

2 **SB 5664** - H COMM AMD **ADOPTED 04/07/99**

3 By Committee on Criminal Justice & Corrections

4

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

7 "**Sec. 1.** RCW 7.80.130 and 1987 c 456 s 21 are each amended to read
8 as follows:

9 (1) An order entered after the receipt of a response which does not
10 contest the determination, or after it has been established at a
11 hearing that the civil infraction was committed, or after a hearing for
12 the purpose of explaining mitigating circumstances is civil in nature.

13 (2) The court may waive, reduce, or suspend the monetary penalty
14 prescribed for the civil infraction. If the court determines that a
15 person has insufficient funds to pay the monetary penalty, the court
16 may order performance of a number of hours of community (~~service~~)
17 restitution in lieu of a monetary penalty, at the rate of the then
18 state minimum wage per hour.

19 **Sec. 2.** RCW 7.80.160 and 1989 c 373 s 12 are each amended to read
20 as follows:

21 (1) A person who fails to sign a notice of civil infraction is
22 guilty of a misdemeanor.

23 (2) Any person willfully violating his or her written and signed
24 promise to appear in court or his or her written and signed promise to
25 respond to a notice of civil infraction is guilty of a misdemeanor
26 regardless of the disposition of the notice of civil infraction. A
27 written promise to appear in court or a written promise to respond to
28 a notice of civil infraction may be complied with by an appearance by
29 counsel.

30 (3) A person who willfully fails to pay a monetary penalty or to
31 perform community (~~service~~) restitution as required by a court under
32 this chapter may be found in contempt of court as provided in chapter
33 7.21 RCW.

1 **Sec. 3.** RCW 7.84.110 and 1987 c 380 s 11 are each amended to read
2 as follows:

3 (1) An order entered after the receipt of a response which does not
4 contest the determination, or after it has been established at a
5 hearing that the infraction was committed, or after a hearing for the
6 purpose of explaining mitigating circumstances, is civil in nature.

7 (2) The court may, in its discretion, waive, reduce, or suspend the
8 monetary penalty prescribed for the infraction. At the person's
9 request, the court may order performance of a number of hours of
10 community ((~~service~~)) restitution in lieu of a monetary penalty, at the
11 rate of the then state minimum wage per hour.

12 **Sec. 4.** RCW 7.84.130 and 1987 c 380 s 13 are each amended to read
13 as follows:

14 (1) Failure to pay a monetary penalty assessed by a court under the
15 provisions of this chapter is a misdemeanor under chapter 9A.20 RCW.

16 (2) Failure to complete community ((~~service~~)) restitution ordered
17 by a court under the provisions of this chapter is a misdemeanor under
18 chapter 9A.20 RCW.

19 **Sec. 5.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read
20 as follows:

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter.

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

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

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

35 (4) "Community custody" means that portion of an inmate's sentence
36 of confinement in lieu of earned early release time or imposed pursuant
37 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to

1 controls placed on the inmate's movement and activities by the
2 department of corrections.

3 (5) "Community placement" means that period during which the
4 offender is subject to the conditions of community custody and/or
5 postrelease supervision, which begins either upon completion of the
6 term of confinement (postrelease supervision) or at such time as the
7 offender is transferred to community custody in lieu of earned early
8 release. Community placement may consist of entirely community
9 custody, entirely postrelease supervision, or a combination of the two.

10 (6) "Community (~~service~~) restitution" means compulsory service,
11 without compensation, performed for the benefit of the community by the
12 offender.

13 (7) "Community supervision" means a period of time during which a
14 convicted offender is subject to crime-related prohibitions and other
15 sentence conditions imposed by a court pursuant to this chapter or RCW
16 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
17 may include crime-related prohibitions and other conditions imposed
18 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
19 for out-of-state supervision of parolees and probationers, RCW
20 9.95.270, community supervision is the functional equivalent of
21 probation and should be considered the same as probation by other
22 states.

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

25 (9) "Conviction" means an adjudication of guilt pursuant to Titles
26 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
27 acceptance of a plea of guilty.

28 (10) "Court-ordered legal financial obligation" means a sum of
29 money that is ordered by a superior court of the state of Washington
30 for legal financial obligations which may include restitution to the
31 victim, statutorily imposed crime victims' compensation fees as
32 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
33 drug funds, court-appointed attorneys' fees, and costs of defense,
34 fines, and any other financial obligation that is assessed to the
35 offender as a result of a felony conviction. Upon conviction for
36 vehicular assault while under the influence of intoxicating liquor or
37 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
38 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
39 legal financial obligations may also include payment to a public agency

1 of the expense of an emergency response to the incident resulting in
2 the conviction, subject to the provisions in RCW 38.52.430.

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

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

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

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

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

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

34 (17) "Disposable earnings" means that part of the earnings of an
35 individual remaining after the deduction from those earnings of any
36 amount required by law to be withheld. For the purposes of this
37 definition, "earnings" means compensation paid or payable for personal
38 services, whether denominated as wages, salary, commission, bonuses, or
39 otherwise, and, notwithstanding any other provision of law making the

1 payments exempt from garnishment, attachment, or other process to
2 satisfy a court-ordered legal financial obligation, specifically
3 includes periodic payments pursuant to pension or retirement programs,
4 or insurance policies of any type, but does not include payments made
5 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
6 or Title 74 RCW.

7 (18) "Drug offense" means:

8 (a) Any felony violation of chapter 69.50 RCW except possession of
9 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
10 controlled substance (RCW 69.50.403);

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

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

17 (19) "Escape" means:

18 (a) Escape in the first degree (RCW 9A.76.110), escape in the
19 second degree (RCW 9A.76.120), willful failure to return from furlough
20 (RCW 72.66.060), willful failure to return from work release (RCW
21 72.65.070), or willful failure to be available for supervision by the
22 department while in community custody (RCW 72.09.310); or

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

26 (20) "Felony traffic offense" means:

27 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
28 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
29 and-run injury-accident (RCW 46.52.020(4)); or

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

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

35 (22) "First-time offender" means any person who is convicted of a
36 felony (a) not classified as a violent offense or a sex offense under
37 this chapter, or (b) that is not the manufacture, delivery, or
38 possession with intent to manufacture or deliver a controlled substance
39 classified in Schedule I or II that is a narcotic drug or flunitrazepam

1 classified in Schedule IV, nor the manufacture, delivery, or possession
2 with intent to deliver methamphetamine, its salts, isomers, and salts
3 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
4 profit of any controlled substance or counterfeit substance classified
5 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
6 marihuana, who previously has never been convicted of a felony in this
7 state, federal court, or another state, and who has never participated
8 in a program of deferred prosecution for a felony offense.

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

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

15 (b) Assault in the second degree;

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

17 (d) Child molestation in the second degree;

18 (e) Controlled substance homicide;

19 (f) Extortion in the first degree;

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

21 (h) Indecent liberties;

22 (i) Kidnapping in the second degree;

23 (j) Leading organized crime;

24 (k) Manslaughter in the first degree;

25 (l) Manslaughter in the second degree;

26 (m) Promoting prostitution in the first degree;

27 (n) Rape in the third degree;

28 (o) Robbery in the second degree;

29 (p) Sexual exploitation;

30 (q) Vehicular assault;

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

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

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

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

6 (v)(i) A prior conviction for indecent liberties under RCW
7 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
8 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
9 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
10 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

11 (ii) A prior conviction for indecent liberties under RCW
12 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
13 if: (A) The crime was committed against a child under the age of
14 fourteen; or (B) the relationship between the victim and perpetrator is
15 included in the definition of indecent liberties under RCW
16 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
17 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
18 through July 27, 1997.

19 (24) "Nonviolent offense" means an offense which is not a violent
20 offense.

21 (25) "Offender" means a person who has committed a felony
22 established by state law and is eighteen years of age or older or is
23 less than eighteen years of age but whose case is under superior court
24 jurisdiction under RCW 13.04.030 or has been transferred by the
25 appropriate juvenile court to a criminal court pursuant to RCW
26 13.40.110. Throughout this chapter, the terms "offender" and
27 "defendant" are used interchangeably.

28 (26) "Partial confinement" means confinement for no more than one
29 year in a facility or institution operated or utilized under contract
30 by the state or any other unit of government, or, if home detention or
31 work crew has been ordered by the court, in an approved residence, for
32 a substantial portion of each day with the balance of the day spent in
33 the community. Partial confinement includes work release, home
34 detention, work crew, and a combination of work crew and home detention
35 as defined in this section.

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

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

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

9 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
10 of a child in the first degree, child molestation in the first degree,
11 rape in the second degree, rape of a child in the second degree, or
12 indecent liberties by forcible compulsion; (B) murder in the first
13 degree, murder in the second degree, homicide by abuse, kidnapping in
14 the first degree, kidnapping in the second degree, assault in the first
15 degree, assault in the second degree, assault of a child in the first
16 degree, or burglary in the first degree, with a finding of sexual
17 motivation; or (C) an attempt to commit any crime listed in this
18 subsection (27)(b)(i); and

19 (ii) Has, before the commission of the offense under (b)(i) of this
20 subsection, been convicted as an offender on at least one occasion,
21 whether in this state or elsewhere, of an offense listed in (b)(i) of
22 this subsection. A conviction for rape of a child in the first degree
23 constitutes a conviction under subsection (27)(b)(i) only when the
24 offender was sixteen years of age or older when the offender committed
25 the offense. A conviction for rape of a child in the second degree
26 constitutes a conviction under subsection (27)(b)(i) only when the
27 offender was eighteen years of age or older when the offender committed
28 the offense.

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

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

35 (30) "Serious traffic offense" means:

36 (a) Driving while under the influence of intoxicating liquor or any
37 drug (RCW 46.61.502), actual physical control while under the influence
38 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving

1 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
2 or

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

6 (31) "Serious violent offense" is a subcategory of violent offense
7 and means:

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

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

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

19 (33) "Sex offense" means:

20 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
21 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
22 criminal attempt, criminal solicitation, or criminal conspiracy to
23 commit such crimes;

24 (b) A felony with a finding of sexual motivation under RCW
25 9.94A.127 or 13.40.135; or

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

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

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

36 (36) "Transition training" means written and verbal instructions
37 and assistance provided by the department to the offender during the
38 two weeks prior to the offender's successful completion of the work
39 ethic camp program. The transition training shall include instructions

1 in the offender's requirements and obligations during the offender's
2 period of community custody.

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

6 (38) "Violent offense" means:

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

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

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

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

38 (40) "Work ethic camp" means an alternative incarceration program
39 designed to reduce recidivism and lower the cost of corrections by

1 requiring offenders to complete a comprehensive array of real-world job
2 and vocational experiences, character-building work ethics training,
3 life management skills development, substance abuse rehabilitation,
4 counseling, literacy training, and basic adult education.

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

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

13 **Sec. 6.** RCW 9.94A.040 and 1997 c 365 s 2 and 1997 c 338 s 3 are
14 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

1 (d)(i) Serve as a clearinghouse and information center for the
2 collection, preparation, analysis, and dissemination of information on
3 state and local adult and juvenile sentencing practices; (ii) develop
4 and maintain a computerized adult and juvenile sentencing information
5 system by individual superior court judge consisting of offender,
6 offense, history, and sentence information entered from judgment and
7 sentence forms for all adult felons; and (iii) conduct ongoing research
8 regarding adult and juvenile sentencing guidelines, use of total
9 confinement and alternatives to total confinement, plea bargaining, and
10 other matters relating to the improvement of the adult criminal justice
11 system and the juvenile justice system;

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

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

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

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

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

38 (ii) The capacity of state and local juvenile and adult facilities
39 and resources; and

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

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

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

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

13 (b) If the maximum term in the range is greater than one year, the
14 minimum term in the range shall be no less than seventy-five percent of
15 the maximum term in the range, except that for murder in the second
16 degree in seriousness category XIII under RCW 9.94A.310, the minimum
17 term in the range shall be no less than fifty percent of the maximum
18 term in the range; and

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

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

23 **Sec. 7.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read
24 as follows:

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

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

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

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

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

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

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

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

1 (c) Pursue a prescribed, secular course of study or vocational
2 training;

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

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

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

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

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

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

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

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

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

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

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

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

1 the administrator for the courts, the office of financial management,
2 and the commission.

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

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

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

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

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

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

32 (C) Monitoring plans, including any requirements regarding living
33 conditions, lifestyle requirements, and monitoring by family members
34 and others;

35 (D) Anticipated length of treatment; and

36 (E) Recommended crime-related prohibitions.

37 The court on its own motion may order, or on a motion by the state
38 shall order, a second examination regarding the offender's amenability
39 to treatment. The evaluator shall be selected by the party making the

1 motion. The defendant shall pay the cost of any second examination
2 ordered unless the court finds the defendant to be indigent in which
3 case the state shall pay the cost.

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

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

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

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

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

36 (III) Report as directed to the court and a community corrections
37 officer;

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

4 (V) Make recoupment to the victim for the cost of any counseling
5 required as a result of the offender's crime; and

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

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

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

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

36 (vi) The court may revoke the suspended sentence at any time during
37 the period of community custody and order execution of the sentence if:
38 (A) The defendant violates the conditions of the suspended sentence, or
39 (B) the court finds that the defendant is failing to make satisfactory

1 progress in treatment. All confinement time served during the period
2 of community custody shall be credited to the offender if the suspended
3 sentence is revoked.

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

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

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

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

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

32 Except for an offender who has been convicted of a violation of RCW
33 9A.44.040 or 9A.44.050, if the offender completes the treatment program
34 before the expiration of his or her term of confinement, the department
35 of corrections may request the court to convert the balance of
36 confinement to community supervision and to place conditions on the
37 offender including crime-related prohibitions and requirements that the
38 offender perform any one or more of the following:

39 (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) Undergo available outpatient treatment.

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

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

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

23 (9)(a) When a court sentences a person to a term of total
24 confinement to the custody of the department of corrections for an
25 offense categorized as a sex offense or a serious violent offense
26 committed after July 1, 1988, but before July 1, 1990, assault in the
27 second degree, assault of a child in the second degree, any crime
28 against a person where it is determined in accordance with RCW
29 9.94A.125 that the defendant or an accomplice was armed with a deadly
30 weapon at the time of commission, or any felony offense under chapter
31 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
32 committed on or after July 1, 1988, the court shall in addition to the
33 other terms of the sentence, sentence the offender to a one-year term
34 of community placement beginning either upon completion of the term of
35 confinement or at such time as the offender is transferred to community
36 custody in lieu of earned early release in accordance with RCW
37 9.94A.150 (1) and (2). When the court sentences an offender under this
38 subsection to the statutory maximum period of confinement then the
39 community placement portion of the sentence shall consist entirely of

1 such community custody to which the offender may become eligible, in
2 accordance with RCW 9.94A.150 (1) and (2). Any period of community
3 custody actually served shall be credited against the community
4 placement portion of the sentence.

