
SENATE BILL 6223

State of Washington

56th Legislature

2000 Regular Session

By Senators Hargrove, Long, Costa and Kohl-Welles; by request of Sentencing Guidelines Commission

Read first time 01/11/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to reorganization of, and technical, clarifying,
2 nonsubstantive amendments to, community supervision and sentencing
3 provisions; amending RCW 9.94A.190, 9.94A.390, 9.94A.130, 9.94A.210,
4 9.94A.370, 9.94A.383, 9.94A.400, 9.94A.410, 9.94A.137, 9.94A.135,
5 9.94A.180, 9.94A.185, 9.94A.145, 18.155.010, 18.155.020, 18.155.030,
6 46.61.524, and 9.94A.395; reenacting and amending RCW 9.94A.030,
7 9.94A.120, 9.94A.310, 9.94A.360, 9.94A.440, 9.94A.150, 9.94A.140,
8 9.94A.142, and 9.94A.040; adding new sections to chapter 9.94A RCW;
9 creating new sections; providing an effective date; and providing an
10 expiration date.

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

12 **PART I**

13 **General Provisions**

14 NEW SECTION. **Sec. 1.** The sentencing reform act has been amended
15 many times since its enactment in 1981. While each amendment promoted
16 a valid public purpose, some sections of the act have become unduly
17 lengthy and repetitive. The legislature finds that it is appropriate

1 to adopt clarifying amendments to make the act easier to use and
2 understand.

3 The legislature does not intend this act to make, and no provision
4 of this act shall be construed as making, a substantive change in the
5 sentencing reform act.

6 The legislature does intend to clarify that persistent offenders
7 are not eligible for extraordinary medical placement.

8 **Sec. 2.** RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999
9 c 196 s 2 are each reenacted and amended to read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Collect," or any derivative thereof, "collect and remit," or
13 "collect and deliver," when used with reference to the department (~~of~~
14 ~~corrections~~), means that the department, either directly or through a
15 collection agreement authorized by RCW 9.94A.145, is responsible for
16 monitoring and enforcing the offender's sentence with regard to the
17 legal financial obligation, receiving payment thereof from the
18 offender, and, consistent with current law, delivering daily the entire
19 payment to the superior court clerk without depositing it in a
20 departmental account.

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

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

26 (4) "Community custody" means that portion of an offender's
27 sentence of confinement in lieu of earned release time or imposed
28 pursuant to RCW 9.94A.120 (~~((5), (6), (7), (8), (10), or (11),)~~)
29 (2)(b), sections 18 through 25 of this act, or RCW 9.94A.383, served in
30 the community subject to controls placed on the offender's movement and
31 activities by the department (~~of corrections~~). For offenders placed
32 on community custody for crimes committed on or after July 1, 2000, the
33 department shall assess the offender's risk of reoffense and may
34 establish and modify conditions of community custody, in addition to
35 those imposed by the court, based upon the risk to community safety.

36 (5) "Community custody range" means the minimum and maximum period
37 of community custody included as part of a sentence under (~~(RCW~~
38 ~~9.94A.120(11))~~) section 25 of this act, as established by the

1 (~~sentencing guidelines~~) commission or the legislature under RCW
2 9.94A.040, for crimes committed on or after July 1, 2000.

3 (6) "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 release.
8 Community placement may consist of entirely community custody, entirely
9 postrelease supervision, or a combination of the two.

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

13 (8) "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).~~) Where the court finds that any
19 offender has a chemical dependency that has contributed to his or her
20 offense, the conditions of supervision may, subject to available
21 resources, include treatment. For purposes of the interstate compact
22 for out-of-state supervision of parolees and probationers, RCW
23 9.95.270, community supervision is the functional equivalent of
24 probation and should be considered the same as probation by other
25 states.

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

28 (10) "Conviction" means an adjudication of guilt pursuant to Titles
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
30 acceptance of a plea of guilty.

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

1 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
2 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
3 legal financial obligations may also include payment to a public agency
4 of the expense of an emergency response to the incident resulting in
5 the conviction, subject to the provisions in RCW 38.52.430.

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

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

19 ~~((14))~~) (13) "Day fine" means a fine imposed by the sentencing
20 ~~((judge))~~) court that equals the difference between the offender's net
21 daily income and the reasonable obligations that the offender has for
22 the support of the offender and any dependents.

23 ~~((15))~~) (14) "Day reporting" means a program of enhanced
24 supervision designed to monitor the ~~((defendant's))~~) offender's daily
25 activities and compliance with sentence conditions, and in which the
26 ~~((defendant))~~) offender is required to report daily to a specific
27 location designated by the department or the sentencing ~~((judge))~~)
28 court.

29 ~~((16))~~) (15) "Department" means the department of corrections.

30 ~~((17))~~) (16) "Determinate sentence" means a sentence that states
31 with exactitude the number of actual years, months, or days of total
32 confinement, of partial confinement, of community supervision, the
33 number of actual hours or days of community service work, or dollars or
34 terms of a legal financial obligation. The fact that an offender
35 through ~~((#))~~) earned release~~((#))~~) can reduce the actual period of
36 confinement shall not affect the classification of the sentence as a
37 determinate sentence.

38 ~~((18))~~) (17) "Disposable earnings" means that part of the earnings
39 of an ~~((individual))~~) offender remaining after the deduction from those

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

11 (18) "Drug offender sentencing alternative" is a sentencing option
12 available to persons convicted of a felony offense other than a violent
13 offense or a sex offense and who are eligible for the option under
14 section 19 of this act.

15 (19) "Drug offense" means:

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

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

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

25 (20) "Earned release" means earned release from confinement as
26 provided in RCW 9.94A.150.

27 ~~((20))~~ (21) "Escape" means:

28 (a) Escape in the first degree (RCW 9A.76.110), escape in the
29 second degree (RCW 9A.76.120), willful failure to return from furlough
30 (RCW 72.66.060), willful failure to return from work release (RCW
31 72.65.070), or willful failure to be available for supervision by the
32 department while in community custody (RCW 72.09.310); or

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

36 ~~((21))~~ (22) "Felony traffic offense" means:

37 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
38 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
39 and-run injury-accident (RCW 46.52.020(4)); or

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

4 (~~((22))~~) (23) "Fine((s))" means ((the requirement that the offender
5 pay)) a specific sum of money ordered by the sentencing court to be
6 paid by the offender to the court over a specific period of time ((to
7 the court)).

8 (~~((23))~~) (24) "First-time offender" means any person who ((is
9 convicted of a felony (a) not classified as a violent offense or a sex
10 offense under this chapter, or (b) that is not the manufacture,
11 delivery, or possession with intent to manufacture or deliver a
12 controlled substance classified in Schedule I or II that is a narcotic
13 drug or flunitrazepam classified in Schedule IV, nor the manufacture,
14 delivery, or possession with intent to deliver methamphetamine, its
15 salts, isomers, and salts of its isomers as defined in RCW
16 69.50.206(d)(2), nor the selling for profit of any controlled substance
17 or counterfeit substance classified in Schedule I, RCW 69.50.204,
18 except leaves and flowering tops of marihuana, who previously has never
19 been convicted of a felony in this state, federal court, or another
20 state, and who has never participated in a program of deferred
21 prosecution for a felony offense)) has no prior convictions for a
22 felony and is eligible for the first-time offender waiver under section
23 18 of this act.

24 (~~((24))~~) (25) "Home detention" means a program of partial
25 confinement available to offenders wherein the offender is confined in
26 a private residence subject to electronic surveillance.

27 (~~((25))~~) (26) "Legal financial obligation" means a sum of money
28 that is ordered by a superior court of the state of Washington for
29 legal financial obligations which may include restitution to the
30 victim, statutorily imposed crime victims' compensation fees as
31 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
32 drug funds, court-appointed attorneys' fees, and costs of defense,
33 finances, and any other financial obligation that is assessed to the
34 offender as a result of a felony conviction. Upon conviction for
35 vehicular assault while under the influence of intoxicating liquor or
36 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
37 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
38 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 RCW 38.52.430.

3 (27) "Most serious offense" means any of the following felonies or
4 a felony attempt to commit any of the following felonies(~~(, as now~~
5 ~~existing or hereafter amended))):~~

6 (a) Any felony defined under any law as a class A felony or
7 criminal solicitation of or criminal conspiracy to commit a class A
8 felony;

9 (b) Assault in the second degree;

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Promoting prostitution in the first degree;

21 (n) Rape in the third degree;

22 (o) Robbery in the second degree;

23 (p) Sexual exploitation;

24 (q) Vehicular assault;

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

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

31 (t) Any other felony with a deadly weapon verdict under RCW
32 9.94A.125;

33 (u) Any felony offense in effect at any time prior to December 2,
34 1993, that is comparable to a most serious offense under this
35 subsection, or any federal or out-of-state conviction for an offense
36 that under the laws of this state would be a felony classified as a
37 most serious offense under this subsection;

38 (v)(i) A prior conviction for indecent liberties under RCW
39 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.

1 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
2 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
3 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

4 (ii) A prior conviction for indecent liberties under RCW
5 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
6 if: (A) The crime was committed against a child under the age of
7 fourteen; or (B) the relationship between the victim and perpetrator is
8 included in the definition of indecent liberties under RCW
9 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
10 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
11 through July 27, 1997.

12 (~~((26))~~) (28) "Nonviolent offense" means an offense which is not a
13 violent offense.

14 (~~((27))~~) (29) "Offender" means a person who has committed a felony
15 established by state law and is eighteen years of age or older or is
16 less than eighteen years of age but whose case is under superior court
17 jurisdiction under RCW 13.04.030 or has been transferred by the
18 appropriate juvenile court to a criminal court pursuant to RCW
19 13.40.110. Throughout this chapter, the terms "offender" and
20 "defendant" are used interchangeably.

21 (~~((28))~~) (30) "Partial confinement" means confinement for no more
22 than one year in a facility or institution operated or utilized under
23 contract by the state or any other unit of government, or, if home
24 detention or work crew has been ordered by the court, in an approved
25 residence, for a substantial portion of each day with the balance of
26 the day spent in the community. Partial confinement includes work
27 release, home detention, work crew, and a combination of work crew and
28 home detention (~~((as defined in this section))~~).

29 (~~((29))~~) (31) "Persistent offender" is an offender who:

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

32 (ii) Has, before the commission of the offense under (a) of this
33 subsection, been convicted as an offender on at least two separate
34 occasions, whether in this state or elsewhere, of felonies that under
35 the laws of this state would be considered most serious offenses and
36 would be included in the offender score under RCW 9.94A.360; provided
37 that of the two or more previous convictions, at least one conviction
38 must have occurred before the commission of any of the other most
39 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
2 of a child in the first degree, child molestation in the first degree,
3 rape in the second degree, rape of a child in the second degree, or
4 indecent liberties by forcible compulsion; (B) murder in the first
5 degree, murder in the second degree, homicide by abuse, kidnapping in
6 the first degree, kidnapping in the second degree, assault in the first
7 degree, assault in the second degree, assault of a child in the first
8 degree, or burglary in the first degree, with a finding of sexual
9 motivation; or (C) an attempt to commit any crime listed in this
10 subsection ~~((+29+))~~ (31)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this
12 subsection, been convicted as an offender on at least one occasion,
13 whether in this state or elsewhere, of an offense listed in (b)(i) of
14 this subsection. A conviction for rape of a child in the first degree
15 constitutes a conviction under ~~((subsection—(29+))~~ (b)(i) of this
16 subsection only when the offender was sixteen years of age or older
17 when the offender committed the offense. A conviction for rape of a
18 child in the second degree constitutes a conviction under ~~((subsection~~
19 ~~(+29+))~~ (b)(i) of this subsection only when the offender was eighteen
20 years of age or older when the offender committed the offense.

21 ~~((+30+))~~ (32) "Postrelease supervision" is that portion of an
22 offender's community placement that is not community custody.

23 ~~((+31+))~~ (33) "Restitution" means ~~((the requirement that the~~
24 ~~offender pay))~~ a specific sum of money ~~((over a specific period of time~~
25 ~~to the court))~~ ordered by the sentencing court to be paid by the
26 offender to the court over a specified period of time as payment of
27 damages. The sum may include both public and private costs. ~~((The~~
28 ~~imposition of a restitution order does not preclude civil redress.~~

29 ~~(+32+))~~ (34) "Risk assessment" means the application of an objective
30 instrument supported by research and adopted by the department for the
31 purpose of assessing an offender's risk of reoffense, taking into
32 consideration the nature of the harm done by the offender, place and
33 circumstances of the offender related to risk, the offender's
34 relationship to any victim, and any information provided to the
35 department by victims. The results of a risk assessment shall not be
36 based on unconfirmed or unconfirmable allegations.

37 ~~((+33+))~~ (35) "Serious traffic offense" means:

38 (a) Driving while under the influence of intoxicating liquor or any
39 drug (RCW 46.61.502), actual physical control while under the influence

1 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
2 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
3 or

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

7 ~~((34))~~ (36) "Serious violent offense" is a subcategory of violent
8 offense and means:

9 (a)(i) Murder in the first degree~~((7))~~i

10 (ii) Homicide by abuse~~((7))~~i

11 (iii) Murder in the second degree~~((7))~~i

12 (iv) Manslaughter in the first degree~~((7))~~i

13 (v) Assault in the first degree~~((7))~~i

14 (vi) Kidnapping in the first degree~~((7- or))~~i

15 (vii) Rape in the first degree~~((7))~~i

16 (viii) Assault of a child in the first degree~~((7))~~i or

17 (ix) An attempt, criminal solicitation, or criminal conspiracy to
18 commit one of these felonies; or

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

22 ~~((35) "Sentence range" means the sentencing court's discretionary
23 range in imposing a nonappealable sentence.~~

24 ~~(36))~~ (37) "Sex offense" means:

25 (a) A felony that is a violation of:

26 (i) Chapter 9A.44 RCW~~((7))~~ other than RCW 9A.44.130~~((10), or))~~
27 (11)i

28 (ii) RCW 9A.64.020 ~~((or))~~i

29 (iii) RCW 9.68A.090i or

30 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
31 criminal solicitation, or criminal conspiracy to commit such crimes;

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

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.127 or 13.40.135; or

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

1 ~~((37))~~ (38) "Sexual motivation" means that one of the purposes
2 for which the defendant committed the crime was for the purpose of his
3 or her sexual gratification.

4 ~~((38))~~ (39) "Standard sentence range" means the sentencing
5 court's discretionary range in imposing a nonappealable sentence.

6 (40) "Statutory maximum sentence" means the maximum length of time
7 for which an offender may be confined as punishment for a crime as
8 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
9 crime, or other statute defining the maximum penalty for a crime.

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

14 ~~((39))~~ (42) "Transition training" means written and verbal
15 instructions and assistance provided by the department to the offender
16 during the two weeks prior to the offender's successful completion of
17 the work ethic camp program. The transition training shall include
18 instructions in the offender's requirements and obligations during the
19 offender's period of community custody.

20 ~~((40))~~ (43) "Victim" means any person who has sustained
21 emotional, psychological, physical, or financial injury to person or
22 property as a direct result of the crime charged.

23 ~~((41))~~ (44) "Violent offense" means:

24 (a) Any of the following felonies(~~((, as now existing or hereafter~~
25 amended))):

26 (i) Any felony defined under any law as a class A felony or an
27 attempt to commit a class A felony(~~((,))i~~

28 (ii) Criminal solicitation of or criminal conspiracy to commit a
29 class A felony(~~((,))i~~

30 (iii) Manslaughter in the first degree(~~((,))i~~

31 (iv) Manslaughter in the second degree(~~((,))i~~

32 (v) Indecent liberties if committed by forcible compulsion(~~((,))i~~

33 (vi) Kidnapping in the second degree(~~((,))i~~

34 (vii) Arson in the second degree(~~((,))i~~

35 (viii) Assault in the second degree(~~((,))i~~

36 (ix) Assault of a child in the second degree(~~((,))i~~

37 (x) Extortion in the first degree(~~((,))i~~

38 (xi) Robbery in the second degree(~~((,))i~~

39 (xii) Drive-by shooting(~~((,))i~~

1 (xiii) Vehicular assault ~~((7))~~; and

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

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

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

12 ~~((42))~~ (45) "Work crew" means a program of partial confinement
13 consisting of civic improvement tasks for the benefit of the community
14 ~~((of not less than thirty five hours per week))~~ that complies with RCW
15 9.94A.135. ~~((The civic improvement tasks shall have minimal negative
16 impact on existing private industries or the labor force in the county
17 where the service or labor is performed. The civic improvement tasks
18 shall not affect employment opportunities for people with developmental
19 disabilities contracted through sheltered workshops as defined in RCW
20 82.04.385. Only those offenders sentenced to a facility operated or
21 utilized under contract by a county or the state, or sanctioned under
22 RCW 9.94A.205, are eligible to participate on a work crew. Offenders
23 sentenced for a sex offense as defined in subsection (36) of this
24 section are not eligible for the work crew program.~~

25 ~~(43))~~ (46) "Work ethic camp" means an alternative incarceration
26 program as provided in RCW 9.94A.137 designed to reduce recidivism and
27 lower the cost of corrections by requiring offenders to complete a
28 comprehensive array of real-world job and vocational experiences,
29 character-building work ethics training, life management skills
30 development, substance abuse rehabilitation, counseling, literacy
31 training, and basic adult education.

32 ~~((44))~~ (47) "Work release" means a program of partial confinement
33 available to offenders who are employed or engaged as a student in a
34 regular course of study at school. ~~((Participation in work release
35 shall be conditioned upon the offender attending work or school at
36 regularly defined hours and abiding by the rules of the work release
37 facility.))~~

1 NEW SECTION. **Sec. 3.** For purposes of judicial and criminal
2 justice forms promulgated under this chapter and related to corrections
3 and sentencing, the terms "offender" and "defendant" may be used
4 interchangeably without substantive effect.

5 This section expires July 1, 2005.

6 **Sec. 4.** RCW 9.94A.190 and 1995 c 108 s 4 are each amended to read
7 as follows:

8 (1) A sentence that includes a term or terms of confinement
9 totaling more than one year shall be served in a facility or
10 institution operated, or utilized under contract, by the state. Except
11 as provided (~~((for))~~) in subsection (3) of this section, a sentence of
12 not more than one year of confinement shall be served in a facility
13 operated, licensed, or utilized under contract, by the county, or if
14 home detention or work crew has been ordered by the court, in the
15 residence of either the (~~((defendant))~~) offender or a member of the
16 (~~((defendant's))~~) offender's immediate family.

17 (2) If a county uses a state partial confinement facility for the
18 partial confinement of a person sentenced to confinement for not more
19 than one year, the county shall reimburse the state for the use of the
20 facility as provided (~~((for))~~) in this subsection. The office of
21 financial management shall set the rate of reimbursement based upon the
22 average per diem cost per offender in the facility. The office of
23 financial management shall determine to what extent, if any,
24 reimbursement shall be reduced or eliminated because of funds provided
25 by the legislature to the department (~~((of corrections))~~) for the purpose
26 of covering the cost of county use of state partial confinement
27 facilities. The office of financial management shall reestablish
28 reimbursement rates each even-numbered year.

