

State of Washington
Governor Christine Gregoire
Sentencing Guidelines Commission

David Boerner, Chair
Professor, University of Seattle School of Law

Hon. Ellen J. Fair, Vice Chair
Snohomish County Superior Court

Sherry Appleton
Washington State Representative

Michael Kawamura
Director, Pierce County Assigned Council

Ida Ballasiotes
Citizen Member

Hon. Ronald Kessler
King County Superior Court

John Clayton
Juvenile Rehabilitation Administration

Timothy Killian
Citizen Member

Jeri Costa
Chair, Indeterminate Sentencing Review Board

Adam Kline
Washington State Senator

Ned Delmore
Director of Services
Kitsap County Juvenile Department

Hon. Dean Lum
King County Superior Court

Hon. Tari Eitzen
Spokane County Superior Court

Lenell Nussbaum
Defense Attorney

Lynda Ring-Erickson
Mason County Commissioner

Pam Roach
Washington State Senator

Russ Hauge
Prosecuting Attorney, Kitsap County

Kirk Pearson
Washington State Representative

Ann Heath
Cities Representative

Mary Ellen Stone
Executive Director,
King County Sexual Assault Resource Center

Lucy Isaki
Sr. Asst. Director & Legal Counsel
Office of Financial Management

Eldon Vail
Secretary, Department of Corrections

Commission Staff

Jean Soliz-Conklin
Executive Director

Duc Luu
Data Program Manager

Stevie Peterson
Executive Assistant

Keri-Anne Jetzer
Research Investigator

Teresa Waller
Research Analyst

Andi May
Administrative Assistant

Thuy Le
Data Compiler

Lindsey May
Data Compiler

Keven Ivers
Data Compiler

Thu Le
Office Assistant

**© Copyright 2008 State of Washington
Sentencing Guidelines Commission**

All rights reserved. Portions of this document may be reproduced without permission for non-commercial purposes.

TABLE OF CONTENTS

	<u>Page</u>
LIST OF TABLES	I-v
LIST OF FIGURES	I-v
USE OF THIS MANUAL	I-vi
INTRODUCTION	I-vii
SECTION I - SENTENCING GUIDELINES	
Determining the Offense Seriousness Level.....	I-1
▪ Table 1 – Sentencing Grid	
▪ Table 2 – Crimes included within each seriousness level (non VUCSA)	
▪ Table 3 – Drug Offense Sentencing Grid	
▪ Table 4 – Drug Offenses included within each seriousness level.	
Determining the Offender Score.....	I-11
Scoring Criminal History.....	I-13
Scoring Multiple Current Convictions.....	I-14
Scoring Offender Status While on Community Placement	I-16
Determining the Standard Sentence Range.....	I-16
Using the Sentencing Grid.....	I-16
Attempt, Conspiracy, and Solicitation (non-VUCSA)	I-17
• Table 5 – Anticipatory Offense Grid	I-17
Attempt, Conspiracy, and Solicitation (VUCSA).....	I-19
Felony Traffic Enhancement.....	I-19
Firearm and Deadly Weapon Enhancements	I-20
Drug-related Enhancements.....	I-21
Sexual Motivation Enhancement.....	I-23
Criminal Street Gang-Related Enhancement.....	I-23
Determining the Sentencing Options.....	I-24
TERMS OF CONFINEMENT	
Standard Sentence Range.....	I-24
Unranked Crimes	I-25
Persistent Offenders	I-25
Non-persistent Sex Offenders	I-26
Exceptional Sentences	I-27
Consecutive and Concurrent Sentences	I-32
Limits on Early Release	I-33
SENTENCING ALTERNATIVES	
First-time Offender Waiver.....	I-35
Drug Offender Sentencing Alternative	I-35
Special Sex Offender Sentencing Alternative.....	I-38
Other Sex Offender Treatment while in Prison	I-41
Work Ethic Camp	I-41
SUPERVISION IN THE COMMUNITY	
Community Custody Ranges (effective on and after July 1, 2000).....	I-44
Community Custody for Sentences One Year or Less	I-44