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

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

27 (ii) The offender shall work at department of corrections-approved
28 education, employment, and/or community ~~((service))~~ restitution;

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

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

33 (v) The residence location and living arrangements are subject to
34 the prior approval of the department of corrections during the period
35 of community placement; and

36 (vi) The offender shall submit to affirmative acts necessary to
37 monitor compliance with the orders of the court as required by the
38 department.

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

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

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

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

10 (iv) The offender shall not consume alcohol;

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

12 or

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

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

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

32 (b) Unless a condition is waived by the court, the terms of
33 community custody shall be the same as those provided for in subsection
34 (9)(b) of this section and may include those provided for in subsection
35 (9)(c) of this section. As part of any sentence that includes a term
36 of community custody imposed under this subsection, the court shall
37 also require the offender to comply with any conditions imposed by the
38 department of corrections under subsection (14) of this section.

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

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

18 (12) If a sentence imposed includes payment of a legal financial
19 obligation, the sentence shall specify the total amount of the legal
20 financial obligation owed, and shall require the offender to pay a
21 specified monthly sum toward that legal financial obligation.
22 Restitution to victims shall be paid prior to any other payments of
23 monetary obligations. Any legal financial obligation that is imposed
24 by the court may be collected by the department, which shall deliver
25 the amount paid to the county clerk for credit. The offender's
26 compliance with payment of legal financial obligations shall be
27 supervised by the department for ten years following the entry of the
28 judgment and sentence or ten years following the offender's release
29 from total confinement. All monetary payments ordered shall be paid no
30 later than ten years after the last date of release from confinement
31 pursuant to a felony conviction or the date the sentence was entered
32 unless the superior court extends the criminal judgment an additional
33 ten years. If the legal financial obligations including crime victims'
34 assessments are not paid during the initial ten-year period, the
35 superior court may extend jurisdiction under the criminal judgment an
36 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
37 9.94A.145. If jurisdiction under the criminal judgment is extended,
38 the department is not responsible for supervision of the offender
39 during the subsequent period. Independent of the department, the party

1 or entity to whom the legal financial obligation is owed shall have the
2 authority to utilize any other remedies available to the party or
3 entity to collect the legal financial obligation. Nothing in this
4 section makes the department, the state, or any of its employees,
5 agents, or other persons acting on their behalf liable under any
6 circumstances for the payment of these legal financial obligations. If
7 an order includes restitution as one of the monetary assessments, the
8 county clerk shall make disbursements to victims named in the order.

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

13 (14) All offenders sentenced to terms involving community
14 supervision, community (~~service~~) restitution, community placement, or
15 legal financial obligation shall be under the supervision of the
16 department of corrections and shall follow explicitly the instructions
17 and conditions of the department of corrections. The department may
18 require an offender to perform affirmative acts it deems appropriate to
19 monitor compliance with the conditions of the sentence imposed.

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

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

1 to the court that any or all of the conditions imposed by the court or
2 the department pursuant to subsection (10) of this section be continued
3 beyond the expiration of the offender's term of community custody as
4 authorized in subsection (10)(c) of this section.

5 The department may require offenders to pay for special services
6 rendered on or after July 25, 1993, including electronic monitoring,
7 day reporting, and telephone reporting, dependent upon the offender's
8 ability to pay. The department may pay for these services for
9 offenders who are not able to pay.

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

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

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

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

36 (19) As a part of any sentence, the court may impose and enforce an
37 order that relates directly to the circumstances of the crime for which
38 the offender has been convicted, prohibiting the offender from having
39 any contact with other specified individuals or a specific class of

1 individuals for a period not to exceed the maximum allowable sentence
2 for the crime, regardless of the expiration of the offender's term of
3 community supervision or community placement.

4 (20) The court may order an offender whose sentence includes
5 community placement or community supervision to undergo a mental status
6 evaluation and to participate in available outpatient mental health
7 treatment, if the court finds that reasonable grounds exist to believe
8 that the offender is a mentally ill person as defined in RCW 71.24.025,
9 and that this condition is likely to have influenced the offense. An
10 order requiring mental status evaluation or treatment must be based on
11 a presentence report and, if applicable, mental status evaluations that
12 have been filed with the court to determine the offender's competency
13 or eligibility for a defense of insanity. The court may order
14 additional evaluations at a later date if deemed appropriate.

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

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

23 **Sec. 8.** RCW 9.94A.200 and 1998 c 260 s 4 are each amended to read
24 as follows:

25 (1) If an offender violates any condition or requirement of a
26 sentence, the court may modify its order of judgment and sentence and
27 impose further punishment in accordance with this section.

28 (2) In cases where conditions from a second or later sentence of
29 community supervision begin prior to the term of the second or later
30 sentence, the court shall treat a violation of such conditions as a
31 violation of the sentence of community supervision currently being
32 served.

33 (3) If an offender fails to comply with any of the requirements or
34 conditions of a sentence the following provisions apply:

35 (a)(i) Following the violation, if the offender and the department
36 make a stipulated agreement, the department may impose sanctions such
37 as work release, home detention with electronic monitoring, work crew,
38 community ((service)) restitution, inpatient treatment, daily

1 reporting, curfew, educational or counseling sessions, supervision
2 enhanced through electronic monitoring, jail time, or other sanctions
3 available in the community.

4 (ii) Within seventy-two hours of signing the stipulated agreement,
5 the department shall submit a report to the court and the prosecuting
6 attorney outlining the violation or violations, and sanctions imposed.
7 Within fifteen days of receipt of the report, if the court is not
8 satisfied with the sanctions, the court may schedule a hearing and may
9 modify the department's sanctions. If this occurs, the offender may
10 withdraw from the stipulated agreement.

11 (iii) If the offender fails to comply with the sanction
12 administratively imposed by the department, the court may take action
13 regarding the original noncompliance. Offender failure to comply with
14 the sanction administratively imposed by the department may be
15 considered an additional violation.

16 (b) In the absence of a stipulated agreement, or where the court is
17 not satisfied with the department's sanctions as provided in (a) of
18 this subsection, the court, upon the motion of the state, or upon its
19 own motion, shall require the offender to show cause why the offender
20 should not be punished for the noncompliance. The court may issue a
21 summons or a warrant of arrest for the offender's appearance;

22 (c) The state has the burden of showing noncompliance by a
23 preponderance of the evidence. If the court finds that the violation
24 has occurred, it may order the offender to be confined for a period not
25 to exceed sixty days for each violation, and may (i) convert a term of
26 partial confinement to total confinement, (ii) convert community
27 (~~service~~) restitution obligation to total or partial confinement,
28 (iii) convert monetary obligations, except restitution and the crime
29 victim penalty assessment, to community (~~service~~) restitution hours
30 at the rate of the state minimum wage as established in RCW 49.46.020
31 for each hour of community (~~service~~) restitution, or (iv) order one
32 or more of the penalties authorized in (a)(i) of this subsection. Any
33 time served in confinement awaiting a hearing on noncompliance shall be
34 credited against any confinement order by the court;

35 (d) If the court finds that the violation was not willful, the
36 court may modify its previous order regarding payment of legal
37 financial obligations and regarding community (~~service~~) restitution
38 obligations; and

1 (e) If the violation involves a failure to undergo or comply with
2 mental status evaluation and/or outpatient mental health treatment, the
3 community corrections officer shall consult with the treatment provider
4 or proposed treatment provider. Enforcement of orders concerning
5 outpatient mental health treatment must reflect the availability of
6 treatment and must pursue the least restrictive means of promoting
7 participation in treatment. If the offender's failure to receive care
8 essential for health and safety presents a risk of serious physical
9 harm or probable harmful consequences, the civil detention and
10 commitment procedures of chapter 71.05 RCW shall be considered in
11 preference to incarceration in a local or state correctional facility.

12 (4) The community corrections officer may obtain information from
13 the offender's mental health treatment provider on the offender's
14 status with respect to evaluation, application for services,
15 registration for services, and compliance with the supervision plan,
16 without the offender's consent, as described under RCW 71.05.630.

17 (5) An offender under community placement or community supervision
18 who is civilly detained under chapter 71.05 RCW, and subsequently
19 discharged or conditionally released to the community, shall be under
20 the supervision of the department of corrections for the duration of
21 his or her period of community placement or community supervision.
22 During any period of inpatient mental health treatment that falls
23 within the period of community placement or community supervision, the
24 inpatient treatment provider and the supervising community corrections
25 officer shall notify each other about the offender's discharge,
26 release, and legal status, and shall share other relevant information.

27 (6) Nothing in this section prohibits the filing of escape charges
28 if appropriate.

29 **Sec. 9.** RCW 9.94A.380 and 1988 c 157 s 4 and 1988 c 155 s 3 are
30 each reenacted and amended to read as follows:

31 Alternatives to total confinement are available for offenders with
32 sentences of one year or less. These alternatives include the
33 following sentence conditions that the court may order as substitutes
34 for total confinement: (1) One day of partial confinement may be
35 substituted for one day of total confinement; (2) in addition, for
36 offenders convicted of nonviolent offenses only, eight hours of
37 community ((~~service~~)) restitution may be substituted for one day of
38 total confinement, with a maximum conversion limit of two hundred forty

1 hours or thirty days. Community (~~service~~) restitution hours must be
2 completed within the period of community supervision or a time period
3 specified by the court, which shall not exceed twenty-four months,
4 pursuant to a schedule determined by the department.

5 For sentences of nonviolent offenders for one year or less, the
6 court shall consider and give priority to available alternatives to
7 total confinement and shall state its reasons in writing on the
8 judgment and sentence form if the alternatives are not used.

9 **Sec. 10.** RCW 9.94A.400 and 1998 c 235 s 2 are each amended to read
10 as follows:

11 (1)(a) Except as provided in (b) or (c) of this subsection,
12 whenever a person is to be sentenced for two or more current offenses,
13 the sentence range for each current offense shall be determined by
14 using all other current and prior convictions as if they were prior
15 convictions for the purpose of the offender score: PROVIDED, That if
16 the court enters a finding that some or all of the current offenses
17 encompass the same criminal conduct then those current offenses shall
18 be counted as one crime. Sentences imposed under this subsection shall
19 be served concurrently. Consecutive sentences may only be imposed
20 under the exceptional sentence provisions of RCW 9.94A.120 and
21 9.94A.390(2)(g) or any other provision of RCW 9.94A.390. "Same
22 criminal conduct," as used in this subsection, means two or more crimes
23 that require the same criminal intent, are committed at the same time
24 and place, and involve the same victim. This definition applies in
25 cases involving vehicular assault or vehicular homicide even if the
26 victims occupied the same vehicle.

27 (b) Whenever a person is convicted of two or more serious violent
28 offenses, as defined in RCW 9.94A.030, arising from separate and
29 distinct criminal conduct, the sentence range for the offense with the
30 highest seriousness level under RCW 9.94A.320 shall be determined using
31 the offender's prior convictions and other current convictions that are
32 not serious violent offenses in the offender score and the sentence
33 range for other serious violent offenses shall be determined by using
34 an offender score of zero. The sentence range for any offenses that
35 are not serious violent offenses shall be determined according to (a)
36 of this subsection. All sentences imposed under (b) of this subsection
37 shall be served consecutively to each other and concurrently with
38 sentences imposed under (a) of this subsection.

1 (c) If an offender is convicted under RCW 9.41.040 for unlawful
2 possession of a firearm in the first or second degree and for the
3 felony crimes of theft of a firearm or possession of a stolen firearm,
4 or both, then the offender shall serve consecutive sentences for each
5 conviction of the felony crimes listed in this subsection, and for each
6 firearm unlawfully possessed.

7 (2)(a) Except as provided in (b) of this subsection, whenever a
8 person while under sentence of felony commits another felony and is
9 sentenced to another term of confinement, the latter term shall not
10 begin until expiration of all prior terms.

11 (b) Whenever a second or later felony conviction results in
12 community supervision with conditions not currently in effect, under
13 the prior sentence or sentences of community supervision the court may
14 require that the conditions of community supervision contained in the
15 second or later sentence begin during the immediate term of community
16 supervision and continue throughout the duration of the consecutive
17 term of community supervision.

18 (3) Subject to subsections (1) and (2) of this section, whenever a
19 person is sentenced for a felony that was committed while the person
20 was not under sentence of a felony, the sentence shall run concurrently
21 with any felony sentence which has been imposed by any court in this or
22 another state or by a federal court subsequent to the commission of the
23 crime being sentenced unless the court pronouncing the current sentence
24 expressly orders that they be served consecutively.

25 (4) Whenever any person granted probation under RCW 9.95.210 or
26 9.92.060, or both, has the probationary sentence revoked and a prison
27 sentence imposed, that sentence shall run consecutively to any sentence
28 imposed pursuant to this chapter, unless the court pronouncing the
29 subsequent sentence expressly orders that they be served concurrently.

30 (5) However, in the case of consecutive sentences, all periods of
31 total confinement shall be served before any partial confinement,
32 community (~~service~~) restitution, community supervision, or any other
33 requirement or conditions of any of the sentences. Except for
34 exceptional sentences as authorized under RCW 9.94A.120(2), if two or
35 more sentences that run consecutively include periods of community
36 supervision, the aggregate of the community supervision period shall
37 not exceed twenty-four months.

1 **Sec. 11.** RCW 9.95.340 and 1986 c 125 s 3 are each amended to read
2 as follows:

3 Any funds in the hands of the department of corrections, or which
4 may come into its hands, which belong to discharged prisoners, inmates
5 assigned to work/training release facilities, parolees or persons
6 convicted of a felony and granted probation who absconded, or whose
7 whereabouts are unknown, shall be deposited in the community
8 ((~~services~~)) restitution revolving fund. Said funds shall be used to
9 defray the expenses of clothing and other necessities and for
10 transporting discharged prisoners, inmates assigned to work/training
11 release facilities, parolees and persons convicted of a felony and
12 granted probation who are without means to secure the same. All
13 payments disbursed from these funds shall be repaid, whenever possible,
14 by discharged prisoners, inmates assigned to work/training release
15 facilities, parolees and persons convicted of a felony and granted
16 probation for whose benefit they are made. Whenever any money
17 belonging to such persons is so paid into the revolving fund, it shall
18 be repaid to them in accordance with law if a claim therefor is filed
19 with the department of corrections within five years of deposit into
20 said fund and upon a clear showing of a legal right of such claimant to
21 such money.