29 (3) A person who is sentenced for a felony to a term of not more
30 than one year, and who is committed or returned to incarceration in a
31 state facility on another felony conviction, either under the
32 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter
33 shall serve all terms of confinement, including a sentence of not more
34 than one year, in a facility or institution operated, or utilized under
35 contract, by the state, consistent with the provisions of RCW
36 9.94A.400.

37 (4) (~~((For))~~) Notwithstanding any other provision of this section, a
38 sentence((s)) imposed pursuant to ((RCW 9.94A.120(6))) section 19 of

1 this act which ~~((have))~~ has a standard sentence range of over one year,
2 ~~((notwithstanding any other provision of this section all such~~
3 ~~sentences))~~ regardless of length, shall be served in a facility or
4 institution operated, or utilized under contract, by the state.

5 **PART II**

6 **Sentencing Determinations**

7 **Sec. 5.** RCW 9.94A.120 and 1999 c 324 s 2, 1999 c 197 s 4, 1999 c
8 196 s 5, and 1999 c 147 s 3 are each reenacted and amended to read as
9 follows:

10 (1) When a person is convicted of a felony, the court shall impose
11 punishment as provided in this ~~((section))~~ chapter.

12 ~~((1) Except as authorized in subsections (2), (4), (5), (6), and~~
13 ~~(8) of this section,))~~ (2)(a) The court shall impose a sentence
14 ~~((within the sentence range for the offense.~~

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

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

23 ~~(4) A persistent offender shall be sentenced to a term of total~~
24 ~~confinement for life without the possibility of parole or, when~~
25 ~~authorized by RCW 10.95.030 for the crime of aggravated murder in the~~
26 ~~first degree, sentenced to death, notwithstanding the maximum sentence~~
27 ~~under any other law. An offender convicted of the crime of murder in~~
28 ~~the first degree shall be sentenced to a term of total confinement not~~
29 ~~less than twenty years. An offender convicted of the crime of assault~~
30 ~~in the first degree or assault of a child in the first degree where the~~
31 ~~offender used force or means likely to result in death or intended to~~
32 ~~kill the victim shall be sentenced to a term of total confinement not~~
33 ~~less than five years. An offender convicted of the crime of rape in~~
34 ~~the first degree shall be sentenced to a term of total confinement not~~
35 ~~less than five years. The foregoing minimum terms of total confinement~~
36 ~~are mandatory and shall not be varied or modified as provided in~~
37 ~~subsection (2) of this section. In addition, all offenders subject to~~

1 the provisions of this subsection shall not be eligible for community
2 custody, earned release time, furlough, home detention, partial
3 confinement, work crew, work release, or any other form of early
4 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
5 or any other form of authorized leave of absence from the correctional
6 facility while not in the direct custody of a corrections officer or
7 officers during such minimum terms of total confinement except: (a) In
8 the case of an offender in need of emergency medical treatment; (b) for
9 the purpose of commitment to an inpatient treatment facility in the
10 case of an offender convicted of the crime of rape in the first degree;
11 or (c) for an extraordinary medical placement when authorized under RCW
12 9.94A.150(4).

13 (5)(a) In sentencing a first-time offender the court may waive the
14 imposition of a sentence within the sentence range and impose a
15 sentence which may include up to ninety days of confinement in a
16 facility operated or utilized under contract by the county and a
17 requirement that the offender refrain from committing new offenses.
18 The sentence may also include a term of community supervision or
19 community custody as specified in (b) of this subsection, which, in
20 addition to crime-related prohibitions, may include requirements that
21 the offender perform any one or more of the following:

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

23 (ii) Undergo available outpatient treatment for up to the period
24 specified in (b) of this subsection, or inpatient treatment not to
25 exceed the standard range of confinement for that offense;

26 (iii) Pursue a prescribed, secular course of study or vocational
27 training;

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

31 (v) Report as directed to a community corrections officer; or

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

34 (b) The terms and statuses applicable to sentences under (a) of
35 this subsection are:

36 (i) For sentences imposed on or after July 25, 1999, for crimes
37 committed before July 1, 2000, up to one year of community supervision.
38 If treatment is ordered, the period of community supervision may

1 include up to the period of treatment, but shall not exceed two years;
2 and

3 (ii) For crimes committed on or after July 1, 2000, up to one year
4 of community custody unless treatment is ordered, in which case the
5 period of community custody may include up to the period of treatment,
6 but shall not exceed two years. Any term of community custody imposed
7 under this subsection (5) is subject to conditions and sanctions as
8 authorized in this subsection (5) and in subsection (11)(b) and (c) of
9 this section.

10 (c) The department shall discharge from community supervision any
11 offender sentenced under this subsection (5) before July 25, 1999, who
12 has served at least one year of community supervision and has completed
13 any treatment ordered by the court.

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

16 (i) The offender is convicted of a felony that is not a violent
17 offense or sex offense and the violation does not involve a sentence
18 enhancement under RCW 9.94A.310 (3) or (4);

19 (ii) The offender has no current or prior convictions for a sex
20 offense or violent offense in this state, another state, or the United
21 States;

22 (iii) For a violation of the uniform controlled substances act
23 under chapter 69.50 RCW or a criminal solicitation to commit such a
24 violation under chapter 9A.28 RCW, the offense involved only a small
25 quantity of the particular controlled substance as determined by the
26 judge upon consideration of such factors as the weight, purity,
27 packaging, sale price, and street value of the controlled substance;
28 and

29 (iv) The offender has not been found by the United States attorney
30 general to be subject to a deportation detainer or order.

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

1 receive, within available resources, treatment services appropriate for
2 the offender. The treatment services shall be designed by the division
3 of alcohol and substance abuse of the department of social and health
4 services, in cooperation with the department of corrections.

5 The court shall also impose:

6 (i) The remainder of the midpoint of the standard range as a term
7 of community custody which must include appropriate substance abuse
8 treatment in a program that has been approved by the division of
9 alcohol and substance abuse of the department of social and health
10 services;

11 (ii) Crime-related prohibitions including a condition not to use
12 illegal controlled substances; and

13 (iii) A requirement to submit to urinalysis or other testing to
14 monitor that status.

15 The court may prohibit the offender from using alcohol or
16 controlled substances and may require that the monitoring for
17 controlled substances be conducted by the department or by a treatment
18 alternatives to street crime program or a comparable court or agency-
19 referred program. The offender may be required to pay thirty dollars
20 per month while on community custody to offset the cost of monitoring.
21 In addition, the court shall impose three or more of the following
22 conditions:

23 (A) Devote time to a specific employment or training;

24 (B) Remain within prescribed geographical boundaries and notify the
25 court or the community corrections officer before any change in the
26 offender's address or employment;

27 (C) Report as directed to a community corrections officer;

28 (D) Pay all court-ordered legal financial obligations;

29 (E) Perform community service work;

30 (F) Stay out of areas designated by the sentencing judge;

31 (G) Such other conditions as the court may require such as
32 affirmative conditions.

33 (c) If the offender violates any of the sentence conditions in (b)
34 of this subsection, a violation hearing shall be held by the department
35 unless waived by the offender. If the department finds that conditions
36 have been willfully violated, the offender may be reclassified to serve
37 the remaining balance of the original sentence.

38 (d) The department shall determine the rules for calculating the
39 value of a day fine based on the offender's income and reasonable

1 obligations which the offender has for the support of the offender and
2 any dependents. These rules shall be developed in consultation with
3 the administrator for the courts, the office of financial management,
4 and the commission.

5 ~~(e) An offender who fails to complete the special drug offender~~
6 ~~sentencing alternative program or who is administratively terminated~~
7 ~~from the program shall be reclassified to serve the unexpired term of~~
8 ~~his or her sentence as ordered by the sentencing judge and shall be~~
9 ~~subject to all rules relating to earned early release time. An~~
10 ~~offender who violates any conditions of supervision as defined by the~~
11 ~~department shall be sanctioned. Sanctions may include, but are not~~
12 ~~limited to, reclassifying the offender to serve the unexpired term of~~
13 ~~his or her sentence as ordered by the sentencing judge. If an offender~~
14 ~~is reclassified to serve the unexpired term of his or her sentence, the~~
15 ~~offender shall be subject to all rules relating to earned early release~~
16 ~~time.~~

17 (7)) as provided in the following sections and as applicable in
18 the case:

19 (i) Unless another term of confinement applies, the court shall
20 impose a sentence within the standard sentence range established in RCW
21 9.94A.310;

22 (ii) Sections 22 and 23 of this act, relating to community
23 placement;

24 (iii) Sections 24 and 25 of this act, relating to community
25 custody;

26 (iv) RCW 9.94A.383, relating to community custody for offenders
27 whose term of confinement is one year or less;

28 (v) Section 6 of this act, relating to persistent offenders;

29 (vi) Section 7 of this act, relating to mandatory minimum terms;

30 (vii) Section 18 of this act, relating to the first-time offender
31 waiver;

32 (viii) Section 19 of this act, relating to the drug offender
33 sentencing alternative;

34 (ix) Section 20 of this act, relating to the special sex offender
35 sentencing alternative;

36 (x) RCW 9.94A.390, relating to exceptional sentences;

37 (xi) RCW 9.94A.400, relating to consecutive and concurrent
38 sentences.

1 (b) If a standard sentence range has not been established for the
2 ((defendant's)) offender's crime, the court shall impose a determinate
3 sentence which may include not more than one year of confinement;
4 community service work; until July 1, 2000, a term of community
5 supervision not to exceed one year and on and after July 1, 2000, a
6 term of community custody not to exceed one year, subject to conditions
7 and sanctions as authorized in ((subsection (11)(b) and (c))) section
8 24 (2) and (3) of this ((section)) act; and/or other legal financial
9 obligations. The court may impose a sentence which provides more than
10 one year of confinement if the court finds((, considering the purpose
11 of this chapter, that there are substantial and compelling)) reasons
12 justifying an exceptional sentence as provided in RCW 9.94A.390.

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

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

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

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

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

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

36 (D) Anticipated length of treatment; and

37 (E) Recommended crime-related prohibitions.

38 The court on its own motion may order, or on a motion by the state
39 shall order, a second examination regarding the offender's amenability

1 to treatment. The evaluator shall be selected by the party making the
2 motion. The defendant shall pay the cost of any second examination
3 ordered unless the court finds the defendant to be indigent in which
4 case the state shall pay the cost.

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

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

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

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

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

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

1 ~~(IV) Pay all court-ordered legal financial obligations as provided~~
2 ~~in RCW 9.94A.030, perform community service work, or any combination~~
3 ~~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 release~~
8 ~~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 ~~(d) Within the funds available for this purpose, the department~~
24 ~~shall develop and monitor transition and relapse prevention strategies,~~
25 ~~including risk assessment and release plans, to reduce risk to the~~
26 ~~community after sex offenders' terms of confinement in the custody of~~
27 ~~the department.~~

28 ~~(9)(a)(i) When a court sentences a person to a term of total~~
29 ~~confinement to the custody of the department of corrections for an~~
30 ~~offense categorized as a sex offense or a serious violent offense~~
31 ~~committed after July 1, 1988, but before July 1, 1990, assault in the~~
32 ~~second degree, assault of a child in the second degree, any crime~~
33 ~~against a person where it is determined in accordance with RCW~~
34 ~~9.94A.125 that the defendant or an accomplice was armed with a deadly~~
35 ~~weapon at the time of commission, or any felony offense under chapter~~
36 ~~69.50 or 69.52 RCW not sentenced under subsection (6) of this section,~~
37 ~~committed on or after July 1, 1988, but before July 25, 1999, the court~~
38 ~~shall in addition to the other terms of the sentence, sentence the~~
39 ~~offender to a one-year term of community placement beginning either~~

1 upon completion of the term of confinement or at such time as the
2 offender is transferred to community custody in lieu of earned release
3 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences
4 an offender under this subsection to the statutory maximum period of
5 confinement then the community placement portion of the sentence shall
6 consist entirely of such community custody to which the offender may
7 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
8 period of community custody actually served shall be credited against
9 the community placement portion of the sentence.

10 (ii) Except for persons sentenced under (b) of this subsection or
11 subsection (10)(a) of this section, when a court sentences a person to
12 a term of total confinement to the custody of the department of
13 corrections for a violent offense, any crime against a person under RCW
14 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW
15 not sentenced under subsection (6) of this section, committed on or
16 after July 25, 1999, but before July 1, 2000, the court shall in
17 addition to the other terms of the sentence, sentence the offender to
18 a one-year term of community placement beginning either upon completion
19 of the term of confinement or at such time as the offender is
20 transferred to community custody in lieu of earned release in
21 accordance with RCW 9.94A.150 (1) and (2). When the court sentences
22 the offender under this subsection (9)(a)(ii) to the statutory maximum
23 period of confinement, then the community placement portion of the
24 sentence shall consist entirely of such community custody to which the
25 offender may become eligible, in accordance with RCW 9.94A.150 (1) and
26 (2). Any period of community custody actually served shall be credited
27 against the community placement portion of the sentence.

28 (b) When a court sentences a person to a term of total confinement
29 to the custody of the department of corrections for an offense
30 categorized as a sex offense committed on or after July 1, 1990, but
31 before June 6, 1996, or a serious violent offense, vehicular homicide,
32 or vehicular assault, committed on or after July 1, 1990, but before
33 July 1, 2000, the court shall in addition to other terms of the
34 sentence, sentence the offender to community placement for two years or
35 up to the period of earned release awarded pursuant to RCW 9.94A.150
36 (1) and (2), whichever is longer. The community placement shall begin
37 either upon completion of the term of confinement or at such time as
38 the offender is transferred to community custody in lieu of earned
39 release in accordance with RCW 9.94A.150 (1) and (2). When the court

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

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

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

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

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

18 (v) The residence location and living arrangements are subject to
19 the prior approval of the department of corrections during the period
20 of community placement; and

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

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

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

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

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

33 (iv) The offender shall not consume alcohol;

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

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

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

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

7 (10)(a) ~~When a court sentences a person to the custody of the~~
8 ~~department of corrections for an offense categorized as a sex offense~~
9 ~~committed on or after June 6, 1996, but before July 1, 2000, the court~~
10 ~~shall, in addition to other terms of the sentence, sentence the~~
11 ~~offender to community custody for three years or up to the period of~~
12 ~~earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever~~
13 ~~is longer. The community custody 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 release in accordance with RCW~~
16 ~~9.94A.150 (1) and (2).~~

17 (b) ~~Unless a condition is waived by the court, the terms of~~
18 ~~community custody shall be the same as those provided for in subsection~~
19 ~~(9)(b) of this section and may include those provided for in subsection~~
20 ~~(9)(c) of this section. As part of any sentence that includes a term~~
21 ~~of community custody imposed under this subsection, the court shall~~
22 ~~also require the offender to comply with any conditions imposed by the~~
23 ~~department of corrections under subsection (15) of this section.~~

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

35 (11)(a) ~~When a court sentences a person to the custody of the~~
36 ~~department of corrections for a sex offense, a violent offense, any~~
37 ~~crime against a person under RCW 9.94A.440(2), or a felony offense~~
38 ~~under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of~~
39 ~~this section, committed on or after July 1, 2000, the court shall in~~

1 addition to the other terms of the sentence, sentence the offender to
2 community custody for the community custody range or up to the period
3 of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),
4 whichever is longer. The community custody shall begin either upon
5 completion of the term of confinement or at such time as the offender
6 is transferred to community custody in lieu of earned release in
7 accordance with RCW 9.94A.150 (1) and (2).

8 (b) Unless a condition is waived by the court, the conditions of
9 community custody shall include those provided for in subsection
10 (9)(b)(i) through (vi) of this section. The conditions may also
11 include those provided for in subsection (9)(c)(i) through (vi) of this
12 section. The court may also order the offender to participate in
13 rehabilitative programs or otherwise perform affirmative conduct
14 reasonably related to the circumstances of the offense, the offender's
15 risk of reoffending, or the safety of the community, and the department
16 shall enforce such conditions pursuant to (f) of this subsection. As
17 part of any sentence that includes a term of community custody imposed
18 under this subsection, the court shall also require the offender to
19 comply with any conditions imposed by the department of corrections
20 under subsection (15) of this section. The department shall assess the
21 offender's risk of reoffense and may establish and modify additional
22 conditions of the offender's community custody based upon the risk to
23 community safety. The department may not impose conditions that are
24 contrary to those ordered by the court and may not contravene or
25 decrease court imposed conditions. The department shall notify the
26 offender in writing of any such conditions or modifications. In
27 setting, modifying, and enforcing conditions of community custody, the
28 department shall be deemed to be performing a quasi-judicial function.

29 (c) If an offender violates conditions imposed by the court or the
30 department pursuant to this subsection during community custody, the
31 department may transfer the offender to a more restrictive confinement
32 status and impose other available sanctions as provided in RCW
33 9.94A.205 and 9.94A.207.

34 (d) Except for terms of community custody under subsection (8) of
35 this section, the department shall discharge the offender from
36 community custody on a date determined by the department, which the
37 department may modify, based on risk and performance of the offender,
38 within the range or at the end of the period of earned release,
39 whichever is later.

1 ~~(e) At any time prior to the completion or termination of a sex~~
2 ~~offender's term of community custody, if the court finds that public~~
3 ~~safety would be enhanced, the court may impose and enforce an order~~
4 ~~extending any or all of the conditions imposed pursuant to this section~~
5 ~~for a period up to the maximum allowable sentence for the crime as it~~
6 ~~is classified in chapter 9A.20 RCW, regardless of the expiration of the~~
7 ~~offender's term of community custody. If a violation of a condition~~
8 ~~extended under this subsection occurs after the expiration of the~~
9 ~~offender's term of community custody, it shall be deemed a violation of~~
10 ~~the sentence for the purposes of RCW 9.94A.195 and may be punishable as~~
11 ~~contempt of court as provided for in RCW 7.21.040. If the court~~
12 ~~extends a condition beyond the expiration of the term of community~~
13 ~~custody, the department is not responsible for supervision of the~~
14 ~~offender's compliance with the condition.~~

15 ~~(f) Within the funds available for community custody, the~~
16 ~~department shall determine conditions and duration of community custody~~
17 ~~on the basis of risk to community safety, and shall supervise offenders~~
18 ~~during community custody on the basis of risk to community safety and~~
19 ~~conditions imposed by the court. The secretary shall adopt rules to~~
20 ~~implement the provisions of this subsection (11)(f).~~

21 ~~(g) By the close of the next business day after receiving notice of~~
22 ~~a condition imposed or modified by the department, an offender may~~
23 ~~request an administrative review under rules adopted by the department.~~
24 ~~The condition shall remain in effect unless the reviewing officer finds~~
25 ~~that it is not reasonably related to any of the following: (i) The~~
26 ~~crime of conviction; (ii) the offender's risk of reoffending; or (iii)~~
27 ~~the safety of the community.~~

28 ~~(12))~~ (3) If the court imposes a sentence requiring confinement of
29 thirty days or less, the court may, in its discretion, specify that the
30 sentence be served on consecutive or intermittent days. A sentence
31 requiring more than thirty days of confinement shall be served on
32 consecutive days. Local jail administrators may schedule court-ordered
33 intermittent sentences as space permits.

