
HOUSE BILL 2454

State of Washington

55th Legislature

1998 Regular Session

By Representatives Carrell, Chandler, Mulliken, Boldt, Lambert, Mielke and Mitchell

Read first time . Referred to Committee on .

1 AN ACT Relating to offenders; amending RCW 13.40.160, 13.40.210,
2 13.40.215, 28A.225.225, 28A.225.330, 28A.525.162, and 72.09.340;
3 reenacting and amending RCW 9.94A.030, 9.94A.120, and 13.40.160; adding
4 a new section to chapter 9A.44 RCW; adding new sections to chapter
5 28A.225 RCW; adding a new section to chapter 28A.600 RCW; adding a new
6 section to chapter 72.65 RCW; adding a new section to chapter 74.15
7 RCW; creating a new section; prescribing penalties; providing an
8 effective date; providing an expiration date; and declaring an
9 emergency.

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

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.44 RCW
12 to read as follows:

13 (1) As used in this section:

14 (a) "Known sex offender" means a person who has, within the
15 knowledge of the arresting officer, been adjudicated or convicted
16 within the last twenty years in any court of a sex offense.

17 (b) "School" means a school as defined in RCW 9.94A.030.

18 (c) "Sex offense" means a sex offense as defined in RCW 9.94A.030
19 or any attempt to commit a sex offense.

1 (d) "Public place" is an area generally visible to public view and
2 includes, but is not limited to, schools, playgrounds, streets,
3 sidewalks, bridges, alleys, plazas, parks, driveways, parking lots,
4 transit stations, shelters and tunnels, automobiles visible to public
5 view whether moving or stationary, doorways and entrances to buildings
6 or dwellings and the grounds enclosing them, and buildings open to the
7 general public including those that serve food or drink, or provide
8 entertainment.

9 (2) A person is guilty of sex offender loitering if he or she
10 remains in a public place within one thousand feet of a school, or a
11 park or playground where children are present and intentionally
12 solicits, induces, entices, or procures another for the purpose of
13 committing a sex offense.

14 (3) The following circumstances do not by themselves constitute the
15 crime of sex offender loitering. Among the circumstances that may be
16 considered in determining whether the defendant is engaging in sex
17 offender loitering are that he or she:

18 (a) Is a known sex offender;

19 (b) Repeatedly beckons to, stops or attempts to stop children or
20 other pedestrians, or engages them in a conversation;

21 (c) Circles an area in a motor vehicle and repeatedly beckons to,
22 contacts, or attempts to stop children or pedestrians;

23 (d) Is the subject of any court order, which directs as a condition
24 of release from custody, a condition of parole, community placement, or
25 community supervision, the person to stay out of any specified area
26 that explicitly or impliedly includes schools, playgrounds, or parks
27 where children congregate;

28 (e) Is subject to conditions of release, supervision, community
29 placement, or parole, as established by the department of corrections
30 or the department of social and health services, that directs the
31 person to stay out of any specified area that explicitly or impliedly
32 includes schools, playgrounds, or parks where children congregate;

33 (f) In the case of a juvenile who is a known sex offender, does not
34 attend the school or is on school premises after hours or after school
35 functions;

36 (g) Is not an employee of the school; or

37 (h) Is on the grounds of the school, playground, or park when
38 children are present.

1 (4) A person convicted of sex offender loitering is guilty of a
2 gross misdemeanor if the trier of fact finds that the person has not
3 been classified at risk level II or III under the risk assessment
4 classification system under RCW 72.09.345, or is not subject to a court
5 order or terms of parole, community placement, or supervision that
6 directs the person to stay out of any specified area that explicitly or
7 impliedly includes schools, or parks or playgrounds where children
8 congregate. A person convicted of sex offender loitering is guilty of
9 a class C felony if the trier of fact finds that the person has been
10 classified at risk level II or III under RCW 72.09.345, and is subject
11 to a court order or terms of parole, community placement, or
12 supervision that directs the person to stay out of any specified area
13 that explicitly or impliedly includes schools, or parks or playgrounds
14 where children congregate.

15 (5) A law enforcement officer may not arrest a person for sex
16 offender loitering unless probable cause exists to believe that the
17 person has remained in a public place and has intentionally solicited,
18 induced, enticed, or procured another for the purpose of committing a
19 sex offense. Nothing in this subsection (5) prohibits a law
20 enforcement or community corrections officer from detaining a known sex
21 offender remaining within one thousand feet of a school, or a park or
22 playground where children are present to determine whether the known
23 sex offender is violating the terms of a court order or conditions of
24 release, supervision, community placement, or parole.

25 **Sec. 2.** RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c
26 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each
27 reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

35 (10) "Court-ordered legal financial obligation" means a sum of
36 money that is ordered by a superior court of the state of Washington
37 for legal financial obligations which may include restitution to the
38 victim, statutorily imposed crime victims' compensation fees as
39 assessed pursuant to RCW 7.68.035, court costs, county or interlocal

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

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

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

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

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

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

33 (16) "Determinate sentence" means a sentence that states with
34 exactitude the number of actual years, months, or days of total
35 confinement, of partial confinement, of community supervision, the
36 number of actual hours or days of community service work, or dollars or
37 terms of a legal financial obligation. The fact that an offender
38 through "earned early release" can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a
2 determinate sentence.

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

15 (18) "Drug offense" means:

16 (a) Any felony violation of chapter 69.50 RCW except possession of
17 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
18 controlled substance (RCW 69.50.403);

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

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

25 (19) "Escape" means:

26 (a) Escape in the first degree (RCW 9A.76.110), escape in the
27 second degree (RCW 9A.76.120), willful failure to return from furlough
28 (RCW 72.66.060), willful failure to return from work release (RCW
29 72.65.070), or willful failure to be available for supervision by the
30 department while in community custody (RCW 72.09.310); or

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

34 (20) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
37 and-run injury-accident (RCW 46.52.020(4)); 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 a felony
3 traffic offense under (a) of this subsection.

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

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

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

22 (a) Any felony defined under any law as a class A felony or
23 criminal solicitation of or criminal conspiracy to commit a class A
24 felony;

25 (b) Assault in the second degree;

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

27 (d) Child molestation in the second degree;

28 (e) Controlled substance homicide;

29 (f) Extortion in the first degree;

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

31 (h) Indecent liberties;

32 (i) Kidnapping in the second degree;

33 (j) Leading organized crime;

34 (k) Manslaughter in the first degree;

35 (l) Manslaughter in the second degree;

36 (m) Promoting prostitution in the first degree;

37 (n) Rape in the third degree;

38 (o) Robbery in the second degree;

39 (p) Sexual exploitation;

1 (q) Vehicular assault;

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

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

8 (t) Any other felony with a deadly weapon verdict under RCW
9 9.94A.125;

10 (u) Any felony offense in effect at any time prior to December 2,
11 1993, that is comparable to a most serious offense under this
12 subsection, or any federal or out-of-state conviction for an offense
13 that under the laws of this state would be a felony classified as a
14 most serious offense under this subsection;

15 (v)(i) A prior conviction for indecent liberties under RCW
16 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
17 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
18 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
19 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

20 (ii) A prior conviction for indecent liberties under RCW
21 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
22 if: (A) The crime was committed against a child under the age of
23 fourteen; or (B) the relationship between the victim and perpetrator is
24 included in the definition of indecent liberties under RCW
25 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
26 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
27 through July 27, 1997.

28 (24) "Nonviolent offense" means an offense which is not a violent
29 offense.

30 (25) "Offender" means a person who has committed a felony
31 established by state law and is eighteen years of age or older or is
32 less than eighteen years of age but whose case is under superior court
33 jurisdiction under RCW 13.04.030 or has been transferred by the
34 appropriate juvenile court to a criminal court pursuant to RCW
35 13.40.110. Throughout this chapter, the terms "offender" and
36 "defendant" are used interchangeably.

37 (26) "Partial confinement" means confinement for no more than one
38 year in a facility or institution operated or utilized under contract
39 by the state or any other unit of government, or, if home detention or

1 work crew has been ordered by the court, in an approved residence, for
2 a substantial portion of each day with the balance of the day spent in
3 the community. Partial confinement includes work release, home
4 detention, work crew, and a combination of work crew and home detention
5 as defined in this section.