22 **Sec. 12.** RCW 9.95.360 and 1986 c 125 s 5 are each amended to read
23 as follows:

24 The department of corrections shall create, maintain, and
25 administer outside the state treasury a permanent revolving fund to be
26 known as the "community ((~~services~~)) restitution revolving fund" into
27 which shall be deposited all moneys received by it under RCW 9.95.310
28 through 9.95.370 and any appropriation made for the purposes of RCW
29 9.95.310 through 9.95.370. All expenditures from this revolving fund
30 shall be made by check or voucher signed by the secretary of
31 corrections or his or her designee. The community ((~~services~~))
32 restitution revolving fund shall be deposited by the department of
33 corrections in such banks or financial institutions as it may select
34 which shall give to the department a surety bond executed by a surety
35 company authorized to do business in this state, or collateral eligible
36 as security for deposit of state funds in at least the full amount of
37 deposit.

1 **Sec. 13.** RCW 10.98.040 and 1985 c 201 s 1 are each amended to read
2 as follows:

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

5 (1) "Arrest and fingerprint form" means the reporting form
6 prescribed by the identification, child abuse, vulnerable adult abuse,
7 and criminal history section to initiate compiling arrest and
8 identification information.

9 (2) "Chief law enforcement officer" includes the sheriff or
10 director of public safety of a county, the chief of police of a city or
11 town, and chief officers of other law enforcement agencies operating
12 within the state.

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

14 (4) "Disposition" means the conclusion of a criminal proceeding at
15 any stage it occurs in the criminal justice system. Disposition
16 includes but is not limited to temporary or permanent outcomes such as
17 charges dropped by police, charges not filed by the prosecuting
18 attorney, deferred prosecution, defendant absconded, charges filed by
19 the prosecuting attorney pending court findings such as not guilty,
20 dismissed, guilty, or guilty--case appealed to higher court.

21 (5) "Disposition report" means the reporting form prescribed by the
22 identification, child abuse, vulnerable adult abuse, and criminal
23 history section to report the legal procedures taken after completing
24 an arrest and fingerprint form. The disposition report shall include
25 but not be limited to the following types of information:

26 (a) The type of disposition;

27 (b) The statutory citation for the arrests;

28 (c) The sentence structure if the defendant was convicted of a
29 felony;

30 (d) The state identification number; and

31 (e) Identification information and other information that is
32 prescribed by the identification, child abuse, vulnerable adult abuse,
33 and criminal history section.

34 (6) "Fingerprints" means the fingerprints taken from arrested or
35 charged persons under the procedures prescribed by the Washington state
36 patrol identification, child abuse, vulnerable adult abuse, and
37 criminal history section.

38 (7) "Prosecuting attorney" means the public or private attorney
39 prosecuting a criminal case.

1 (8) "Section" refers to the Washington state patrol section on
2 identification, child abuse, vulnerable adult abuse, and criminal
3 history.

4 (9) "Sentence structure" means itemizing the components of the
5 felony sentence. The sentence structure shall include but not be
6 limited to the total or partial confinement sentenced, and whether the
7 sentence is prison or jail, community supervision, fines, restitution,
8 or community ((~~service~~)) restitution.

9 **Sec. 14.** RCW 13.40.020 and 1997 c 338 s 10 are each amended to
10 read as follows:

11 For the purposes of this chapter:

12 (1) "Community-based rehabilitation" means one or more of the
13 following: Employment; attendance of information classes; literacy
14 classes; counseling, outpatient substance abuse treatment programs,
15 outpatient mental health programs, anger management classes, education
16 or outpatient treatment programs to prevent animal cruelty, or other
17 services; or attendance at school or other educational programs
18 appropriate for the juvenile as determined by the school district.
19 Placement in community-based rehabilitation programs is subject to
20 available funds;

21 (2) Community-based sanctions may include one or more of the
22 following:

23 (a) A fine, not to exceed five hundred dollars;

24 (b) Community ((~~service~~)) restitution not to exceed one hundred
25 fifty hours of ((~~service~~)) community restitution;

26 (3) "Community ((~~service~~)) restitution" means compulsory service,
27 without compensation, performed for the benefit of the community by the
28 offender as punishment for committing an offense. Community
29 ((~~service~~)) restitution may be performed through public or private
30 organizations or through work crews;

31 (4) "Community supervision" means an order of disposition by the
32 court of an adjudicated youth not committed to the department or an
33 order granting a deferred disposition. A community supervision order
34 for a single offense may be for a period of up to two years for a sex
35 offense as defined by RCW 9.94A.030 and up to one year for other
36 offenses. As a mandatory condition of any term of community
37 supervision, the court shall order the juvenile to refrain from
38 committing new offenses. As a mandatory condition of community

1 supervision, the court shall order the juvenile to comply with the
2 mandatory school attendance provisions of chapter 28A.225 RCW and to
3 inform the school of the existence of this requirement. Community
4 supervision is an individualized program comprised of one or more of
5 the following:

6 (a) Community-based sanctions;

7 (b) Community-based rehabilitation;

8 (c) Monitoring and reporting requirements;

9 (d) Posting of a probation bond;

10 (5) "Confinement" means physical custody by the department of
11 social and health services in a facility operated by or pursuant to a
12 contract with the state, or physical custody in a detention facility
13 operated by or pursuant to a contract with any county. The county may
14 operate or contract with vendors to operate county detention
15 facilities. The department may operate or contract to operate
16 detention facilities for juveniles committed to the department.
17 Pretrial confinement or confinement of less than thirty-one days
18 imposed as part of a disposition or modification order may be served
19 consecutively or intermittently, in the discretion of the court;

20 (6) "Court," when used without further qualification, means the
21 juvenile court judge(s) or commissioner(s);

22 (7) "Criminal history" includes all criminal complaints against the
23 respondent for which, prior to the commission of a current offense:

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

28 (b) The criminal complaint was diverted by a prosecutor pursuant to
29 the provisions of this chapter on agreement of the respondent and after
30 an advisement to the respondent that the criminal complaint would be
31 considered as part of the respondent's criminal history. A
32 successfully completed deferred adjudication that was entered before
33 July 1, 1998, or a deferred disposition shall not be considered part of
34 the respondent's criminal history;

35 (8) "Department" means the department of social and health
36 services;

37 (9) "Detention facility" means a county facility, paid for by the
38 county, for the physical confinement of a juvenile alleged to have
39 committed an offense or an adjudicated offender subject to a

1 disposition or modification order. "Detention facility" includes
2 county group homes, inpatient substance abuse programs, juvenile basic
3 training camps, and electronic monitoring;

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

21 (11) "Foster care" means temporary physical care in a foster family
22 home or group care facility as defined in RCW 74.15.020 and licensed by
23 the department, or other legally authorized care;

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

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

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

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

1 (16) "Local sanctions" means one or more of the following: (a)
2 0-30 days of confinement; (b) 0-12 months of community supervision; (c)
3 0-150 hours of community ((service)) restitution; or (d) \$0-\$500 fine;

4 (17) "Manifest injustice" means a disposition that would either
5 impose an excessive penalty on the juvenile or would impose a serious,
6 and clear danger to society in light of the purposes of this chapter;

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

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

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

26 (21) "Respondent" means a juvenile who is alleged or proven to have
27 committed an offense;

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

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

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

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

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

13 (27) "Surety" means an entity licensed under state insurance laws
14 or by the state department of licensing, to write corporate, property,
15 or probation bonds within the state, and justified and approved by the
16 superior court of the county having jurisdiction of the case;

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

20 (29) "Violent offense" means a violent offense as defined in RCW
21 9.94A.030.

22 **Sec. 15.** RCW 13.40.0357 and 1998 c 290 s 5 are each amended to
23 read as follows:

24 **DESCRIPTION AND OFFENSE CATEGORY**

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

30 **Arson and Malicious Mischief**

31	A	Arson 1 (9A.48.020)	B+
32	B	Arson 2 (9A.48.030)	C
33	C	Reckless Burning 1 (9A.48.040)	D
34	D	Reckless Burning 2 (9A.48.050)	E
35	B	Malicious Mischief 1 (9A.48.070)	C
36	C	Malicious Mischief 2 (9A.48.080)	D
37	D	Malicious Mischief 3 (<\$50 is	
38		E class) (9A.48.090)	E

1	E	Tampering with Fire Alarm	
2		Apparatus (9.40.100)	E
3	A	Possession of Incendiary Device	
4		(9.40.120)	B+
5		Assault and Other Crimes	
6		Involving Physical Harm	
7	A	Assault 1 (9A.36.011)	B+
8	B+	Assault 2 (9A.36.021)	C+
9	C+	Assault 3 (9A.36.031)	D+
10	D+	Assault 4 (9A.36.041)	E
11	B+	Drive-By Shooting	
12		(9A.36.045)	C+
13	D+	Reckless Endangerment	
14		(9A.36.050)	E
15	C+	Promoting Suicide Attempt	
16		(9A.36.060)	D+
17	D+	Coercion (9A.36.070)	E
18	C+	Custodial Assault (9A.36.100)	D+
19		Burglary and Trespass	
20	B+	Burglary 1 (9A.52.020)	C+
21	B	Residential Burglary	
22		(9A.52.025)	C
23	B	Burglary 2 (9A.52.030)	C
24	D	Burglary Tools (Possession of)	
25		(9A.52.060)	E
26	D	Criminal Trespass 1 (9A.52.070)	E
27	E	Criminal Trespass 2 (9A.52.080)	E
28	C	Vehicle Prowling 1 (9A.52.095)	D
29	D	Vehicle Prowling 2 (9A.52.100)	E
30		Drugs	
31	E	Possession/Consumption of Alcohol	
32		(66.44.270)	E
33	C	Illegally Obtaining Legend Drug	
34		(69.41.020)	D
35	C+	Sale, Delivery, Possession of Legend	
36		Drug with Intent to Sell	
37		(69.41.030)	D+

1	E	Possession of Legend Drug	
2		(69.41.030)	E
3	B+	Violation of Uniform Controlled	
4		Substances Act - Narcotic,	
5		Methamphetamine, or Flunitrazepam	
6		Sale (69.50.401(a)(1) (i) or (ii))	B+
7	C	Violation of Uniform Controlled	
8		Substances Act - Nonnarcotic Sale	
9		(69.50.401(a)(1)(iii))	C
10	E	Possession of Marihuana <40 grams	
11		(69.50.401(e))	E
12	C	Fraudulently Obtaining Controlled	
13		Substance (69.50.403)	C
14	C+	Sale of Controlled Substance	
15		for Profit (69.50.410)	C+
16	E	Unlawful Inhalation (9.47A.020)	E
17	B	Violation of Uniform Controlled	
18		Substances Act - Narcotic,	
19		Methamphetamine, or Flunitrazepam	
20		Counterfeit Substances	
21		(69.50.401(b)(1) (i) or (ii))	B
22	C	Violation of Uniform Controlled	
23		Substances Act - Nonnarcotic	
24		Counterfeit Substances	
25		(69.50.401(b)(1) (iii), (iv), (v))	C
26	C	Violation of Uniform Controlled	
27		Substances Act - Possession of a	
28		Controlled Substance	
29		(69.50.401(d))	C
30	C	Violation of Uniform Controlled	
31		Substances Act - Possession of a	
32		Controlled Substance	
33		(69.50.401(c))	C
34		Firearms and Weapons	
35	B	Theft of Firearm (9A.56.300)	C
36	B	Possession of Stolen Firearm	
37		(9A.56.310)	C

1	E	Carrying Loaded Pistol Without	
2		Permit (9.41.050)	E
3	C	Possession of Firearms by Minor (<18)	
4		(9.41.040(1)(b)(iii))	C
5	D+	Possession of Dangerous Weapon	
6		(9.41.250)	E
7	D	Intimidating Another Person by use	
8		of Weapon (9.41.270)	E
9		Homicide	
10	A+	Murder 1 (9A.32.030)	A
11	A+	Murder 2 (9A.32.050)	B+
12	B+	Manslaughter 1 (9A.32.060)	C+
13	C+	Manslaughter 2 (9A.32.070)	D+
14	B+	Vehicular Homicide (46.61.520)	C+
15		Kidnapping	
16	A	Kidnap 1 (9A.40.020)	B+
17	B+	Kidnap 2 (9A.40.030)	C+
18	C+	Unlawful Imprisonment	
19		(9A.40.040)	D+
20		Obstructing Governmental Operation	
21	D	Obstructing a Law Enforcement	
22		Officer (9A.76.020)	E
23	E	Resisting Arrest (9A.76.040)	E
24	B	Introducing Contraband 1	
25		(9A.76.140)	C
26	C	Introducing Contraband 2	
27		(9A.76.150)	D
28	E	Introducing Contraband 3	
29		(9A.76.160)	E
30	B+	Intimidating a Public Servant	
31		(9A.76.180)	C+
32	B+	Intimidating a Witness	
33		(9A.72.110)	C+
34		Public Disturbance	
35	C+	Riot with Weapon (9A.84.010)	D+
36	D+	Riot Without Weapon	
37		(9A.84.010)	E

1	E	Failure to Disperse (9A.84.020)	E
2	E	Disorderly Conduct (9A.84.030)	E
3		Sex Crimes	
4	A	Rape 1 (9A.44.040)	B+
5	A-	Rape 2 (9A.44.050)	B+
6	C+	Rape 3 (9A.44.060)	D+
7	A-	Rape of a Child 1 (9A.44.073)	B+
8	B+	Rape of a Child 2 (9A.44.076)	C+
9	B	Incest 1 (9A.64.020(1))	C
10	C	Incest 2 (9A.64.020(2))	D
11	D+	Indecent Exposure	
12		(Victim <14) (9A.88.010)	E
13	E	Indecent Exposure	
14		(Victim 14 or over) (9A.88.010)	E
15	B+	Promoting Prostitution 1	
16		(9A.88.070)	C+
17	C+	Promoting Prostitution 2	
18		(9A.88.080)	D+
19	E	O & A (Prostitution) (9A.88.030)	E
20	B+	Indecent Liberties (9A.44.100)	C+
21	A-	Child Molestation 1 (9A.44.083)	B+
22	B	Child Molestation 2 (9A.44.086)	C+
23		Theft, Robbery, Extortion, and Forgery	
24	B	Theft 1 (9A.56.030)	C
25	C	Theft 2 (9A.56.040)	D
26	D	Theft 3 (9A.56.050)	E
27	B	Theft of Livestock (9A.56.080)	C
28	C	Forgery (9A.60.020)	D
29	A	Robbery 1 (9A.56.200)	B+
30	B+	Robbery 2 (9A.56.210)	C+
31	B+	Extortion 1 (9A.56.120)	C+
32	C+	Extortion 2 (9A.56.130)	D+
33	B	Possession of Stolen Property 1	
34		(9A.56.150)	C
35	C	Possession of Stolen Property 2	
36		(9A.56.160)	D
37	D	Possession of Stolen Property 3	
38		(9A.56.170)	E