34 ~~((13))~~ (4) If a sentence imposed includes payment of a legal
35 financial obligation, ~~((the sentence shall specify the total amount of~~
36 ~~the legal financial obligation owed, and shall require the offender to~~
37 ~~pay a specified monthly sum toward that legal financial obligation.~~
38 ~~Restitution to victims shall be paid prior to any other payments of~~
39 ~~monetary obligations. Any legal financial obligation that is imposed~~

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

26 ~~(14))~~ (5) Except as provided under RCW 9.94A.140(~~((1))~~) (4) and
27 9.94A.142(~~((1))~~) (4), a court may not impose a sentence providing for
28 a term of confinement or community supervision, community placement, or
29 community custody which exceeds the statutory maximum for the crime as
30 provided in chapter 9A.20 RCW.

31 ~~((15) All offenders sentenced to terms involving community~~
32 ~~supervision, community service, community placement, community custody,~~
33 ~~or legal financial obligation shall be under the supervision of the~~
34 ~~department of corrections and shall follow explicitly the instructions~~
35 ~~and conditions of the department of corrections. The department may~~
36 ~~require an offender to perform affirmative acts it deems appropriate to~~
37 ~~monitor compliance with the conditions of the sentence imposed.~~

38 ~~(a) The instructions shall include, at a minimum, reporting as~~
39 ~~directed to a community corrections officer, remaining within~~

1 prescribed geographical boundaries, notifying the community corrections
2 officer of any change in the offender's address or employment, and
3 paying the supervision fee assessment.

4 (b) For offenders sentenced to terms involving community custody
5 for crimes committed on or after June 6, 1996, the department may
6 include, in addition to the instructions in (a) of this subsection, any
7 appropriate conditions of supervision, including but not limited to,
8 prohibiting the offender from having contact with any other specified
9 individuals or specific class of individuals. For offenders sentenced
10 to terms of community custody for crimes committed on or after July 1,
11 2000, the department may additionally require the offender to
12 participate in rehabilitative programs or otherwise perform affirmative
13 conduct, and to obey all laws.

14 The conditions authorized under this subsection (15)(b) may be
15 imposed by the department prior to or during an offender's community
16 custody term. If a violation of conditions imposed by the court or the
17 department pursuant to subsection (10) of this section occurs during
18 community custody, it shall be deemed a violation of community
19 placement for the purposes of RCW 9.94A.207 and shall authorize the
20 department to transfer an offender to a more restrictive confinement
21 status as provided in RCW 9.94A.205. At any time prior to the
22 completion of an offender's term of community custody, the department
23 may recommend to the court that any or all of the conditions imposed by
24 the court or the department pursuant to subsection (10) or (11) of this
25 section be continued beyond the expiration of the offender's term of
26 community custody as authorized in subsection (10)(c) or (11)(e) of
27 this section.

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

33 (16) All offenders sentenced to terms involving community
34 supervision, community service, community custody, or community
35 placement under the supervision of the department of corrections shall
36 not own, use, or possess firearms or ammunition. Offenders who own,
37 use, or are found to be in actual or constructive possession of
38 firearms or ammunition shall be subject to the appropriate violation
39 process and sanctions. "Constructive possession" as used in this

1 subsection means the power and intent to control the firearm or
2 ammunition. "Firearm" as used in this subsection means a weapon or
3 device from which a projectile may be fired by an explosive such as
4 gunpowder.

5 ~~((17))~~ (6) The sentencing court shall give the offender credit for
6 all confinement time served before the sentencing if that confinement
7 was solely in regard to the offense for which the offender is being
8 sentenced.

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

14 ~~((19))~~ (7) The court shall order restitution ~~((whenever the
15 offender is convicted of a felony that results in injury to any person
16 or damage to or loss of property, whether the offender is sentenced to
17 confinement or placed under community supervision, unless extraordinary
18 circumstances exist that make restitution inappropriate in the court's
19 judgment. The court shall set forth the extraordinary circumstances in
20 the record if it does not order restitution))~~ as provided in RCW
21 9.94A.140 and 9.94A.142.

22 ~~((20))~~ (8) As a part of any sentence, the court may impose and
23 enforce ~~((an order that relates directly to the circumstances of the
24 crime for which the offender has been convicted, prohibiting the
25 offender from having any contact with other specified individuals or a
26 specific class of individuals for a period not to exceed the maximum
27 allowable sentence for the crime, regardless of the expiration of the
28 offender's term of community supervision or community placement))~~
29 crime-related prohibitions and affirmative conditions as provided in
30 this chapter.

31 ~~((21))~~ (9) The court may order an offender whose sentence
32 includes community placement or community supervision to undergo a
33 mental status evaluation and to participate in available outpatient
34 mental health treatment, if the court finds that reasonable grounds
35 exist to believe that the offender is a mentally ill person as defined
36 in RCW 71.24.025, and that this condition is likely to have influenced
37 the offense. An order requiring mental status evaluation or treatment
38 must be based on a presentence report and, if applicable, mental status
39 evaluations that have been filed with the court to determine the

1 offender's competency or eligibility for a defense of insanity. The
2 court may order additional evaluations at a later date if deemed
3 appropriate.

4 ~~((22))~~ (10) In any sentence of partial confinement, the court may
5 require the ~~((defendant))~~ offender to serve the partial confinement in
6 work release, in a program of home detention, on work crew, or in a
7 combined program of work crew and home detention.

8 ~~((23) All court ordered legal financial obligations collected by
9 the department and remitted to the county clerk shall be credited and
10 paid where restitution is ordered. Restitution shall be paid prior to
11 any other payments of monetary obligations.~~

12 ~~(24))~~ (11) In sentencing an offender convicted of a crime of
13 domestic violence, as defined in RCW 10.99.020, if the offender has a
14 minor child, or if the victim of the offense for which the offender was
15 convicted has a minor child, the court may, as part of any term of
16 community supervision, community placement, or community custody, order
17 the offender to participate in a domestic violence perpetrator program
18 approved under RCW 26.50.150.

19 ~~((25)(a) Sex offender examinations and treatment ordered as a
20 special condition of community placement or community custody under
21 this section shall be conducted only by sex offender treatment
22 providers certified by the department of health under chapter 18.155
23 RCW unless the court finds that: (i) The offender has already moved to
24 another state or plans to move to another state for reasons other than
25 circumventing the certification requirements; (ii) no certified
26 providers are available for treatment within a reasonable geographic
27 distance of the offender's home, as determined in rules adopted by the
28 secretary; (iii) the evaluation and treatment plan comply with the
29 rules adopted by the department of health; or (iv) the treatment
30 provider is employed by the department. A treatment provider selected
31 by an offender who is not certified by the department of health shall
32 consult with a certified provider during the offender's period of
33 treatment to ensure compliance with the rules adopted by the department
34 of health. The frequency and content of the consultation shall be
35 based on the recommendation of the certified provider.~~

36 ~~(b) A sex offender's failure to participate in treatment required
37 as a condition of community placement or community custody is a
38 violation that will not be excused on the basis that no treatment~~

1 ~~provider was located within a reasonable geographic distance of the~~
2 ~~offender's home.)~~)

3 NEW SECTION. **Sec. 6.** PERSISTENT OFFENDERS. Notwithstanding the
4 statutory maximum sentence or any other provision of this chapter, a
5 persistent offender shall be sentenced to a term of total confinement
6 for life without the possibility of release or, when authorized by RCW
7 10.95.030 for the crime of aggravated murder in the first degree,
8 sentenced to death. In addition, no offender subject to this section
9 may be eligible for community custody, earned release time, furlough,
10 home detention, partial confinement, work crew, work release, or any
11 other form of release as defined under RCW 9.94A.150 (1), (2), (3),
12 (4), (6), (8), or (9), or any other form of authorized leave from a
13 correctional facility while not in the direct custody of a corrections
14 officer or officers, except: (1) In the case of an offender in need of
15 emergency medical treatment; or (2) for the purpose of commitment to an
16 inpatient treatment facility in the case of an offender convicted of
17 the crime of rape in the first degree.

18 NEW SECTION. **Sec. 7.** MANDATORY MINIMUM TERMS. (1) The following
19 minimum terms of total confinement are mandatory and shall not be
20 varied or modified under RCW 9.94A.390:

21 (a) An offender convicted of the crime of murder in the first
22 degree shall be sentenced to a term of total confinement not less than
23 twenty years.

24 (b) An offender convicted of the crime of assault in the first
25 degree or assault of a child in the first degree where the offender
26 used force or means likely to result in death or intended to kill the
27 victim shall be sentenced to a term of total confinement not less than
28 five years.

29 (c) An offender convicted of the crime of rape in the first degree
30 shall be sentenced to a term of total confinement not less than five
31 years.

32 (2) During such minimum terms of total confinement, no offender
33 subject to the provisions of this section is eligible for community
34 custody, earned release time, furlough, home detention, partial
35 confinement, work crew, work release, or any other form of early
36 release authorized under RCW 9.94A.150, or any other form of authorized
37 leave of absence from the correctional facility while not in the direct

1 custody of a corrections officer. The provisions of this subsection
2 shall not apply: (a) In the case of an offender in need of emergency
3 medical treatment; (b) for the purpose of commitment to an inpatient
4 treatment facility in the case of an offender convicted of the crime of
5 rape in the first degree; or (c) for an extraordinary medical placement
6 when authorized under RCW 9.94A.150(4).

7 **Sec. 8.** RCW 9.94A.390 and 1999 c 330 s 1 are each amended to read
8 as follows:

9 The court may impose a sentence outside the standard sentence range
10 for an offense if it finds, considering the purpose of this chapter,
11 that there are substantial and compelling reasons justifying an
12 exceptional sentence. Whenever a sentence outside the standard
13 sentence range is imposed, the court shall set forth the reasons for
14 its decision in written findings of fact and conclusions of law. A
15 sentence outside the standard sentence range shall be a determinate
16 sentence.

17 If the sentencing court finds that an exceptional sentence outside
18 the standard sentence range should be imposed (~~(in accordance with RCW~~
19 ~~9.94A.120(2))~~), the sentence is subject to review only as provided for
20 in RCW 9.94A.210(4).

21 A departure from the standards in RCW 9.94A.400 (1) and (2)
22 governing whether sentences are to be served consecutively or
23 concurrently is an exceptional sentence subject to the limitations in
24 this section, and may be appealed by the offender or the state as set
25 forth in RCW 9.94A.210 (2) through (6).

26 The following are illustrative factors which the court may consider
27 in the exercise of its discretion to impose an exceptional sentence.
28 The following are illustrative only and are not intended to be
29 exclusive reasons for exceptional sentences.

30 (1) Mitigating Circumstances

31 (a) To a significant degree, the victim was an initiator, willing
32 participant, aggressor, or provoker of the incident.

33 (b) Before detection, the defendant compensated, or made a good
34 faith effort to compensate, the victim of the criminal conduct for any
35 damage or injury sustained.

36 (c) The defendant committed the crime under duress, coercion,
37 threat, or compulsion insufficient to constitute a complete defense but
38 which significantly affected his or her conduct.

1 (d) The defendant, with no apparent predisposition to do so, was
2 induced by others to participate in the crime.

3 (e) The defendant's capacity to appreciate the wrongfulness of his
4 or her conduct, or to conform his or her conduct to the requirements of
5 the law, was significantly impaired ((+)). Voluntary use of drugs or
6 alcohol is excluded((+)).

7 (f) The offense was principally accomplished by another person and
8 the defendant manifested extreme caution or sincere concern for the
9 safety or well-being of the victim.

10 (g) The operation of the multiple offense policy of RCW 9.94A.400
11 results in a presumptive sentence that is clearly excessive in light of
12 the purpose of this chapter, as expressed in RCW 9.94A.010.

13 (h) The defendant or the defendant's children suffered a continuing
14 pattern of physical or sexual abuse by the victim of the offense and
15 the offense is a response to that abuse.

16 (2) Aggravating Circumstances

17 (a) The defendant's conduct during the commission of the current
18 offense manifested deliberate cruelty to the victim.

19 (b) The defendant knew or should have known that the victim of the
20 current offense was particularly vulnerable or incapable of resistance
21 due to extreme youth, advanced age, disability, or ill health.

22 (c) The current offense was a violent offense, and the defendant
23 knew that the victim of the current offense was pregnant.

24 (d) The current offense was a major economic offense or series of
25 offenses, so identified by a consideration of any of the following
26 factors:

27 (i) The current offense involved multiple victims or multiple
28 incidents per victim;

29 (ii) The current offense involved attempted or actual monetary loss
30 substantially greater than typical for the offense;

31 (iii) The current offense involved a high degree of sophistication
32 or planning or occurred over a lengthy period of time; or

33 (iv) The defendant used his or her position of trust, confidence,
34 or fiduciary responsibility to facilitate the commission of the current
35 offense.

36 (e) The current offense was a major violation of the Uniform
37 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
38 trafficking in controlled substances, which was more onerous than the

1 typical offense of its statutory definition: The presence of ANY of
2 the following may identify a current offense as a major VUCSA:

3 (i) The current offense involved at least three separate
4 transactions in which controlled substances were sold, transferred, or
5 possessed with intent to do so;

6 (ii) The current offense involved an attempted or actual sale or
7 transfer of controlled substances in quantities substantially larger
8 than for personal use;

9 (iii) The current offense involved the manufacture of controlled
10 substances for use by other parties;

11 (iv) The circumstances of the current offense reveal the offender
12 to have occupied a high position in the drug distribution hierarchy;

13 (v) The current offense involved a high degree of sophistication or
14 planning ((~~or~~)), occurred over a lengthy period of time, or involved a
15 broad geographic area of disbursement; or

16 (vi) The offender used his or her position or status to facilitate
17 the commission of the current offense, including positions of trust,
18 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
19 other medical professional).

20 (f) The current offense included a finding of sexual motivation
21 pursuant to RCW 9.94A.127.

22 (g) The offense was part of an ongoing pattern of sexual abuse of
23 the same victim under the age of eighteen years manifested by multiple
24 incidents over a prolonged period of time.

25 (h) The current offense involved domestic violence, as defined in
26 RCW 10.99.020, and one or more of the following was present:

27 (i) The offense was part of an ongoing pattern of psychological,
28 physical, or sexual abuse of the victim manifested by multiple
29 incidents over a prolonged period of time;

30 (ii) The offense occurred within sight or sound of the victim's or
31 the offender's minor children under the age of eighteen years; or

32 (iii) The offender's conduct during the commission of the current
33 offense manifested deliberate cruelty or intimidation of the victim.

34 (i) The operation of the multiple offense policy of RCW 9.94A.400
35 results in a presumptive sentence that is clearly too lenient in light
36 of the purpose of this chapter, as expressed in RCW 9.94A.010.

37 (j) The defendant's prior unscored misdemeanor or prior unscored
38 foreign criminal history results in a presumptive sentence that is

1 clearly too lenient in light of the purpose of this chapter, as
2 expressed in RCW 9.94A.010.

3 (k) The offense resulted in the pregnancy of a child victim of
4 rape.

5 (l) The defendant knew that the victim of the current offense was
6 a youth who was not residing with a legal custodian and the defendant
7 established or promoted the relationship for the primary purpose of
8 victimization.

9 **Sec. 9.** RCW 9.94A.130 and 1999 c 143 s 12 are each amended to read
10 as follows:

11 The power to defer or suspend the imposition or execution of
12 sentence is hereby abolished in respect to sentences prescribed for
13 felonies committed after June 30, 1984, except for offenders sentenced
14 under ~~((RCW 9.94A.120(8)(a)))~~ section 20 of this act, the special
15 ~~((sexual))~~ sex offender sentencing alternative, whose sentence may be
16 suspended.

17 **Sec. 10.** RCW 9.94A.210 and 1989 c 214 s 1 are each amended to read
18 as follows:

19 (1) A sentence within the standard sentence range for the offense
20 shall not be appealed. For purposes of this section, a sentence
21 imposed on a first-time offender under ~~((RCW 9.94A.120(5)))~~ section 18
22 of this act shall also be deemed to be within the standard sentence
23 range for the offense and shall not be appealed.

24 (2) A sentence outside the standard sentence range for the offense
25 is subject to appeal by the defendant or the state. The appeal shall
26 be to the court of appeals in accordance with rules adopted by the
27 supreme court.

28 (3) Pending review of the sentence, the sentencing court or the
29 court of appeals may order the defendant confined or placed on
30 conditional release, including bond.

31 (4) To reverse a sentence which is outside the standard sentence
32 range, the reviewing court must find: (a) Either that the reasons
33 supplied by the sentencing ~~((judge))~~ court are not supported by the
34 record which was before the judge or that those reasons do not justify
35 a sentence outside the standard sentence range for that offense; or (b)
36 that the sentence imposed was clearly excessive or clearly too lenient.

1 (5) A review under this section shall be made solely upon the
 2 record that was before the sentencing court. Written briefs shall not
 3 be required and the review and decision shall be made in an expedited
 4 manner according to rules adopted by the supreme court.

5 (6) The court of appeals shall issue a written opinion in support
 6 of its decision whenever the judgment of the sentencing court is
 7 reversed and may issue written opinions in any other case where the
 8 court believes that a written opinion would provide guidance to
 9 sentencing ((judges)) courts and others in implementing this chapter
 10 and in developing a common law of sentencing within the state.

11 (7) The department may petition for a review of a sentence
 12 committing an offender to the custody or jurisdiction of the
 13 department. The review shall be limited to errors of law. Such
 14 petition shall be filed with the court of appeals no later than ninety
 15 days after the department has actual knowledge of terms of the
 16 sentence. The petition shall include a certification by the department
 17 that all reasonable efforts to resolve the dispute at the superior
 18 court level have been exhausted.

19 **Sec. 11.** RCW 9.94A.310 and 1999 c 352 s 2 and 1999 c 324 s 3 are
 20 each reenacted and amended to read as follows:

21 (1) TABLE 1
 22 Sentencing Grid

23 SERIOUSNESS		24 OFFENDER SCORE									
25 LEVEL		26 0	27 1	28 2	29 3	30 4	31 5	32 6	33 7	34 8	35 9 or more
36 XVI	37 Life Sentence without Parole/Death Penalty										
38 XV		23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
		320	333	347	361	374	388	416	450	493	548
39 XIV		14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
		220	234	244	254	265	275	295	316	357	397

1	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
2		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
3		164	178	192	205	219	233	260	288	342	397
4											
5	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
6		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
7		123	136	147	160	171	184	216	236	277	318
8											
9	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
10		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
11		102	114	125	136	147	158	194	211	245	280
12											
13	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
14		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
15		68	75	82	89	96	102	130	144	171	198
16											
17	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
18		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
19		41	48	54	61	68	75	102	116	144	171
20											
21	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
22		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
23		27	34	41	48	54	61	89	102	116	144
24											
25	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
26		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
27		20	27	34	41	48	54	75	89	102	116
28											
29	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
30		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
31		14	20	27	34	41	48	61	75	89	102
32											
33	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
34		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
35		12	14	17	20	29	43	54	68	82	96
36											
37	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
38		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
39		9	12	14	17	20	29	43	57	70	84

1	<hr/>										
2	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
3		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
4		3	8	12	12	16	22	29	43	57	68
5	<hr/>										
6	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
7		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
8		Days	6	9	12	14	18	22	29	43	57
9	<hr/>										
10	I			3m	4m	5m	8m	13m	16m	20m	2y2m
11		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
12		Days	Days	5	6	8	12	14	18	22	29
13	<hr/>										

14 ((NOTE+)) Numbers in the first horizontal row of each seriousness
15 category represent sentencing midpoints in years(y) and months(m).
16 Numbers in the second and third rows represent ((presumptive
17 ~~sentencing~~)) standard sentence ranges in months, or in days if so
18 designated. 12+ equals one year and one day.