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

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

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

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

27 (ii) Has, before the commission of the offense under (b)(i) of this
28 subsection, been convicted as an offender on at least one occasion,
29 whether in this state or elsewhere, of an offense listed in (b)(i) of
30 this subsection. A conviction for rape of a child in the first degree
31 constitutes a conviction under subsection (27)(b)(i) only when the
32 offender was sixteen years of age or older when the offender committed
33 the offense. A conviction for rape of a child in the second degree
34 constitutes a conviction under subsection (27)(b)(i) only when the
35 offender was eighteen years of age or older when the offender committed
36 the offense.

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

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

5 (30) "School" has the meaning under RCW 28A.150.010, 28A.150.020,
6 or 28A.195.010 and also means preschools. Any city, town, school
7 district, or county may depict the location and boundaries of the area
8 on or within the radius of one thousand feet of the perimeter of a
9 school.

10 (31) "Serious traffic offense" means:

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

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

19 (~~(31)~~) (32) "Serious violent offense" is a subcategory of violent
20 offense and means:

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

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

30 (~~(32)~~) (33) "Sentence range" means the sentencing court's
31 discretionary range in imposing a nonappealable sentence.

32 (~~(33)~~) (34) "Sex offense" means:

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

37 (b) A felony with a finding of sexual motivation under RCW
38 9.94A.127 or 13.40.135; or

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

4 (~~(34)~~) (35) "Sexual motivation" means that one of the purposes
5 for which the defendant committed the crime was for the purpose of his
6 or her sexual gratification.

7 (~~(35)~~) (36) "Total confinement" means confinement inside the
8 physical boundaries of a facility or institution operated or utilized
9 under contract by the state or any other unit of government for twenty-
10 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (~~(36)~~) (37) "Transition training" means written and verbal
12 instructions and assistance provided by the department to the offender
13 during the two weeks prior to the offender's successful completion of
14 the work ethic camp program. The transition training shall include
15 instructions in the offender's requirements and obligations during the
16 offender's period of community custody.

17 (~~(37)~~) (38) "Victim" means any person who has sustained
18 emotional, psychological, physical, or financial injury to person or
19 property as a direct result of the crime charged.

20 (~~(38)~~) (39) "Violent offense" means:

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

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

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

1 (~~(39)~~) (40) "Work crew" means a program of partial confinement
2 consisting of civic improvement tasks for the benefit of the community
3 of not less than thirty-five hours per week that complies with RCW
4 9.94A.135. The civic improvement tasks shall have minimal negative
5 impact on existing private industries or the labor force in the county
6 where the service or labor is performed. The civic improvement tasks
7 shall not affect employment opportunities for people with developmental
8 disabilities contracted through sheltered workshops as defined in RCW
9 82.04.385. Only those offenders sentenced to a facility operated or
10 utilized under contract by a county or the state are eligible to
11 participate on a work crew. Offenders sentenced for a sex offense as
12 defined in subsection (~~(33)~~) (34) of this section are not eligible
13 for the work crew program.

14 (~~(40)~~) (41) "Work ethic camp" means an alternative incarceration
15 program designed to reduce recidivism and lower the cost of corrections
16 by requiring offenders to complete a comprehensive array of real-world
17 job and vocational experiences, character-building work ethics
18 training, life management skills development, substance abuse
19 rehabilitation, counseling, literacy training, and basic adult
20 education.

21 (~~(41)~~) (42) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school. Participation in work release shall
24 be conditioned upon the offender attending work or school at regularly
25 defined hours and abiding by the rules of the work release facility.

26 (~~(42)~~) (43) "Home detention" means a program of partial
27 confinement available to offenders wherein the offender is confined in
28 a private residence subject to electronic surveillance.

29 **Sec. 3.** RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c
30 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and
31 amended to read as follows:

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

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

37 (2) The court may impose a sentence outside the standard sentence
38 range for that offense if it finds, considering the purpose of this

1 chapter, that there are substantial and compelling reasons justifying
2 an exceptional sentence.

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

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

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

1 requirements that the offender perform any one or more of the
2 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 In addition, as a condition of the suspended sentence, the court
12 shall order the defendant to refrain from establishing or maintaining
13 a residence within the radius of one thousand feet of the perimeter of
14 a school ground and to refrain from sex offender loitering as
15 prohibited in section 1 of this act; and

16 (C) Sex offenders sentenced under this special sex offender
17 sentencing alternative are not eligible to accrue any earned early
18 release time while serving a suspended sentence.

19 (iii) The sex offender therapist shall submit quarterly reports on
20 the defendant's progress in treatment to the court and the parties.
21 The report shall reference the treatment plan and include at a minimum
22 the following: Dates of attendance, defendant's compliance with
23 requirements, treatment activities, the defendant's relative progress
24 in treatment, and any other material as specified by the court at
25 sentencing.

26 (iv) At the time of sentencing, the court shall set a treatment
27 termination hearing for three months prior to the anticipated date for
28 completion of treatment. Prior to the treatment termination hearing,
29 the treatment professional and community corrections officer shall
30 submit written reports to the court and parties regarding the
31 defendant's compliance with treatment ~~((and))~~, monitoring, and
32 residential requirements, and recommendations regarding termination
33 from treatment, including proposed community supervision conditions.
34 Either party may request and the court may order another evaluation
35 regarding the advisability of termination from treatment. The
36 defendant shall pay the cost of any additional evaluation ordered
37 unless the court finds the defendant to be indigent in which case the
38 state shall pay the cost. At the treatment termination hearing the
39 court may: (A) Modify conditions of community custody, and either (B)

1 terminate treatment, or (C) extend treatment for up to the remaining
2 period of community custody.

3 (v) If a violation of conditions occurs during community custody,
4 the department shall either impose sanctions as provided for in RCW
5 9.94A.205(2)(a) or refer the violation to the court and recommend
6 revocation of the suspended sentence as provided for in (a)(vi) of this
7 subsection.

8 (vi) The court may revoke the suspended sentence at any time during
9 the period of community custody and order execution of the sentence if:
10 (A) The defendant violates the conditions of the suspended sentence, or
11 (B) the court finds that the defendant is failing to make satisfactory
12 progress in treatment. All confinement time served during the period
13 of community custody shall be credited to the offender if the suspended
14 sentence is revoked.

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

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

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

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

36 (b) When an offender commits any felony sex offense on or after
37 July 1, 1987, and is sentenced to a term of confinement of more than
38 one year but less than six years, the sentencing court may, on its own
39 motion or on the motion of the offender or the state, request the

1 department of corrections to evaluate whether the offender is amenable
2 to treatment and the department may place the offender in a treatment
3 program within a correctional facility operated by the department.

4 Except for an offender who has been convicted of a violation of RCW
5 9A.44.040 or 9A.44.050, if the offender completes the treatment program
6 before the expiration of his or her term of confinement, the department
7 of corrections may request the court to convert the balance of
8 confinement to community supervision and to place conditions on the
9 offender including crime-related prohibitions and requirements that the
10 offender perform any one or more of the following:

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

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

15 (iii) Report as directed to the court and a community corrections
16 officer;

17 (iv) Undergo available outpatient treatment.

18 If the court places the offender on community supervision, the
19 court shall order the defendant to refrain from establishing or
20 maintaining a residence within the radius of one thousand feet of the
21 perimeter of a school ground and to refrain from sex offender loitering
22 as prohibited in section 1 of this act.

23 If the offender violates any of the terms of his or her community
24 supervision, the court may order the offender to serve out the balance
25 of his or her community supervision term in confinement in the custody
26 of the department of corrections.

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

31 (c) Offenders convicted and sentenced for a sex offense committed
32 prior to July 1, 1987, may, subject to available funds, request an
33 evaluation by the department of corrections to determine whether they
34 are amenable to treatment. If the offender is determined to be
35 amenable to treatment, the offender may request placement in a
36 treatment program within a correctional facility operated by the
37 department. Placement in such treatment program is subject to
38 available funds.