1	C	Taking Motor Vehicle Without	
2		Owner's Permission (9A.56.070)	D
3		Motor Vehicle Related Crimes	
4	E	Driving Without a License	
5		(46.20.005)	E
6	C	Hit and Run - Injury	
7		(46.52.020(4))	D
8	D	Hit and Run-Attended	
9		(46.52.020(5))	E
10	E	Hit and Run-Unattended	
11		(46.52.010)	E
12	C	Vehicular Assault (46.61.522)	D
13	C	Attempting to Elude Pursuing	
14		Police Vehicle (46.61.024)	D
15	E	Reckless Driving (46.61.500)	E
16	D	Driving While Under the Influence	
17		(46.61.502 and 46.61.504)	E
18		Other	
19	B	Bomb Threat (9.61.160)	C
20	C	Escape 1 (9A.76.110)	C
21	C	Escape 2 (9A.76.120)	C
22	D	Escape 3 (9A.76.130)	E
23	E	Obscene, Harassing, Etc.,	
24		Phone Calls (9.61.230)	E
25	A	Other Offense Equivalent to an	
26		Adult Class A Felony	B+
27	B	Other Offense Equivalent to an	
28		Adult Class B Felony	C
29	C	Other Offense Equivalent to an	
30		Adult Class C Felony	D
31	D	Other Offense Equivalent to an	
32		Adult Gross Misdemeanor	E
33	E	Other Offense Equivalent to an	
34		Adult Misdemeanor	E
35	V	Violation of Order of Restitution,	
36		Community Supervision, or	
37		Confinement (13.40.200)	V

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

3 1st escape or attempted escape during 12-month period - 4 weeks
 4 confinement

5 2nd escape or attempted escape during 12-month period - 8 weeks
 6 confinement

7 3rd and subsequent escape or attempted escape during 12-month
 8 period - 12 weeks confinement

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

11 **JUVENILE SENTENCING STANDARDS**

12 This schedule must be used for juvenile offenders. The court may
 13 select sentencing option A, B, or C.

14 **OPTION A**
 15 **JUVENILE OFFENDER SENTENCING GRID**
 16 **STANDARD RANGE**

17		_____				
18	A+	180 WEEKS TO AGE 21 YEARS				
19		_____				
20	A	103 WEEKS TO 129 WEEKS				
21		_____				
22	A-	15-36	52-65	80-100	103-129	
23		WEEKS	WEEKS	WEEKS	WEEKS	
24		EXCEPT				
25		30-40				
26		WEEKS FOR				
27		15-17				
28		YEAR OLDS				
29		_____				
30	Current	B+	15-36	52-65	80-100 103-129	
31	Offense		WEEKS	WEEKS	WEEKS WEEKS	
32	Category		_____			
33		B	LOCAL		52-65	
34			SANCTIONS (LS)	15-36 WEEKS	WEEKS	
35			_____			
36		C+	LS			
37				15-36 WEEKS		
38			_____			
39		C	LS		15-36 WEEKS	
40			Local Sanctions:			

1			0 to 30 Days	
2	D+	LS	0 to 12 Months Community Supervision	
3			0 to 150 Hours Community ((Service)) <u>Restitution</u>	
4	D	LS	\$0 to \$500 Fine	
5	E	LS		
6				
7			0	1
8			2	3
				4 or more
			PRIOR ADJUDICATIONS	

9 NOTE: References in the grid to days or weeks mean periods of
10 confinement.

11 (1) The vertical axis of the grid is the current offense category.
12 The current offense category is determined by the offense of
13 adjudication.

14 (2) The horizontal axis of the grid is the number of prior
15 adjudications included in the juvenile's criminal history. Each prior
16 felony adjudication shall count as one point. Each prior violation,
17 misdemeanor, and gross misdemeanor adjudication shall count as 1/4
18 point. Fractional points shall be rounded down.

19 (3) The standard range disposition for each offense is determined
20 by the intersection of the column defined by the prior adjudications
21 and the row defined by the current offense category.

22 (4) RCW 13.40.180 applies if the offender is being sentenced for
23 more than one offense.

24 (5) A current offense that is a violation is equivalent to an
25 offense category of E. However, a disposition for a violation shall
26 not include confinement.

27 **OR**

28 **OPTION B**
29 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

30 If the juvenile offender is subject to a standard range disposition
31 of local sanctions or 15 to 36 weeks of confinement and has not
32 committed an A- or B+ offense, the court may impose a disposition under
33 RCW 13.40.160(5) and 13.40.165.

34 **OR**

35 **OPTION C**
36 **MANIFEST INJUSTICE**

1 If the court determines that a disposition under option A or B would
2 effectuate a manifest injustice, the court shall impose a disposition
3 outside the standard range under RCW 13.40.160(2).

4 **Sec. 16.** RCW 13.40.080 and 1997 c 338 s 70 are each amended to
5 read as follows:

6 (1) A diversion agreement shall be a contract between a juvenile
7 accused of an offense and a diversionary unit whereby the juvenile
8 agrees to fulfill certain conditions in lieu of prosecution. Such
9 agreements may be entered into only after the prosecutor, or probation
10 counselor pursuant to this chapter, has determined that probable cause
11 exists to believe that a crime has been committed and that the juvenile
12 committed it. Such agreements shall be entered into as expeditiously
13 as possible.

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

16 (a) Community (~~service~~) restitution not to exceed one hundred
17 fifty hours, not to be performed during school hours if the juvenile is
18 attending school;

19 (b) Restitution limited to the amount of actual loss incurred by
20 the victim;

21 (c) Attendance at up to ten hours of counseling and/or up to twenty
22 hours of educational or informational sessions at a community agency.
23 The educational or informational sessions may include sessions relating
24 to respect for self, others, and authority; victim awareness;
25 accountability; self-worth; responsibility; work ethics; good
26 citizenship; literacy; and life skills. For purposes of this section,
27 "community agency" may also mean a community-based nonprofit
28 organization, if approved by the diversion unit. The state shall not
29 be liable for costs resulting from the diversionary unit exercising the
30 option to permit diversion agreements to mandate attendance at up to
31 ten hours of counseling and/or up to twenty hours of educational or
32 informational sessions;

33 (d) A fine, not to exceed one hundred dollars. In determining the
34 amount of the fine, the diversion unit shall consider only the
35 juvenile's financial resources and whether the juvenile has the means
36 to pay the fine. The diversion unit shall not consider the financial
37 resources of the juvenile's parents, guardian, or custodian in
38 determining the fine to be imposed; and

1 (e) Requirements to remain during specified hours at home, school,
2 or work, and restrictions on leaving or entering specified geographical
3 areas.

4 (3) In assessing periods of community (~~(service)~~) restitution to be
5 performed and restitution to be paid by a juvenile who has entered into
6 a diversion agreement, the court officer to whom this task is assigned
7 shall consult with the juvenile's custodial parent or parents or
8 guardian and victims who have contacted the diversionary unit and, to
9 the extent possible, involve members of the community. Such members of
10 the community shall meet with the juvenile and advise the court officer
11 as to the terms of the diversion agreement and shall supervise the
12 juvenile in carrying out its terms.

13 (4)(a) A diversion agreement may not exceed a period of six months
14 and may include a period extending beyond the eighteenth birthday of
15 the diverttee.

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

19 (c) If the juvenile has not paid the full amount of restitution by
20 the end of the additional six-month period, then the juvenile shall be
21 referred to the juvenile court for entry of an order establishing the
22 amount of restitution still owed to the victim. In this order, the
23 court shall also determine the terms and conditions of the restitution,
24 including a payment plan extending up to ten years if the court
25 determines that the juvenile does not have the means to make full
26 restitution over a shorter period. For the purposes of this subsection
27 (4)(c), the juvenile shall remain under the court's jurisdiction for a
28 maximum term of ten years after the juvenile's eighteenth birthday.
29 Prior to the expiration of the initial ten-year period, the juvenile
30 court may extend the judgment for restitution an additional ten years.
31 The court may not require the juvenile to pay full or partial
32 restitution if the juvenile reasonably satisfies the court that he or
33 she does not have the means to make full or partial restitution and
34 could not reasonably acquire the means to pay the restitution over a
35 ten-year period. The county clerk shall make disbursements to victims
36 named in the order. The restitution to victims named in the order
37 shall be paid prior to any payment for other penalties or monetary
38 assessments. A juvenile under obligation to pay restitution may
39 petition the court for modification of the restitution order.

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

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

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

10 (b) Violation of the terms of the agreement shall be the only
11 grounds for termination;

12 (c) No divertee may be terminated from a diversion program without
13 being given a court hearing, which hearing shall be preceded by:

14 (i) Written notice of alleged violations of the conditions of the
15 diversion program; and

16 (ii) Disclosure of all evidence to be offered against the divertee;

17 (d) The hearing shall be conducted by the juvenile court and shall
18 include:

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

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

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

23 (iv) Demonstration by evidence that the divertee has substantially
24 violated the terms of his or her diversion agreement.

25 (e) The prosecutor may file an information on the offense for which
26 the divertee was diverted:

27 (i) In juvenile court if the divertee is under eighteen years of
28 age; or

29 (ii) In superior court or the appropriate court of limited
30 jurisdiction if the divertee is eighteen years of age or older.

31 (7) The diversion unit shall, subject to available funds, be
32 responsible for providing interpreters when juveniles need interpreters
33 to effectively communicate during diversion unit hearings or
34 negotiations.

35 (8) The diversion unit shall be responsible for advising a divertee
36 of his or her rights as provided in this chapter.

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

1 (10) The right to counsel shall inure prior to the initial
2 interview for purposes of advising the juvenile as to whether he or she
3 desires to participate in the diversion process or to appear in the
4 juvenile court. The juvenile may be represented by counsel at any
5 critical stage of the diversion process, including intake interviews
6 and termination hearings. The juvenile shall be fully advised at the
7 intake of his or her right to an attorney and of the relevant services
8 an attorney can provide. For the purpose of this section, intake
9 interviews mean all interviews regarding the diversion agreement
10 process.

11 The juvenile shall be advised that a diversion agreement shall
12 constitute a part of the juvenile's criminal history as defined by RCW
13 13.40.020(~~(+9)~~) (7). A signed acknowledgment of such advisement shall
14 be obtained from the juvenile, and the document shall be maintained by
15 the diversionary unit together with the diversion agreement, and a copy
16 of both documents shall be delivered to the prosecutor if requested by
17 the prosecutor. The supreme court shall promulgate rules setting forth
18 the content of such advisement in simple language.

19 (11) When a juvenile enters into a diversion agreement, the
20 juvenile court may receive only the following information for
21 dispositional purposes:

- 22 (a) The fact that a charge or charges were made;
- 23 (b) The fact that a diversion agreement was entered into;
- 24 (c) The juvenile's obligations under such agreement;
- 25 (d) Whether the alleged offender performed his or her obligations
26 under such agreement; and
- 27 (e) The facts of the alleged offense.

28 (12) A diversionary unit may refuse to enter into a diversion
29 agreement with a juvenile. When a diversionary unit refuses to enter
30 a diversion agreement with a juvenile, it shall immediately refer such
31 juvenile to the court for action and shall forward to the court the
32 criminal complaint and a detailed statement of its reasons for refusing
33 to enter into a diversion agreement. The diversionary unit shall also
34 immediately refer the case to the prosecuting attorney for action if
35 such juvenile violates the terms of the diversion agreement.

36 (13) A diversionary unit may, in instances where it determines that
37 the act or omission of an act for which a juvenile has been referred to
38 it involved no victim, or where it determines that the juvenile
39 referred to it has no prior criminal history and is alleged to have

1 committed an illegal act involving no threat of or instance of actual
2 physical harm and involving not more than fifty dollars in property
3 loss or damage and that there is no loss outstanding to the person or
4 firm suffering such damage or loss, counsel and release or release such
5 a juvenile without entering into a diversion agreement. A diversion
6 unit's authority to counsel and release a juvenile under this
7 subsection shall include the authority to refer the juvenile to
8 community-based counseling or treatment programs. Any juvenile
9 released under this subsection shall be advised that the act or
10 omission of any act for which he or she had been referred shall
11 constitute a part of the juvenile's criminal history as defined by RCW
12 13.40.020(~~(+9)~~) (7). A signed acknowledgment of such advisement shall
13 be obtained from the juvenile, and the document shall be maintained by
14 the unit, and a copy of the document shall be delivered to the
15 prosecutor if requested by the prosecutor. The supreme court shall
16 promulgate rules setting forth the content of such advisement in simple
17 language. A juvenile determined to be eligible by a diversionary unit
18 for release as provided in this subsection shall retain the same right
19 to counsel and right to have his or her case referred to the court for
20 formal action as any other juvenile referred to the unit.

21 (14) A diversion unit may supervise the fulfillment of a diversion
22 agreement entered into before the juvenile's eighteenth birthday and
23 which includes a period extending beyond the diverttee's eighteenth
24 birthday.

25 (15) If a fine required by a diversion agreement cannot reasonably
26 be paid due to a change of circumstance, the diversion agreement may be
27 modified at the request of the diverttee and with the concurrence of the
28 diversion unit to convert an unpaid fine into community (~~(service)~~)
29 restitution. The modification of the diversion agreement shall be in
30 writing and signed by the diverttee and the diversion unit. The number
31 of hours of community (~~(service)~~) restitution in lieu of a monetary
32 penalty shall be converted at the rate of the prevailing state minimum
33 wage per hour.

34 (16) Fines imposed under this section shall be collected and paid
35 into the county general fund in accordance with procedures established
36 by the juvenile court administrator under RCW 13.04.040 and may be used
37 only for juvenile services. In the expenditure of funds for juvenile
38 services, there shall be a maintenance of effort whereby counties

1 exhaust existing resources before using amounts collected under this
2 section.

3 **Sec. 17.** RCW 13.40.160 and 1997 c 338 s 25 and 1997 c 265 s 1 are
4 each reenacted and amended to read as follows:

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

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

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

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

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

32 (3) Where a respondent is found to have committed an offense for
33 which the respondent declined to enter into a diversion agreement, the
34 court shall impose a term of community supervision limited to the
35 conditions allowed in a diversion agreement as provided in RCW
36 13.40.080(2).

37 (4) When a juvenile offender is found to have committed a sex
38 offense, other than a sex offense that is also a serious violent

1 offense as defined by RCW 9.94A.030, and has no history of a prior sex
2 offense, the court, on its own motion or the motion of the state or the
3 respondent, may order an examination to determine whether the
4 respondent is amenable to treatment.