19 (2) For persons convicted of the anticipatory offenses of criminal
20 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
21 ((presumptive)) standard sentence range is determined by locating the
22 sentencing grid sentence range defined by the appropriate offender
23 score and the seriousness level of the completed crime, and multiplying
24 the range by 75 percent.

25 (3) The following additional times shall be added to the
26 ((presumptive)) standard sentence range for felony crimes committed
27 after July 23, 1995, if the offender or an accomplice was armed with a
28 firearm as defined in RCW 9.41.010 and the offender is being sentenced
29 for one of the crimes listed in this subsection as eligible for any
30 firearm enhancements based on the classification of the completed
31 felony crime. If the offender is being sentenced for more than one
32 offense, the firearm enhancement or enhancements must be added to the
33 total period of confinement for all offenses, regardless of which
34 underlying offense is subject to a firearm enhancement. If the
35 offender or an accomplice was armed with a firearm as defined in RCW
36 9.41.010 and the offender is being sentenced for an anticipatory
37 offense under chapter 9A.28 RCW to commit one of the crimes listed in
38 this subsection as eligible for any firearm enhancements, the following

1 additional times shall be added to the (~~presumptive~~) standard
2 sentence range determined under subsection (2) of this section based on
3 the felony crime of conviction as classified under RCW 9A.28.020:

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

7 (b) Three years for any felony defined under any law as a class B
8 felony or with a statutory maximum sentence of ten years, or both, and
9 not covered under (f) of this subsection.

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

13 (d) If the offender is being sentenced for any firearm enhancements
14 under (a), (b), and/or (c) of this subsection and the offender has
15 previously been sentenced for any deadly weapon enhancements after July
16 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
17 (4)(a), (b), and/or (c) of this section, or both, (~~any and~~) all
18 firearm enhancements under this subsection shall be twice the amount of
19 the enhancement listed.

20 (e) Notwithstanding any other provision of law, (~~any and~~) all
21 firearm enhancements under this section are mandatory, shall be served
22 in total confinement, and shall run consecutively to all other
23 sentencing provisions, including other firearm or deadly weapon
24 enhancements, for all offenses sentenced under this chapter. However,
25 whether or not a mandatory minimum term has expired, an offender
26 serving a sentence under this subsection may be granted an
27 extraordinary medical placement when authorized under RCW 9.94A.150(4).

28 (f) The firearm enhancements in this section shall apply to all
29 felony crimes except the following: Possession of a machine gun,
30 possessing a stolen firearm, drive-by shooting, theft of a firearm,
31 unlawful possession of a firearm in the first and second degree, and
32 use of a machine gun in a felony.

33 (g) If the (~~presumptive~~) standard sentence range under this
34 section exceeds the statutory maximum sentence for the offense, the
35 statutory maximum sentence shall be the presumptive sentence unless the
36 offender is a persistent offender (~~as defined in RCW 9.94A.030~~). If
37 the addition of a firearm enhancement increases the sentence so that it
38 would exceed the statutory maximum for the offense, the portion of the
39 sentence representing the enhancement may not be reduced.

1 (4) The following additional times shall be added to the
2 ((~~presumptive~~)) standard sentence range for felony crimes committed
3 after July 23, 1995, if the offender or an accomplice was armed with a
4 deadly weapon ((~~as defined in this chapter~~)) other than a firearm as
5 defined in RCW 9.41.010 and the offender is being sentenced for one of
6 the crimes listed in this subsection as eligible for any deadly weapon
7 enhancements based on the classification of the completed felony crime.
8 If the offender is being sentenced for more than one offense, the
9 deadly weapon enhancement or enhancements must be added to the total
10 period of confinement for all offenses, regardless of which underlying
11 offense is subject to a deadly weapon enhancement. If the offender or
12 an accomplice was armed with a deadly weapon other than a firearm as
13 defined in RCW 9.41.010 and the offender is being sentenced for an
14 anticipatory offense under chapter 9A.28 RCW to commit one of the
15 crimes listed in this subsection as eligible for any deadly weapon
16 enhancements, the following additional times shall be added to the
17 ((~~presumptive~~)) standard sentence range determined under subsection (2)
18 of this section based on the felony crime of conviction as classified
19 under RCW 9A.28.020:

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

23 (b) One year for any felony defined under any law as a class B
24 felony or with a statutory maximum sentence of ten years, or both, and
25 not covered under (f) of this subsection.

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

29 (d) If the offender is being sentenced under (a), (b), and/or (c)
30 of this subsection for any deadly weapon enhancements and the offender
31 has previously been sentenced for any deadly weapon enhancements after
32 July 23, 1995, under (a), (b), and/or (c) of this subsection or
33 subsection (3)(a), (b), and/or (c) of this section, or both, ((~~any~~
34 ~~and~~)) all deadly weapon enhancements under this subsection shall be
35 twice the amount of the enhancement listed.

36 (e) Notwithstanding any other provision of law, ((~~any and~~)) all
37 deadly weapon enhancements under this section are mandatory, shall be
38 served in total confinement, and shall run consecutively to all other
39 sentencing provisions, including other firearm or deadly weapon

1 enhancements, for all offenses sentenced under this chapter. However,
2 whether or not a mandatory minimum term has expired, an offender
3 serving a sentence under this subsection may be granted an
4 extraordinary medical placement when authorized under RCW 9.94A.150(4).

5 (f) The deadly weapon enhancements in this section shall apply to
6 all felony crimes except the following: Possession of a machine gun,
7 possessing a stolen firearm, drive-by shooting, theft of a firearm,
8 unlawful possession of a firearm in the first and second degree, and
9 use of a machine gun in a felony.

10 (g) If the (~~presumptive~~) standard sentence range under this
11 section exceeds the statutory maximum sentence for the offense, the
12 statutory maximum sentence shall be the presumptive sentence unless the
13 offender is a persistent offender (~~as defined in RCW 9.94A.030~~). If
14 the addition of a deadly weapon enhancement increases the sentence so
15 that it would exceed the statutory maximum for the offense, the portion
16 of the sentence representing the enhancement may not be reduced.

17 (5) The following additional times shall be added to the
18 (~~presumptive~~) standard sentence range if the offender or an
19 accomplice committed the offense while in a county jail or state
20 correctional facility (~~as that term is defined in this chapter~~) and
21 the offender is being sentenced for one of the crimes listed in this
22 subsection. If the offender or an accomplice committed one of the
23 crimes listed in this subsection while in a county jail or state
24 correctional facility (~~as that term is defined in this chapter~~), and
25 the offender is being sentenced for an anticipatory offense under
26 chapter 9A.28 RCW to commit one of the crimes listed in this
27 subsection, the following additional times shall be added to the
28 (~~presumptive~~) standard sentence range determined under subsection (2)
29 of this section:

30 (a) Eighteen months for offenses committed under RCW
31 69.50.401(a)(1) (i) or (ii) or 69.50.410;

32 (b) Fifteen months for offenses committed under RCW 69.50.401(a)(1)
33 (iii), (iv), and (v);

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

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

38 (6) An additional twenty-four months shall be added to the
39 (~~presumptive~~) standard sentence range for any ranked offense

1 involving a violation of chapter 69.50 RCW if the offense was also a
2 violation of RCW 69.50.435.

3 (7) An additional two years shall be added to the (~~presumptive~~)
4 standard sentence range for vehicular homicide committed while under
5 the influence of intoxicating liquor or any drug as defined by RCW
6 46.61.502 for each prior offense as defined in RCW 46.61.5055.

7 **Sec. 12.** RCW 9.94A.370 and 1999 c 143 s 16 are each amended to
8 read as follows:

9 (1) The intersection of the column defined by the offender score
10 and the row defined by the offense seriousness score determines the
11 (~~presumptive sentencing~~) standard sentence range (see RCW 9.94A.310,
12 Table 1)). The additional time for deadly weapon findings or for
13 those offenses enumerated in RCW 9.94A.310(4) that were committed in a
14 state correctional facility or county jail shall be added to the entire
15 (~~presumptive~~) standard sentence range. The court may impose any
16 sentence within the range that it deems appropriate. All
17 (~~presumptive~~) standard sentence ranges are expressed in terms of
18 total confinement.

19 (2) In determining any sentence, the trial court may rely on no
20 more information than is admitted by the plea agreement, or admitted,
21 acknowledged, or proved in a trial or at the time of sentencing.
22 Acknowledgement includes not objecting to information stated in the
23 presentence reports. Where the defendant disputes material facts, the
24 court must either not consider the fact or grant an evidentiary hearing
25 on the point. The facts shall be deemed proved at the hearing by a
26 preponderance of the evidence. Facts that establish the elements of a
27 more serious crime or additional crimes may not be used to go outside
28 the (~~presumptive~~) standard sentence range except upon stipulation or
29 when specifically provided for in RCW 9.94A.390(2) (d), (e), (g), and
30 (h).

31 **Sec. 13.** RCW 9.94A.383 and 1999 c 196 s 10 are each amended to
32 read as follows:

33 On all sentences of confinement for one year or less, the court may
34 impose up to one year of community custody, subject to conditions and
35 sanctions as authorized in (~~RCW 9.94A.120(11) (b) and (c)~~) sections
36 25 and 26 of this act. An offender shall be on community custody as of
37 the date of sentencing. However, during the time for which the

1 offender is in total or partial confinement pursuant to the sentence or
2 a violation of the sentence, the period of community custody shall
3 toll.

4 **Sec. 14.** RCW 9.94A.400 and 1999 c 352 s 11 are each amended to
5 read as follows:

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

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

35 (c) If an offender is convicted under RCW 9.41.040 for unlawful
36 possession of a firearm in the first or second degree and for the
37 felony crimes of theft of a firearm or possession of a stolen firearm,
38 or both, the standard sentence range for each of these current offenses

1 shall be determined by using all other current and prior convictions,
2 except other current convictions for the felony crimes listed in this
3 subsection (1)(c), as if they were prior convictions. The offender
4 shall serve consecutive sentences for each conviction of the felony
5 crimes listed in this subsection (1)(c), and for each firearm
6 unlawfully possessed.

7 (2)(a) Except as provided in (b) of this subsection, whenever a
8 person while under sentence for conviction of a felony commits another
9 felony and is sentenced to another term of confinement, the latter term
10 shall not 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 for conviction of a felony, the sentence shall
21 run concurrently with any felony sentence which has been imposed by any
22 court in this or another state or by a federal court subsequent to the
23 commission of the crime being sentenced unless the court pronouncing
24 the current sentence expressly orders that they be served
25 consecutively.

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

31 (5) (~~However,~~) In the case of consecutive sentences, all periods
32 of total confinement shall be served before any partial confinement,
33 community service, community supervision, or any other requirement or
34 conditions of any of the sentences. Except for exceptional sentences
35 as authorized under RCW (~~(9.94A.120(2))~~) 9.94A.390, if two or more
36 sentences that run consecutively include periods of community
37 supervision, the aggregate of the community supervision period shall
38 not exceed twenty-four months.

1 **Sec. 15.** RCW 9.94A.360 and 1999 c 352 s 10 and 1999 c 331 s 1 are
2 each reenacted and amended to read as follows:

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

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

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

12 (2) Class A and sex prior felony convictions shall always be
13 included in the offender score. Class B prior felony convictions other
14 than sex offenses shall not be included in the offender score, if since
15 the last date of release from confinement (including full-time
16 residential treatment) pursuant to a felony conviction, if any, or
17 entry of judgment and sentence, the offender had spent ten consecutive
18 years in the community without committing any crime that subsequently
19 results in a conviction. Class C prior felony convictions other than
20 sex offenses shall not be included in the offender score if, since the
21 last date of release from confinement (including full-time residential
22 treatment) pursuant to a felony conviction, if any, or entry of
23 judgment and sentence, the offender had spent five consecutive years in
24 the community without committing any crime that subsequently results in
25 a conviction. Serious traffic convictions shall not be included in the
26 offender score if, since the last date of release from confinement
27 (including full-time residential treatment) pursuant to a felony
28 conviction, if any, or entry of judgment and sentence, the offender
29 spent five years in the community without committing any crime that
30 subsequently results in a conviction. This subsection applies to both
31 adult and juvenile prior convictions.

32 (3) Out-of-state convictions for offenses shall be classified
33 according to the comparable offense definitions and sentences provided
34 by Washington law. Federal convictions for offenses shall be
35 classified according to the comparable offense definitions and
36 sentences provided by Washington law. If there is no clearly
37 comparable offense under Washington law or the offense is one that is
38 usually considered subject to exclusive federal jurisdiction, the

1 offense shall be scored as a class C felony equivalent if it was a
2 felony under the relevant federal statute.

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

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

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

23 (ii) In the case of multiple prior convictions for offenses
24 committed before July 1, 1986, for the purpose of computing the
25 offender score, count all adult convictions served concurrently as one
26 offense, and count all juvenile convictions entered on the same date as
27 one offense. Use the conviction for the offense that yields the
28 highest offender score.

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

35 (6) If the present conviction is one of the anticipatory offenses
36 of criminal attempt, solicitation, or conspiracy, count each prior
37 conviction as if the present conviction were for a completed offense.
38 When these convictions are used as criminal history, score them the
39 same as a completed crime.

1 (7) If the present conviction is for a nonviolent offense and not
2 covered by subsection (11) or (12) of this section, count one point for
3 each adult prior felony conviction and one point for each juvenile
4 prior violent felony conviction and ½ point for each juvenile prior
5 nonviolent felony conviction.

6 (8) If the present conviction is for a violent offense and not
7 covered in subsection (9), (10), (11), or (12) of this section, count
8 two points for each prior adult and juvenile violent felony conviction,
9 one point for each prior adult nonviolent felony conviction, and ½
10 point for each prior juvenile nonviolent felony conviction.

11 (9) If the present conviction is for a serious violent offense,
12 count three points for prior adult and juvenile convictions for crimes
13 in this category, two points for each prior adult and juvenile violent
14 conviction (not already counted), one point for each prior adult
15 nonviolent felony conviction, and ½ point for each prior juvenile
16 nonviolent felony conviction.

17 (10) If the present conviction is for Burglary 1, count prior
18 convictions as in subsection (8) of this section; however count two
19 points for each prior adult Burglary 2 or residential burglary
20 conviction, and one point for each prior juvenile Burglary 2 or
21 residential burglary conviction.

22 (11) If the present conviction is for a felony traffic offense
23 count two points for each adult or juvenile prior conviction for
24 Vehicular Homicide or Vehicular Assault; for each felony offense count
25 one point for each adult and ½ point for each juvenile prior
26 conviction; for each serious traffic offense, other than those used for
27 an enhancement pursuant to RCW 46.61.520(2), count one point for each
28 adult and ½ point for each juvenile prior conviction.

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

35 (13) If the present conviction is for Willful Failure to Return
36 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
37 Release, RCW 72.65.070, or Escape from Community Custody, RCW
38 72.09.310, count only prior escape convictions in the offender score.

1 Count adult prior escape convictions as one point and juvenile prior
2 escape convictions as ½ point.

3 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or
4 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
5 juvenile prior convictions as ½ point.

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

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

15 (17) If the present conviction is for an offense committed while
16 the offender was under community placement, add one point.

17 **Sec. 16.** RCW 9.94A.410 and 1986 c 257 s 29 are each amended to
18 read as follows:

19 For persons convicted of the anticipatory offenses of criminal
20 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
21 presumptive sentence is determined by locating the sentencing grid
22 sentence range defined by the appropriate offender score and the
23 seriousness level of the crime, and multiplying the range by 75
24 percent.

25 ~~((In calculating an offender score, count each prior conviction as
26 if the present conviction were for the completed offense. When these
27 convictions are used as criminal history, score them the same as a
28 completed crime.))~~

29 **PART III**

30 **Prosecutorial Standards**

31 **Sec. 17.** RCW 9.94A.440 and 1999 c 322 s 6 and 1999 c 196 s 11 are
32 each reenacted and amended to read as follows:

33 (1) Decision not to prosecute.

34 **STANDARD:** A prosecuting attorney may decline to prosecute, even
35 though technically sufficient evidence to prosecute exists, in
36 situations where prosecution would serve no public purpose, would

1 defeat the underlying purpose of the law in question or would result in
2 decreased respect for the law.

3 GUIDELINE/COMMENTARY:

4 Examples

5 The following are examples of reasons not to prosecute which could
6 satisfy the standard.

7 (a) Contrary to Legislative Intent - It may be proper to decline to
8 charge where the application of criminal sanctions would be clearly
9 contrary to the intent of the legislature in enacting the particular
10 statute.

11 (b) Antiquated Statute - It may be proper to decline to charge
12 where the statute in question is antiquated in that:

13 (i) It has not been enforced for many years; and

14 (ii) Most members of society act as if it were no longer in
15 existence; and

16 (iii) It serves no deterrent or protective purpose in today's
17 society; and

18 (iv) The statute has not been recently reconsidered by the
19 legislature.

20 This reason is not to be construed as the basis for declining cases
21 because the law in question is unpopular or because it is difficult to
22 enforce.

23 (c) De Minimus Violation - It may be proper to decline to charge
24 where the violation of law is only technical or insubstantial and where
25 no public interest or deterrent purpose would be served by prosecution.

26 (d) Confinement on Other Charges - It may be proper to decline to
27 charge because the accused has been sentenced on another charge to a
28 lengthy period of confinement; and

29 (i) Conviction of the new offense would not merit any additional
30 direct or collateral punishment;

31 (ii) The new offense is either a misdemeanor or a felony which is
32 not particularly aggravated; and

33 (iii) Conviction of the new offense would not serve any significant
34 deterrent purpose.

35 (e) Pending Conviction on Another Charge - It may be proper to
36 decline to charge because the accused is facing a pending prosecution
37 in the same or another county; and

38 (i) Conviction of the new offense would not merit any additional
39 direct or collateral punishment;

- 1 (ii) Conviction in the pending prosecution is imminent;
- 2 (iii) The new offense is either a misdemeanor or a felony which is
- 3 not particularly aggravated; and
- 4 (iv) Conviction of the new offense would not serve any significant
- 5 deterrent purpose.

6 (f) High Disproportionate Cost of Prosecution - It may be proper to
7 decline to charge where the cost of locating or transporting, or the
8 burden on, prosecution witnesses is highly disproportionate to the
9 importance of prosecuting the offense in question. This reason should
10 be limited to minor cases and should not be relied upon in serious
11 cases.

12 (g) Improper Motives of Complainant - It may be proper to decline
13 charges because the motives of the complainant are improper and
14 prosecution would serve no public purpose, would defeat the underlying
15 purpose of the law in question or would result in decreased respect for
16 the law.