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

27 (b) When a court sentences a person to a term of total confinement
28 to the custody of the department of corrections for an offense
29 categorized as a sex offense committed on or after July 1, 1990, but
30 before June 6, 1996, a serious violent offense, vehicular homicide, or
31 vehicular assault, committed on or after July 1, 1990, the court shall
32 in addition to other terms of the sentence, sentence the offender to
33 community placement for two years or up to the period of earned early
34 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
35 longer. The community placement shall begin either upon completion of
36 the term of confinement or at such time as the offender is transferred
37 to community custody in lieu of earned early release in accordance with
38 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
39 this subsection to the statutory maximum period of confinement then the

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

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

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

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

14 (iv) The offender shall pay supervision fees as determined by the
15 department of corrections;

16 (v) The residence location and living arrangements are subject to
17 the prior approval of the department of corrections during the period
18 of community placement. The offender may not establish or maintain a
19 residence within one thousand feet of the perimeter of a school ground.
20 The court may not waive the restriction on residences within this
21 radius; and

22 (vi) The offender shall submit to affirmative acts necessary to
23 monitor compliance with the orders of the court as required by the
24 department.

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

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

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

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

34 (iv) The offender shall not consume alcohol;

35 (v) The offender shall comply with any crime-related prohibitions;
36 or

37 (vi) For an offender convicted of a felony sex offense against a
38 minor victim after June 6, 1996, the offender shall comply with any
39 terms and conditions of community placement imposed by the department

1 of corrections relating to contact between the sex offender and a minor
2 victim or a child of similar age or circumstance as a previous victim.

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

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

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

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

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

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

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

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

37 (14) All offenders sentenced to terms involving community
38 supervision, community service, community placement, or legal financial
39 obligation shall be under the supervision of the department of

1 corrections and shall follow explicitly the instructions and conditions
2 of the department of corrections. The department may require an
3 offender to perform affirmative acts it deems appropriate to monitor
4 compliance with the conditions of the sentence imposed.

5 (a) The instructions shall include, at a minimum, reporting as
6 directed to a community corrections officer, refraining from
7 establishing or maintaining a residence within the radius of one
8 thousand feet of the perimeter of a school ground if the offender is a
9 sex offender, engaging in sex offender loitering as prohibited in
10 section 1 of this act, remaining within prescribed geographical
11 boundaries, notifying the community corrections officer of any change
12 in the offender's address or employment, and paying the supervision fee
13 assessment.

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

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

38 (15) All offenders sentenced to terms involving community
39 supervision, community service, or community placement under the

1 supervision of the department of corrections shall not own, use, or
2 possess firearms or ammunition. Offenders who own, use, or are found
3 to be in actual or constructive possession of firearms or ammunition
4 shall be subject to the appropriate violation process and sanctions.
5 "Constructive possession" as used in this subsection means the power
6 and intent to control the firearm or ammunition. "Firearm" as used in
7 this subsection means a weapon or device from which a projectile may be
8 fired by an explosive such as gunpowder.

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

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

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

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

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

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

1 **Sec. 4.** RCW 13.40.160 and 1997 c 265 s 1 are each amended to read
2 as follows:

3 (1) When the respondent is found to be a serious offender, the
4 court shall commit the offender to the department for the standard
5 range of disposition for the offense, as indicated in option A of
6 schedule D-3, RCW 13.40.0357 except as provided in subsections (5) and
7 (6) of this section.

8 If the court concludes, and enters reasons for its conclusion, that
9 disposition within the standard range would effectuate a manifest
10 injustice the court shall impose a disposition outside the standard
11 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
12 court's finding of manifest injustice shall be supported by clear and
13 convincing evidence.

14 A disposition outside the standard range shall be determinate and
15 shall be comprised of confinement or community supervision, or a
16 combination thereof. When a judge finds a manifest injustice and
17 imposes a sentence of confinement exceeding thirty days, the court
18 shall sentence the juvenile to a maximum term, and the provisions of
19 RCW 13.40.030(2) shall be used to determine the range. A disposition
20 outside the standard range is appealable under RCW 13.40.230 by the
21 state or the respondent. A disposition within the standard range is
22 not appealable under RCW 13.40.230.

23 (2) Where the respondent is found to be a minor or first offender,
24 the court shall order that the respondent serve a term of community
25 supervision as indicated in option A or option B of schedule D-1, RCW
26 13.40.0357 except as provided in subsections (5) and (6) of this
27 section. If the court determines that a disposition of community
28 supervision would effectuate a manifest injustice the court may impose
29 another disposition under option C of schedule D-1, RCW 13.40.0357.
30 Except as provided in subsection (5) of this section, a disposition
31 other than a community supervision may be imposed only after the court
32 enters reasons upon which it bases its conclusions that imposition of
33 community supervision would effectuate a manifest injustice. When a
34 judge finds a manifest injustice and imposes a sentence of confinement
35 exceeding thirty days, the court shall sentence the juvenile to a
36 maximum term, and the provisions of RCW 13.40.030(2) shall be used to
37 determine the range. The court's finding of manifest injustice shall
38 be supported by clear and convincing evidence.

1 Except for disposition of community supervision or a disposition
2 imposed pursuant to subsection (5) of this section, a disposition may
3 be appealed as provided in RCW 13.40.230 by the state or the
4 respondent. A disposition of community supervision or a disposition
5 imposed pursuant to subsection (5) of this section may not be appealed
6 under RCW 13.40.230.

7 (3) Where a respondent is found to have committed an offense for
8 which the respondent declined to enter into a diversion agreement, the
9 court shall impose a term of community supervision limited to the
10 conditions allowed in a diversion agreement as provided in RCW
11 13.40.080(2).

12 (4) If a respondent is found to be a middle offender:

13 (a) The court shall impose a determinate disposition within the
14 standard range(s) for such offense, as indicated in option A of
15 schedule D-2, RCW 13.40.0357 except as provided in subsections (5) and
16 (6) of this section. If the standard range includes a term of
17 confinement exceeding thirty days, commitment shall be to the
18 department for the standard range of confinement; or

19 (b) If the middle offender has less than 110 points, the court
20 shall impose a determinate disposition of community supervision and/or
21 up to thirty days confinement, as indicated in option B of schedule D-
22 2, RCW 13.40.0357 in which case, if confinement has been imposed, the
23 court shall state either aggravating or mitigating factors as set forth
24 in RCW 13.40.150. If the middle offender has 110 points or more, the
25 court may impose a disposition under option A and may suspend the
26 disposition on the condition that the offender serve up to thirty days
27 of confinement and follow all conditions of community supervision. If
28 the offender violates any condition of the disposition including
29 conditions of a probation bond, the court may impose sanctions pursuant
30 to RCW 13.40.200 or may revoke the suspension and order execution of
31 the disposition. The court shall give credit for any confinement time
32 previously served if that confinement was for the offense for which the
33 suspension is being revoked.

34 (c) Only if the court concludes, and enters reasons for its
35 conclusions, that disposition as provided in subsection (4)(a) or (b)
36 of this section would effectuate a manifest injustice, the court shall
37 sentence the juvenile to a maximum term, and the provisions of RCW
38 13.40.030(2) shall be used to determine the range. The court's finding

1 of manifest injustice shall be supported by clear and convincing
2 evidence.

3 (d) A disposition pursuant to subsection (4)(c) of this section is
4 appealable under RCW 13.40.230 by the state or the respondent. A
5 disposition pursuant to subsection (4)(a) or (b) of this section is not
6 appealable under RCW 13.40.230.

7 (5) When a serious, middle, or minor first offender is found to
8 have committed a sex offense, other than a sex offense that is also a
9 serious violent offense as defined by RCW 9.94A.030, and has no history
10 of a prior sex offense, the court, on its own motion or the motion of
11 the state or the respondent, may order an examination to determine
12 whether the respondent is amenable to treatment.

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

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

24 (a)(i) Frequency and type of contact between the offender and
25 therapist;

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

28 (iii) Monitoring plans, including any requirements regarding living
29 conditions, lifestyle requirements, and monitoring by family members,
30 legal guardians, or others;

31 (iv) Anticipated length of treatment; and

32 (v) Recommended crime-related prohibitions.