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

12 The examiner shall assess and report regarding the respondent's
13 amenability to treatment and relative risk to the community. A
14 proposed treatment plan shall be provided and shall include, at a
15 minimum:

16 (a)(i) Frequency and type of contact between the offender and
17 therapist;

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

20 (iii) Monitoring plans, including any requirements regarding living
21 conditions, lifestyle requirements, and monitoring by family members,
22 legal guardians, or others;

23 (iv) Anticipated length of treatment; and

24 (v) Recommended crime-related prohibitions.

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

31 After receipt of reports of the examination, the court shall then
32 consider whether the offender and the community will benefit from use
33 of this special sex offender disposition alternative and consider the
34 victim's opinion whether the offender should receive a treatment
35 disposition under this section. If the court determines that this
36 special sex offender disposition alternative is appropriate, then the
37 court shall impose a determinate disposition within the standard range
38 for the offense, or if the court concludes, and enters reasons for its
39 conclusions, that such disposition would cause a manifest injustice,

1 the court shall impose a disposition under option C, and the court may
2 suspend the execution of the disposition and place the offender on
3 community supervision for at least two years. As a condition of the
4 suspended disposition, the court may impose the conditions of community
5 supervision and other conditions, including up to thirty days of
6 confinement and requirements that the offender do any one or more of
7 the following:

8 (b)(i) Devote time to a specific education, employment, or
9 occupation;

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

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

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

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

27 (vi) Pay all court-ordered legal financial obligations, perform
28 community ((~~service~~)) restitution, or any combination thereof;

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

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

33 (ix) The court shall order that the offender may not attend the
34 public or approved private elementary, middle, or high school attended
35 by the victim or the victim's siblings. The parents or legal guardians
36 of the offender are responsible for transportation or other costs
37 associated with the offender's change of school that would otherwise be
38 paid by the school district. The court shall send notice of the
39 disposition and restriction on attending the same school as the victim

1 or victim's siblings to the public or approved private school the
2 juvenile will attend, if known, or if unknown, to the approved private
3 schools and the public school district board of directors of the
4 district in which the juvenile resides or intends to reside. This
5 notice must be sent at the earliest possible date but not later than
6 ten calendar days after entry of the disposition.

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

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

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

29 If the offender violates any condition of the disposition or the
30 court finds that the respondent is failing to make satisfactory
31 progress in treatment, the court may revoke the suspension and order
32 execution of the disposition or the court may impose a penalty of up to
33 thirty days' confinement for violating conditions of the disposition.
34 The court may order both execution of the disposition and up to thirty
35 days' confinement for the violation of the conditions of the
36 disposition. The court shall give credit for any confinement time
37 previously served if that confinement was for the offense for which the
38 suspension is being revoked.

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

6 A disposition entered under this subsection (4) is not appealable
7 under RCW 13.40.230.

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

12 (6) RCW 13.40.193 shall govern the disposition of any juvenile
13 adjudicated of possessing a firearm in violation of RCW
14 9.41.040(1)(b)(iii) or any crime in which a special finding is entered
15 that the juvenile was armed with a firearm.

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

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

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

26 **Sec. 18.** RCW 13.40.165 and 1997 c 338 s 26 are each amended to
27 read as follows:

28 (1) When a juvenile offender is subject to a standard range
29 disposition of local sanctions or 15 to 36 weeks of confinement and has
30 not committed an A- or B+ offense, the court, on its own motion or the
31 motion of the state or the respondent if the evidence shows that the
32 offender may be chemically dependent, may order an examination by a
33 chemical dependency counselor from a chemical dependency treatment
34 facility approved under chapter 70.96A RCW to determine if the youth is
35 chemically dependent and amenable to treatment.

36 (2) The report of the examination shall include at a minimum the
37 following: The respondent's version of the facts and the official
38 version of the facts, the respondent's offense history, an assessment

1 of drug-alcohol problems and previous treatment attempts, the
2 respondent's social, educational, and employment situation, and other
3 evaluation measures used. The report shall set forth the sources of
4 the examiner's information.

5 (3) The examiner shall assess and report regarding the respondent's
6 amenability to treatment and relative risk to the community. A
7 proposed treatment plan shall be provided and shall include, at a
8 minimum:

9 (a) Whether inpatient and/or outpatient treatment is recommended;

10 (b) Availability of appropriate treatment;

11 (c) Monitoring plans, including any requirements regarding living
12 conditions, lifestyle requirements, and monitoring by family members,
13 legal guardians, or others;

14 (d) Anticipated length of treatment;

15 (e) Recommended crime-related prohibitions; and

16 (f) Whether the respondent is amenable to treatment.

17 (4) The court on its own motion may order, or on a motion by the
18 state shall order, a second examination regarding the offender's
19 amenability to treatment. The evaluator shall be selected by the party
20 making the motion. The defendant shall pay the cost of any examination
21 ordered under this subsection (4) or subsection (1) of this section
22 unless the court finds that the offender is indigent and no third party
23 insurance coverage is available, in which case the state shall pay the
24 cost.

25 (5)(a) After receipt of reports of the examination, the court shall
26 then consider whether the offender and the community will benefit from
27 use of this chemical dependency disposition alternative and consider
28 the victim's opinion whether the offender should receive a treatment
29 disposition under this section.

30 (b) If the court determines that this chemical dependency
31 disposition alternative is appropriate, then the court shall impose the
32 standard range for the offense, suspend execution of the disposition,
33 and place the offender on community supervision for up to one year. As
34 a condition of the suspended disposition, the court shall require the
35 offender to undergo available outpatient drug/alcohol treatment and/or
36 inpatient drug/alcohol treatment. For purposes of this section, the
37 sum of confinement time and inpatient treatment may not exceed ninety
38 days. As a condition of the suspended disposition, the court may
39 impose conditions of community supervision and other sanctions,

1 including up to thirty days of confinement, one hundred fifty hours of
2 community ((~~service~~)) restitution, and payment of legal financial
3 obligations and restitution.

4 (6) The drug/alcohol treatment provider shall submit monthly
5 reports on the respondent's progress in treatment to the court and the
6 parties. The reports shall reference the treatment plan and include at
7 a minimum the following: Dates of attendance, respondent's compliance
8 with requirements, treatment activities, the respondent's relative
9 progress in treatment, and any other material specified by the court at
10 the time of the disposition.

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

13 If the offender violates any condition of the disposition or the
14 court finds that the respondent is failing to make satisfactory
15 progress in treatment, the court may revoke the suspension and order
16 execution of the disposition. The court shall give credit for any
17 confinement time previously served if that confinement was for the
18 offense for which the suspension is being revoked.

19 (7) For purposes of this section, "victim" means any person who has
20 sustained emotional, psychological, physical, or financial injury to
21 person or property as a direct result of the offense charged.

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

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) A disposition under this section is not appealable under RCW
30 13.40.230.

31 **Sec. 19.** RCW 13.40.180 and 1981 c 299 s 14 are each amended to
32 read as follows:

33 Where a disposition is imposed on a youth for two or more offenses,
34 the terms shall run consecutively, subject to the following
35 limitations:

36 (1) Where the offenses were committed through a single act or
37 omission, omission, or through an act or omission which in itself
38 constituted one of the offenses and also was an element of the other,

1 the aggregate of all the terms shall not exceed one hundred fifty
2 percent of the term imposed for the most serious offense;

3 (2) The aggregate of all consecutive terms shall not exceed three
4 hundred percent of the term imposed for the most serious offense; and

5 (3) The aggregate of all consecutive terms of community supervision
6 shall not exceed two years in length, or require payment of more than
7 two hundred dollars in fines or the performance of more than two
8 hundred hours of community ((~~service~~)) restitution.

9 **Sec. 20.** RCW 13.40.200 and 1997 c 338 s 31 are each amended to
10 read as follows:

11 (1) When a respondent fails to comply with an order of restitution,
12 community supervision, penalty assessments, or confinement of less than
13 thirty days, the court upon motion of the prosecutor or its own motion,
14 may modify the order after a hearing on the violation.

15 (2) The hearing shall afford the respondent the same due process of
16 law as would be afforded an adult probationer. The court may issue a
17 summons or a warrant to compel the respondent's appearance. The state
18 shall have the burden of proving by a preponderance of the evidence the
19 fact of the violation. The respondent shall have the burden of showing
20 that the violation was not a willful refusal to comply with the terms
21 of the order. If a respondent has failed to pay a fine, penalty
22 assessments, or restitution or to perform community ((~~service~~))
23 restitution hours, as required by the court, it shall be the
24 respondent's burden to show that he or she did not have the means and
25 could not reasonably have acquired the means to pay the fine, penalty
26 assessments, or restitution or perform community ((~~service~~))
27 restitution.

28 (3) If the court finds that a respondent has willfully violated the
29 terms of an order pursuant to subsections (1) and (2) of this section,
30 it may impose a penalty of up to thirty days' confinement. Penalties
31 for multiple violations occurring prior to the hearing shall not be
32 aggregated to exceed thirty days' confinement. Regardless of the
33 number of times a respondent is brought to court for violations of the
34 terms of a single disposition order, the combined total number of days
35 spent by the respondent in detention shall never exceed the maximum
36 term to which an adult could be sentenced for the underlying offense.

37 (4) If a respondent has been ordered to pay a fine or monetary
38 penalty and due to a change of circumstance cannot reasonably comply

1 with the order, the court, upon motion of the respondent, may order
2 that the unpaid fine or monetary penalty be converted to community
3 ((~~service~~)) restitution. The number of hours of community ((~~service~~))
4 restitution in lieu of a monetary penalty or fine shall be converted at
5 the rate of the prevailing state minimum wage per hour. The monetary
6 penalties or fines collected shall be deposited in the county general
7 fund. A failure to comply with an order under this subsection shall be
8 deemed a failure to comply with an order of community supervision and
9 may be proceeded against as provided in this section.

10 (5) When a respondent has willfully violated the terms of a
11 probation bond, the court may modify, revoke, or retain the probation
12 bond as provided in RCW 13.40.054.

13 **Sec. 21.** RCW 13.40.205 and 1990 c 3 s 103 are each amended to read
14 as follows:

15 (1) A juvenile sentenced to a term of confinement to be served
16 under the supervision of the department shall not be released from the
17 physical custody of the department prior to the release date
18 established under RCW 13.40.210 except as otherwise provided in this
19 section.

20 (2) A juvenile serving a term of confinement under the supervision
21 of the department may be released on authorized leave from the physical
22 custody of the department only if consistent with public safety and if:

23 (a) Sixty percent of the minimum term of confinement has been
24 served; and

25 (b) The purpose of the leave is to enable the juvenile:

26 (i) To visit the juvenile's family for the purpose of strengthening
27 or preserving family relationships;

28 (ii) To make plans for parole or release which require the
29 juvenile's personal appearance in the community and which will
30 facilitate the juvenile's reintegration into the community; or

31 (iii) To make plans for a residential placement out of the
32 juvenile's home which requires the juvenile's personal appearance in
33 the community.

34 (3) No authorized leave may exceed seven consecutive days. The
35 total of all pre-minimum term authorized leaves granted to a juvenile
36 prior to final discharge from confinement shall not exceed thirty days.

37 (4) Prior to authorizing a leave, the secretary shall require a
38 written leave plan, which shall detail the purpose of the leave and how

1 it is to be achieved, the address at which the juvenile shall reside,
2 the identity of the person responsible for supervising the juvenile
3 during the leave, and a statement by such person acknowledging
4 familiarity with the leave plan and agreeing to supervise the juvenile
5 and to notify the secretary immediately if the juvenile violates any
6 terms or conditions of the leave. The leave plan shall include such
7 terms and conditions as the secretary deems appropriate and shall be
8 signed by the juvenile.

9 (5) Upon authorizing a leave, the secretary shall issue to the
10 juvenile an authorized leave order which shall contain the name of the
11 juvenile, the fact that the juvenile is on leave from a designated
12 facility, the time period of the leave, and the identity of an
13 appropriate official of the department to contact when necessary. The
14 authorized leave order shall be carried by the juvenile at all times
15 while on leave.

16 (6) Prior to the commencement of any authorized leave, the
17 secretary shall give notice of the leave to the appropriate law
18 enforcement agency in the jurisdiction in which the juvenile will
19 reside during the leave period. The notice shall include the identity
20 of the juvenile, the time period of the leave, the residence of the
21 juvenile during the leave, and the identity of the person responsible
22 for supervising the juvenile during the leave.

23 (7) The secretary may authorize a leave, which shall not exceed
24 forty-eight hours plus travel time, to meet an emergency situation such
25 as a death or critical illness of a member of the juvenile's family.
26 The secretary may authorize a leave, which shall not exceed the period
27 of time medically necessary, to obtain medical care not available in a
28 juvenile facility maintained by the department. In cases of emergency
29 or medical leave the secretary may waive all or any portions of
30 subsections (2)(a), (3), (4), (5), and (6) of this section.

31 (8) If requested by the juvenile's victim or the victim's immediate
32 family, the secretary shall give notice of any leave to the victim or
33 the victim's immediate family.

34 (9) A juvenile who violates any condition of an authorized leave
35 plan may be taken into custody and returned to the department in the
36 same manner as an adult in identical circumstances.

37 (10) Notwithstanding the provisions of this section, a juvenile
38 placed in minimum security status may participate in work, educational,
39 community ((service)) restitution, or treatment programs in the

1 community up to twelve hours a day if approved by the secretary. Such
2 a release shall not be deemed a leave of absence.

3 (11) Subsections (6), (7), and (8) of this section do not apply to
4 juveniles covered by RCW 13.40.215.

5 **Sec. 22.** RCW 13.40.210 and 1997 c 338 s 32 are each amended to
6 read as follows:

7 (1) The secretary shall, except in the case of a juvenile committed
8 by a court to a term of confinement in a state institution outside the
9 appropriate standard range for the offense(s) for which the juvenile
10 was found to be guilty established pursuant to RCW 13.40.030, set a
11 release or discharge date for each juvenile committed to its custody.
12 The release or discharge date shall be within the prescribed range to
13 which a juvenile has been committed except as provided in RCW 13.40.320
14 concerning offenders the department determines are eligible for the
15 juvenile offender basic training camp program. Such dates shall be
16 determined prior to the expiration of sixty percent of a juvenile's
17 minimum term of confinement included within the prescribed range to
18 which the juvenile has been committed. The secretary shall release any
19 juvenile committed to the custody of the department within four
20 calendar days prior to the juvenile's release date or on the release
21 date set under this chapter. Days spent in the custody of the
22 department shall be tolled by any period of time during which a
23 juvenile has absented himself or herself from the department's
24 supervision without the prior approval of the secretary or the
25 secretary's designee.