TABLE OF CONTENTS (continued)

	<u>Page</u>
ALTERNATIVES TO CONFINEMENT	
Alternative Conversions.....	I-50
Work Crew	I-50
Home Detention.....	I-51
Restitution.....	I-52
Fines	I-53
Other Legal Financial Obligations.....	I-54
Contact with Individuals.....	I-55
REVIEW OF SENTENCES	I-55
PENALTY AND MODIFICATION HEARING	I-55
DISCHARGE AND VACATION OF CONVICTION RECORD.....	I-56
Discharge	I-56
Vacation of Conviction Record	I-57
SECTION II - SENTENCING REFORM ACT, COMMENTARY AND JUDICIAL REVIEW	
Index	II-1
Statute and Commentaries;	
Chapter 9.94A.....	II-26
Chapter 9.94B.....	II-367
Digest of Court Cases Interpreting the Sentencing Reform Act.....	II-377
SECTION III - SCORING FORMS	
Index	III-1
Introduction: Scoring Forms.....	III-2
Table 6: Felony Offense Effected by 2007 Session Laws	III-3
Table 6a: Community Custody HB 2719.....	III-7
General Deadly Weapon Enhancement - Form A	III-8
General Deadly Weapon Enhancement - Form B.....	III-9
Sexual Motivation Enhancement - Form C	III-10
Drug Offender Sentencing Alternative (DOSAs) Form.....	III-11
Index of General Scoring Forms.....	III-13
General Scoring Forms	III-14
Index of Individual Offense Reference Sheets	III-22
Index of Controlled Substances, Imitation and Legend Drug Crimes	III-29
INDIVIDUAL OFFENSE REFERENCE SHEETS (NON VUCSA)	III-32 – III-239
CONTROLLED SUBSTANCES INDIVIDUAL OFFENSE REFERENCE.....	III-242 - III-287
Sentencing Options for Drug Offenses.....	III-288
Anticipatory Drug Offenses - Sentence Ranges and Relevant Statutes	
• Table 7:.....	III-289
COMMUNITY CUSTODY RANGES WAC 437-20-010	III-292

TABLE OF CONTENTS (continued)

	<u>Page</u>
SECTION IV - APPENDICES	
Index	IV-1
Appendix A	
Felony Index	IV-5
Felonies defined in Title 9A RCW	IV-21
Appendix B	
Felony Offenses by Type	IV-26
Serious Violent Offense.	IV-27
Violent Offense.	IV-31
Non Violent Offense.	IV-35
Sex Offense.	IV-51
Most Serious Offense.	IV-55
Reportable Offenses Under RCW 9.94A.480.....	IV-59
Appendix C	
Sentencing Grids.....	IV-62

LIST OF TABLES

	<u>Page</u>
Table 1 Sentencing Grid	I-2
Table 2 Crimes Included Within Each Seriousness Level.....	I-3
Table 3 Drug Offense Sentencing Grid	I-9
Table 4 Drug Offense With in Each Seriousness Level.....	I-9
Table 5 Anticipatory Offense Grid	I-18
Table 6 Felony Offenses Affected by the 2008 Session Law	III-3
Table 6a Community Custody HB 2719 Effective 9/01/2009.....	III-6
Table 7 Sentence Ranges for Anticipatory Drug Offenses	III-288

LIST OF FIGURES

	<u>Page</u>
Figure 1 Weapon Enhancements	I-21
Figure 2 VUCSA Offense Enhancements in a Correctional Facility.....	I-22

USE OF THIS MANUAL

The Adult Sentencing Guidelines Manual provides comprehensive information for criminal justice practitioners, public officials and citizens on adult felony sentencing in the state of Washington. This manual offers specific guidance on how to determine the appropriate standard sentence range for an offense by identifying the seriousness level of the offense and by “scoring” the offender’s criminal history. This manual lists and describes all of the sentencing options currently provided for by statute. And the manual addresses; reviews, modifications, discharges of sentences, as well as vacating conviction records. As an aid to judges, prosecutors, defense attorneys and other criminal justice professionals, this manual also includes forms for use in “scoring” an offender’s criminal history.