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

1 After receipt of reports of the examination, the court shall then
2 consider whether the offender and the community will benefit from use
3 of this special sex offender disposition alternative and consider the
4 victim's opinion whether the offender should receive a treatment
5 disposition under this section. If the court determines that this
6 special sex offender disposition alternative is appropriate, then the
7 court shall impose a determinate disposition within the standard range
8 for the offense, and the court may suspend the execution of the
9 disposition and place the offender on community supervision for up to
10 two years. As a condition of the suspended disposition, the court may
11 impose the conditions of community supervision and other conditions,
12 including up to thirty days of confinement and requirements that the
13 offender do any one or more of the following:

14 (b)(i) Devote time to a specific education, employment, or
15 occupation;

16 (ii) Undergo available outpatient sex offender treatment for up to
17 two years, or inpatient sex offender treatment not to exceed the
18 standard range of confinement for that offense. A community mental
19 health center may not be used for such treatment unless it has an
20 appropriate program designed for sex offender treatment. The
21 respondent shall not change sex offender treatment providers or
22 treatment conditions without first notifying the prosecutor, the
23 probation counselor, and the court, and shall not change providers
24 without court approval after a hearing if the prosecutor or probation
25 counselor object to the change;

26 (iii) Remain within prescribed geographical boundaries and notify
27 the court or the probation counselor prior to any change in the
28 offender's address, educational program, or employment;

29 (iv) Report to the prosecutor and the probation counselor prior to
30 any change in a sex offender treatment provider. This change shall
31 have prior approval by the court;

32 (v) Report as directed to the court and a probation counselor;

33 (vi) Pay all court-ordered legal financial obligations, perform
34 community service, or any combination thereof;

35 (vii) Make restitution to the victim for the cost of any counseling
36 reasonably related to the offense;

37 (viii) Comply with the conditions of any court-ordered probation
38 bond; ((or))

1 (ix) Refrain from sex offender loitering as prohibited in section
2 1 of this act; or

3 (x) The court shall order that the offender may not attend ((the))
4 any public or approved private elementary, middle, or high school
5 attended by the victim ((or)), the victim's siblings, or any student
6 more than three years younger than the offender. The court shall also
7 order that the offender may not attend any public or private
8 elementary, middle, or high school that is within one thousand feet of
9 the perimeter of a public or approved private school that has students
10 more than three years younger than the offender. The parents or legal
11 guardians of the offender are responsible for transportation or other
12 costs associated with the offender's change of school that would
13 otherwise be paid by the school district. The court shall send notice
14 of the disposition and restriction on attending the ((same school as
15 the victim or victim's siblings)) schools described in this subsection
16 (5)(b)(x) to the public or approved private school the juvenile will
17 attend, if known, or if unknown, to the approved private schools and
18 the public school district board of directors of the district in which
19 the juvenile resides or intends to reside. This notice must be sent at
20 the earliest possible date but not later than ten calendar days after
21 entry of the disposition.

22 The sex offender treatment provider shall submit quarterly reports
23 on the respondent's progress in treatment to the court and the parties.
24 The reports shall reference the treatment plan and include at a minimum
25 the following: Dates of attendance, respondent's compliance with
26 requirements, treatment activities, the respondent's relative progress
27 in treatment, and any other material specified by the court at the time
28 of the disposition.

29 At the time of the disposition, the court may set treatment review
30 hearings as the court considers appropriate.

31 Except as provided in this subsection (5), after July 1, 1991,
32 examinations and treatment ordered pursuant to this subsection shall
33 only be conducted by sex offender treatment providers certified by the
34 department of health pursuant to chapter 18.155 RCW. A sex offender
35 therapist who examines or treats a juvenile sex offender pursuant to
36 this subsection does not have to be certified by the department of
37 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
38 offender has already moved to another state or plans to move to another
39 state for reasons other than circumventing the certification

1 requirements; (B) no certified providers are available for treatment
2 within a reasonable geographical distance of the offender's home; and
3 (C) the evaluation and treatment plan comply with this subsection (5)
4 and the rules adopted by the department of health.

5 If the offender violates any condition of the disposition or the
6 court finds that the respondent is failing to make satisfactory
7 progress in treatment, the court may revoke the suspension and order
8 execution of the disposition or the court may impose a penalty of up to
9 thirty days' confinement for violating conditions of the disposition.
10 The court may order both execution of the disposition and up to thirty
11 days' confinement for the violation of the conditions of the
12 disposition. The court shall give credit for any confinement time
13 previously served if that confinement was for the offense for which the
14 suspension is being revoked.

15 For purposes of this section, "victim" means any person who has
16 sustained emotional, psychological, physical, or financial injury to
17 person or property as a direct result of the crime charged. "Victim"
18 may also include a known parent or guardian of a victim who is a minor
19 child unless the parent or guardian is the perpetrator of the offense.

20 (6) RCW 13.40.193 shall govern the disposition of any juvenile
21 adjudicated of possessing a firearm in violation of RCW
22 9.41.040(1)(b)(iii) or any crime in which a special finding is entered
23 that the juvenile was armed with a firearm.

24 (7) Whenever a juvenile offender is entitled to credit for time
25 spent in detention prior to a dispositional order, the dispositional
26 order shall specifically state the number of days of credit for time
27 served.

28 (8) Except as provided for in subsection (4)(b) or (5) of this
29 section or RCW 13.40.125, the court shall not suspend or defer the
30 imposition or the execution of the disposition.

31 (9) In no case shall the term of confinement imposed by the court
32 at disposition exceed that to which an adult could be subjected for the
33 same offense.

34 (10) As a mandatory condition of community supervision or parole of
35 a sex offender, the court shall order a sex offender to refrain from
36 sex offender loitering as prohibited in section 1 of this act.

37 **Sec. 5.** RCW 13.40.160 and 1997 c 338 s 25 and 1997 c 265 s 1 are
38 each reenacted and amended to read as follows:

1 (1) The standard range disposition for a juvenile adjudicated of an
2 offense is determined according to RCW 13.40.0357.

3 (a) When the court sentences an offender to a local sanction as
4 provided in RCW 13.40.0357 option A, the court shall impose a
5 determinate disposition within the standard ranges, except as provided
6 in subsections (2), (4), and (5) of this section. The disposition may
7 be comprised of one or more local sanctions.

8 (b) When the court sentences an offender to a standard range as
9 provided in RCW 13.40.0357 option A that includes a term of confinement
10 exceeding thirty days, commitment shall be to the department for the
11 standard range of confinement, except as provided in subsections (2),
12 (4), and (5) of this section.

13 (2) If the court concludes, and enters reasons for its conclusion,
14 that disposition within the standard range would effectuate a manifest
15 injustice the court shall impose a disposition outside the standard
16 range, as indicated in option C of RCW 13.40.0357. The court's finding
17 of manifest injustice shall be supported by clear and convincing
18 evidence.

19 A disposition outside the standard range shall be determinate and
20 shall be comprised of confinement or community supervision, or a
21 combination thereof. When a judge finds a manifest injustice and
22 imposes a sentence of confinement exceeding thirty days, the court
23 shall sentence the juvenile to a maximum term, and the provisions of
24 RCW 13.40.030(2) shall be used to determine the range. A disposition
25 outside the standard range is appealable under RCW 13.40.230 by the
26 state or the respondent. A disposition within the standard range is
27 not appealable under RCW 13.40.230.

28 (3) Where a respondent is found to have committed an offense for
29 which the respondent declined to enter into a diversion agreement, the
30 court shall impose a term of community supervision limited to the
31 conditions allowed in a diversion agreement as provided in RCW
32 13.40.080(2).

33 (4) When a juvenile offender is found to have committed a sex
34 offense, other than a sex offense that is also a serious violent
35 offense as defined by RCW 9.94A.030, and has no history of a prior sex
36 offense, the court, on its own motion or the motion of the state or the
37 respondent, may order an examination to determine whether the
38 respondent is amenable to treatment.