26 (2) The secretary shall monitor the average daily population of the
27 state's juvenile residential facilities. When the secretary concludes
28 that in-residence population of residential facilities exceeds one
29 hundred five percent of the rated bed capacity specified in statute, or
30 in absence of such specification, as specified by the department in
31 rule, the secretary may recommend reductions to the governor. On
32 certification by the governor that the recommended reductions are
33 necessary, the secretary has authority to administratively release a
34 sufficient number of offenders to reduce in-residence population to one
35 hundred percent of rated bed capacity. The secretary shall release
36 those offenders who have served the greatest proportion of their
37 sentence. However, the secretary may deny release in a particular case
38 at the request of an offender, or if the secretary finds that there is

1 no responsible custodian, as determined by the department, to whom to
2 release the offender, or if the release of the offender would pose a
3 clear danger to society. The department shall notify the committing
4 court of the release at the time of release if any such early releases
5 have occurred as a result of excessive in-residence population. In no
6 event shall an offender adjudicated of a violent offense be granted
7 release under the provisions of this subsection.

8 (3)(a) Following the juvenile's release under subsection (1) of
9 this section, the secretary may require the juvenile to comply with a
10 program of parole to be administered by the department in his or her
11 community which shall last no longer than eighteen months, except that
12 in the case of a juvenile sentenced for rape in the first or second
13 degree, rape of a child in the first or second degree, child
14 molestation in the first degree, or indecent liberties with forcible
15 compulsion, the period of parole shall be twenty-four months and, in
16 the discretion of the secretary, may be up to thirty-six months when
17 the secretary finds that an additional period of parole is necessary
18 and appropriate in the interests of public safety or to meet the
19 ongoing needs of the juvenile. A parole program is mandatory for
20 offenders released under subsection (2) of this section. The decision
21 to place an offender on parole shall be based on an assessment by the
22 department of the offender's risk for reoffending upon release. The
23 department shall prioritize available parole resources to provide
24 supervision and services to offenders at moderate to high risk for
25 reoffending.

26 (b) The secretary shall, for the period of parole, facilitate the
27 juvenile's reintegration into his or her community and to further this
28 goal shall require the juvenile to refrain from possessing a firearm or
29 using a deadly weapon and refrain from committing new offenses and may
30 require the juvenile to: (i) Undergo available medical, psychiatric,
31 drug and alcohol, sex offender, mental health, and other offense-
32 related treatment services; (ii) report as directed to a parole officer
33 and/or designee; (iii) pursue a course of study, vocational training,
34 or employment; (iv) notify the parole officer of the current address
35 where he or she resides; (v) be present at a particular address during
36 specified hours; (vi) remain within prescribed geographical boundaries;
37 (vii) submit to electronic monitoring; (viii) refrain from using
38 illegal drugs and alcohol, and submit to random urinalysis when
39 requested by the assigned parole officer; (ix) refrain from contact

1 with specific individuals or a specified class of individuals; (x) meet
2 other conditions determined by the parole officer to further enhance
3 the juvenile's reintegration into the community; (xi) pay any court-
4 ordered fines or restitution; and (xii) perform community ((~~service~~))
5 restitution. Community ((~~service~~)) restitution for the purpose of this
6 section means compulsory service, without compensation, performed for
7 the benefit of the community by the offender. Community ((~~service~~))
8 restitution may be performed through public or private organizations or
9 through work crews.

10 (c) The secretary may further require up to twenty-five percent of
11 the highest risk juvenile offenders who are placed on parole to
12 participate in an intensive supervision program. Offenders
13 participating in an intensive supervision program shall be required to
14 comply with all terms and conditions listed in (b) of this subsection
15 and shall also be required to comply with the following additional
16 terms and conditions: (i) Obey all laws and refrain from any conduct
17 that threatens public safety; (ii) report at least once a week to an
18 assigned community case manager; and (iii) meet all other requirements
19 imposed by the community case manager related to participating in the
20 intensive supervision program. As a part of the intensive supervision
21 program, the secretary may require day reporting.

22 (d) After termination of the parole period, the juvenile shall be
23 discharged from the department's supervision.

24 (4)(a) The department may also modify parole for violation thereof.
25 If, after affording a juvenile all of the due process rights to which
26 he or she would be entitled if the juvenile were an adult, the
27 secretary finds that a juvenile has violated a condition of his or her
28 parole, the secretary shall order one of the following which is
29 reasonably likely to effectuate the purpose of the parole and to
30 protect the public: (i) Continued supervision under the same
31 conditions previously imposed; (ii) intensified supervision with
32 increased reporting requirements; (iii) additional conditions of
33 supervision authorized by this chapter; (iv) except as provided in
34 (a)(v) of this subsection, imposition of a period of confinement not to
35 exceed thirty days in a facility operated by or pursuant to a contract
36 with the state of Washington or any city or county for a portion of
37 each day or for a certain number of days each week with the balance of
38 the days or weeks spent under supervision; and (v) the secretary may
39 order any of the conditions or may return the offender to confinement

1 for the remainder of the sentence range if the offense for which the
2 offender was sentenced is rape in the first or second degree, rape of
3 a child in the first or second degree, child molestation in the first
4 degree, indecent liberties with forcible compulsion, or a sex offense
5 that is also a serious violent offense as defined by RCW 9.94A.030.

6 (b) If the department finds that any juvenile in a program of
7 parole has possessed a firearm or used a deadly weapon during the
8 program of parole, the department shall modify the parole under (a) of
9 this subsection and confine the juvenile for at least thirty days.
10 Confinement shall be in a facility operated by or pursuant to a
11 contract with the state or any county.

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

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

19 **Sec. 23.** RCW 13.40.250 and 1997 c 338 s 36 are each amended to
20 read as follows:

21 A traffic or civil infraction case involving a juvenile under the
22 age of sixteen may be diverted in accordance with the provisions of
23 this chapter or filed in juvenile court.

24 (1) If a notice of a traffic or civil infraction is filed in
25 juvenile court, the juvenile named in the notice shall be afforded the
26 same due process afforded to adult defendants in traffic infraction
27 cases.

28 (2) A monetary penalty imposed upon a juvenile under the age of
29 sixteen who is found to have committed a traffic or civil infraction
30 may not exceed one hundred dollars. At the juvenile's request, the
31 court may order performance of a number of hours of community
32 ((~~service~~)) restitution in lieu of a monetary penalty, at the rate of
33 the prevailing state minimum wage per hour.

34 (3) A diversion agreement entered into by a juvenile referred
35 pursuant to this section shall be limited to thirty hours of community
36 ((~~service~~)) restitution, or educational or informational sessions.

37 (4) If a case involving the commission of a traffic or civil
38 infraction or offense by a juvenile under the age of sixteen has been

1 referred to a diversion unit, an abstract of the action taken by the
2 diversion unit may be forwarded to the department of licensing in the
3 manner provided for in RCW 46.20.270(2).

4 **Sec. 24.** RCW 28A.225.090 and 1998 c 296 s 39 are each amended to
5 read as follows:

6 (1) A court may order a child subject to a petition under RCW
7 28A.225.035 to:

8 (a) Attend the child's current school;

9 (b) If there is space available and the program can provide
10 educational services appropriate for the child, order the child to
11 attend another public school, an alternative education program, center,
12 a skill center, dropout prevention program, or another public
13 educational program;

14 (c) Attend a private nonsectarian school or program including an
15 education center. Before ordering a child to attend an approved or
16 certified private nonsectarian school or program, the court shall: (i)
17 Consider the public and private programs available; (ii) find that
18 placement is in the best interest of the child; and (iii) find that the
19 private school or program is willing to accept the child and will not
20 charge any fees in addition to those established by contract with the
21 student's school district. If the court orders the child to enroll in
22 a private school or program, the child's school district shall contract
23 with the school or program to provide educational services for the
24 child. The school district shall not be required to contract for a
25 weekly rate that exceeds the state general apportionment dollars
26 calculated on a weekly basis generated by the child and received by the
27 district. A school district shall not be required to enter into a
28 contract that is longer than the remainder of the school year. A
29 school district shall not be required to enter into or continue a
30 contract if the child is no longer enrolled in the district;

31 (d) Be referred to a community truancy board, if available; or

32 (e) Submit to testing for the use of controlled substances or
33 alcohol based on a determination that such testing is appropriate to
34 the circumstances and behavior of the child and will facilitate the
35 child's compliance with the mandatory attendance law.

36 (2) If the child fails to comply with the court order, the court
37 may order the child to be punished by detention, as provided in RCW
38 7.21.030(2)(e), or may impose alternatives to detention such as

1 community ((~~service~~)) restitution. Failure by a child to comply with
2 an order issued under this subsection shall not be punishable by
3 detention for a period greater than that permitted pursuant to a civil
4 contempt proceeding against a child under chapter 13.32A RCW.

5 (3) Any parent violating any of the provisions of either RCW
6 28A.225.010 or 28A.225.080 shall be fined not more than twenty-five
7 dollars for each day of unexcused absence from school. It shall be a
8 defense for a parent charged with violating RCW 28A.225.010 to show
9 that he or she exercised reasonable diligence in attempting to cause a
10 child in his or her custody to attend school or that the child's school
11 did not perform its duties as required in RCW 28A.225.020. The court
12 may order the parent to provide community ((~~service~~)) restitution
13 instead of imposing a fine. Any fine imposed pursuant to this section
14 may be suspended upon the condition that a parent charged with
15 violating RCW 28A.225.010 shall participate with the school and the
16 child in a supervised plan for the child's attendance at school or upon
17 condition that the parent attend a conference or conferences scheduled
18 by a school for the purpose of analyzing the causes of a child's
19 absence.

20 **Sec. 25.** RCW 35.21.209 and 1984 c 24 s 1 are each amended to read
21 as follows:

22 The legislative authority of a city or town may purchase liability
23 insurance in an amount it deems reasonable to protect the city or town,
24 its officers, and employees against liability for the wrongful acts of
25 offenders or injury or damage incurred by offenders in the course of
26 court-ordered community ((~~service~~)) restitution, and may elect to treat
27 offenders as employees and/or workers under Title 51 RCW.

28 **Sec. 26.** RCW 35A.21.220 and 1984 c 24 s 2 are each amended to read
29 as follows:

30 The legislative authority of a code city may purchase liability
31 insurance in an amount it deems reasonable to protect the code city,
32 its officers, and employees against liability for the wrongful acts of
33 offenders or injury or damage incurred by offenders in the course of
34 court-ordered community ((~~service~~)) restitution, and may elect to treat
35 offenders as employees and/or workers under Title 51 RCW.

1 **Sec. 27.** RCW 36.16.139 and 1984 c 24 s 3 are each amended to read
2 as follows:

3 The legislative authority of a county may purchase liability
4 insurance in an amount it deems reasonable to protect the county, its
5 officers, and employees against liability for the wrongful acts of
6 offenders or injury or damage incurred by offenders in the course of
7 community ((~~service~~)) restitution imposed by court order or pursuant to
8 RCW 13.40.080. The legislative authority of a county may elect to
9 treat offenders as employees and/or workers under Title 51 RCW.

10 **Sec. 28.** RCW 43.51.048 and 1996 c 263 s 3 are each amended to read
11 as follows:

12 (1) The commission shall establish a policy and procedures for
13 supervising and evaluating community ((~~service~~)) restitution activities
14 that may be imposed under RCW 70.93.060(3) including a description of
15 what constitutes satisfactory completion of community ((~~service~~))
16 restitution.

17 (2) The commission shall inform each state park of the policy and
18 procedures regarding community ((~~service~~)) restitution activities, and
19 each state park shall then notify the commission as to whether or not
20 the park elects to participate in the community ((~~service~~)) restitution
21 program. The commission shall transmit a list notifying the district
22 courts of each state park that elects to participate.

23 **Sec. 29.** RCW 46.16.381 and 1998 c 294 s 1 are each amended to read
24 as follows:

25 (1) The director shall grant special parking privileges to any
26 person who has a disability that limits or impairs the ability to walk
27 and meets one of the following criteria, as determined by a licensed
28 physician:

29 (a) Cannot walk two hundred feet without stopping to rest;

30 (b) Is severely limited in ability to walk due to arthritic,
31 neurological, or orthopedic condition;

32 (c) Is so severely disabled, that the person cannot walk without
33 the use of or assistance from a brace, cane, another person, prosthetic
34 device, wheelchair, or other assistive device;

35 (d) Uses portable oxygen;

36 (e) Is restricted by lung disease to such an extent that forced
37 expiratory respiratory volume, when measured by spirometry is less than

1 one liter per second or the arterial oxygen tension is less than sixty
2 mm/hg on room air at rest;

3 (f) Impairment by cardiovascular disease or cardiac condition to
4 the extent that the person's functional limitations are classified as
5 class III or IV under standards accepted by the American Heart
6 Association; or

7 (g) Has a disability resulting from an acute sensitivity to
8 automobile emissions which limits or impairs the ability to walk. The
9 personal physician of the applicant shall document that the disability
10 is comparable in severity to the others listed in this subsection.

11 (2) The applications for disabled parking permits and temporary
12 disabled parking permits are official state documents. Knowingly
13 providing false information in conjunction with the application is a
14 gross misdemeanor punishable under chapter 9A.20 RCW. The following
15 statement must appear on each application form immediately below the
16 physician's signature and immediately below the applicant's signature:
17 "A disabled parking permit may be issued only for a medical necessity
18 that severely affects mobility (RCW 46.16.381). Knowingly providing
19 false information on this application is a gross misdemeanor. The
20 penalty is up to one year in jail and a fine of up to \$5,000 or both."

21 (3) Persons who qualify for special parking privileges are entitled
22 to receive from the department of licensing a removable windshield
23 placard bearing the international symbol of access and an individual
24 serial number, along with a special identification card bearing the
25 photograph, name, and date of birth of the person to whom the placard
26 is issued, and the placard's serial number. The department shall
27 design the placard to be displayed when the vehicle is parked by
28 suspending it from the rearview mirror, or in the absence of a rearview
29 mirror the card may be displayed on the dashboard of any vehicle used
30 to transport the disabled person. Instead of regular motor vehicle
31 license plates, disabled persons are entitled to receive special
32 license plates bearing the international symbol of access for one
33 vehicle registered in the disabled person's name. Disabled persons who
34 are not issued the special license plates are entitled to receive a
35 second special placard upon submitting a written request to the
36 department. Persons who have been issued the parking privileges and
37 who are using a vehicle or are riding in a vehicle displaying the
38 special license plates or placard may park in places reserved for
39 mobility disabled persons. The director shall adopt rules providing

1 for the issuance of special placards and license plates to public
2 transportation authorities, nursing homes licensed under chapter 18.51
3 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen
4 centers, private nonprofit agencies as defined in chapter 24.03 RCW,
5 and vehicles registered with the department as cabulances that
6 regularly transport disabled persons who have been determined eligible
7 for special parking privileges provided under this section. The
8 director may issue special license plates for a vehicle registered in
9 the name of the public transportation authority, nursing home, boarding
10 homes, senior citizen center, private nonprofit agency, or cabulance
11 service if the vehicle is primarily used to transport persons with
12 disabilities described in this section. Public transportation
13 authorities, nursing homes, boarding homes, senior citizen centers,
14 private nonprofit agencies, and cabulance services are responsible for
15 insuring that the special placards and license plates are not used
16 improperly and are responsible for all fines and penalties for improper
17 use.