Adult felony sentencing in Washington is governed by the Sentencing Reform Act (SRA) of 1981, [RCW Chapter 9.94A](#), as amended. This manual includes the text of the SRA, commentaries to amendments to the SRA and a digest of recent appellate and Supreme Court decisions interpreting and affecting the meaning of the SRA prepared by the Office of Attorney General of Washington. Persons interested in a comprehensive legal analysis of the SRA are advised to read *Sentencing in Washington*, by David Boerner (Butterworth Legal Publishers) and the 1996 supplement to *Washington Practice Volume 13A: Criminal Law*, by Seth Aaron Fine (West Publishing Co.).

This edition of the Manual has been updated to reflect amendments to the SRA enacted during the 2008 legislative session. Earlier editions of this manual should be retained for reference on offenses committed prior to the effective dates of the recently enacted legislation.

The Commission staff acknowledges those who assisted in the publication of this latest edition of the Manual. Contributors include the members of the Commission, chaired by David Boerner, who provided support and leadership; the staff of the Office of the Code Reviser, who assisted in identifying statutory changes; and the staff of the Office of the Attorney General who updated the applicable appellate case law. The Commission also appreciates the suggestions for improvements and additions to the Manual received throughout the year from attorneys, judges and criminal justice professionals. We always welcome suggestions for making the Manual easier to use.

Copies of the FY1987 through FY2007 Adult Sentencing Guidelines Manuals are available electronically on the Commission’s website at:

<http://www.sgc.wa.gov>

Comments or suggestions related to this Manual or to any other Commission publications should be directed to:

State of Washington
Sentencing Guidelines Commission
P.O. Box 40927
Olympia, WA 98504-0927
Telephone: (360) 407-1050
Fax: (360) 407-1043

INTRODUCTION

Adult offenders who committed felonies on or after July 1, 1984 are subject to the provisions of the Sentencing Reform Act of 1981, as amended (SRA). The goal of Washington's sentencing system, which is based on a determinate sentencing model and eliminates parole and probation, is to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. The enabling legislation, RCW Section 9.94A *et seq.*, contains guidelines and procedures used by courts to impose sentences that apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or to a defendant's previous criminal record. The SRA guides judicial discretion by providing presumptive sentencing ranges for the courts to follow. The ranges are structured so that offenses involving greater harm to a victim and to society result in greater punishment. Sentences that depart from the standard presumptive ranges must be based upon substantial and compelling reasons and may be appealed by either the prosecutor or the defendant.

The Sentencing Guidelines Commission developed the initial guidelines and continues to advise the Legislature on necessary adjustments. The Commission is composed of twenty voting members; sixteen appointed by the Governor. Those sixteen appointed members include: four Superior Court judges; two defense attorneys; two elected county prosecutors; four citizens (one of whom is a victim of crime or a crime victims' advocate); one juvenile court administrator; one elected city official; one elected county official; and the chief of a local law enforcement agency. Four voting members serve in an *ex-officio* capacity to their state positions: the Secretary of the Department of Corrections; the Director of the Office of Financial Management; the Assistant Secretary of the Department of Social and Health Services' Juvenile Rehabilitation Administration; and the Chair of the Indeterminate Sentence Review Board. The Speaker of the House of Representatives and the President of the Senate each appoint two nonvoting members from their respective chamber, one from each of the two largest caucuses in each body.

In order to carry out its mandate, the Commission relies upon the cooperation and assistance of the superior court clerks of all thirty-nine counties in the state. The clerks transmit copies of Judgment and Sentence forms issued in all adult felony convictions to the Sentencing Guidelines Commission. The Commission staff extracts data from the forms relating to the crime, the offender, the sentencing judge, the sentence, and alternatives to incarceration, where applicable, and enters the information into a computerized database. Using this database the Commission produces and distributes descriptive reports on actual sentences and analyzes the effects of changes in the law on prison and jail populations.