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

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

12 (a)(i) Frequency and type of contact between the offender and
13 therapist;

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

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

19 (iv) Anticipated length of treatment; and

20 (v) Recommended crime-related prohibitions.

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

27 After receipt of reports of the examination, the court shall then
28 consider whether the offender and the community will benefit from use
29 of this special sex offender disposition alternative and consider the
30 victim's opinion whether the offender should receive a treatment
31 disposition under this section. If the court determines that this
32 special sex offender disposition alternative is appropriate, then the
33 court shall impose a determinate disposition within the standard range
34 for the offense, or if the court concludes, and enters reasons for its
35 conclusions, that such disposition would cause a manifest injustice,
36 the court shall impose a disposition under option C, and the court may
37 suspend the execution of the disposition and place the offender on
38 community supervision for at least two years. As a condition of the
39 suspended disposition, the court may impose the conditions of community

1 supervision and other conditions, including up to thirty days of
2 confinement and requirements that the offender do any one or more of
3 the following:

4 (b)(i) Devote time to a specific education, employment, or
5 occupation;

6 (ii) Undergo available outpatient sex offender treatment for up to
7 two years, or inpatient sex offender treatment not to exceed the
8 standard range of confinement for that offense. A community mental
9 health center may not be used for such treatment unless it has an
10 appropriate program designed for sex offender treatment. The
11 respondent shall not change sex offender treatment providers or
12 treatment conditions without first notifying the prosecutor, the
13 probation counselor, and the court, and shall not change providers
14 without court approval after a hearing if the prosecutor or probation
15 counselor object to the change;

16 (iii) Remain within prescribed geographical boundaries and notify
17 the court or the probation counselor prior to any change in the
18 offender's address, educational program, or employment;

19 (iv) Report to the prosecutor and the probation counselor prior to
20 any change in a sex offender treatment provider. This change shall
21 have prior approval by the court;

22 (v) Report as directed to the court and a probation counselor;

23 (vi) Pay all court-ordered legal financial obligations, perform
24 community service, or any combination thereof;

25 (vii) Make restitution to the victim for the cost of any counseling
26 reasonably related to the offense;

27 (viii) Comply with the conditions of any court-ordered probation
28 bond; ~~((or))~~

29 (ix) Refrain from sex offender loitering as prohibited in section
30 1 of this act; or

31 ~~(x)~~ The court shall order that the offender may not attend ((the))
32 any public or approved private elementary, middle, or high school
33 attended by the victim ((or)), the victim's siblings, or any student
34 more than three years younger than the offender. The court shall also
35 order that the offender may not attend any public or private
36 elementary, middle, or high school that is within one thousand feet of
37 the perimeter of a public or approved private school that has students
38 more than three years younger than the offender. The parents or legal
39 guardians of the offender are responsible for transportation or other

1 costs associated with the offender's change of school that would
2 otherwise be paid by the school district. The court shall send notice
3 of the disposition and restriction on attending the (~~same school as~~
4 ~~the victim or victim's siblings~~) schools described in this subsection
5 (4)(b)(x) to the public or approved private school the juvenile will
6 attend, if known, or if unknown, to the approved private schools and
7 the public school district board of directors of the district in which
8 the juvenile resides or intends to reside. This notice must be sent at
9 the earliest possible date but not later than ten calendar days after
10 entry of the disposition.

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

18 At the time of the disposition, the court may set treatment review
19 hearings as the court considers appropriate.

20 Except as provided in this subsection (4), after July 1, 1991,
21 examinations and treatment ordered pursuant to this subsection shall
22 only be conducted by sex offender treatment providers certified by the
23 department of health pursuant to chapter 18.155 RCW. A sex offender
24 therapist who examines or treats a juvenile sex offender pursuant to
25 this subsection does not have to be certified by the department of
26 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
27 offender has already moved to another state or plans to move to another
28 state for reasons other than circumventing the certification
29 requirements; (B) no certified providers are available for treatment
30 within a reasonable geographical distance of the offender's home; and
31 (C) the evaluation and treatment plan comply with this subsection (4)
32 and the rules adopted by the department of health.

33 If the offender violates any condition of the disposition or the
34 court finds that the respondent is failing to make satisfactory
35 progress in treatment, the court may revoke the suspension and order
36 execution of the disposition or the court may impose a penalty of up to
37 thirty days' confinement for violating conditions of the disposition.
38 The court may order both execution of the disposition and up to thirty
39 days' confinement for the violation of the conditions of the

1 disposition. The court shall give credit for any confinement time
2 previously served if that confinement was for the offense for which the
3 suspension is being revoked.

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

9 A disposition entered under this subsection (4) is not appealable
10 under RCW 13.40.230.

11 (5) If the juvenile offender is subject to a standard range
12 disposition of local sanctions or 15 to 36 weeks of confinement and has
13 not committed an A- or B+ offense, the court may impose the disposition
14 alternative under RCW 13.40.165.

15 (6) RCW 13.40.193 shall govern the disposition of any juvenile
16 adjudicated of possessing a firearm in violation of RCW
17 9.41.040(1)(b)(iii) or any crime in which a special finding is entered
18 that the juvenile was armed with a firearm.

19 (7) Whenever a juvenile offender is entitled to credit for time
20 spent in detention prior to a dispositional order, the dispositional
21 order shall specifically state the number of days of credit for time
22 served.

23 (8) Except as provided under subsection (4) or (5) of this section
24 or RCW 13.40.127, the court shall not suspend or defer the imposition
25 or the execution of the disposition.

26 (9) In no case shall the term of confinement imposed by the court
27 at disposition exceed that to which an adult could be subjected for the
28 same offense.

29 (10) As a mandatory condition of community supervision or parole of
30 a sex offender, the court shall order a sex offender to refrain from
31 sex offender loitering as prohibited in section 1 of this act.

32 **Sec. 6.** RCW 13.40.210 and 1997 c 338 s 32 are each amended to read
33 as follows:

34 (1) The secretary shall, except in the case of a juvenile committed
35 by a court to a term of confinement in a state institution outside the
36 appropriate standard range for the offense(s) for which the juvenile
37 was found to be guilty established pursuant to RCW 13.40.030, set a
38 release or discharge date for each juvenile committed to its custody.

1 The release or discharge date shall be within the prescribed range to
2 which a juvenile has been committed except as provided in RCW 13.40.320
3 concerning offenders the department determines are eligible for the
4 juvenile offender basic training camp program. Such dates shall be
5 determined prior to the expiration of sixty percent of a juvenile's
6 minimum term of confinement included within the prescribed range to
7 which the juvenile has been committed. The secretary shall release any
8 juvenile committed to the custody of the department within four
9 calendar days prior to the juvenile's release date or on the release
10 date set under this chapter. Days spent in the custody of the
11 department shall be tolled by any period of time during which a
12 juvenile has absented himself or herself from the department's
13 supervision without the prior approval of the secretary or the
14 secretary's designee.

15 (2) The secretary shall monitor the average daily population of the
16 state's juvenile residential facilities. When the secretary concludes
17 that in-residence population of residential facilities exceeds one
18 hundred five percent of the rated bed capacity specified in statute, or
19 in absence of such specification, as specified by the department in
20 rule, the secretary may recommend reductions to the governor. On
21 certification by the governor that the recommended reductions are
22 necessary, the secretary has authority to administratively release a
23 sufficient number of offenders to reduce in-residence population to one
24 hundred percent of rated bed capacity. The secretary shall release
25 those offenders who have served the greatest proportion of their
26 sentence. However, the secretary may deny release in a particular case
27 at the request of an offender, or if the secretary finds that there is
28 no responsible custodian, as determined by the department, to whom to
29 release the offender, or if the release of the offender would pose a
30 clear danger to society. The department shall notify the committing
31 court of the release at the time of release if any such early releases
32 have occurred as a result of excessive in-residence population. In no
33 event shall an offender adjudicated of a violent offense be granted
34 release under the provisions of this subsection.