18 (4) Whenever the disabled person transfers or assigns his or her
19 interest in the vehicle, the special license plates shall be removed
20 from the motor vehicle. If another vehicle is acquired by the disabled
21 person and the vehicle owner qualifies for a special plate, the plate
22 shall be attached to the vehicle, and the director shall be immediately
23 notified of the transfer of the plate. If another vehicle is not
24 acquired by the disabled person, the removed plate shall be immediately
25 surrendered to the director.

26 (5) The special license plate shall be renewed in the same manner
27 and at the time required for the renewal of regular motor vehicle
28 license plates under this chapter. No special license plate may be
29 issued to a person who is temporarily disabled. A person who has a
30 condition expected to improve within six months may be issued a
31 temporary placard for a period not to exceed six months. If the
32 condition exists after six months a new temporary placard shall be
33 issued upon receipt of a new certification from the disabled person's
34 physician. The permanent parking placard and photo identification card
35 of a disabled person shall be renewed at least every five years, as
36 required by the director, by satisfactory proof of the right to
37 continued use of the privileges. In the event of the permit holder's
38 death, the parking placard and photo identification card must be
39 immediately surrendered to the department. The department shall match

1 and purge its disabled permit data base with available death record
2 information at least every twelve months.

3 (6) Each person who has been issued a permanent disabled parking
4 permit on or before July 1, 1998, must renew the permit no later than
5 July 1, 2003, subject to a schedule to be set by the department, or the
6 permit will expire.

7 (7) Additional fees shall not be charged for the issuance of the
8 special placards or the photo identification cards. No additional fee
9 may be charged for the issuance of the special license plates except
10 the regular motor vehicle registration fee and any other fees and taxes
11 required to be paid upon registration of a motor vehicle.

12 (8) Any unauthorized use of the special placard, special license
13 plate, or photo identification card is a traffic infraction with a
14 monetary penalty of two hundred fifty dollars.

15 (9) It is a parking infraction, with a monetary penalty of two
16 hundred fifty dollars for a person to make inaccessible the access
17 aisle located next to a space reserved for physically disabled persons.
18 The clerk of the court shall report all violations related to this
19 subsection to the department.

20 (10) It is a parking infraction, with a monetary penalty of two
21 hundred fifty dollars for any person to park a vehicle in a parking
22 place provided on private property without charge or on public property
23 reserved for physically disabled persons without a special license
24 plate or placard. If a person is charged with a violation, the person
25 shall not be determined to have committed an infraction if the person
26 produces in court or before the court appearance the special license
27 plate or placard required under this section. A local jurisdiction
28 providing nonmetered, on-street parking places reserved for physically
29 disabled persons may impose by ordinance time restrictions of no less
30 than four hours on the use of these parking places. A local
31 jurisdiction may impose by ordinance time restrictions of no less than
32 four hours on the use of nonreserved, on-street parking spaces by
33 vehicles displaying the special parking placards. All time
34 restrictions must be clearly posted.

35 (11) The penalties imposed under subsections (9) and (10) of this
36 section shall be used by that local jurisdiction exclusively for law
37 enforcement. The court may also impose an additional penalty
38 sufficient to reimburse the local jurisdiction for any costs it may
39 have incurred in removal and storage of the improperly parked vehicle.

1 (12) Except as provided by subsection (2) of this section, it is a
2 traffic infraction with a monetary penalty of two hundred fifty dollars
3 for any person willfully to obtain a special license plate, placard, or
4 photo identification card in a manner other than that established under
5 this section.

6 (13)(a) A law enforcement agency authorized to enforce parking laws
7 may appoint volunteers, with a limited commission, to issue notices of
8 infractions for violations of this section or RCW 46.61.581.
9 Volunteers must be at least twenty-one years of age. The law
10 enforcement agency appointing volunteers may establish any other
11 qualifications the agency deems desirable.

12 (b) An agency appointing volunteers under this section must provide
13 training to the volunteers before authorizing them to issue notices of
14 infractions.

15 (c) A notice of infraction issued by a volunteer appointed under
16 this subsection has the same force and effect as a notice of infraction
17 issued by a police officer for the same offense.

18 (d) A police officer or a volunteer may request a person to show
19 the person's photo identification card or special parking placard when
20 investigating the possibility of a violation of this section. If the
21 request is refused, the person in charge of the vehicle may be issued
22 a notice of infraction for a violation of this section.

23 (14) For second or subsequent violations of this section, in
24 addition to a monetary fine, the violator must complete a minimum of
25 forty hours of:

26 (a) Community ((~~service~~)) restitution for a nonprofit organization
27 that serves the disabled community or persons having disabling
28 diseases; or

29 (b) Any other community ((~~service~~)) restitution that may sensitize
30 the violator to the needs and obstacles faced by persons who have
31 disabilities.

32 (15) The court may not suspend more than one-half of any fine
33 imposed under subsection (8), (9), (10), or (12) of this section.

34 **Sec. 30.** RCW 46.20.031 and 1995 c 219 s 1 are each amended to read
35 as follows:

36 The department shall not issue a driver's license hereunder:

37 (1) To any person who is under the age of sixteen years;

1 (2) To any person whose license has been suspended during such
2 suspension, nor to any person whose license has been revoked, except as
3 provided in RCW 46.20.311;

4 (3) To any person who has been evaluated by a program approved by
5 the department of social and health services as being an alcoholic,
6 drug addict, alcohol abuser, and/or drug abuser: PROVIDED, That a
7 license may be issued if the department determines that such person has
8 been granted a deferred prosecution, pursuant to chapter 10.05 RCW, or
9 is satisfactorily participating in or has successfully completed an
10 alcohol or drug abuse treatment program approved by the department of
11 social and health services and has established control of his or her
12 alcohol and/or drug abuse problem;

13 (4) To any person who has previously been adjudged to be mentally
14 ill or insane, or to be incompetent due to any mental disability or
15 disease, and who has not at the time of application been restored to
16 competency by the methods provided by law: PROVIDED, HOWEVER, That no
17 person so adjudged shall be denied a license for such cause if the
18 superior court should find him able to operate a motor vehicle with
19 safety upon the highways during such incompetency;

20 (5) To any person who is required by this chapter to take an
21 examination, unless such person shall have successfully passed such
22 examination;

23 (6) To any person who is required under the laws of this state to
24 deposit proof of financial responsibility and who has not deposited
25 such proof;

26 (7) To any person when the department has good and substantial
27 evidence to reasonably conclude that such person by reason of physical
28 or mental disability would not be able to operate a motor vehicle with
29 safety upon the highways; subject to review by a court of competent
30 jurisdiction;

31 (8) To a person when the department has been notified by a court
32 that the person has violated his or her written promise to appear,
33 respond, or comply regarding a notice of infraction issued for a
34 violation of RCW 46.55.105, unless the department has received notice
35 from the court showing that the person has been found not to have
36 committed the violation of RCW 46.55.105, or that the person has paid
37 all monetary penalties owing, including completion of community
38 ((~~service~~)) restitution, and that the court is satisfied that the
39 person has made restitution as provided by RCW 46.55.105(2).

1 **Sec. 31.** RCW 46.30.020 and 1991 sp.s. c 25 s 1 are each amended to
2 read as follows:

3 (1)(a) No person may operate a motor vehicle subject to
4 registration under chapter 46.16 RCW in this state unless the person is
5 insured under a motor vehicle liability policy with liability limits of
6 at least the amounts provided in RCW 46.29.090, is self-insured as
7 provided in RCW 46.29.630, is covered by a certificate of deposit in
8 conformance with RCW 46.29.550, or is covered by a liability bond of at
9 least the amounts provided in RCW 46.29.090. Written proof of
10 financial responsibility for motor vehicle operation must be provided
11 on the request of a law enforcement officer in the format specified
12 under RCW 46.30.030.

13 (b) A person who drives a motor vehicle that is required to be
14 registered in another state that requires drivers and owners of
15 vehicles in that state to maintain insurance or financial
16 responsibility shall, when requested by a law enforcement officer,
17 provide evidence of financial responsibility or insurance as is
18 required by the laws of the state in which the vehicle is registered.

19 (c) When asked to do so by a law enforcement officer, failure to
20 display an insurance identification card as specified under RCW
21 46.30.030 creates a presumption that the person does not have motor
22 vehicle insurance.

23 (d) Failure to provide proof of motor vehicle insurance is a
24 traffic infraction and is subject to penalties as set by the supreme
25 court under RCW 46.63.110 or community ((~~service~~)) restitution.

26 (2) If a person cited for a violation of subsection (1) of this
27 section appears in person before the court and provides written
28 evidence that at the time the person was cited, he or she was in
29 compliance with the financial responsibility requirements of subsection
30 (1) of this section, the citation shall be dismissed. In lieu of
31 personal appearance, a person cited for a violation of subsection (1)
32 of this section may, before the date scheduled for the person's
33 appearance before the court, submit by mail to the court written
34 evidence that at the time the person was cited, he or she was in
35 compliance with the financial responsibility requirements of subsection
36 (1) of this section, in which case the citation shall be dismissed
37 without cost, except that the court may assess court administrative
38 costs of twenty-five dollars at the time of dismissal.

39 (3) The provisions of this chapter shall not govern:

1 (a) The operation of a motor vehicle registered under RCW
2 46.16.305(1), governed by RCW 46.16.020, or registered with the
3 Washington utilities and transportation commission as common or
4 contract carriers; or

5 (b) The operation of a motorcycle as defined in RCW 46.04.330, a
6 motor-driven cycle as defined in RCW 46.04.332, or a moped as defined
7 in RCW 46.04.304.

8 (4) RCW 46.29.490 shall not be deemed to govern all motor vehicle
9 liability policies required by this chapter but only those certified
10 for the purposes stated in chapter 46.29 RCW.

11 **Sec. 32.** RCW 46.63.120 and 1979 ex.s. c 136 s 14 are each amended
12 to read as follows:

13 (1) An order entered after the receipt of a response which does not
14 contest the determination, or after it has been established at a
15 hearing that the infraction was committed, or after a hearing for the
16 purpose of explaining mitigating circumstances is civil in nature.

17 (2) The court may include in the order the imposition of any
18 penalty authorized by the provisions of this chapter for the commission
19 of an infraction. The court may, in its discretion, waive, reduce, or
20 suspend the monetary penalty prescribed for the infraction. At the
21 person's request the court may order performance of a number of hours
22 of community ((~~service~~)) restitution in lieu of a monetary penalty, at
23 the rate of the then state minimum wage per hour.

24 **Sec. 33.** RCW 51.12.045 and 1986 c 193 s 1 are each amended to read
25 as follows:

26 Offenders performing community ((~~services~~)) restitution pursuant to
27 court order or under RCW 13.40.080 may be deemed employees and/or
28 workers under this title at the option of the state, county, city,
29 town, or nonprofit organization under whose authorization the
30 ((~~services are~~)) community restitution is performed. Any premiums or
31 assessments due under this title for community ((~~services~~)) restitution
32 work shall be the obligation of and be paid for by the state agency,
33 county, city, town, or nonprofit organization for which the offender
34 performed the community ((~~services~~)) restitution. Coverage commences
35 when a state agency, county, city, town, or nonprofit organization has
36 given notice to the director that it wishes to cover offenders

1 performing community ((~~services~~)) restitution before the occurrence of
2 an injury or contraction of an occupational disease.

3 **Sec. 34.** RCW 66.20.200 and 1994 c 201 s 1 are each amended to read
4 as follows:

5 It shall be unlawful for the owner of a card of identification to
6 transfer the card to any other person for the purpose of aiding such
7 person to procure alcoholic beverages from any licensee or store
8 employee. Any person who shall permit his or her card of
9 identification to be used by another or transfer such card to another
10 for the purpose of aiding such transferee to obtain alcoholic beverages
11 from a licensee or store employee or gain admission to a premises or
12 portion of a premises classified by the board as off-limits to persons
13 under twenty-one years of age, shall be guilty of a misdemeanor
14 punishable as provided by RCW 9A.20.021, except that a minimum fine of
15 two hundred fifty dollars shall be imposed and any sentence requiring
16 community ((~~service~~)) restitution shall require not fewer than twenty-
17 five hours of ((~~such service~~)) community restitution. Any person not
18 entitled thereto who unlawfully procures or has issued or transferred
19 to him or her a card of identification, and any person who possesses a
20 card of identification not issued to him or her, and any person who
21 makes any false statement on any certification card required by RCW
22 66.20.190, as now or hereafter amended, to be signed by him or her,
23 shall be guilty of a misdemeanor punishable as provided by RCW
24 9A.20.021, except that a minimum fine of two hundred fifty dollars
25 shall be imposed and any sentence requiring community ((~~service~~))
26 restitution shall require not fewer than twenty-five hours of ((~~such~~
27 ~~service~~)) community restitution.

28 **Sec. 35.** RCW 66.44.291 and 1987 c 101 s 1 are each amended to read
29 as follows:

30 Every person between the ages of eighteen and twenty, inclusive,
31 who is convicted of a violation of RCW 66.44.290 is guilty of a
32 misdemeanor punishable as provided by RCW 9A.20.021, except that a
33 minimum fine of two hundred fifty dollars shall be imposed and any
34 sentence requiring community ((~~service~~)) restitution shall require not
35 fewer than twenty-five hours of ((~~such service~~)) community restitution.

1 **Sec. 36.** RCW 66.44.325 and 1987 c 101 s 2 are each amended to read
2 as follows:

3 Any person who transfers in any manner an identification of age to
4 a minor for the purpose of permitting such minor to obtain alcoholic
5 beverages shall be guilty of a misdemeanor punishable as provided by
6 RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars
7 shall be imposed and any sentence requiring community ((~~service~~))
8 restitution shall require not fewer than twenty-five hours of ((~~such~~
9 ~~service~~)) community restitution: PROVIDED, That corroborative
10 testimony of a witness other than the minor shall be a condition
11 precedent to conviction.

