between a juvenile
25 accused of an offense and a diversionary unit whereby the juvenile
26 agrees to fulfill certain conditions in lieu of prosecution. Such
27 agreements may be entered into only after the prosecutor, or probation
28 counselor pursuant to this chapter, has determined that probable cause
29 exists to believe that a crime has been committed and that the juvenile
30 committed it. Such agreements shall be entered into as expeditiously
31 as possible.

32 (2) A diversion agreement shall be limited to one or more of the
33 following:

34 (a) Community service not to exceed one hundred fifty hours, not to
35 be performed during school hours if the juvenile is attending school;

36 (b) Restitution limited to the amount of actual loss incurred by
37 the victim;

1 (c) Attendance at up to ten hours of counseling and/or up to twenty
2 hours of educational or informational sessions at a community agency.
3 The educational or informational sessions may include sessions relating
4 to respect for self, others, and authority; victim awareness;
5 accountability; self-worth; responsibility; work ethics; good
6 citizenship; and life skills. For purposes of this section, "community
7 agency" may also mean a community-based nonprofit organization, if
8 approved by the diversion unit. The state shall not be liable for
9 costs resulting from the diversionary unit exercising the option to
10 permit diversion agreements to mandate attendance at up to ten hours of
11 counseling and/or up to twenty hours of educational or informational
12 sessions;

13 (d) A fine, not to exceed one hundred dollars. In determining the
14 amount of the fine, the diversion unit shall consider only the
15 juvenile's financial resources and whether the juvenile has the means
16 to pay the fine. The diversion unit shall not consider the financial
17 resources of the juvenile's parents, guardian, or custodian in
18 determining the fine to be imposed; and

19 (e) Requirements to remain during specified hours at home, school,
20 or work, and restrictions on leaving or entering specified geographical
21 areas.

22 (3) In assessing periods of community service to be performed and
23 restitution to be paid by a juvenile who has entered into a diversion
24 agreement, the court officer to whom this task is assigned shall
25 consult with the juvenile's custodial parent or parents or guardian and
26 victims who have contacted the diversionary unit and, to the extent
27 possible, involve members of the community. Such members of the
28 community shall meet with the juvenile and advise the court officer as
29 to the terms of the diversion agreement and shall supervise the
30 juvenile in carrying out its terms.

31 (4)(a) A diversion agreement may not exceed a period of six months
32 and may include a period extending beyond the eighteenth birthday of
33 the divertee.

34 (b) If additional time is necessary for the juvenile to complete
35 restitution to the victim, the time period limitations of this
36 subsection may be extended by an additional six months.

37 (c) If the juvenile has not paid the full amount of restitution by
38 the end of the additional six-month period, then the juvenile shall be
39 referred to the juvenile court for entry of an order establishing the

1 amount of restitution still owed to the victim. In this order, the
2 court shall also determine the terms and conditions of the restitution,
3 including a payment plan extending up to ten years if the court
4 determines that the juvenile does not have the means to make full
5 restitution over a shorter period. For the purposes of this subsection
6 (4)(c), the juvenile shall remain under the court's jurisdiction for a
7 maximum term of ten years after the juvenile's eighteenth birthday.
8 Prior to the expiration of the initial ten-year period, the juvenile
9 court may extend the judgment for restitution an additional ten years.
10 The court may not require the juvenile to pay full or partial
11 restitution if the juvenile reasonably satisfies the court that he or
12 she does not have the means to make full or partial restitution and
13 could not reasonably acquire the means to pay the restitution over a
14 ten-year period. The county clerk shall make disbursements to victims
15 named in the order. The restitution to victims named in the order
16 shall be paid prior to any payment for other penalties or monetary
17 assessments. A juvenile under obligation to pay restitution may
18 petition the court for modification of the restitution order.

19 (5) The juvenile shall retain the right to be referred to the court
20 at any time prior to the signing of the diversion agreement.