35 (3)(a) Following the juvenile's release under subsection (1) of
36 this section, the secretary may require the juvenile to comply with a
37 program of parole to be administered by the department in his or her
38 community which shall last no longer than eighteen months, except that
39 in the case of a juvenile sentenced for rape in the first or second

1 degree, rape of a child in the first or second degree, child
2 molestation in the first degree, or indecent liberties with forcible
3 compulsion, the period of parole shall be twenty-four months and, in
4 the discretion of the secretary, may be up to thirty-six months when
5 the secretary finds that an additional period of parole is necessary
6 and appropriate in the interests of public safety or to meet the
7 ongoing needs of the juvenile. A parole program is mandatory for
8 offenders released under subsection (2) of this section. The decision
9 to place an offender on parole shall be based on an assessment by the
10 department of the offender's risk for reoffending upon release. The
11 department shall prioritize available parole resources to provide
12 supervision and services to offenders at moderate to high risk for
13 reoffending.

14 (b) The secretary shall, for the period of parole, facilitate the
15 juvenile's reintegration into his or her community and to further this
16 goal shall require the juvenile to refrain from possessing a firearm or
17 using a deadly weapon and refrain from committing new offenses and may
18 require the juvenile to: (i) Undergo available medical, psychiatric,
19 drug and alcohol, sex offender, mental health, and other offense-
20 related treatment services; (ii) report as directed to a parole officer
21 and/or designee; (iii) pursue a course of study, vocational training,
22 or employment; (iv) notify the parole officer of the current address
23 where he or she resides; (v) be present at a particular address during
24 specified hours; (vi) remain within prescribed geographical boundaries;
25 (vii) submit to electronic monitoring; (viii) refrain from using
26 illegal drugs and alcohol, and submit to random urinalysis when
27 requested by the assigned parole officer; (ix) refrain from contact
28 with specific individuals or a specified class of individuals; (x) meet
29 other conditions determined by the parole officer to further enhance
30 the juvenile's reintegration into the community; (xi) pay any court-
31 ordered fines or restitution; and (xii) perform community service.
32 Community service for the purpose of this section means compulsory
33 service, without compensation, performed for the benefit of the
34 community by the offender. Community service may be performed through
35 public or private organizations or through work crews.

36 (c) The secretary may further require up to twenty-five percent of
37 the highest risk juvenile offenders who are placed on parole to
38 participate in an intensive supervision program. Offenders
39 participating in an intensive supervision program shall be required to

1 comply with all terms and conditions listed in (b) of this subsection
2 and shall also be required to comply with the following additional
3 terms and conditions: (i) Obey all laws and refrain from any conduct
4 that threatens public safety; (ii) report at least once a week to an
5 assigned community case manager; and (iii) meet all other requirements
6 imposed by the community case manager related to participating in the
7 intensive supervision program. As a part of the intensive supervision
8 program, the secretary may require day reporting.

9 (d) If the juvenile is a sex offender, the secretary shall require
10 the offender to refrain from sex offender loitering as prohibited in
11 section 1 of this act.

12 (e) After termination of the parole period, the juvenile shall be
13 discharged from the department's supervision.

14 (4)(a) The department may also modify parole for violation thereof.
15 If, after affording a juvenile all of the due process rights to which
16 he or she would be entitled if the juvenile were an adult, the
17 secretary finds that a juvenile has violated a condition of his or her
18 parole, the secretary shall order one of the following which is
19 reasonably likely to effectuate the purpose of the parole and to
20 protect the public: (i) Continued supervision under the same
21 conditions previously imposed; (ii) intensified supervision with
22 increased reporting requirements; (iii) additional conditions of
23 supervision authorized by this chapter; (iv) except as provided in
24 (a)(v) of this subsection, imposition of a period of confinement not to
25 exceed thirty days in a facility operated by or pursuant to a contract
26 with the state of Washington or any city or county for a portion of
27 each day or for a certain number of days each week with the balance of
28 the days or weeks spent under supervision; and (v) the secretary may
29 order any of the conditions or may return the offender to confinement
30 for the remainder of the sentence range if the offense for which the
31 offender was sentenced is rape in the first or second degree, rape of
32 a child in the first or second degree, child molestation in the first
33 degree, indecent liberties with forcible compulsion, or a sex offense
34 that is also a serious violent offense as defined by RCW 9.94A.030.

35 (b) If the department finds that any juvenile in a program of
36 parole has possessed a firearm or used a deadly weapon during the
37 program of parole, the department shall modify the parole under (a) of
38 this subsection and confine the juvenile for at least thirty days.

1 Confinement shall be in a facility operated by or pursuant to a
2 contract with the state or any county.

3 (5) A parole officer of the department of social and health
4 services shall have the power to arrest a juvenile under his or her
5 supervision on the same grounds as a law enforcement officer would be
6 authorized to arrest the person.

7 (6) If so requested and approved under chapter 13.06 RCW, the
8 secretary shall permit a county or group of counties to perform
9 functions under subsections (3) through (5) of this section.

10 **Sec. 7.** RCW 13.40.215 and 1997 c 265 s 2 are each amended to read
11 as follows:

12 (1)(a) Except as provided in subsection (2) of this section, at the
13 earliest possible date, and in no event later than thirty days before
14 discharge, parole, or any other authorized leave or release, or before
15 transfer to a community residential facility, the secretary shall send
16 written notice of the discharge, parole, authorized leave or release,
17 or transfer of a juvenile found to have committed a violent offense, a
18 sex offense, or stalking, to the following:

19 (i) The chief of police of the city, if any, in which the juvenile
20 will reside;

21 (ii) The sheriff of the county in which the juvenile will reside;
22 and

23 (iii) The approved private schools and the common school district
24 board of directors of the district in which the juvenile intends to
25 reside or the approved private school or public school district in
26 which the juvenile last attended school, whichever is appropriate,
27 except when it has been determined by the department that the juvenile
28 is twenty-one years old(~~(i is not required to return to school under~~
29 ~~chapter 28A.225 RCW)~~) or will be in the community for less than seven
30 consecutive days on approved leave and will not be attending school
31 during that time.

32 (b) After July 27, 1997, the department shall send a written notice
33 to approved private and public schools under the same conditions
34 identified in subsection (1)(a)(iii) of this section when a juvenile
35 adjudicated of any offense is transferred to a community residential
36 facility. The community residential facility shall provide written
37 notice of the offender's criminal history to any school that the
38 offender attends while residing at the community residential facility

1 and to any employer that employs the offender while residing at the
2 community residential facility.

3 (c) The same notice as required by (a) of this subsection shall be
4 sent to the following, if such notice has been requested in writing
5 about a specific juvenile:

6 (i) The victim of the offense for which the juvenile was found to
7 have committed or the victim's next of kin if the crime was a homicide;

8 (ii) Any witnesses who testified against the juvenile in any court
9 proceedings involving the offense; and

10 (iii) Any person specified in writing by the prosecuting attorney.
11 Information regarding victims, next of kin, or witnesses requesting the
12 notice, information regarding any other person specified in writing by
13 the prosecuting attorney to receive the notice, and the notice are
14 confidential and shall not be available to the juvenile. The notice to
15 the chief of police or the sheriff shall include the identity of the
16 juvenile, the residence where the juvenile will reside, the identity of
17 the person, if any, responsible for supervising the juvenile, and the
18 time period of any authorized leave.

19 (d) The thirty-day notice requirements contained in this subsection
20 shall not apply to emergency medical furloughs.

21 (e) The existence of the notice requirements in this subsection
22 will not require any extension of the release date in the event the
23 release plan changes after notification.

24 (2)(a) If a juvenile found to have committed a violent offense, a
25 sex offense, or stalking escapes from a facility of the department, the
26 secretary shall immediately notify, by the most reasonable and
27 expedient means available, the chief of police of the city and the
28 sheriff of the county in which the juvenile resided immediately before
29 the juvenile's arrest. If previously requested, the secretary shall
30 also notify the witnesses and the victim of the offense which the
31 juvenile was found to have committed or the victim's next of kin if the
32 crime was a homicide. If the juvenile is recaptured, the secretary
33 shall send notice to the persons designated in this subsection as soon
34 as possible but in no event later than two working days after the
35 department learns of such recapture.