12 **Sec. 37.** RCW 69.50.425 and 1989 c 271 s 105 are each amended to
13 read as follows:

14 A person who is convicted of a misdemeanor violation of any
15 provision of this chapter shall be punished by imprisonment for not
16 less than twenty-four consecutive hours, and by a fine of not less than
17 two hundred fifty dollars. On a second or subsequent conviction, the
18 fine shall not be less than five hundred dollars. These fines shall be
19 in addition to any other fine or penalty imposed. Unless the court
20 finds that the imposition of the minimum imprisonment will pose a
21 substantial risk to the defendant's physical or mental well-being or
22 that local jail facilities are in an overcrowded condition, the minimum
23 term of imprisonment shall not be suspended or deferred. If the court
24 finds such risk or overcrowding exists, it shall sentence the defendant
25 to a minimum of forty hours of community ((~~service~~)) restitution. If
26 a minimum term of imprisonment is suspended or deferred, the court
27 shall state in writing the reason for granting the suspension or
28 deferral and the facts upon which the suspension or deferral is based.
29 Unless the court finds the person to be indigent, the minimum fine
30 shall not be suspended or deferred.

31 **Sec. 38.** RCW 70.93.060 and 1997 c 159 s 1 are each amended to read
32 as follows:

33 (1) No person shall throw, drop, deposit, discard, or otherwise
34 dispose of litter upon any public property in the state or upon private
35 property in this state not owned by him or her or in the waters of this
36 state whether from a vehicle or otherwise including but not limited to
37 any public highway, public park, beach, campground, forest land,

1 recreational area, trailer park, highway, road, street, or alley
2 except:

3 (a) When the property is designated by the state or its agencies or
4 political subdivisions for the disposal of garbage and refuse, and the
5 person is authorized to use such property for that purpose;

6 (b) Into a litter receptacle in a manner that will prevent litter
7 from being carried away or deposited by the elements upon any part of
8 said private or public property or waters.

9 (2)(a) Except as provided in subsection (4) of this section, it is
10 a class 3 civil infraction as provided in RCW 7.80.120 for a person to
11 litter in an amount less than or equal to one cubic foot.

12 (b) It is a class 1 civil infraction as provided in RCW 7.80.120
13 for a person to litter in an amount greater than one cubic foot.
14 Unless suspended or modified by a court, the person shall also pay a
15 litter cleanup fee of twenty-five dollars per cubic foot of litter.
16 The court may, in addition to or in lieu of part or all of the cleanup
17 fee, order the person to pick up and remove litter from the property,
18 with prior permission of the legal owner or, in the case of public
19 property, of the agency managing the property.

20 (3) If the violation occurs in a state park, the court shall, in
21 addition to any other penalties assessed, order the person to perform
22 twenty-four hours of community (~~service~~) restitution in the state
23 park where the violation occurred if the state park has stated an
24 intent to participate as provided in RCW 43.51.048(2).

25 (4) It is a class 1 civil infraction as provided in RCW 7.80.120
26 for a person to discard, in violation of this section, a cigarette,
27 cigar, or other tobacco product that is capable of starting a fire.

28 **Sec. 39.** RCW 70.93.250 and 1998 c 257 s 10 and 1998 c 245 s 128
29 are each reenacted and amended to read as follows:

30 (1) The department shall provide funding to local units of
31 government to establish, conduct, and evaluate community (~~service~~)
32 restitution and other programs for waste reduction, litter and illegal
33 dump cleanup, and recycling. Programs eligible for funding under this
34 section shall include, but not be limited to, programs established
35 pursuant to RCW 72.09.260.

36 (2) Funds may be offered for costs associated with community waste
37 reduction, litter cleanup and prevention, and recycling activities.
38 The funding program must be flexible, allowing local governments to use

1 funds broadly to meet their needs to reduce waste, control litter and
2 illegal dumping, and promote recycling. Local governments are required
3 to contribute resources or in-kind services. The department shall
4 evaluate funding requests from local government according to the same
5 criteria as those developed in RCW 70.93.220, provide funds according
6 to the effectiveness and efficiency of local government litter control
7 programs, and monitor the results of all local government programs
8 under this section.

9 (3) Local governments shall report information as requested by the
10 department in funding agreements entered into by the department and a
11 local government. The department shall report to the appropriate
12 standing committees of the legislature by December of even-numbered
13 years on the effectiveness of local government waste reduction, litter,
14 and recycling programs funded under this section.

15 **Sec. 40.** RCW 70.155.080 and 1998 c 133 s 2 are each amended to
16 read as follows:

17 (1) A person under the age of eighteen who purchases or attempts to
18 purchase, possesses, or obtains or attempts to obtain cigarettes or
19 tobacco products commits a class 3 civil infraction under chapter 7.80
20 RCW and is subject to a fine as set out in chapter 7.80 RCW or
21 participation in up to four hours of community (~~service~~) restitution,
22 or both. The court may also require participation in a smoking
23 cessation program. This provision does not apply if a person under the
24 age of eighteen, with parental authorization, is participating in a
25 controlled purchase as part of a liquor control board, law enforcement,
26 or local health department activity.

27 (2) Municipal and district courts within the state have
28 jurisdiction for enforcement of this section.

29 **Sec. 41.** RCW 72.09.060 and 1989 c 185 s 3 are each amended to read
30 as follows:

31 The department of corrections may be organized into such divisions
32 or offices as the secretary may determine, but shall include divisions
33 for (1) correctional industries, (2) prisons and other custodial
34 institutions and (3) probation, parole, community (~~service~~)
35 restitution, restitution, and other nonincarcerative sanctions. The
36 secretary shall have at least one person on his or her staff who shall
37 have the responsibility for developing a program which encourages the

1 use of volunteers, for citizen advisory groups, and for similar public
2 involvement programs in the corrections area. Minimum qualification
3 for staff assigned to public involvement responsibilities shall include
4 previous experience in working with volunteers or volunteer agencies.

5 **Sec. 42.** RCW 72.09.100 and 1995 1st sp.s. c 19 s 33 are each
6 amended to read as follows:

7 It is the intent of the legislature to vest in the department the
8 power to provide for a comprehensive inmate work program and to remove
9 statutory and other restrictions which have limited work programs in
10 the past. For purposes of establishing such a comprehensive program,
11 the legislature recommends that the department consider adopting any or
12 all, or any variation of, the following classes of work programs:

13 (1) CLASS I: FREE VENTURE INDUSTRIES. The employer model
14 industries in this class shall be operated and managed in total or in
15 part by any profit or nonprofit organization pursuant to an agreement
16 between the organization and the department. The organization shall
17 produce goods or services for sale to both the public and private
18 sector.

19 The customer model industries in this class shall be operated and
20 managed by the department to provide Washington state manufacturers or
21 businesses with products or services currently produced or provided by
22 out-of-state or foreign suppliers. The correctional industries board
23 of directors shall review these proposed industries before the
24 department contracts to provide such products or services. The review
25 shall include an analysis of the potential impact of the proposed
26 products and services on the Washington state business community and
27 labor market.

28 The department of corrections shall supply appropriate security and
29 custody services without charge to the participating firms.

30 Inmates who work in free venture industries shall do so at their
31 own choice. They shall be paid a wage comparable to the wage paid for
32 work of a similar nature in the locality in which the industry is
33 located, as determined by the director of correctional industries. If
34 the director cannot reasonably determine the comparable wage, then the
35 pay shall not be less than the federal minimum wage.

36 An inmate who is employed in the class I program of correctional
37 industries shall not be eligible for unemployment compensation benefits

1 pursuant to any of the provisions of Title 50 RCW until released on
2 parole or discharged.

3 (2) CLASS II: TAX REDUCTION INDUSTRIES. Industries in this class
4 shall be state-owned and operated enterprises designed to reduce the
5 costs for goods and services for tax-supported agencies and for
6 nonprofit organizations. The industries selected for development
7 within this class shall, as much as possible, match the available pool
8 of inmate work skills and aptitudes with the work opportunities in the
9 free community. The industries shall be closely patterned after
10 private sector industries but with the objective of reducing public
11 support costs rather than making a profit. The products and services
12 of this industry, including purchased products and services necessary
13 for a complete product line, may be sold to public agencies, to
14 nonprofit organizations, and to private contractors when the goods
15 purchased will be ultimately used by a public agency or a nonprofit
16 organization. Clothing manufactured by an industry in this class may
17 be donated to nonprofit organizations that provide clothing free of
18 charge to low-income persons. Correctional industries products and
19 services shall be reviewed by the correctional industries board of
20 directors before offering such products and services for sale to
21 private contractors. The board of directors shall conduct a yearly
22 marketing review of the products and services offered under this
23 subsection. Such review shall include an analysis of the potential
24 impact of the proposed products and services on the Washington state
25 business community. To avoid waste or spoilage and consequent loss to
26 the state, when there is no public sector market for such goods,
27 byproducts and surpluses of timber, agricultural, and animal husbandry
28 enterprises may be sold to private persons, at private sale. Surplus
29 byproducts and surpluses of timber, agricultural and animal husbandry
30 enterprises that cannot be sold to public agencies or to private
31 persons may be donated to nonprofit organizations. All sales of
32 surplus products shall be carried out in accordance with rules
33 prescribed by the secretary.

34 Security and custody services shall be provided without charge by
35 the department of corrections.

36 Inmates working in this class of industries shall do so at their
37 own choice and shall be paid for their work on a gratuity scale which
38 shall not exceed the wage paid for work of a similar nature in the

1 locality in which the industry is located and which is approved by the
2 director of correctional industries.

3 Subject to approval of the correctional industries board,
4 provisions of RCW 41.06.380 prohibiting contracting out work performed
5 by classified employees shall not apply to contracts with Washington
6 state businesses entered into by the department of corrections through
7 class II industries.

8 (3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES. Industries in
9 this class shall be operated by the department of corrections. They
10 shall be designed and managed to accomplish the following objectives:

11 (a) Whenever possible, to provide basic work training and
12 experience so that the inmate will be able to qualify for better work
13 both within correctional industries and the free community. It is not
14 intended that an inmate's work within this class of industries should
15 be his or her final and total work experience as an inmate.

16 (b) Whenever possible, to provide forty hours of work or work
17 training per week.

18 (c) Whenever possible, to offset tax and other public support
19 costs.

20 Supervising, management, and custody staff shall be employees of
21 the department.

22 All able and eligible inmates who are assigned work and who are not
23 working in other classes of industries shall work in this class.

24 Except for inmates who work in work training programs, inmates in
25 this class shall be paid for their work in accordance with an inmate
26 gratuity scale. The scale shall be adopted by the secretary of
27 corrections.

28 (4) CLASS IV: COMMUNITY WORK INDUSTRIES. Industries in this class
29 shall be operated by the department of corrections. They shall be
30 designed and managed to provide services in the inmate's resident
31 community at a reduced cost. The services shall be provided to public
32 agencies, to persons who are poor or infirm, or to nonprofit
33 organizations.

34 Inmates in this program shall reside in facilities owned by,
35 contracted for, or licensed by the department of corrections. A unit
36 of local government shall provide work supervision services without
37 charge to the state and shall pay the inmate's wage.

1 The department of corrections shall reimburse participating units
2 of local government for liability and workers compensation insurance
3 costs.

4 Inmates who work in this class of industries shall do so at their
5 own choice and shall receive a gratuity which shall not exceed the wage
6 paid for work of a similar nature in the locality in which the industry
7 is located.

8 (5) CLASS V: COMMUNITY ((~~SERVICE~~)) RESTITUTION PROGRAMS. Programs
9 in this class shall be subject to supervision by the department of
10 corrections. The purpose of this class of industries is to enable an
11 inmate, placed on community supervision, to work off all or part of a
12 community ((~~service~~)) restitution order as ordered by the sentencing
13 court.

14 Employment shall be in a community ((~~service~~)) restitution program
15 operated by the state, local units of government, or a nonprofit
16 agency.

17 To the extent that funds are specifically made available for such
18 purposes, the department of corrections shall reimburse nonprofit
19 agencies for workers compensation insurance costs.

20 **Sec. 43.** RCW 72.09.260 and 1990 c 66 s 2 are each amended to read
21 as follows:

22 (1) The department shall assist local units of government in
23 establishing community ((~~service~~)) restitution programs for litter
24 cleanup. Community ((~~service~~)) restitution litter cleanup programs
25 must include the following: (a) Procedures for documenting the number
26 of community ((~~service~~)) restitution hours worked in litter cleanup by
27 each offender; (b) plans to coordinate litter cleanup activities with
28 local governmental entities responsible for roadside and park
29 maintenance; (c) insurance coverage for offenders during litter cleanup
30 activities pursuant to RCW 51.12.045; (d) provision of adequate safety
31 equipment and, if needed, weather protection gear; and (e) provision
32 for including felons and misdemeanants in the program.

33 (2) Community ((~~service~~)) restitution programs established under
34 this section shall involve, but not be limited to, persons convicted of
35 nonviolent, drug-related offenses.

36 (3) Nothing in this section shall diminish the department's
37 authority to place offenders in community ((~~service~~)) restitution

1 programs or to determine the suitability of offenders for specific
2 programs.

3 (4) As used in this section, "litter cleanup" includes cleanup and
4 removal of solid waste that is illegally dumped.

5 **Sec. 44.** RCW 72.65.090 and 1986 c 125 s 6 are each amended to read
6 as follows:

7 The department may provide transportation for work release
8 participants to the designated places of housing under the work release
9 plan, and may supply suitable clothing and such other equipment,
10 supplies and other necessities as may be reasonably needed for the
11 implementation of the plans adopted for such participation from the
12 community (~~(services)~~) restitution revolving fund as established in RCW
13 9.95.360: PROVIDED, That costs and expenditures incurred for this
14 purpose may be deducted by the department from the earnings of the
15 participants and deposited in the community (~~(services)~~) restitution
16 revolving fund.

17 **Sec. 45.** RCW 72.65.100 and 1986 c 125 s 7 are each amended to read
18 as follows:

19 The secretary is authorized to make rules and regulations for the
20 administration of the provisions of this chapter to administer the work
21 release program. In addition, the department shall:

- 22 (1) Supervise and consult with work release participants;
- 23 (2) Locate available employment or vocational training
24 opportunities for qualified work release participants;
- 25 (3) Effect placement of work release participants under the
26 program;
- 27 (4) Collect, account for and make disbursement from earnings of
28 work release participants under the provisions of this chapter,
29 including accounting for all inmate debt in the community (~~(services)~~)
30 restitution revolving fund. RCW 9.95.370 applies to inmates assigned
31 to work/training release facilities who receive assistance as provided
32 in RCW 9.95.310, 9.95.320, 72.65.050, and 72.65.090;

33 (5) Promote public understanding and acceptance of the work release
34 program.

35 All state agencies shall cooperate with the department in the
36 administration of the work release program as provided by this
37 chapter."

1 Correct the title.

--- END ---