17 (h) Immunity - It may be proper to decline to charge where immunity
18 is to be given to an accused in order to prosecute another where the
19 accused's information or testimony will reasonably lead to the
20 conviction of others who are responsible for more serious criminal
21 conduct or who represent a greater danger to the public interest.

22 (i) Victim Request - It may be proper to decline to charge because
23 the victim requests that no criminal charges be filed and the case
24 involves the following crimes or situations:

25 (i) Assault cases where the victim has suffered little or no
26 injury;

27 (ii) Crimes against property, not involving violence, where no
28 major loss was suffered;

29 (iii) Where doing so would not jeopardize the safety of society.

30 Care should be taken to insure that the victim's request is freely
31 made and is not the product of threats or pressure by the accused.

32 The presence of these factors may also justify the decision to
33 dismiss a prosecution which has been commenced.

34 Notification

35 The prosecutor is encouraged to notify the victim, when practical,
36 and the law enforcement personnel, of the decision not to prosecute.

37 (2) Decision to prosecute.

38 (a) STANDARD:

1 Crimes against persons will be filed if sufficient admissible
2 evidence exists, which, when considered with the most plausible,
3 reasonably foreseeable defense that could be raised under the evidence,
4 would justify conviction by a reasonable and objective fact-finder.
5 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
6 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
7 9A.64.020 the prosecutor should avoid prefiling agreements or
8 diversions intended to place the accused in a program of treatment or
9 counseling, so that treatment, if determined to be beneficial, can be
10 provided pursuant to ((RCW 9.94A.120(8))) section 20 of this act.

11 Crimes against property/other crimes will be filed if the
12 admissible evidence is of such convincing force as to make it probable
13 that a reasonable and objective fact-finder would convict after hearing
14 all the admissible evidence and the most plausible defense that could
15 be raised.

16 See table below for the crimes within these categories.

17 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

18 CRIMES AGAINST PERSONS

19 Aggravated Murder

20 1st Degree Murder

21 2nd Degree Murder

22 1st Degree Manslaughter

23 2nd Degree Manslaughter

24 1st Degree Kidnapping

25 2nd Degree Kidnapping

26 1st Degree Assault

27 2nd Degree Assault

28 3rd Degree Assault

29 1st Degree Assault of a Child

30 2nd Degree Assault of a Child

31 3rd Degree Assault of a Child

32 1st Degree Rape

33 ((1st Degree Robbery))

34 2nd Degree Rape

35 3rd Degree Rape

36 1st Degree Rape of a Child

37 2nd Degree Rape of a Child

38 3rd Degree Rape of a Child

1 1st Degree Robbery
2 2nd Degree Robbery
3 1st Degree Arson
4 (~~2nd Degree Kidnaping~~
5 ~~2nd Degree Assault~~
6 ~~2nd Degree Assault of a Child~~
7 ~~2nd Degree Rape~~
8 ~~2nd Degree Robbery~~)
9 1st Degree Burglary
10 (~~1st Degree Manslaughter~~
11 ~~2nd Degree Manslaughter~~)
12 1st Degree Extortion
13 2nd Degree Extortion
14 Indecent Liberties
15 Incest
16 (~~2nd Degree Rape of a Child~~)
17 Vehicular Homicide
18 Vehicular Assault
19 (~~3rd Degree Rape~~
20 ~~3rd Degree Rape of a Child~~)
21 1st Degree Child Molestation
22 2nd Degree Child Molestation
23 3rd Degree Child Molestation
24 (~~2nd Degree Extortion~~)
25 1st Degree Promoting Prostitution
26 Intimidating a Juror
27 Communication with a Minor
28 Intimidating a Witness
29 Intimidating a Public Servant
30 Bomb Threat (if against person)
31 (~~3rd Degree Assault~~
32 ~~3rd Degree Assault of a Child~~)
33 Unlawful Imprisonment
34 Promoting a Suicide Attempt
35 Riot (if against person)
36 Stalking
37 Custodial Assault

1 No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b)
2 and (c))
3 No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))
4 Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and
5 (5))
6 Counterfeiting (if a violation of RCW 9.16.035(4))

7 CRIMES AGAINST PROPERTY/OTHER CRIMES

8 2nd Degree Arson
9 1st Degree Escape
10 2nd Degree Escape
11 2nd Degree Burglary
12 1st Degree Theft
13 2nd Degree Theft
14 1st Degree Perjury
15 2nd Degree Perjury
16 1st Degree Introducing Contraband
17 2nd Degree Introducing Contraband
18 1st Degree Possession of Stolen Property
19 2nd Degree Possession of Stolen Property
20 Bribery
21 Bribing a Witness
22 Bribe received by a Witness
23 Bomb Threat (if against property)
24 1st Degree Malicious Mischief
25 (~~2nd Degree Theft~~
26 ~~2nd Degree Escape~~
27 ~~2nd Degree Introducing Contraband~~
28 ~~2nd Degree Possession of Stolen Property~~)
29 2nd Degree Malicious Mischief
30 1st Degree Reckless Burning
31 Taking a Motor Vehicle without Authorization
32 Forgery
33 (~~2nd Degree Perjury~~)
34 2nd Degree Promoting Prostitution
35 Tampering with a Witness
36 Trading in Public Office
37 Trading in Special Influence
38 Receiving/Granting Unlawful Compensation
39 Bigamy

1 Eluding a Pursuing Police Vehicle
2 Willful Failure to Return from Furlough
3 Escape from Community Custody
4 Riot (if against property)
5 1st Degree Theft((s)) of Livestock
6 2nd Degree Theft of Livestock

7 ALL OTHER UNCLASSIFIED FELONIES

8 Selection of Charges/Degree of Charge

9 (i) The prosecutor should file charges which adequately describe
10 the nature of defendant's conduct. Other offenses may be charged only
11 if they are necessary to ensure that the charges:

12 (A) Will significantly enhance the strength of the state's case at
13 trial; or

14 (B) Will result in restitution to all victims.

15 (ii) The prosecutor should not overcharge to obtain a guilty plea.
16 Overcharging includes:

17 (A) Charging a higher degree;

18 (B) Charging additional counts.

19 This standard is intended to direct prosecutors to charge those
20 crimes which demonstrate the nature and seriousness of a defendant's
21 criminal conduct, but to decline to charge crimes which are not
22 necessary to such an indication. Crimes which do not merge as a matter
23 of law, but which arise from the same course of conduct, do not all
24 have to be charged.

25 (b) GUIDELINES/COMMENTARY:

26 (i) Police Investigation

27 A prosecuting attorney is dependent upon law enforcement agencies
28 to conduct the necessary factual investigation which must precede the
29 decision to prosecute. The prosecuting attorney shall ensure that a
30 thorough factual investigation has been conducted before a decision to
31 prosecute is made. In ordinary circumstances the investigation should
32 include the following:

33 (A) The interviewing of all material witnesses, together with the
34 obtaining of written statements whenever possible;

35 (B) The completion of necessary laboratory tests; and

36 (C) The obtaining, in accordance with constitutional requirements,
37 of the suspect's version of the events.

1 If the initial investigation is incomplete, a prosecuting attorney
2 should insist upon further investigation before a decision to prosecute
3 is made, and specify what the investigation needs to include.

4 (ii) Exceptions

5 In certain situations, a prosecuting attorney may authorize filing
6 of a criminal complaint before the investigation is complete if:

7 (A) Probable cause exists to believe the suspect is guilty; and

8 (B) The suspect presents a danger to the community or is likely to
9 flee if not apprehended; or

10 (C) The arrest of the suspect is necessary to complete the
11 investigation of the crime.

12 In the event that the exception to the standard is applied, the
13 prosecuting attorney shall obtain a commitment from the law enforcement
14 agency involved to complete the investigation in a timely manner. If
15 the subsequent investigation does not produce sufficient evidence to
16 meet the normal charging standard, the complaint should be dismissed.

17 (iii) Investigation Techniques

18 The prosecutor should be fully advised of the investigatory
19 techniques that were used in the case investigation including:

20 (A) Polygraph testing;

21 (B) Hypnosis;

22 (C) Electronic surveillance;

23 (D) Use of informants.

24 (iv) Pre-Filing Discussions with Defendant

25 Discussions with the defendant or his/her representative regarding
26 the selection or disposition of charges may occur prior to the filing
27 of charges, and potential agreements can be reached.

28 (v) Pre-Filing Discussions with Victim(s)

29 Discussions with the victim(s) or victims' representatives
30 regarding the selection or disposition of charges may occur before the
31 filing of charges. The discussions may be considered by the prosecutor
32 in charging and disposition decisions, and should be considered before
33 reaching any agreement with the defendant regarding these decisions.

34 **PART IV**

35 **Sentencing Alternatives**

36 NEW SECTION. **Sec. 18.** FIRST-TIME OFFENDER WAIVER. (1) This
37 section applies to offenders who have never been previously convicted

1 of a felony in this state, federal court, or another state, and who
2 have never participated in a program of deferred prosecution for a
3 felony, and who are convicted of a felony that is not:

4 (a) Classified as a violent offense or a sex offense under this
5 chapter;

6 (b) Manufacture, delivery, or possession with intent to manufacture
7 or deliver a controlled substance classified in Schedule I or II that
8 is a narcotic drug or flunitrazepam classified in Schedule IV;

9 (c) Manufacture, delivery, or possession with intent to deliver a
10 methamphetamine, its salts, isomers, and salts of its isomers as
11 defined in RCW 69.50.206(d)(2); or

12 (d) The selling for profit of any controlled substance or
13 counterfeit substance classified in Schedule I, RCW 69.50.204, except
14 leaves and flowering tops of marijuana.

15 (2) In sentencing a first-time offender the court may waive the
16 imposition of a sentence within the standard sentence range and impose
17 a sentence which may include up to ninety days of confinement in a
18 facility operated or utilized under contract by the county and a
19 requirement that the offender refrain from committing new offenses.
20 The sentence may also include a term of community supervision or
21 community custody as specified in subsection (3) of this section,
22 which, in addition to crime-related prohibitions, may include
23 requirements that the offender perform any one or more of the
24 following:

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

26 (b) Undergo available outpatient treatment for up to the period
27 specified in subsection (3) of this section, or inpatient treatment not
28 to exceed the standard range of confinement for that offense;

29 (c) Pursue a prescribed, secular course of study or vocational
30 training;

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

34 (e) Report as directed to a community corrections officer; or

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

37 (3) The terms and statuses applicable to sentences under subsection
38 (2) of this section are:

1 (a) For sentences imposed on or after July 25, 1999, for crimes
2 committed before July 1, 2000, up to one year of community supervision.
3 If treatment is ordered, the period of community supervision may
4 include up to the period of treatment, but shall not exceed two years;
5 and

6 (b) For crimes committed on or after July 1, 2000, up to one year
7 of community custody unless treatment is ordered, in which case the
8 period of community custody may include up to the period of treatment,
9 but shall not exceed two years. Any term of community custody imposed
10 under this section is subject to conditions and sanctions as authorized
11 in this section and in section 25 (2) and (3) of this act.

12 (4) The department shall discharge from community supervision any
13 offender sentenced under this section before July 25, 1999, who has
14 served at least one year of community supervision and has completed any
15 treatment ordered by the court.

16 NEW SECTION. **Sec. 19.** DRUG OFFENDER SENTENCING ALTERNATIVE. (1)
17 An offender is eligible for the special drug offender sentencing
18 alternative if:

19 (a) The offender is convicted of a felony that is not a violent
20 offense or sex offense and the violation does not involve a sentence
21 enhancement under RCW 9.94A.310 (3) or (4);

22 (b) The offender has no current or prior convictions for a sex
23 offense or violent offense in this state, another state, or the United
24 States;

25 (c) For a violation of the uniform controlled substances act under
26 chapter 69.50 RCW or a criminal solicitation to commit such a violation
27 under chapter 9A.28 RCW, the offense involved only a small quantity of
28 the particular controlled substance as determined by the judge upon
29 consideration of such factors as the weight, purity, packaging, sale
30 price, and street value of the controlled substance; and

31 (d) The offender has not been found by the United States attorney
32 general to be subject to a deportation detainer or order.

33 (2) If the standard sentence range is greater than one year and the
34 sentencing court determines that the offender is eligible for this
35 alternative and that the offender and the community will benefit from
36 the use of the alternative, the judge may waive imposition of a
37 sentence within the standard sentence range and impose a sentence that
38 must include a period of total confinement in a state facility for one-

1 half of the midpoint of the standard sentence range. During
2 incarceration in the state facility, offenders sentenced under this
3 subsection shall undergo a comprehensive substance abuse assessment and
4 receive, within available resources, treatment services appropriate for
5 the offender. The treatment services shall be designed by the division
6 of alcohol and substance abuse of the department of social and health
7 services, in cooperation with the department of corrections.

8 The court shall also impose:

9 (a) The remainder of the midpoint of the standard range as a term
10 of community custody which must include appropriate substance abuse
11 treatment in a program that has been approved by the division of
12 alcohol and substance abuse of the department of social and health
13 services;

14 (b) Crime-related prohibitions including a condition not to use
15 illegal controlled substances; and

16 (c) A requirement to submit to urinalysis or other testing to
17 monitor that status.

18 The court may prohibit the offender from using alcohol or
19 controlled substances and may require that the monitoring for
20 controlled substances be conducted by the department or by a treatment
21 alternatives to street crime program or a comparable court or agency-
22 referred program. The offender may be required to pay thirty dollars
23 per month while on community custody to offset the cost of monitoring.
24 In addition, the court shall impose three or more of the following
25 conditions:

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

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

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

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

32 (v) Perform community service work;

33 (vi) Stay out of areas designated by the sentencing court;

34 (vii) Such other conditions as the court may require such as
35 affirmative conditions.

36 (3) If the offender violates any of the sentence conditions in
37 subsection (2) of this section, a violation hearing shall be held by
38 the department unless waived by the offender. If the department finds

1 that conditions have been willfully violated, the offender may be
2 reclassified to serve the remaining balance of the original sentence.

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

9 (5) An offender who fails to complete the special drug offender
10 sentencing alternative program or who is administratively terminated
11 from the program shall be reclassified to serve the unexpired term of
12 his or her sentence as ordered by the sentencing court and shall be
13 subject to all rules relating to earned release time. An offender who
14 violates any conditions of supervision as defined by the department
15 shall be sanctioned. Sanctions may include, but are not limited to,
16 reclassifying the offender to serve the unexpired term of his or her
17 sentence as ordered by the sentencing court. If an offender is
18 reclassified to serve the unexpired term of his or her sentence, the
19 offender shall be subject to all rules relating to earned release time.

20 NEW SECTION. **Sec. 20.** SPECIAL SEX OFFENDER SENTENCING
21 ALTERNATIVE. (1) Unless the context clearly requires otherwise, the
22 definitions in this subsection apply to this section only.

23 (a) "Sex offender treatment provider" or "treatment provider" means
24 a certified sex offender treatment provider as defined in RCW
25 18.155.020.

26 (b) "Victim" means any person who has sustained emotional,
27 psychological, physical, or financial injury to person or property as
28 a result of the crime charged. "Victim" also means a parent or
29 guardian of a victim who is a minor child unless the parent or guardian
30 is the perpetrator of the offense.

31 (2) An offender is eligible for the special sex offender sentencing
32 alternative if:

33 (a) The offender has been convicted of a sex offense other than a
34 violation of RCW 9A.44.050 or a sex offense that is also a serious
35 violent offense;

36 (b) The offender has no prior convictions for a sex offense as
37 defined in RCW 9.94A.030 or any other felony sex offenses in this or
38 any other state; and

1 (c) The offender's standard sentence range for the offense includes
2 the possibility of confinement for less than eleven years.

3 (3) If the court finds the offender is eligible for this
4 alternative, the court, on its own motion or the motion of the state or
5 the offender, may order an examination to determine whether the
6 offender is amenable to treatment.

7 (a) The report of the examination shall include at a minimum the
8 following:

9 (i) The offender's version of the facts and the official version of
10 the facts;

11 (ii) The offender's offense history;

12 (iii) An assessment of problems in addition to alleged deviant
13 behaviors;

14 (iv) The offender's social and employment situation; and

15 (v) Other evaluation measures used.

16 The report shall set forth the sources of the examiner's information.

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

21 (i) Frequency and type of contact between offender and therapist;

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

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

27 (iv) Anticipated length of treatment; and

28 (v) Recommended crime-related prohibitions.

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

35 (4) After receipt of the reports, the court shall consider whether
36 the offender and the community will benefit from use of this
37 alternative and consider the victim's opinion whether the offender
38 should receive a treatment disposition under this section. If the
39 court determines that this alternative is appropriate, the court shall

1 then impose a sentence within the standard sentence range. If the
2 sentence imposed is less than eleven years of confinement, the court
3 may suspend the execution of the sentence and impose the following
4 conditions of suspension:

5 (a) The court shall place the offender on community custody for the
6 length of the suspended sentence or three years, whichever is greater,
7 and require the offender to comply with any conditions imposed by the
8 department under section 26 of this act.

9 (b) The court shall order treatment for any period up to three
10 years in duration. The court, in its discretion, shall order
11 outpatient sex offender treatment or inpatient sex offender treatment,
12 if available. A community mental health center may not be used for
13 such treatment unless it has an appropriate program designed for sex
14 offender treatment. The offender shall not change sex offender
15 treatment providers or treatment conditions without first notifying the
16 prosecutor, the community corrections officer, and the court. If any
17 party or the court objects to a proposed change, the offender shall not
18 change providers or conditions without court approval after a hearing.

19 (5) As conditions of the suspended sentence, the court may impose
20 one or more of the following:

21 (a) Up to six months of confinement, not to exceed the sentence
22 range of confinement for that offense;

23 (b) Crime-related prohibitions;

24 (c) Require the offender to devote time to a specific employment or
25 occupation;

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

29 (e) Report as directed to the court and a community corrections
30 officer;

31 (f) Pay all court-ordered legal financial obligations as provided
32 in RCW 9.94A.030;

33 (g) Perform community service work; or

34 (h) Reimburse the victim for the cost of any counseling required as
35 a result of the offender's crime.

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

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

8 (8) Prior to the treatment termination hearing, the treatment
9 provider and community corrections officer shall submit written reports
10 to the court and parties regarding the offender's compliance with
11 treatment and monitoring requirements, and recommendations regarding
12 termination from treatment, including proposed community custody
13 conditions. Either party may request, and the court may order, another
14 evaluation regarding the advisability of termination from treatment.
15 The offender shall pay the cost of any additional evaluation ordered
16 unless the court finds the offender to be indigent in which case the
17 state shall pay the cost. At the treatment termination hearing the
18 court may: (a) Modify conditions of community custody, and either (b)
19 terminate treatment, or (c) extend treatment for up to the remaining
20 period of community custody.

21 (9) If a violation of conditions occurs during community custody,
22 the department shall either impose sanctions as provided for in RCW
23 9.94A.205(2)(a) or refer the violation to the court and recommend
24 revocation of the suspended sentence as provided for in subsections (6)
25 and (8) of this section.