36 (b) The secretary may authorize a leave, for a juvenile found to
37 have committed a violent offense, a sex offense, or stalking, which
38 shall not exceed forty-eight hours plus travel time, to meet an
39 emergency situation such as a death or critical illness of a member of

1 the juvenile's family. The secretary may authorize a leave, which
2 shall not exceed the time medically necessary, to obtain medical care
3 not available in a juvenile facility maintained by the department.
4 Prior to the commencement of an emergency or medical leave, the
5 secretary shall give notice of the leave to the appropriate law
6 enforcement agency in the jurisdiction in which the juvenile will be
7 during the leave period. The notice shall include the identity of the
8 juvenile, the time period of the leave, the residence of the juvenile
9 during the leave, and the identity of the person responsible for
10 supervising the juvenile during the leave. If previously requested,
11 the department shall also notify the witnesses and victim of the
12 offense which the juvenile was found to have committed or the victim's
13 next of kin if the offense was a homicide.

14 In case of an emergency or medical leave the secretary may waive
15 all or any portion of the requirements for leaves pursuant to RCW
16 13.40.205 (2)(a), (3), (4), and (5).

17 (3) If the victim, the victim's next of kin, or any witness is
18 under the age of sixteen, the notice required by this section shall be
19 sent to the parents or legal guardian of the child.

20 (4) The secretary shall send the notices required by this chapter
21 to the last address provided to the department by the requesting party.
22 The requesting party shall furnish the department with a current
23 address.

24 (5) Upon discharge, parole, transfer to a community residential
25 facility, or other authorized leave or release, a convicted juvenile
26 sex offender shall not attend a public or approved private elementary,
27 middle, or high school that is attended by a victim ~~((or))~~, a sibling
28 of a victim of the sex offender, or any student more than three years
29 younger than the offender. The offender also may not attend any public
30 or private elementary, middle, or high school that is within one
31 thousand feet of the perimeter of a public or approved private school
32 that has students more than three years younger than the offender. The
33 parents or legal guardians of the convicted juvenile sex offender shall
34 be responsible for transportation or other costs associated with or
35 required by the sex offender's change in school that otherwise would be
36 paid by a school district. Upon discharge, parole, transfer to a
37 community residential facility, or other authorized leave or release of
38 a convicted juvenile sex offender, the secretary shall send written
39 notice of the discharge, parole, transfer, or other authorized leave or

1 release and the requirements of this subsection to the common school
2 district board of directors of the district in which the sex offender
3 intends to reside or the district in which the sex offender last
4 attended school, whichever is appropriate. The secretary shall send a
5 similar notice to any approved private school the juvenile will attend,
6 if known, or if unknown, to the approved private schools within the
7 district the juvenile resides or intends to reside.

8 (6) For purposes of this section the following terms have the
9 following meanings:

10 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

11 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

12 (c) "Stalking" means the crime of stalking as defined in RCW
13 9A.46.110;

14 (d) "Next of kin" means a person's spouse, parents, siblings, and
15 children.

16 NEW SECTION. **Sec. 8.** A new section is added to chapter 28A.225
17 RCW to read as follows:

18 (1) If a school district knows that a student is adjudicated or
19 convicted of a sex offense, as defined in RCW 9.94A.030, the school
20 district may not place the student in a public school with other
21 children more than three years younger than the sex offender. The
22 school district may also not place the sex offender in a school that is
23 within one thousand feet of another public or approved private school
24 that has students more than three years younger than the sex offender.
25 If the student is adjudicated or convicted of the sex offense during
26 the school year, the student shall be suspended pending transfer to
27 another school that the offender may attend without a violation of
28 this section. If the school district cannot place the student in
29 another school within the district without violating this section, the
30 school district may enter into an agreement with another school
31 district or an educational service district to provide educational
32 services to the sex offender or may expel the student.

33 (2) This section shall be construed in a manner consistent with the
34 individuals with disabilities education act, 20 U.S.C. 1400 et seq.

35 **Sec. 9.** RCW 28A.225.225 and 1997 c 265 s 3 are each amended to
36 read as follows:

1 (1) All districts accepting applications from nonresident students
2 or from students receiving home-based instruction for admission to the
3 district's schools shall consider equally all applications received.
4 Each school district shall adopt a policy establishing rational, fair,
5 and equitable standards for acceptance and rejection of applications by
6 June 30, 1990. The policy may include rejection of a nonresident
7 student if:

8 (a) Acceptance of a nonresident student would result in the
9 district experiencing a financial hardship;

10 (b) The student's disciplinary records indicate a history of
11 convictions for offenses or crimes, violent or disruptive behavior, or
12 gang membership; ((or))

13 (c) The student has been expelled or suspended from a public school
14 for more than ten consecutive days. Any policy allowing for
15 readmission of expelled or suspended students under this subsection
16 (1)(c) must apply uniformly to both resident and nonresident
17 applicants; or

18 (d) Acceptance of the student would result in the district
19 violating section 1 of this act.

20 For purposes of subsection (1)(b) of this section, "gang" means a
21 group which: (i) Consists of three or more persons; (ii) has
22 identifiable leadership; and (iii) on an ongoing basis, regularly
23 conspires and acts in concert mainly for criminal purposes.

24 (2) The district shall provide to applicants written notification
25 of the approval or denial of the application in a timely manner. If
26 the application is rejected, the notification shall include the reason
27 or reasons for denial and the right to appeal under RCW 28A.225.230(3).

28 **Sec. 10.** RCW 28A.225.330 and 1997 c 266 s 4 are each amended to
29 read as follows:

30 (1) When enrolling a student who has attended school in another
31 school district, the school enrolling the student ((may)) shall request
32 the parent and the student to briefly indicate in writing whether or
33 not the student has:

34 (a) Any history of placement in special educational programs;

35 (b) Any past, current, or pending disciplinary action;

36 (c) Any history of violent behavior, or behavior listed in RCW
37 13.04.155;

38 (d) Any unpaid fines or fees imposed by other schools; and

1 (e) Any health conditions affecting the student's educational
2 needs.

3 (2) The school enrolling the student shall request the school the
4 student previously attended to send the student's permanent record
5 including records of disciplinary action and behavior listed in RCW
6 13.04.155, attendance, immunization records, and academic performance.
7 If the student has not paid a fine or fee under RCW 28A.635.060, or
8 tuition, fees, or fines at approved private schools the school may
9 withhold the student's official transcript, but shall transmit
10 information about the student's academic performance, special
11 placement, immunization records, and records of disciplinary action and
12 behavior listed in RCW 13.04.155. If the official transcript is not
13 sent due to unpaid tuition, fees, or fines, the enrolling school shall
14 notify both the student and parent or guardian that the official
15 transcript will not be sent until the obligation is met, and failure to
16 have an official transcript may result in exclusion from
17 extracurricular activities or failure to graduate.

18 (3) If information is requested under subsection (2) of this
19 section, the information shall be transmitted within two school days
20 after receiving the request and the records shall be sent as soon as
21 possible. Any school district or district employee who releases the
22 information in compliance with this section is immune from civil
23 liability for damages unless it is shown that the school district
24 employee acted with gross negligence or in bad faith. The state board
25 of education shall provide by rule for the discipline under chapter
26 28A.410 RCW of a school principal or other chief administrator of a
27 public school building who fails to make a good faith effort to assure
28 compliance with this subsection.

29 (4) Any school district or district employee who releases the
30 information in compliance with federal and state law is immune from
31 civil liability for damages unless it is shown that the school district
32 or district employee acted with gross negligence or in bad faith.

33 NEW SECTION. **Sec. 11.** A new section is added to chapter 28A.225
34 RCW to read as follows:

35 (1) Any school district, educational service district, or
36 consortium of school districts may create specialized schools for
37 students who have been adjudicated or convicted of offenses and who
38 pose a danger to themselves, other students, and staff. The schools

1 may be designed to address the special educational needs of those
2 students and the security needs of the students and staff. The schools
3 may give priority in placement to adjudicated or convicted youth who
4 are violent or chronically disruptive of the educational process and
5 who would otherwise be subject to suspension or expulsion.

6 (2) The superintendent of public instruction is directed to assist
7 school districts, educational service districts, and consortiums that
8 intend to create specialized schools.