21 (6) Divertees and potential divertees shall be afforded due process
22 in all contacts with a diversionary unit regardless of whether the
23 juveniles are accepted for diversion or whether the diversion program
24 is successfully completed. Such due process shall include, but not be
25 limited to, the following:

26 (a) A written diversion agreement shall be executed stating all
27 conditions in clearly understandable language;

28 (b) Violation of the terms of the agreement shall be the only
29 grounds for termination;

30 (c) No diverttee may be terminated from a diversion program without
31 being given a court hearing, which hearing shall be preceded by:

32 (i) Written notice of alleged violations of the conditions of the
33 diversion program; and

34 (ii) Disclosure of all evidence to be offered against the diverttee;

35 (d) The hearing shall be conducted by the juvenile court and shall
36 include:

37 (i) Opportunity to be heard in person and to present evidence;

38 (ii) The right to confront and cross-examine all adverse witnesses;

1 (iii) A written statement by the court as to the evidence relied on
2 and the reasons for termination, should that be the decision; and

3 (iv) Demonstration by evidence that the diverttee has substantially
4 violated the terms of his or her diversion agreement.

5 (e) The prosecutor may file an information on the offense for which
6 the diverttee was diverted:

7 (i) In juvenile court if the diverttee is under eighteen years of
8 age; or

9 (ii) In superior court or the appropriate court of limited
10 jurisdiction if the diverttee is eighteen years of age or older.

11 (7) The diversion unit shall, subject to available funds, be
12 responsible for providing interpreters when juveniles need interpreters
13 to effectively communicate during diversion unit hearings or
14 negotiations.

15 (8) The diversion unit shall be responsible for advising a diverttee
16 of his or her rights as provided in this chapter.

17 (9) The diversion unit may refer a juvenile to community-based
18 counseling or treatment programs.

19 (10) The right to counsel shall inure prior to the initial
20 interview for purposes of advising the juvenile as to whether he or she
21 desires to participate in the diversion process or to appear in the
22 juvenile court. The juvenile may be represented by counsel at any
23 critical stage of the diversion process, including intake interviews
24 and termination hearings. The juvenile shall be fully advised at the
25 intake of his or her right to an attorney and of the relevant services
26 an attorney can provide. For the purpose of this section, intake
27 interviews mean all interviews regarding the diversion agreement
28 process.

29 The juvenile shall be advised that a diversion agreement shall
30 constitute a part of the juvenile's criminal history as defined by RCW
31 13.40.020(9). A signed acknowledgment of such advisement shall be
32 obtained from the juvenile, and the document shall be maintained by the
33 diversionary unit together with the diversion agreement, and a copy of
34 both documents shall be delivered to the prosecutor if requested by the
35 prosecutor. The supreme court shall promulgate rules setting forth the
36 content of such advisement in simple language.

37 (11) When a juvenile enters into a diversion agreement, the
38 juvenile court may receive only the following information for
39 dispositional purposes:

- 1 (a) The fact that a charge or charges were made;
- 2 (b) The fact that a diversion agreement was entered into;
- 3 (c) The juvenile's obligations under such agreement;
- 4 (d) Whether the alleged offender performed his or her obligations
- 5 under such agreement; and
- 6 (e) The facts of the alleged offense.

7 (12) A diversionary unit may refuse to enter into a diversion
8 agreement with a juvenile. When a diversionary unit refuses to enter
9 a diversion agreement with a juvenile, it shall immediately refer such
10 juvenile to the court for action and shall forward to the court the
11 criminal complaint and a detailed statement of its reasons for refusing
12 to enter into a diversion agreement. The diversionary unit shall also
13 immediately refer the case to the prosecuting attorney for action if
14 such juvenile violates the terms of the diversion agreement.

15 (13) A diversionary unit may, in instances where it determines that
16 the act or omission of an act for which a juvenile has been referred to
17 it involved no victim, or where it determines that the juvenile
18 referred to it has no prior criminal history and is alleged to have
19 committed an illegal act involving no threat of or instance of actual
20 physical harm and involving not more than fifty dollars in property
21 loss or damage and that there is no loss outstanding to the person or
22 firm suffering such damage or loss, counsel and release or release such
23 a juvenile without entering into a diversion agreement. A diversion
24 unit's authority to counsel and release a juvenile under this
25 subsection shall include the authority to refer the juvenile to
26 community-based counseling or treatment programs. Any juvenile
27 released under this subsection shall be advised that the act or
28 omission of any act for which he or she had been referred shall
29 constitute a part of the juvenile's criminal history as defined by RCW
30 13.40.020(9). A signed acknowledgment of such advisement shall be
31 obtained from the juvenile, and the document shall be maintained by the
32 unit, and a copy of the document shall be delivered to the prosecutor
33 if requested by the prosecutor. The supreme court shall promulgate
34 rules setting forth the content of such advisement in simple language.
35 A juvenile determined to be eligible by a diversionary unit for release
36 as provided in this subsection shall retain the same right to counsel
37 and right to have his or her case referred to the court for formal
38 action as any other juvenile referred to the unit.

