

FORMATTING NOTE:

In initiatives, legislative bills and other proposed measures, language that is to be deleted from current statutes is represented by a "strikethrough" character and language that is to be added is underlined. Because these special characters cannot be formatted in all Internet browsers, a different set of symbols is used for presenting these proposals on-line. The symbols are as follows:

- Text that is surrounded by (({- text here -})) is text that will be DELETED FROM the existing statute if the proposed measure is approved.
- Text that is surrounded by {+ text here +} is text that will be ADDED TO the existing statute if the proposed measure is approved.
- {+ NEW SECTION+} (found at the beginning of a section or paragraph) indicates that ALL of the text in that section will become law if the proposed measure is approved.

* * *
INITIATIVE 194

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 194 to the Legislature is a true and correct copy as it was received by this office.

AN ACT Relating to crimes against children; amending RCW 9A.44.073, 9A.44.083, 9.68A.040, 9.68A.050; reenacting and amending RCW 9.94A.120 and 9.94A.320; adding a new section to chapter 9.94A RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

{+ NEW SECTION. +} Sec. 1. A new section is added to chapter 9.94A RCW to read as follows:

Any person convicted of a crime against a child shall be punished by confinement and fine to be no less than the following:

By confinement in a state correctional institution for a term of life imprisonment without the possibility of parole; and by a fine of no less than one hundred thousand dollars.

For purposes of this section a "crime against a child" is designated as one of the following:

- (1) Rape of a child in the first degree;
- (2) Child molestation in the first degree;
- (3) Sexual exploitation of a minor;
- (4) Dealing in depictions of minor engaged in sexually explicit conduct.

Sec. 2. RCW 9A.44.073 and 1988 c 145 s 2 are each amended to read as follows:

(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony {+ and is punishable according to section 1 of this act +}.

Sec. 3. RCW 9A.44.083 and 1994 c 271 s 303 are each amended to

read as follows:

(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a class A felony {+ and is punishable according to section 1 of this act +}.

Sec. 4. RCW 9.68A.040 and 1989 c 32 s 2 are each amended to read as follows:

(1) A person is guilty of sexual exploitation of a minor if the person:

(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;

(b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is a class (({- B -})) {+ (A) +} felony {+ and is +} punishable (({- under chapter 9A.20 RCW -})) {+ according to section 1 of this act +}.

Sec. 5. RCW 9.68A.050 and 1989 c 32 s 3 are each amended to read as follows:

A person who:

(1) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or

(2) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct is guilty of a class (({- C -})) {+ A +} felony {+ and is +} punishable (({- under chapter 9A.20 RCW -})) {+ according to section 1 of this act +}.

Sec. 6. RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as follows:

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

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

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

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

(4) A persistent offender shall be sentenced to a term of total

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

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

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

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

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

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

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

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

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

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

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

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

(v) Perform community service work;

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

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

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

any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

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

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

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

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

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

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

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

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

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient

sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense

committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

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

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

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

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

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

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

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

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

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

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

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

(iv) The offender shall not consume alcohol;

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

or

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

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

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

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

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

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

(12) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be

paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

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

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

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

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

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

(15) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be

fired by an explosive such as gunpowder.

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

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

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

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

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

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

Sec. 7. RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and 1996 c 36 s 2 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020) {+ Rape of a Child 1 (RCW 9A.44.073) Child Molestation 1 (RCW 9A.44.083) Sexual Exploitation of a Minor (RCW 9.68A.040) Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.050) +}
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XIII	Murder 2 (RCW 9A.32.050)
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120)
XI	Rape 1 (RCW 9A.44.040)

(({- Rape of a Child 1 (RCW 9A.44.073) -}))

X Kidnapping 1 (RCW 9A.40.020)
Rape 2 (RCW 9A.44.050)
Rape of a Child 2 (RCW 9A.44.076)
(({- Child Molestation 1 (RCW 9A.44.083) -
}))
Damaging building, etc., by explosion with
threat to human being (RCW
70.74.280(1))
Over 18 and deliver heroin or narcotic from
Schedule I or II to someone under 18
(RCW 69.50.406)
Leading Organized Crime (RCW
9A.82.060(1)(a))