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

33 (11) Examinations and treatment ordered pursuant to this subsection
34 shall only be conducted by sex offender treatment providers certified
35 by the department of health pursuant to chapter 18.155 RCW unless the
36 court finds that:

37 (a) The offender has already moved to another state or plans to
38 move to another state for reasons other than circumventing the
39 certification requirements; or

1 (b)(i) No certified providers are available for treatment within a
2 reasonable geographical distance of the offender's home; and

3 (ii) The evaluation and treatment plan comply with this section and
4 the rules adopted by the department of health.

5 (12) If the offender is less than eighteen years of age when the
6 charge is filed, the state shall pay for the cost of initial evaluation
7 and treatment.

8 **Sec. 21.** RCW 9.94A.137 and 1999 c 197 s 5 are each amended to read
9 as follows:

10 (1)(a) An offender is eligible to be sentenced to a work ethic camp
11 if the offender:

12 (i) Is sentenced to a term of total confinement of not less than
13 twelve months and one day or more than thirty-six months;

14 (ii) Has no current or prior convictions for any sex offenses or
15 for violent offenses; and

16 (iii) Is not currently subject to a sentence for, or being
17 prosecuted for, a violation of the uniform controlled substances act or
18 a criminal solicitation to commit such a violation under chapter 9A.28
19 or 69.50 RCW.

20 (b) The length of the work ethic camp shall be at least one hundred
21 twenty days and not more than one hundred eighty days.

22 (2) If the sentencing (~~(judge)~~) court determines that the offender
23 is eligible for the work ethic camp and is likely to qualify under
24 subsection (3) of this section, the judge shall impose a sentence
25 within the standard sentence range and may recommend that the offender
26 serve the sentence at a work ethic camp. In sentencing an offender to
27 the work ethic camp, the court shall specify: (a) That upon completion
28 of the work ethic camp the offender shall be released on community
29 custody for any remaining time of total confinement; (b) the applicable
30 conditions of supervision on community custody status as required by
31 (~~RCW 9.94A.120(9)(b)~~) section 22(4) of this act and authorized by
32 (~~RCW 9.94A.120(9)(e)~~) section 22(5) of this act; and (c) that
33 violation of the conditions may result in a return to total confinement
34 for the balance of the offender's remaining time of confinement.

35 (3) The department shall place the offender in the work ethic camp
36 program, subject to capacity, unless: (a) The department determines
37 that the offender has physical or mental impairments that would prevent
38 participation and completion of the program; (b) the department

1 determines that the offender's custody level prevents placement in the
2 program; (c) the offender refuses to agree to the terms and conditions
3 of the program; (d) the offender has been found by the United States
4 attorney general to be subject to a deportation detainer or order; or
5 (e) the offender has participated in the work ethic camp program in the
6 past.

7 (4) An offender who fails to complete the work ethic camp program,
8 who is administratively terminated from the program, or who otherwise
9 violates any conditions of supervision, as defined by the department,
10 shall be reclassified to serve the unexpired term of his or her
11 sentence as ordered by the sentencing ((judge)) court and shall be
12 subject to all rules relating to earned ((early)) release time.

13 (5) During the last two weeks prior to release from the work ethic
14 camp program the department shall provide the offender with
15 comprehensive transition training.

16 **PART V**

17 **Offenders in the Community**

18 NEW SECTION. **Sec. 22.** COMMUNITY PLACEMENT. When a court
19 sentences an offender to a term of total confinement in the custody of
20 the department for any of the offenses specified in this section, the
21 court shall also sentence the offender to a term of community placement
22 as provided in this section.

23 (1) The court shall order a one-year term of community placement
24 for the following:

25 (a) A sex offense or a serious violent offense committed after July
26 1, 1988, but before July 1, 1990; or

27 (b) An offense committed on or after July 1, 1988, but before July
28 25, 1999, that is:

29 (i) Assault in the second degree;

30 (ii) Assault of a child in the second degree;

31 (iii) A crime against persons where it is determined in accordance
32 with RCW 9.94A.125 that the offender or an accomplice was armed with a
33 deadly weapon at the time of commission; or

34 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
35 sentenced under section 19 of this act.

1 (2) The court shall sentence the offender to a term of community
2 placement of two years or up to the period of earned release awarded
3 pursuant to RCW 9.94A.150, whichever is longer, for:

4 (a) An offense categorized as a sex offense committed on or after
5 July 1, 1990, but before June 6, 1996, including those sex offenses
6 also included in other offense categories;

7 (b) A serious violent offense other than a sex offense committed on
8 or after July 1, 1990, but before July 1, 2000; or

9 (c) A vehicular homicide or vehicular assault committed on or after
10 July 1, 1990, but before July 1, 2000.

11 (3) The community placement ordered under this section shall begin
12 either upon completion of the term of confinement or at such time as
13 the offender is transferred to community custody in lieu of earned
14 release. When the court sentences an offender to the statutory maximum
15 sentence then the community placement portion of the sentence shall
16 consist entirely of the community custody to which the offender may
17 become eligible. Any period of community custody actually served shall
18 be credited against the community placement portion of the sentence.

19 (4) Unless a condition is waived by the court, the terms of any
20 community placement imposed under this section shall include the
21 following conditions:

22 (a) The offender shall report to and be available for contact with
23 the assigned community corrections officer as directed;

24 (b) The offender shall work at department-approved education,
25 employment, or community service, or any combination thereof;

26 (c) The offender shall not possess or consume controlled substances
27 except pursuant to lawfully issued prescriptions;

28 (d) The offender shall pay supervision fees as determined by the
29 department; and

30 (e) The residence location and living arrangements shall be subject
31 to the prior approval of the department during the period of community
32 placement.

33 (5) As a part of any terms of community placement imposed under
34 this section, the court may also order one or more of the following
35 special conditions:

36 (a) The offender shall remain within, or outside of, a specified
37 geographical boundary;

38 (b) The offender shall not have direct or indirect contact with the
39 victim of the crime or a specified class of individuals;

1 (c) The offender shall participate in crime-related treatment or
2 counseling services;

3 (d) The offender shall not consume alcohol; or

4 (e) The offender shall comply with any crime-related prohibitions.

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

10 (7) Prior to or during community placement, upon recommendation of
11 the department, the sentencing court may remove or modify any
12 conditions of community placement so as not to be more restrictive.

13 NEW SECTION. **Sec. 23.** COMMUNITY PLACEMENT FOR SPECIFIED
14 OFFENDERS. Except for persons sentenced under section 22(2) or 24 of
15 this act, when a court sentences a person to a term of total
16 confinement to the custody of the department for a violent offense, any
17 crime against persons under RCW 9.94A.440(2), or any felony offense
18 under chapter 69.50 or 69.52 RCW not sentenced under section 19 of this
19 act, committed on or after July 25, 1999, but before July 1, 2000, the
20 court shall in addition to the other terms of the sentence, sentence
21 the offender to a one-year term of community placement beginning either
22 upon completion of the term of confinement or at such time as the
23 offender is transferred to community custody in lieu of earned release
24 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences
25 the offender under this section to the statutory maximum period of
26 confinement, then the community placement portion of the sentence shall
27 consist entirely of such community custody to which the offender may
28 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
29 period of community custody actually served shall be credited against
30 the community placement portion of the sentence.

31 NEW SECTION. **Sec. 24.** COMMUNITY CUSTODY FOR SEX OFFENDERS. (1)
32 When a court sentences a person to the custody of the department for an
33 offense categorized as a sex offense, including those sex offenses also
34 included in other offense categories, committed on or after June 6,
35 1996, and before July 1, 2000, the court shall, in addition to other
36 terms of the sentence, sentence the offender to community custody for
37 three years or up to the period of earned release awarded pursuant to

1 RCW 9.94A.150, whichever is longer. The community custody shall begin
2 either upon completion of the term of confinement or at such time as
3 the offender is transferred to community custody in lieu of earned
4 release.

5 (2) Unless a condition is waived by the court, the terms of
6 community custody imposed under this section shall be the same as those
7 provided for in section 22(4) of this act and may include those
8 provided for in section 22(5) of this act. As part of any sentence
9 that includes a term of community custody imposed under this section,
10 the court shall also require the offender to comply with any conditions
11 imposed by the department under section 26 of this act.

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

23 NEW SECTION. **Sec. 25.** COMMUNITY CUSTODY FOR SPECIFIED OFFENDERS.

24 (1) When a court sentences a person to the custody of the department
25 for a sex offense, a violent offense, any crime against persons under
26 RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW
27 not sentenced under section 19 of this act, committed on or after July
28 1, 2000, the court shall in addition to the other terms of the
29 sentence, sentence the offender to community custody for the community
30 custody range established under RCW 9.94A.040 or up to the period of
31 earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever
32 is longer. The community custody shall begin either upon completion of
33 the term of confinement or at such time as the offender is transferred
34 to community custody in lieu of earned release in accordance with RCW
35 9.94A.150 (1) and (2).

36 (2)(a) Unless a condition is waived by the court, the conditions of
37 community custody shall include those provided for in section 22(4) of
38 this act. The conditions may also include those provided for in

1 section 22(5) of this act. The court may also order the offender to
2 participate in rehabilitative programs or otherwise perform affirmative
3 conduct reasonably related to the circumstances of the offense, the
4 offender's risk of reoffending, or the safety of the community, and the
5 department shall enforce such conditions pursuant to subsection (6) of
6 this section.

7 (b) As part of any sentence that includes a term of community
8 custody imposed under this subsection, the court shall also require the
9 offender to comply with any conditions imposed by the department under
10 section 26 of this act. The department shall assess the offender's
11 risk of reoffense and may establish and modify additional conditions of
12 the offender's community custody based upon the risk to community
13 safety. In addition, the department may require the offender to
14 participate in rehabilitative programs, or otherwise perform
15 affirmative conduct, and to obey all laws.

16 (c) The department may not impose conditions that are contrary to
17 those ordered by the court and may not contravene or decrease court
18 imposed conditions. The department shall notify the offender in
19 writing of any such conditions or modifications. In setting,
20 modifying, and enforcing conditions of community custody, the
21 department shall be deemed to be performing a quasi-judicial function.

22 (3) If an offender violates conditions imposed by the court or the
23 department pursuant to this section during community custody, the
24 department may transfer the offender to a more restrictive confinement
25 status and impose other available sanctions as provided in RCW
26 9.94A.205 and 9.94A.207.

27 (4) Except for terms of community custody under section 20 of this
28 act, the department shall discharge the offender from community custody
29 on a date determined by the department, which the department may
30 modify, based on risk and performance of the offender, within the range
31 or at the end of the period of earned release, whichever is later.

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

1 offender's term of community custody, it shall be deemed a violation of
2 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
3 contempt of court as provided for in RCW 7.21.040. If the court
4 extends a condition beyond the expiration of the term of community
5 custody, the department is not responsible for supervision of the
6 offender's compliance with the condition.

7 (6) Within the funds available for community custody, the
8 department shall determine conditions and duration of community custody
9 on the basis of risk to community safety, and shall supervise offenders
10 during community custody on the basis of risk to community safety and
11 conditions imposed by the court. The secretary shall adopt rules to
12 implement the provisions of this subsection.

13 (7) By the close of the next business day after receiving notice of
14 a condition imposed or modified by the department, an offender may
15 request an administrative review under rules adopted by the department.
16 The condition shall remain in effect unless the reviewing officer finds
17 that it is not reasonably related to any of the following: (a) The
18 crime of conviction; (b) the offender's risk of reoffending; or (c) the
19 safety of the community.

20 NEW SECTION. **Sec. 26.** SUPERVISION OF OFFENDERS. (1)(a) All
21 offenders sentenced to terms involving community supervision, community
22 service, community placement, community custody, or legal financial
23 obligation shall be under the supervision of the department and shall
24 follow explicitly the instructions and conditions of the department.
25 The department may require an offender to perform affirmative acts it
26 deems appropriate to monitor compliance with the conditions of the
27 sentence imposed.

28 (b) The instructions shall include, at a minimum, reporting as
29 directed to a community corrections officer, remaining within
30 prescribed geographical boundaries, notifying the community corrections
31 officer of any change in the offender's address or employment, and
32 paying the supervision fee assessment.

33 (c) For offenders sentenced to terms involving community custody
34 for crimes committed on or after June 6, 1996, the department may
35 include, in addition to the instructions in (b) of this subsection, any
36 appropriate conditions of supervision, including but not limited to,
37 prohibiting the offender from having contact with any other specified
38 individuals or specific class of individuals.

1 (d) For offenders sentenced to terms of community custody for
2 crimes committed on or after July 1, 2000, the department may impose
3 conditions as specified in section 25 of this act.

4 The conditions authorized under (c) of this subsection may be
5 imposed by the department prior to or during an offender's community
6 custody term. If a violation of conditions imposed by the court or the
7 department pursuant to section 24 of this act occurs during community
8 custody, it shall be deemed a violation of community placement for the
9 purposes of RCW 9.94A.207 and shall authorize the department to
10 transfer an offender to a more restrictive confinement status as
11 provided in RCW 9.94A.205. At any time prior to the completion of an
12 offender's term of community custody, the department may recommend to
13 the court that any or all of the conditions imposed by the court or the
14 department pursuant to section 24 or 25 of this act be continued beyond
15 the expiration of the offender's term of community custody as
16 authorized in section 25 (3) or (5) of this act.

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

22 (2) No offender sentenced to terms involving community supervision,
23 community service, community custody, or community placement under the
24 supervision of the department may own, use, or possess firearms or
25 ammunition. Offenders who own, use, or are found to be in actual or
26 constructive possession of firearms or ammunition shall be subject to
27 the violation process and sanctions under RCW 9.94A.200, 9.94A.205, and
28 9.94A.207. "Constructive possession" as used in this subsection means
29 the power and intent to control the firearm or ammunition. "Firearm"
30 as used in this subsection has the same definition as in RCW 9.41.010.

31 **Sec. 27.** RCW 9.94A.135 and 1991 c 181 s 2 are each amended to read
32 as follows:

33 Participation in a work crew is conditioned upon the offender's
34 acceptance into the program, abstinence from alcohol and controlled
35 substances as demonstrated by urinalysis and breathalyzer monitoring,
36 with the cost of monitoring to be paid by the offender, unless
37 indigent; and upon compliance with the rules of the program, which
38 rules (~~shall include the requirements that~~) require the offender to

1 work to the best of his or her abilities and (~~that he or she~~) provide
2 the program with accurate, verified residence information. Work crew
3 may be imposed simultaneously with electronic home detention.

4 Where work crew is imposed as part of a sentence of nine months or
5 more, the offender must serve a minimum of thirty days of total
6 confinement before being eligible for work crew.

7 Work crew tasks shall be performed for a minimum of thirty-five
8 hours per week. Only those offenders sentenced to a facility operated
9 or utilized under contract by a county or the state, or sanctioned
10 under RCW 9.94A.205, are eligible to participate on a work crew.
11 Offenders sentenced for a sex offense are not eligible for the work
12 crew program.

13 An offender who has successfully completed four weeks of work crew
14 at thirty-five hours per week shall thereafter receive credit toward
15 the work crew sentence for hours worked at approved, verified
16 employment. Such employment credit may be earned for up to twenty-four
17 hours actual employment per week provided, however, that every such
18 offender shall continue active participation in work crew(~~s~~) projects
19 according to a schedule approved by a work crew supervisor until the
20 work crew sentence has been served.

21 The hours served as part of a work crew sentence may include
22 substance abuse counseling and/or job skills training.

23 The civic improvement tasks performed by offenders on work crew
24 shall be unskilled labor for the benefit of the community as determined
25 by the head of the county executive branch or his or her designee.
26 Civic improvement tasks shall not be done on private property unless it
27 is owned or operated by a nonprofit entity, except that, for emergency
28 purposes only, work crews may perform snow removal on any private
29 property. The civic improvement tasks shall have minimal negative
30 impact on existing private industries or the labor force in the county
31 where the service or labor is performed. The civic improvement tasks
32 shall not affect employment opportunities for people with developmental
33 disabilities contracted through sheltered workshops as defined in RCW
34 82.04.385. In case any dispute arises as to a civic improvement task
35 having more than minimum negative impact on existing private industries
36 or labor force in the county where their service or labor is performed,
37 the matter shall be referred by an interested party, as defined in RCW
38 39.12.010(4), for arbitration to the director of the department of
39 labor and industries of the state.

1 Whenever an offender receives credit against a work crew sentence
2 for hours of approved, verified employment, the offender shall pay to
3 the ((department)) agency administering the program the monthly
4 assessment of an amount not less than ten dollars per month nor more
5 than fifty dollars per month. This assessment shall be considered
6 payment of the costs of providing the work crew program to an offender.
7 The court may exempt a person from the payment of all or any part of
8 the assessment based upon any of the following factors:

9 (1) The offender has diligently attempted but has been unable to
10 obtain employment that ((provided)) provides the offender sufficient
11 income to make such payment.

12 (2) The offender is a student in a school, college, university, or
13 a course of vocational or technical training designed to fit the
14 student for gainful employment.

15 (3) The offender has an employment handicap, as determined by an
16 examination acceptable to or ordered by the court.

17 (4) The offender is responsible for the support of dependents and
18 the payment of the assessment constitutes an undue hardship.

19 (5) Other extenuating circumstances as determined by the court.

20 **Sec. 28.** RCW 9.94A.150 and 1999 c 324 s 1 and 1999 c 37 s 1 are
21 each reenacted and amended to read as follows:

22 No person serving a sentence imposed pursuant to this chapter and
23 committed to the custody of the department shall leave the confines of
24 the correctional facility or be released prior to the expiration of the
25 sentence except as follows:

26 (1) Except as otherwise provided for in subsection (2) of this
27 section, the term of the sentence of an offender committed to a
28 correctional facility operated by the department((7)) may be reduced by
29 earned ((early)) release time in accordance with procedures that shall
30 be developed and promulgated by the correctional agency having
31 jurisdiction in which the offender is confined. The earned ((early))
32 release time shall be for good behavior and good performance, as
33 determined by the correctional agency having jurisdiction. The
34 correctional agency shall not credit the offender with earned ((early))
35 release credits in advance of the offender actually earning the
36 credits. Any program established pursuant to this section shall allow
37 an offender to earn early release credits for presentence
38 incarceration. If an offender is transferred from a county jail to the

1 department (~~of corrections~~), the administrator of a county jail
2 facility shall certify to the department the amount of time spent in
3 custody at the facility and the amount of earned (~~early~~) release
4 time. (~~In the case of~~) An offender who has been convicted of a
5 felony committed after July 23, 1995, that involves any applicable
6 deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both,
7 shall not receive any good time credits or earned (~~early~~) release
8 time for that portion of his or her sentence that results from any
9 deadly weapon enhancements. In the case of an offender convicted of a
10 serious violent offense, or a sex offense that is a class A felony,
11 committed on or after July 1, 1990, the aggregate earned (~~early~~)
12 release time may not exceed fifteen percent of the sentence. In no
13 other case shall the aggregate earned (~~early~~) release time exceed
14 one-third of the total sentence;

15 (2)(a) A person convicted of a sex offense or an offense
16 categorized as a serious violent offense, assault in the second degree,
17 vehicular homicide, vehicular assault, assault of a child in the second
18 degree, any crime against (~~a~~) persons where it is determined in
19 accordance with RCW 9.94A.125 that the (~~defendant~~) offender or an
20 accomplice was armed with a deadly weapon at the time of commission, or
21 any felony offense under chapter 69.50 or 69.52 RCW, committed before
22 July 1, 2000, may become eligible, in accordance with a program
23 developed by the department, for transfer to community custody status
24 in lieu of earned (~~early~~) release time pursuant to subsection (1) of
25 this section;

26 (b) A person convicted of a sex offense, a violent offense, any
27 crime against persons under RCW 9.94A.440(2), or a felony offense under
28 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
29 become eligible, in accordance with a program developed by the
30 department, for transfer to community custody status in lieu of earned
31 release time pursuant to subsection (1) of this section;

32 (3) An offender may leave a correctional facility pursuant to an
33 authorized furlough or leave of absence. In addition, offenders may
34 leave a correctional facility when in the custody of a corrections
35 officer or officers;

36 (4)(a) The secretary (~~of corrections~~) may authorize an
37 extraordinary medical placement for an offender when all of the
38 following conditions exist:

1 (i) The offender has a medical condition that is serious enough to
2 require costly care or treatment;

3 (ii) The offender poses a low risk to the community because he or
4 she is physically incapacitated due to age or the medical condition;
5 and

6 (iii) Granting the extraordinary medical placement will result in
7 a cost savings to the state.