1 (14) A diversion unit may supervise the fulfillment of a diversion
2 agreement entered into before the juvenile's eighteenth birthday and
3 which includes a period extending beyond the diverttee's eighteenth
4 birthday.

5 (15) If a fine required by a diversion agreement cannot reasonably
6 be paid due to a change of circumstance, the diversion agreement may be
7 modified at the request of the diverttee and with the concurrence of the
8 diversion unit to convert an unpaid fine into community service. The
9 modification of the diversion agreement shall be in writing and signed
10 by the diverttee and the diversion unit. The number of hours of
11 community service in lieu of a monetary penalty shall be converted at
12 the rate of the prevailing state minimum wage per hour.

13 (16) Fines imposed under this section shall be collected and paid
14 into the county general fund in accordance with procedures established
15 by the juvenile court administrator under RCW 13.04.040 and may be used
16 only for juvenile services. In the expenditure of funds for juvenile
17 services, there shall be a maintenance of effort whereby counties
18 exhaust existing resources before using amounts collected under this
19 section.

20 **Sec. 9.** RCW 13.40.190 and 1996 c 124 s 2 are each amended to read
21 as follows:

22 (1) In its dispositional order, the court shall require the
23 respondent to make restitution to any persons who have suffered loss or
24 damage as a result of the offense committed by the respondent. In
25 addition, restitution may be ordered for loss or damage if the offender
26 pleads guilty to a lesser offense or fewer offenses and agrees with the
27 prosecutor's recommendation that the offender be required to pay
28 restitution to a victim of an offense or offenses which, pursuant to a
29 plea agreement, are not prosecuted. The payment of restitution shall
30 be in addition to any punishment which is imposed pursuant to the other
31 provisions of this chapter. The court may determine the amount, terms,
32 and conditions of the restitution including a payment plan extending up
33 to ten years if the court determines that the respondent does not have
34 the means to make full restitution over a shorter period. Restitution
35 may include the costs of counseling reasonably related to the offense.
36 If the respondent participated in the crime with another person or
37 other persons, all such participants shall be jointly and severally
38 responsible for the payment of restitution. For the purposes of this

1 section, the respondent shall remain under the court's jurisdiction for
2 a maximum term of ten years after the respondent's eighteenth birthday.
3 Prior to the expiration of the ten-year period, the juvenile court may
4 extend the judgment for the payment of restitution for an additional
5 ten years. The court may not require the respondent to pay full or
6 partial restitution if the respondent reasonably satisfies the court
7 that he or she does not have the means to make full or partial
8 restitution and could not reasonably acquire the means to pay such
9 restitution over a ten-year period.

10 (2) Regardless of the provisions of subsection (1) of this section,
11 the court shall order restitution in all cases where the victim is
12 entitled to benefits under the crime victims' compensation act, chapter
13 7.68 RCW. If the court does not order restitution and the victim of
14 the crime has been determined to be entitled to benefits under the
15 crime victims' compensation act, the department of labor and
16 industries, as administrator of the crime victims' compensation
17 program, may petition the court within one year of entry of the
18 disposition order for entry of a restitution order. Upon receipt of a
19 petition from the department of labor and industries, the court shall
20 hold a restitution hearing and shall enter a restitution order.

21 (3) If an order includes restitution as one of the monetary
22 assessments, the county clerk shall make disbursements to victims named
23 in the order. The restitution to victims named in the order shall be
24 paid prior to any payment for other penalties or monetary assessments.

25 (4) A respondent under obligation to pay restitution may petition
26 the court for modification of the restitution order.

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