IX Assault of a Child 2 (RCW 9A.36.130)
Robbery 1 (RCW 9A.56.200)
Manslaughter 1 (RCW 9A.32.060)
Explosive devices prohibited (RCW
70.74.180)
Indecent Liberties (with forcible
compulsion) (RCW 9A.44.100(1)(a))
Endangering life and property by explosives
with threat to human being (RCW
70.74.270)
Over 18 and deliver narcotic from Schedule
III, IV, or V or a nonnarcotic from
Schedule I-V to someone under 18 and 3
years junior (RCW 69.50.406)
Controlled Substance Homicide (RCW
69.50.415)
(({- Sexual Exploitation (RCW 9.68A.040) -
}))
Inciting Criminal Profiteering (RCW
9A.82.060(1)(b))
Vehicular Homicide, by being under the
influence of intoxicating liquor or
any drug (RCW 46.61.520)

VIII Arson 1 (RCW 9A.48.020)
Promoting Prostitution 1 (RCW 9A.88.070)
Selling for profit (controlled or
counterfeit) any controlled substance
(RCW 69.50.410)
Manufacture, deliver, or possess with
intent to deliver heroin or cocaine
(RCW 69.50.401(a)(1)(i))
Manufacture, deliver, or possess with
intent to deliver methamphetamine (RCW
69.50.401(a)(1)(({- (ii) -})) {+ (iii)
+})
Possession of ephedrine or pseudoephedrine
with intent to manufacture
methamphetamine (RCW 69.50.440)
Vehicular Homicide, by the operation of any
vehicle in a reckless manner (RCW
46.61.520)

VII Burglary 1 (RCW 9A.52.020)
 Vehicular Homicide, by disregard for the
 safety of others (RCW 46.61.520)
 Introducing Contraband 1 (RCW 9A.76.140)
 Indecent Liberties (without forcible
 compulsion) (RCW 9A.44.100(1) (b) and
 (c))
 Child Molestation 2 (RCW 9A.44.086)
 (({- Dealing in depictions of minor engaged
 in sexually explicit conduct (RCW
 9.68A.050) -}))
 Sending, bringing into state depictions of
 minor engaged in sexually explicit
 conduct (RCW 9.68A.060)
 Involving a minor in drug dealing (RCW
 69.50.401(f))
 Reckless Endangerment 1 (RCW 9A.36.045)
 Unlawful Possession of a Firearm in the
 first degree (RCW 9.41.040(1)(a))

VI Bribery (RCW 9A.68.010)
 Manslaughter 2 (RCW 9A.32.070)
 Rape of a Child 3 (RCW 9A.44.079)
 Intimidating a Juror/Witness (RCW
 9A.72.110, 9A.72.130)
 Damaging building, etc., by explosion with
 no threat to human being (RCW
 70.74.280(2))
 Endangering life and property by explosives
 with no threat to human being (RCW
 70.74.270)
 Incest 1 (RCW 9A.64.020(1))
 Manufacture, deliver, or possess with
 intent to deliver narcotics from
 Schedule I or II (except heroin or
 cocaine) (RCW 69.50.401(a)(1)(i))
 Intimidating a Judge (RCW 9A.72.160)
 Bail Jumping with Murder 1 (RCW
 9A.76.170(2)(a))
 Theft of a Firearm (RCW 9A.56.300)

V Persistent prison misbehavior (RCW
 9.94.070)
 Criminal Mistreatment 1 (RCW 9A.42.020)
 Abandonment of dependent person 1 (RCW
 9A.42.060)
 Rape 3 (RCW 9A.44.060)
 Sexual Misconduct with a Minor 1 (RCW
 9A.44.093)
 Child Molestation 3 (RCW 9A.44.089)
 Kidnapping 2 (RCW 9A.40.030)
 Extortion 1 (RCW 9A.56.120)
 Incest 2 (RCW 9A.64.020(2))
 Perjury 1 (RCW 9A.72.020)
 Extortionate Extension of Credit (RCW
 9A.82.020)
 Advancing money or property for

extortionate extension of credit (RCW
9A.82.030)
Extortionate Means to Collect Extensions of
Credit (RCW 9A.82.040)
Rendering Criminal Assistance 1 (RCW
9A.76.070)
Bail Jumping with class A Felony (RCW
9A.76.170(2)(b))
Sexually Violating Human Remains (RCW
9A.44.105)
Delivery of imitation controlled substance
by person eighteen or over to person
under eighteen (RCW 69.52.030(2))
Possession of a Stolen Firearm (RCW
9A.56.310)