8 (b) An offender sentenced to death or to life imprisonment without
9 the possibility of release or parole is not eligible for an
10 extraordinary medical placement (~~(under this subsection)~~).

11 (c) The secretary shall require electronic monitoring for all
12 offenders in extraordinary medical placement unless the electronic
13 monitoring equipment interferes with the function of the offender's
14 medical equipment or results in the loss of funding for the offender's
15 medical care. The secretary shall specify who shall provide the
16 monitoring services and the terms under which the monitoring shall be
17 performed.

18 (d) The secretary may revoke an extraordinary medical placement
19 under this subsection at any time.

20 (5) The governor, upon recommendation from the clemency and pardons
21 board, may grant an extraordinary release for reasons of serious health
22 problems, senility, advanced age, extraordinary meritorious acts, or
23 other extraordinary circumstances;

24 (6) No more than the final six months of the sentence may be served
25 in partial confinement designed to aid the offender in finding work and
26 reestablishing himself or herself in the community;

27 (7) The governor may pardon any offender;

28 (8) The department (~~(of corrections)~~) may release an offender from
29 confinement any time within ten days before a release date calculated
30 under this section; and

31 (9) An offender may leave a correctional facility prior to
32 completion of his or her sentence if the sentence has been reduced as
33 provided in RCW 9.94A.160.

34 Notwithstanding any other provisions of this section, an offender
35 sentenced for a felony crime listed in (~~(RCW 9.94A.120(4))~~) section 7
36 of this act as subject to a mandatory minimum sentence of total
37 confinement shall not be released from total confinement before the
38 completion of the listed mandatory minimum sentence for that felony
39 crime of conviction unless allowed under (~~(RCW 9.94A.120(4))~~) section

1 7 of this act, however persistent offenders are not eligible for
2 extraordinary medical placement.

3 **Sec. 29.** RCW 9.94A.180 and 1999 c 143 s 15 are each amended to
4 read as follows:

5 (1) An offender sentenced to a term of partial confinement shall be
6 confined in the facility for at least eight hours per day or, if
7 serving a work crew sentence shall comply with the conditions of that
8 sentence as set forth in RCW 9.94A.030(~~(+26+)~~) (30) and 9.94A.135. The
9 offender shall be required as a condition of partial confinement to
10 report to the facility at designated times. During the period of
11 partial confinement, an offender may be required to comply with crime-
12 related prohibitions (~~(during the period of partial confinement)~~) and
13 affirmative conditions imposed by the court or the department pursuant
14 to this chapter.

15 (2) An offender in a county jail ordered to serve all or part of a
16 term of less than one year in work release, work crew, or a program of
17 home detention who violates the rules of the work release facility,
18 work crew, or program of home detention or fails to remain employed or
19 enrolled in school may be transferred to the appropriate county
20 detention facility without further court order but shall, upon request,
21 be notified of the right to request an administrative hearing on the
22 issue of whether or not the offender failed to comply with the order
23 and relevant conditions. Pending such hearing, or in the absence of a
24 request for the hearing, the offender shall serve the remainder of the
25 term of confinement as total confinement. This subsection shall not
26 affect transfer or placement of offenders committed to the (~~(state)~~)
27 department (~~(of corrections)~~).

28 (3) Participation in work release shall be conditioned upon the
29 offender attending work or school at regularly defined hours and
30 abiding by the rules of the work release facility.

31 **Sec. 30.** RCW 9.94A.185 and 1995 c 108 s 2 are each amended to read
32 as follows:

33 (1) Home detention may not be imposed for offenders convicted of:
34 (a) A violent offense(~~(τ)~~)i
35 (b) Any sex offense(~~(τ)~~)i
36 (c) Any drug offense(~~(τ)~~)i

- 1 (d) Reckless burning in the first or second degree as defined in
2 RCW 9A.48.040 or 9A.48.050((τ))i
3 (e) Assault in the third degree as defined in RCW 9A.36.031((τ))i
4 (f) Assault of a child in the third degree((τ))i
5 (g) Unlawful imprisonment as defined in RCW 9A.40.040((τ))i or
6 (h) Harassment as defined in RCW 9A.46.020.

7 Home detention may be imposed for offenders convicted of possession of
8 a controlled substance under RCW 69.50.401(d) or forged prescription
9 for a controlled substance under RCW 69.50.403 if the offender fulfills
10 the participation conditions set forth in this (~~subsection~~[~~section~~])
11 section and is monitored for drug use by a treatment alternatives to
12 street crime program or a comparable court or agency-referred program.

13 (~~(1)~~) (2) Home detention may be imposed for offenders convicted
14 of burglary in the second degree as defined in RCW 9A.52.030 or
15 residential burglary conditioned upon the offender:

16 (a) Successfully completing twenty-one days in a work release
17 program((τ))i

18 (b) Having no convictions for burglary in the second degree or
19 residential burglary during the preceding two years and not more than
20 two prior convictions for burglary or residential burglary((τ))i

21 (c) Having no convictions for a violent felony offense during the
22 preceding two years and not more than two prior convictions for a
23 violent felony offense((τ))i

24 (d) Having no prior charges of escape((τ))i and

25 (e) Fulfilling the other conditions of the home detention program.

26 (~~(2)~~) (3) Participation in a home detention program shall be
27 conditioned upon:

28 (a) The offender obtaining or maintaining current employment or
29 attending a regular course of school study at regularly defined hours,
30 or the offender performing parental duties to offspring or minors
31 normally in the custody of the offender((τ))i

32 (b) Abiding by the rules of the home detention program((τ))i and

33 (c) Compliance with court-ordered legal financial obligations. The
34 home detention program may also be made available to offenders whose
35 charges and convictions do not otherwise disqualify them if medical or
36 health-related conditions, concerns or treatment would be better
37 addressed under the home detention program, or where the health and
38 welfare of the offender, other inmates, or staff would be jeopardized
39 by the offender's incarceration. Participation in the home detention

1 program for medical or health-related reasons is conditioned on the
2 offender abiding by the rules of the home detention program and
3 complying with court-ordered restitution.

4 **PART VI**

5 **Legal Financial Obligations**

6 **Sec. 31.** RCW 9.94A.145 and 1999 c 196 s 6 are each amended to read
7 as follows:

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

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

33 (3) The court may add to the judgment and sentence or subsequent
34 order to pay a statement that a notice of payroll deduction is to be
35 issued immediately (~~(issued)~~). If the court chooses not to order the
36 immediate issuance of a notice of payroll deduction at sentencing, the
37 court shall add to the judgment and sentence or subsequent order to pay

1 a statement that a notice of payroll deduction may be issued or other
2 income-withholding action may be taken, without further notice to the
3 offender if a monthly court-ordered legal financial obligation payment
4 is not paid when due, and an amount equal to or greater than the amount
5 payable for one month is owed.

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

13 (4) (~~All legal financial obligations that are ordered as a result~~
14 ~~of a conviction for a felony, may also be enforced~~) Independent of the
15 department, the party or entity to whom the legal financial obligation
16 is owed shall have the authority to use any other remedies available to
17 the party or entity to collect the legal financial obligation. These
18 remedies include enforcement in the same manner as a judgment in a
19 civil action by the party or entity to whom the legal financial
20 obligation is owed. Restitution collected through civil enforcement
21 must be paid through the registry of the court and must be distributed
22 proportionately according to each victim's loss when there is more than
23 one victim. The judgment and sentence shall identify the party or
24 entity to whom restitution is owed so that the state, party, or entity
25 may enforce the judgment. If restitution is ordered pursuant to RCW
26 9.94A.140(~~(+3)~~) (6) or 9.94A.142(~~(+3)~~) (6) to a victim of rape of a
27 child (~~and the~~) or a victim's child born from the rape, the
28 Washington state child support registry shall be identified as the
29 party to whom payments must be made. Restitution obligations arising
30 from the rape of a child in the first, second, or third degree that
31 result in the pregnancy of the victim may be enforced for the time
32 periods provided under RCW 9.94A.140(~~(+3)~~) (6) and 9.94A.142(~~(+3)~~)
33 (6). All other legal financial obligations may be enforced at any time
34 during the ten-year period following the offender's release from total
35 confinement or within ten years of entry of the judgment and sentence,
36 whichever period is longer. Prior to the expiration of the initial
37 ten-year period, the superior court may extend the criminal judgment an
38 additional ten years for payment of legal financial obligations
39 including crime victims' assessments. If jurisdiction under the

1 criminal judgment is extended, the department is not responsible for
2 supervision of the offender during the subsequent period.
3 (~~Independent of the department, the party or entity to whom the legal~~
4 ~~financial obligation is owed shall have the authority to utilize any~~
5 ~~other remedies available to the party or entity to collect the legal~~
6 ~~financial obligation.~~)

7 (5) In order to assist the court in setting a monthly sum that the
8 offender must pay during the period of supervision, the offender is
9 required to report to the department for purposes of preparing a
10 recommendation to the court. When reporting, the offender is required,
11 under oath, to respond truthfully and honestly (~~respond~~) to all
12 questions concerning present, past, and future earning capabilities and
13 the location and nature of all property or financial assets. The
14 offender is further required to bring (~~any and~~) all documents (~~as~~)
15 requested by the department.

16 (6) After completing the investigation, the department shall make
17 a report to the court on the amount of the monthly payment that the
18 offender should be required to make towards a satisfied legal financial
19 obligation.

20 (7) During the period of supervision, the department may make a
21 recommendation to the court that the offender's monthly payment
22 schedule be modified so as to reflect a change in financial
23 circumstances. If the department sets the monthly payment amount, the
24 department may modify the monthly payment amount without the matter
25 being returned to the court. (~~Also,~~) During the period of
26 supervision, the (~~offender~~) department may (~~be required at the~~
27 ~~request of the department~~) require the offender to report to the
28 department for the purposes of reviewing the appropriateness of the
29 collection schedule for the legal financial obligation. During this
30 reporting, the offender is required under oath to respond truthfully
31 and honestly (~~respond~~) to all questions concerning earning
32 capabilities and the location and nature of all property or financial
33 assets. (~~Also,~~) The offender (~~is required to~~) shall bring (~~any~~
34 ~~and~~) all documents (~~as~~) requested by the department in order to
35 prepare the collection schedule.

36 (8) After the judgment and sentence or payment order is entered,
37 the department (~~shall~~) is authorized, for any period of supervision
38 (~~be authorized to~~), to collect the legal financial obligation from
39 the offender. Any amount collected by the department shall be remitted

1 daily to the county clerk for the purpose((s)) of disbursements. The
2 department is authorized to accept credit cards as payment for a legal
3 financial obligation, and any costs incurred related to accepting
4 credit card payments shall be the responsibility of the offender.

5 (9) The department or any obligee of the legal financial obligation
6 may seek a mandatory wage assignment for the purposes of obtaining
7 satisfaction for the legal financial obligation pursuant to RCW
8 9.94A.2001.

9 (10) The requirement that the offender pay a monthly sum towards a
10 legal financial obligation constitutes a condition or requirement of a
11 sentence and the offender is subject to the penalties for noncompliance
12 as provided in RCW 9.94A.200 (~~for noncompliance~~), 9.94A.205, or
13 9.94A.207.

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

18 (12) The department may arrange for the collection of unpaid legal
19 financial obligations through the county clerk, or through another
20 entity if the clerk does not assume responsibility for collection. The
21 costs for collection services shall be paid by the offender.

22 (13) Nothing in this chapter makes the department, the state, or
23 any of its employees, agents, or other persons acting on their behalf
24 liable under any circumstances for the payment of these legal financial
25 obligations.

26 **Sec. 32.** RCW 9.94A.140 and 1997 c 121 s 3 and 1997 c 52 s 1 are
27 each reenacted and amended to read as follows:

28 This section applies to offenses committed on or before July 1,
29 1985.

30 (1) If restitution is ordered, the court shall determine the amount
31 of restitution due at the sentencing hearing or within one hundred
32 eighty days. The court may continue the hearing beyond the one hundred
33 eighty days for good cause. The court shall then set a minimum monthly
34 payment that the offender is required to make towards the restitution
35 that is ordered. The court should take into consideration the total
36 amount of the restitution owed, the offender's present, past, and
37 future ability to pay, as well as any assets that the offender may
38 have.

1 (2) During the period of supervision, the community corrections
2 officer may examine the offender to determine if there has been a
3 change in circumstances that warrants an amendment of the monthly
4 payment schedule. The community corrections officer may recommend a
5 change to the schedule of payment and shall inform the court of the
6 recommended change and the reasons for the change. The sentencing
7 court may then reset the monthly minimum payments based on the report
8 from the community corrections officer of the change in circumstances.

9 (3) Except as provided in subsection (~~(+3)~~) (6) of this section,
10 restitution ordered by a court pursuant to a criminal conviction shall
11 be based on easily ascertainable damages for injury to or loss of
12 property, actual expenses incurred for treatment for injury to persons,
13 and lost wages resulting from injury. Restitution shall not include
14 reimbursement for damages for mental anguish, pain and suffering, or
15 other intangible losses, but may include the costs of counseling
16 reasonably related to the offense. The amount of restitution shall not
17 exceed double the amount of the offender's gain or the victim's loss
18 from the commission of the (~~crime~~) offense.

19 (4) For the purposes of this section, the offender shall remain
20 under the court's jurisdiction for a term of ten years following the
21 offender's release from total confinement or ten years subsequent to
22 the entry of the judgment and sentence, whichever period is longer.
23 Prior to the expiration of the initial ten-year period, the superior
24 court may extend jurisdiction under the criminal judgment an additional
25 ten years for payment of restitution. If jurisdiction under the
26 criminal judgment is extended, the department is not responsible for
27 supervision of the offender during the subsequent period. The portion
28 of the sentence concerning restitution may be modified as to amount,
29 terms and conditions during either the initial ten-year period or
30 subsequent ten-year period if the criminal judgment is extended,
31 regardless of the expiration of the offender's term of community
32 supervision and regardless of the statutory maximum sentence for the
33 crime. The court may not reduce the total amount of restitution
34 ordered because the offender may lack the ability to pay the total
35 amount. The offender's compliance with the restitution shall be
36 supervised by the department (~~of corrections~~).

37 (~~(+2)~~) (5) Restitution may be ordered whenever the offender is
38 convicted of an offense which results in injury to any person or damage
39 to or loss of property or as provided in subsection (~~(+3)~~) (6) of this

1 section. In addition, restitution may be ordered to pay for an injury,
2 loss, or damage if the offender pleads guilty to a lesser offense or
3 fewer offenses and agrees with the prosecutor's recommendation that the
4 offender be required to pay restitution to a victim of an offense or
5 offenses which are not prosecuted pursuant to a plea agreement.

6 ((+3)) (6) Restitution for the crime of rape of a child in the
7 first, second, or third degree, in which the victim becomes pregnant,
8 shall include: (a) All of the victim's medical expenses that are
9 associated with the rape and resulting pregnancy; and (b) child support
10 for any child born as a result of the rape if child support is ordered
11 pursuant to a ((civil)) proceeding in superior court or administrative
12 order for support for that child. The clerk must forward any
13 restitution payments made on behalf of the victim's child to the
14 Washington state child support registry under chapter 26.23 RCW.
15 Identifying information about the victim and child shall not be
16 included in the order. The ((defendant)) offender shall receive a
17 credit against any obligation owing under the administrative or
18 superior court order for support of the victim's child. For the
19 purposes of this subsection, the offender shall remain under the
20 court's jurisdiction until the ((defendant)) offender has satisfied
21 support obligations under the superior court or administrative order
22 but not longer than a maximum term of twenty-five years following the
23 offender's release from total confinement or twenty-five years
24 subsequent to the entry of the judgment and sentence, whichever period
25 is longer. The court may not reduce the total amount of restitution
26 ordered because the offender may lack the ability to pay the total
27 amount. The department shall supervise the offender's compliance with
28 the restitution ordered under this subsection.

29 ((+4)) (7) In addition to any sentence that may be imposed, ((a
30 defendant)) an offender who has been found guilty of an offense
31 involving fraud or other deceptive practice or an organization which
32 has been found guilty of any such offense may be ordered by the
33 sentencing court to give notice of the conviction to the class of
34 persons or to the sector of the public affected by the conviction or
35 financially interested in the subject matter of the offense by mail, by
36 advertising in designated areas or through designated media, or by
37 other appropriate means.

38 ((+5)) (8) This section does not limit civil remedies or defenses
39 available to the victim or ((defendant)) offender including support

1 enforcement remedies for support ordered under subsection (~~((3))~~) (6)
2 of this section for a child born as a result of a rape of a child
3 victim. The court shall identify in the judgment and sentence the
4 victim or victims entitled to restitution and what amount is due each
5 victim. The state or victim may enforce the court-ordered restitution
6 in the same manner as a judgment in a civil action. Restitution
7 collected through civil enforcement must be paid through the registry
8 of the court and must be distributed proportionately according to each
9 victim's loss when there is more than one victim.

10 **Sec. 33.** RCW 9.94A.142 and 1997 c 121 s 4 and 1997 c 52 s 2 are
11 each reenacted and amended to read as follows:

12 This section applies to offenses committed after July 1, 1985.

13 (1) When restitution is ordered, the court shall determine the
14 amount of restitution due at the sentencing hearing or within one
15 hundred eighty days except as provided in subsection (~~((4))~~) (7) of
16 this section. The court may continue the hearing beyond the one
17 hundred eighty days for good cause. The court shall then set a minimum
18 monthly payment that the offender is required to make towards the
19 restitution that is ordered. The court should take into consideration
20 the total amount of the restitution owed, the offender's present, past,
21 and future ability to pay, as well as any assets that the offender may
22 have.

23 (2) During the period of supervision, the community corrections
24 officer may examine the offender to determine if there has been a
25 change in circumstances that warrants an amendment of the monthly
26 payment schedule. The community corrections officer may recommend a
27 change to the schedule of payment and shall inform the court of the
28 recommended change and the reasons for the change. The sentencing
29 court may then reset the monthly minimum payments based on the report
30 from the community corrections officer of the change in circumstances.