9 **Sec. 12.** RCW 28A.525.162 and 1995 c 77 s 24 are each amended to
10 read as follows:

11 (1) Funds appropriated to the state board of education from the
12 common school construction fund shall be allotted by the state board of
13 education in accordance with student enrollment and the provisions of
14 RCW 28A.525.200.

15 (2) No allotment shall be made to a school district until such
16 district has provided matching funds equal to or greater than the
17 difference between the total approved project cost and the amount of
18 state assistance to the district for financing the project computed
19 pursuant to RCW 28A.525.166, with the following exceptions:

20 (a) The state board may waive the matching requirement for
21 districts which have provided funds for school building construction
22 purposes through the authorization of bonds or through the
23 authorization of excess tax levies or both in an amount equivalent to
24 two and one-half percent of the value of its taxable property, as
25 defined in RCW 39.36.015.

26 (b) No such matching funds shall be required as a condition to the
27 allotment of funds for the purpose of making major or minor structural
28 changes to existing school facilities in order to bring such facilities
29 into compliance with the barrier free access requirements of section
30 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and
31 rules implementing the act.

32 (c) The state board shall waive the matching requirement for
33 districts that have provided funds to construct school buildings to
34 house specialized schools that the districts may create under section
35 11 of this act or to make structural changes to convert an existing
36 building or school into a specialized school.

37 (3) For the purpose of computing the state matching percentage
38 under RCW 28A.525.166 when a school district is granted authority to

1 enter into contracts, adjusted valuation per pupil shall be calculated
2 using headcount student enrollments from the most recent October
3 enrollment reports submitted by districts to the superintendent of
4 public instruction, adjusted as follows:

5 (a) In the case of projects for which local bonds were approved
6 after May 11, 1989:

7 (i) For districts which have been designated as serving high school
8 districts under RCW 28A.540.110, students residing in the nonhigh
9 district so designating shall be excluded from the enrollment count if
10 the student is enrolled in any grade level not offered by the nonhigh
11 district;

12 (ii) The enrollment of nonhigh school districts shall be increased
13 by the number of students residing within the district who are enrolled
14 in a serving high school district so designated by the nonhigh school
15 district under RCW 28A.540.110, including only students who are
16 enrolled in grade levels not offered by the nonhigh school district;
17 and

18 (iii) The number of preschool students with disabilities included
19 in the enrollment count shall be multiplied by one-half;

20 (b) In the case of construction or modernization of high school
21 facilities in districts serving students from nonhigh school districts,
22 the adjusted valuation per pupil shall be computed using the combined
23 adjusted valuations and enrollments of each district, each weighted by
24 the percentage of the district's resident high school students served
25 by the high school district; and

26 (c) The number of kindergarten students included in the enrollment
27 count shall be multiplied by one-half.

28 (4) The state board of education shall prescribe and make effective
29 such rules as are necessary to equate insofar as possible the efforts
30 made by school districts to provide capital funds by the means
31 aforesaid.

32 (5) For the purposes of this section, "preschool students with
33 disabilities" means developmentally disabled children of preschool age
34 who are entitled to services under RCW 28A.155.010 through 28A.155.100
35 and are not included in the kindergarten enrollment count of the
36 district.

37 NEW SECTION. **Sec. 13.** A new section is added to chapter 28A.600
38 RCW to read as follows:

1 Any elementary, middle, or secondary school student who is
2 adjudicated or convicted of a sex offense as defined in RCW 9.94A.030
3 may not attend any public school with other children that are more than
4 three years younger than the sex offender. The sex offender also may
5 not attend any public school that is located within the perimeter of
6 one thousand feet of another public or approved private school attended
7 by children more than three years younger than the sex offender.
8 School districts may suspend, expel, or transfer any student who is
9 adjudicated or convicted of a sex offense as provided in section 8 of
10 this act.

11 **Sec. 14.** RCW 72.09.340 and 1996 c 215 s 3 are each amended to read
12 as follows:

13 (1) In making all discretionary decisions regarding release plans
14 for and supervision of sex offenders, the department shall set
15 priorities and make decisions based on an assessment of public safety
16 risks.

17 (2) The department shall, no later than September 1, 1996,
18 implement a policy governing the department's evaluation and approval
19 of release plans for sex offenders. The policy shall include, at a
20 minimum, a formal process by which victims, witnesses, and other
21 interested people may provide information and comments to the
22 department on potential safety risks to specific individuals or classes
23 of individuals posed by a specific sex offender. The department shall
24 make all reasonable efforts to publicize the availability of this
25 process through currently existing mechanisms and shall seek the
26 assistance of courts, prosecutors, law enforcement, and victims'
27 advocacy groups in doing so. Notice of an offender's proposed
28 residence shall be provided to all people registered to receive notice
29 of an offender's release under RCW 9.94A.155(2), except that in no case
30 may this notification requirement be construed to require an extension
31 of an offender's release date.

32 (3) Except as provided in subsection (4) of this section, for any
33 offender convicted of a felony sex offense against a minor victim after
34 June 6, 1996, the department shall not approve a residence location if
35 the proposed residence: (a) Includes a minor victim or child of
36 similar age or circumstance as a previous victim who the department
37 determines may be put at substantial risk of harm by the offender's
38 residence in the household; or (b) is within close proximity of the

1 current residence of a minor victim, unless the whereabouts of the
2 minor victim cannot be determined or unless such a restriction would
3 impede family reunification efforts ordered by the court or directed by
4 the department of social and health services. The department is
5 further authorized to reject a residence location if the proposed
6 residence is within close proximity to schools, child care centers,
7 playgrounds, or other grounds or facilities where children of similar
8 age or circumstance as a previous victim are present who the department
9 determines may be put at substantial risk of harm by the sex offender's
10 residence at that location.

11 (4) For an offender convicted of any felony sex offense who is
12 released after July 1, 1998, the department shall not approve a work
13 release or residence location if the proposed work release facility or
14 residence is located within the perimeter of one thousand feet of a
15 public or approved private school as defined in RCW 9.94A.030.

16 (5) When the department requires supervised visitation as a term or
17 condition of a sex offender's community placement under RCW
18 9.94A.120(9)(c)(vi), the department shall, prior to approving a
19 supervisor, consider the following:

20 (a) The relationships between the proposed supervisor, the
21 offender, and the minor;

22 (b) The proposed supervisor's acknowledgment and understanding of
23 the offender's prior criminal conduct, general knowledge of the
24 dynamics of child sexual abuse, and willingness and ability to protect
25 the minor from the potential risks posed by contact with the offender;
26 and

27 (c) Recommendations made by the department of social and health
28 services about the best interests of the child.

29 NEW SECTION. Sec. 15. A new section is added to chapter 72.65 RCW
30 to read as follows:

31 The department may not place a sex offender in a work release
32 facility that is located within one thousand feet of a public or
33 approved private school as defined in RCW 9.94A.030.

34 NEW SECTION. Sec. 16. A new section is added to chapter 74.15 RCW
35 to read as follows:

36 (1) The secretary shall require any agency that receives juveniles
37 who have been adjudicated or convicted to provide written notice of the

1 offender's criminal history to any school that the offender attends
2 while the offender resides at the agency's facility, home, or center,
3 and to any employer who employs the offender while the offender resides
4 at the facility, home, or center. The secretary shall, at a minimum,
5 suspend the license of an agency for one year if the agency violates
6 this section two or more times within one year.

7 (2) The secretary shall prohibit placement of a sex offender into
8 an agency that is located within one thousand feet of a public or
9 approved private school and has students more than three years younger
10 than the offender.

11 NEW SECTION. **Sec. 17.** Section 4 of this act expires July 1, 1998.

12 NEW SECTION. **Sec. 18.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 19.** If any part of this act is found to be in
17 conflict with federal requirements, the conflicting part of this act is
18 hereby declared to be inoperative solely to the extent of the conflict,
19 and such finding or determination does not affect the operation of the
20 remainder of this act. Rules adopted under this act must meet federal
21 requirements.

22 NEW SECTION. **Sec. 20.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 immediately except for section 5 of this act which takes effect July 1,
26 1998.

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