IV

Residential Burglary (RCW 9A.52.025)
Theft of Livestock 1 (RCW 9A.56.080)
Robbery 2 (RCW 9A.56.210)
Assault 2 (RCW 9A.36.021)
Escape 1 (RCW 9A.76.110)
Arson 2 (RCW 9A.48.030)
Commercial Bribery (RCW 9A.68.060)
Bribing a Witness/Bribe Received by Witness
(RCW 9A.72.090, 9A.72.100)
Malicious Harassment (RCW 9A.36.080)
Threats to Bomb (RCW 9.61.160)
Willful Failure to Return from Furlough
(RCW 72.66.060)
Hit and Run - Injury Accident (RCW
46.52.020(4))
Hit and Run with Vessel - Injury Accident
(RCW 88.12.155(3))
Vehicular Assault (RCW 46.61.522)
Manufacture, deliver, or possess with
intent to deliver narcotics from
Schedule III, IV, or V or nonnarcotics
from Schedule I-V (except marijuana or
methamphetamines) (RCW
69.50.401(a)(1)(iii) through (v))
Influencing Outcome of Sporting Event (RCW
9A.82.070)
Use of Proceeds of Criminal Profiteering
(RCW 9A.82.080 (1) and (2))
Knowingly Trafficking in Stolen Property
(RCW 9A.82.050(2))

III

Criminal Mistreatment 2 (RCW 9A.42.030)
Abandonment of dependent person 2 (RCW
9A.42.070)
Extortion 2 (RCW 9A.56.130)
Unlawful Imprisonment (RCW 9A.40.040)
Assault 3 (RCW 9A.36.031)
Assault of a Child 3 (RCW 9A.36.140)
Custodial Assault (RCW 9A.36.100)
Unlawful possession of firearm in the
second degree (RCW 9.41.040(1)(b))
Harassment (RCW 9A.46.020)

Promoting Prostitution 2 (RCW 9A.88.080)
Willful Failure to Return from Work Release
(RCW 72.65.070)
Burglary 2 (RCW 9A.52.030)
Introducing Contraband 2 (RCW 9A.76.150)
Communication with a Minor for Immoral
Purposes (RCW 9.68A.090)
Patronizing a Juvenile Prostitute (RCW
9.68A.100)
Escape 2 (RCW 9A.76.120)
Perjury 2 (RCW 9A.72.030)
Bail Jumping with class B or C Felony (RCW
9A.76.170(2)(c))
Intimidating a Public Servant (RCW
9A.76.180)
Tampering with a Witness (RCW 9A.72.120)
Manufacture, deliver, or possess with
intent to deliver marijuana (RCW
69.50.401(a)(1)(iii))
Delivery of a material in lieu of a
controlled substance (RCW
69.50.401(c))
Manufacture, distribute, or possess with
intent to distribute an imitation
controlled substance (RCW
69.52.030(1))
Recklessly Trafficking in Stolen Property
(RCW 9A.82.050(1))
Theft of livestock 2 (RCW 9A.56.080)
Securities Act violation (RCW 21.20.400)

II Unlawful Practice of Law (RCW 2.48.180)
Malicious Mischief 1 (RCW 9A.48.070)
Possession of Stolen Property 1 (RCW
9A.56.150)
Theft 1 (RCW 9A.56.030)
Trafficking in Insurance Claims (RCW
48.30A.015)
Unlicensed Practice of a Profession or
Business (RCW 18.130.190(7))
Health Care False Claims (RCW 48.80.030)
Possession of controlled substance that is
either heroin or narcotics from
Schedule I or II (RCW 69.50.401(d))
Possession of phencyclidine (PCP) (RCW
69.50.401(d))
Create, deliver, or possess a counterfeit
controlled substance (RCW
69.50.401(b))
Computer Trespass 1 (RCW 9A.52.110)
Escape from Community Custody (RCW
72.09.310)

I Theft 2 (RCW 9A.56.040)
Possession of Stolen Property 2 (RCW
9A.56.160)
Forgery (RCW 9A.60.020)
Taking Motor Vehicle Without Permission

(RCW 9A.56.070)
Vehicle Prowl 1 (RCW 9A.52.095)
Attempting to Elude a Pursuing Police
Vehicle (RCW 46.61.024)
Malicious Mischief 2 (RCW 9A.48.080)
Reckless Burning 1 (RCW 9A.48.040)
Unlawful Issuance of Checks or Drafts (RCW
9A.56.060)
Unlawful Use of Food Stamps (RCW 9.91.140
(2) and (3))
False Verification for Welfare (RCW
74.08.055)
Forged Prescription (RCW 69.41.020)
Forged Prescription for a Controlled
Substance (RCW 69.50.403)
Possess Controlled Substance that is a
Narcotic from Schedule III, IV, or V
or Non-narcotic from Schedule I-V
(except phencyclidine) (RCW
69.50.401(d))

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