31 (3) Except as provided in subsection (~~((3))~~) (6) of this section,
32 restitution ordered by a court pursuant to a criminal conviction shall
33 be based on easily ascertainable damages for injury to or loss of
34 property, actual expenses incurred for treatment for injury to persons,
35 and lost wages resulting from injury. Restitution shall not include
36 reimbursement for damages for mental anguish, pain and suffering, or
37 other intangible losses, but may include the costs of counseling
38 reasonably related to the offense. The amount of restitution shall not

1 exceed double the amount of the offender's gain or the victim's loss
2 from the commission of the crime.

3 (4) For the purposes of this section, the offender shall remain
4 under the court's jurisdiction for a term of ten years following the
5 offender's release from total confinement or ten years subsequent to
6 the entry of the judgment and sentence, whichever period is longer.
7 Prior to the expiration of the initial ten-year period, the superior
8 court may extend jurisdiction under the criminal judgment an additional
9 ten years for payment of restitution. The portion of the sentence
10 concerning restitution may be modified as to amount, terms and
11 conditions during either the initial ten-year period or subsequent ten-
12 year period if the criminal judgment is extended, regardless of the
13 expiration of the offender's term of community supervision and
14 regardless of the statutory maximum sentence for the crime. The court
15 may not reduce the total amount of restitution ordered because the
16 offender may lack the ability to pay the total amount. The offender's
17 compliance with the restitution shall be supervised by the department
18 (~~(of corrections)~~) for ten years following the entry of the judgment
19 and sentence or ten years following the offender's release from total
20 confinement. If jurisdiction under the criminal judgment is extended,
21 the department is not responsible for supervision of the offender
22 during the subsequent period.

23 ~~((+2))~~ (5) Restitution shall be ordered whenever the offender is
24 convicted of an offense which results in injury to any person or damage
25 to or loss of property or as provided in subsection ~~((+3))~~ (6) of this
26 section unless extraordinary circumstances exist which make restitution
27 inappropriate in the court's judgment and the court sets forth such
28 circumstances in the record. In addition, restitution shall be ordered
29 to pay for an injury, loss, or damage if the offender pleads guilty to
30 a lesser offense or fewer offenses and agrees with the prosecutor's
31 recommendation that the offender be required to pay restitution to a
32 victim of an offense or offenses which are not prosecuted pursuant to
33 a plea agreement.

34 ~~((+3))~~ (6) Restitution for the crime of rape of a child in the
35 first, second, or third degree, in which the victim becomes pregnant,
36 shall include: (a) All of the victim's medical expenses that are
37 associated with the rape and resulting pregnancy; and (b) child support
38 for any child born as a result of the rape if child support is ordered
39 pursuant to a civil superior court or administrative order for support

1 for that child. The clerk must forward any restitution payments made
2 on behalf of the victim's child to the Washington state child support
3 registry under chapter 26.23 RCW. Identifying information about the
4 victim and child shall not be included in the order. The ~~((defendant))~~
5 offender shall receive a credit against any obligation owing under the
6 administrative or superior court order for support of the victim's
7 child. For the purposes of this subsection, the offender shall remain
8 under the court's jurisdiction until the ~~((defendant))~~ offender has
9 satisfied support obligations under the superior court or
10 administrative order but not longer than a maximum term of twenty-five
11 years following the offender's release from total confinement or
12 twenty-five years subsequent to the entry of the judgment and sentence,
13 whichever period is longer. The court may not reduce the total amount
14 of restitution ordered because the offender may lack the ability to pay
15 the total amount. The department shall supervise the offender's
16 compliance with the restitution ordered under this subsection.

17 ~~((+4))~~ (7) Regardless of the provisions of subsections (1)~~((,-(2),~~
18 ~~and-(3))~~) through (6) of this section, the court shall order
19 restitution in all cases where the victim is entitled to benefits under
20 the crime victims' compensation act, chapter 7.68 RCW. If the court
21 does not order restitution and the victim of the crime has been
22 determined to be entitled to benefits under the crime victims'
23 compensation act, the department of labor and industries, as
24 administrator of the crime victims' compensation program, may petition
25 the court within one year of entry of the judgment and sentence for
26 entry of a restitution order. Upon receipt of a petition from the
27 department of labor and industries, the court shall hold a restitution
28 hearing and shall enter a restitution order.

29 ~~((+5))~~ (8) In addition to any sentence that may be imposed, ~~((a~~
30 ~~defendant))~~ an offender who has been found guilty of an offense
31 involving fraud or other deceptive practice or an organization which
32 has been found guilty of any such offense may be ordered by the
33 sentencing court to give notice of the conviction to the class of
34 persons or to the sector of the public affected by the conviction or
35 financially interested in the subject matter of the offense by mail, by
36 advertising in designated areas or through designated media, or by
37 other appropriate means.

38 ~~((+6))~~ (9) This section does not limit civil remedies or defenses
39 available to the victim, survivors of the victim, or ~~((defendant))~~

1 offender including support enforcement remedies for support ordered
2 under subsection ~~((+3))~~ (6) of this section for a child born as a
3 result of a rape of a child victim. The court shall identify in the
4 judgment and sentence the victim or victims entitled to restitution and
5 what amount is due each victim. The state or victim may enforce the
6 court-ordered restitution in the same manner as a judgment in a civil
7 action. Restitution collected through civil enforcement must be paid
8 through the registry of the court and must be distributed
9 proportionately according to each victim's loss when there is more than
10 one victim.

11 ~~((7) This section shall apply to offenses committed after July 1,~~
12 ~~1985.))~~

13 PART VII

14 Sex Offender Treatment

15 NEW SECTION. **Sec. 34.** SEX OFFENDER TREATMENT. (1) When an
16 offender commits any felony sex offense on or after July 1, 1987, and
17 on or before July 1, 1990, and is sentenced to a term of confinement of
18 more than one year but less than six years, the sentencing court may,
19 on its own motion or on the motion of the offender or the state,
20 request the department to evaluate whether the offender is amenable to
21 treatment and the department may place the offender in a treatment
22 program within a correctional facility operated by the department.

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

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

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

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

36 (d) Undergo available outpatient treatment.

1 If the offender violates any of the terms of his or her community
2 supervision, the court may order the offender to serve out the balance
3 of his or her community supervision term in confinement in the custody
4 of the department.

5 Nothing in this subsection shall confer eligibility for such
6 programs for offenders convicted and sentenced for a sex offense
7 committed prior to July 1, 1987.

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

15 NEW SECTION. **Sec. 35.** TRANSITION AND RELAPSE PREVENTION
16 STRATEGIES. Within the funds available for this purpose, the
17 department shall develop and monitor transition and relapse prevention
18 strategies, including risk assessment and release plans, to reduce risk
19 to the community after sex offenders' terms of confinement in the
20 custody of the department.

21 NEW SECTION. **Sec. 36.** SEX OFFENDER TREATMENT. (1) Sex offender
22 examinations and treatment ordered as a special condition of community
23 placement or community custody under this chapter shall be conducted
24 only by sex offender treatment providers certified by the department of
25 health under chapter 18.155 RCW unless the court or the department
26 finds that: (a) The offender has already moved to another state or
27 plans to move to another state for reasons other than circumventing the
28 certification requirements; (b) the treatment provider is employed by
29 the department; or (c)(i) no certified providers are available to
30 provide treatment within a reasonable geographic distance of the
31 offender's home, as determined in rules adopted by the secretary; and
32 (ii) the evaluation and treatment plan comply with the rules adopted by
33 the department of health. A treatment provider selected by an offender
34 under (c) of this subsection, who is not certified by the department of
35 health shall consult with a certified provider during the offender's
36 period of treatment to ensure compliance with the rules adopted by the

1 department of health. The frequency and content of the consultation
2 shall be based on the recommendation of the certified provider.

3 (2) A sex offender's failure to participate in treatment required
4 as a condition of community placement or community custody is a
5 violation that will not be excused on the basis that no treatment
6 provider was located within a reasonable geographic distance of the
7 offender's home.

8 **Sec. 37.** RCW 18.155.010 and 1990 c 3 s 801 are each amended to
9 read as follows:

10 The legislature finds that sex offender therapists who examine and
11 treat sex offenders pursuant to the special sexual offender sentencing
12 alternative under ((RCW 9.94A.120(7)(a))) section 20 of this act and
13 who may treat juvenile sex offenders pursuant to RCW 13.40.160, play a
14 vital role in protecting the public from sex offenders who remain in
15 the community following conviction. The legislature finds that the
16 qualifications, practices, techniques, and effectiveness of sex
17 offender treatment providers vary widely and that the court's ability
18 to effectively determine the appropriateness of granting the sentencing
19 alternative and monitoring the offender to ensure continued protection
20 of the community is undermined by a lack of regulated practices. The
21 legislature recognizes the right of sex offender therapists to
22 practice, consistent with the paramount requirements of public safety.
23 Public safety is best served by regulating sex offender therapists
24 whose clients are being evaluated and being treated pursuant to ((RCW
25 9.94A.120(7)(a))) section 20 of this act and RCW 13.40.160. This
26 chapter shall be construed to require only those sex offender
27 therapists who examine and treat sex offenders pursuant to ((RCW
28 9.94A.120(7)(a))) section 20 of this act and RCW 13.40.160 to obtain a
29 sexual offender treatment certification as provided in this chapter.

30 **Sec. 38.** RCW 18.155.020 and 1990 c 3 s 802 are each amended to
31 read as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter:

34 (1) "Certified sex offender treatment provider" means a licensed,
35 certified, or registered health professional who is certified to
36 examine and treat sex offenders pursuant to ((RCW 9.94A.120(7)(a)))
37 section 20 of this act and RCW 13.40.160.

1 (2) "Department" means the department of health.

2 (3) "Secretary" means the secretary of health.

3 (4) "Sex offender treatment provider" means a person who counsels
4 or treats sex offenders accused of or convicted of a sex offense as
5 defined by RCW 9.94A.030.

6 **Sec. 39.** RCW 18.155.030 and 1990 c 3 s 803 are each amended to
7 read as follows:

8 (1) No person shall represent himself or herself as a certified sex
9 offender treatment provider without first applying for and receiving a
10 certificate pursuant to this chapter.

11 (2) Only a certified sex offender treatment provider may perform or
12 provide the following services:

13 (a) Evaluations conducted for the purposes of and pursuant to ((RCW
14 ~~9.94A.120(7)(a))~~) section 20 of this act and RCW 13.40.160;

15 (b) Treatment of convicted sex offenders who are sentenced and
16 ordered into treatment pursuant to ((RCW ~~9.94A.120(7)(a))~~) section 20
17 of this act and adjudicated juvenile sex offenders who are ordered into
18 treatment pursuant to RCW 13.40.160.

19 **PART VIII**

20 **DASA Licensing Requirements**

21 **Sec. 40.** RCW 46.61.524 and 1991 c 348 s 2 are each amended to read
22 as follows:

23 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
24 shall, as a condition of community supervision imposed under RCW
25 9.94A.383 or community placement imposed under ((RCW ~~9.94A.120(8))~~)
26 section 19 of this act, complete a diagnostic evaluation by an alcohol
27 or drug dependency agency approved by the department of social and
28 health services or a qualified probation department, as defined under
29 RCW 46.61.516 that has been approved by the department of social and
30 health services. This report shall be forwarded to the department of
31 licensing. If the person is found to have an alcohol or drug problem
32 that requires treatment, the person shall complete treatment in a
33 program approved by the department of social and health services under
34 chapter 70.96A RCW. If the person is found not to have an alcohol or
35 drug problem that requires treatment, he or she shall complete a course
36 in an information school approved by the department of social and

1 health services under chapter 70.96A RCW. The convicted person shall
2 pay all costs for any evaluation, education, or treatment required by
3 this section, unless the person is eligible for an existing program
4 offered or approved by the department of social and health services.
5 Nothing in chapter 348, Laws of 1991 requires the addition of new
6 treatment or assessment facilities nor affects the department of social
7 and health services use of existing programs and facilities authorized
8 by law.

9 (2) As provided for under RCW 46.20.285, the department shall
10 revoke the license, permit to drive, or a nonresident privilege of a
11 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
12 assault under RCW 46.61.522. The department shall determine the
13 eligibility of a person convicted of vehicular homicide under RCW
14 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to
15 receive a license based upon the report provided by the designated
16 alcoholism treatment facility or probation department, and shall deny
17 reinstatement until satisfactory progress in an approved program has
18 been established and the person is otherwise qualified.

19 **PART IX**

20 **Miscellaneous**

21 **Sec. 41.** RCW 9.94A.040 and 1999 c 352 s 1 and 1999 c 196 s 3 are
22 each reenacted and amended to read as follows:

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

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

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

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

31 (ii) The intent of the legislature to emphasize confinement for the
32 violent offender and alternatives to confinement for the nonviolent
33 offender.

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

1 (b) Recommend to the legislature revisions or modifications to the
2 standard sentence ranges, state sentencing policy, prosecuting
3 standards, and other standards. If implementation of the revisions or
4 modifications would result in exceeding the capacity of correctional
5 facilities, then the commission shall accompany its recommendation with
6 an additional list of standard sentence ranges which are consistent
7 with correction capacity;

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

10 (d)(i) Serve as a clearinghouse and information center for the
11 collection, preparation, analysis, and dissemination of information on
12 state and local adult and juvenile sentencing practices; (ii) develop
13 and maintain a computerized adult and juvenile sentencing information
14 system by individual superior court judge consisting of offender,
15 offense, history, and sentence information entered from judgment and
16 sentence forms for all adult felons; and (iii) conduct ongoing research
17 regarding adult and juvenile sentencing guidelines, use of total
18 confinement and alternatives to total confinement, plea bargaining, and
19 other matters relating to the improvement of the adult criminal justice
20 system and the juvenile justice system;

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

23 (f) Evaluate the effectiveness of existing disposition standards
24 and related statutes in implementing policies set forth in RCW
25 13.40.010 generally, specifically review the guidelines relating to the
26 confinement of minor and first-time offenders as well as the use of
27 diversion, and review the application of current and proposed juvenile
28 sentencing standards and guidelines for potential adverse impacts on
29 the sentencing outcomes of racial and ethnic minority youth;

30 (g) Solicit the comments and suggestions of the juvenile justice
31 community concerning disposition standards, and make recommendations to
32 the legislature regarding revisions or modifications of the standards.
33 The evaluations shall be submitted to the legislature on December 1 of
34 each odd-numbered year. The department of social and health services
35 shall provide the commission with available data concerning the
36 implementation of the disposition standards and related statutes and
37 their effect on the performance of the department's responsibilities
38 relating to juvenile offenders, and with recommendations for
39 modification of the disposition standards. The office of the

1 administrator for the courts shall provide the commission with
2 available data on diversion and dispositions of juvenile offenders
3 under chapter 13.40 RCW; and

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

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

8 (ii) The capacity of state and local juvenile and adult facilities
9 and resources; and

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

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

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

16 (a) If the maximum term in the range is one year or less, the
17 minimum term in the range shall be no less than one-third of the
18 maximum term in the range, except that if the maximum term in the range
19 is ninety days or less, the minimum term may be less than one-third of
20 the maximum;

21 (b) If the maximum term in the range is greater than one year, the
22 minimum term in the range shall be no less than seventy-five percent of
23 the maximum term in the range, except that for murder in the second
24 degree in seriousness level XIV under RCW 9.94A.310, the minimum term
25 in the range shall be no less than fifty percent of the maximum term in
26 the range; and

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

29 (5)(a) Not later than December 31, 1999, the commission shall
30 propose to the legislature the initial community custody ranges to be
31 included in sentences under ~~((RCW 9.94A.120(11)))~~ section 25 of this
32 act for crimes committed on or after July 1, 2000. Not later than
33 December 31 of each year, the commission may propose modifications to
34 the ranges. The ranges shall be based on the principles in RCW
35 9.94A.010, and shall take into account the funds available to the
36 department for community custody. The minimum term in each range shall
37 not be less than one-half of the maximum term.

38 (b) The legislature may, by enactment of a legislative bill, adopt
39 or modify the community custody ranges proposed by the commission. If

1 the legislature fails to adopt or modify the initial ranges in its next
2 regular session after they are proposed, the proposed ranges shall take
3 effect without legislative approval for crimes committed on or after
4 July 1, 2000.

5 (c) When the commission proposes modifications to ranges pursuant
6 to this subsection, the legislature may, by enactment of a bill, adopt
7 or modify the ranges proposed by the commission for crimes committed on
8 or after July 1 of the year after they were proposed. Unless the
9 legislature adopts or modifies the commission's proposal in its next
10 regular session, the proposed ranges shall not take effect.

11 (6) The commission shall exercise its duties under this section in
12 conformity with chapter 34.05 RCW.

13 **Sec. 42.** RCW 9.94A.395 and 1993 c 144 s 5 are each amended to read
14 as follows:

15 (1) The sentencing court or the court's successor shall consider
16 recommendations from the indeterminate sentence review board for
17 resentencing (~~((defendants))~~) offenders convicted of murder if the
18 indeterminate sentence review board advises the court of the following:

19 (a) The (~~((defendant))~~) offender was convicted for a murder committed
20 prior to (~~((the effective date of RCW 9.94A.390(1)(h))~~) July 23, 1989;

21 (b) RCW 9.94A.390(1)(h), if effective when the (~~((defendant))~~)
22 offender committed the crime, would have provided a basis for the
23 (~~((defendant))~~) offender to seek a mitigated sentence; and

24 (c) Upon review of the sentence, the indeterminate sentence review
25 board believes that the sentencing court, when originally sentencing
26 the (~~((defendant))~~) offender for the murder, did not consider evidence
27 that the victim subjected the (~~((defendant))~~) offender or the
28 (~~((defendant's))~~) offender's children to a continuing pattern of sexual
29 or physical abuse and the murder was in response to that abuse.

30 (2) The court may resentence the (~~((defendant))~~) offender in light of
31 RCW 9.94A.390(1)(h) and impose an exceptional mitigating sentence
32 pursuant to that provision. Prior to resentencing, the court shall
33 consider any other recommendation and evidence concerning the issue of
34 whether the (~~((defendant))~~) offender committed the crime in response to
35 abuse.

36 (3) The court shall render its decision regarding reducing the
37 inmate's sentence no later than six months after receipt of the

1 indeterminate sentence review board's recommendation to reduce the
2 sentence imposed.

3 NEW SECTION. **Sec. 43.** Part headings and section captions used in
4 this act do not constitute any part of the law.

5 NEW SECTION. **Sec. 44.** Sections 3, 6, 7, 18 through 20, 22 through
6 26, and 34 through 36 of this act are each added to chapter 9.94A RCW.

7 NEW SECTION. **Sec. 45.** If any amendments to RCW 9.94A.120, or any
8 sections enacted or affected by this act, are enacted in a 2000
9 legislative session that do not take cognizance of this act, the code
10 reviser shall prepare a bill for introduction in the 2001 legislative
11 session that incorporates any such amendments into the reorganization
12 adopted by this act and corrects any incorrect cross-references.

13 NEW SECTION. **Sec. 46.** Sections 1 through 42 of this act take
14 effect July 1, 2001.

15 NEW SECTION. **Sec. 47.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

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