The Commission database is also the source of information used in preparation of annual statistical summaries of sentencing practices and other reports and studies related to felony sentencing in the state. Please direct questions about the guidelines, requests for notice of public meetings or copies of the minutes of Commission meetings or any other Commission publication, to the Commission office.

Sentencing Guidelines Commission
4565 7th Ave. S E
Olympia, WA 98504-0927
(360) 407-1050

SECTION I - SENTENCING GUIDELINES

This section explains the rules for applying the sentencing guidelines to **felony crimes committed after June 30, 1984**, including changes enacted by the 2008 regular session of the Legislature. The instructions cover the following:

- Offense Seriousness Level
- Offender Score
- Standard Sentence Range
- Sentencing Options
- Review of Sentences
- Penalty and Modification Hearing
- Discharge and Vacation of Conviction Record

DETERMINING THE OFFENSE SERIOUSNESS LEVEL

The offense of *conviction* determines the offense seriousness level.

General Felony Crimes

The seriousness level is measured on the vertical axis of the sentencing guidelines grid (Table 1, page I-2). Offenses are divided into 16 seriousness levels ranging from low (Level I) to high (Level XVI). RCW 9.94A.515 lists the crimes within each seriousness level (Table 2, page I-3).

This edition of the Manual includes the grids applicable to offenses committed after July 24, 1999 as well as the 2007-08 changes to the list of offense ranked on the adult felony sentencing grid. Previous versions of the grid can be found in Appendix C.

On the grid, numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months (m). Numbers in the second and third rows represent standard sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

Drug Crimes

Drug offenses committed on or after July 1, 2003 are divided into three seriousness levels and sentenced according to the drug grid (Table 3, page I-9). RCW 9.94A.518 lists the crimes within each seriousness level (Table 4, page I-10).

Unranked Felony Crimes

Some felonies, those rarely charged or recently created by the Legislature, are not included in the Seriousness Level table and are referred to as “unranked.” Sentences for unranked felonies are entered without reference to the grid’s standard sentence ranges and do not require sentence calculations. The sentencing options for unranked felonies are described on page I-25.

**TABLE 1
SENTENCING GRID
FOR CRIMES COMMITTED AFTER JULY 24, 1999**

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVI	Life Sentence without Parole/Death Penalty									
XV	23y 4m 240 – 320	24y 4m 250 – 333	25y 4m 261 – 347	26y 4m 271 – 361	27y 4m 281 – 374	28y 4m 291 – 388	30y 4m 312 – 416	32y 10m 338 – 450	36y 370 – 493	40y 411 – 548
XIV	14y 4m 123 – 220	15y 4m 134 – 234	16y 2m 144 – 244	17y 154 – 254	17y 11m 165 – 265	18y 9m 175 – 275	20y 5m 195 – 295	22y 2m 216 – 316	25y 7m 257 – 357	29y 298 – 397
XIII	12y 123 – 164	13y 134 – 178	14y 144 – 192	15y 154 – 205	16y 165 – 219	17y 175 – 233	19y 195 – 260	21y 216 – 288	25y 257 – 342	29y 298 – 397
XII	9y 93 – 123	9y 11m 102 – 136	10y 9m 111 – 147	11y 8m 120 – 160	12y 6m 129 – 171	13y 5m 138 – 184	15y 9m 162 – 216	17y 3m 178 – 236	20y 3m 209 – 277	23y 3m 240 – 318
XI	7y 6m 78 – 102	8y 4m 86 – 114	9y 2m 95 – 125	9y 11m 102 – 136	10y 9m 111 – 147	11y 7m 120 – 158	14y 2m 146 – 194	15y 5m 159 – 211	17y 11m 185 – 245	20y 5m 210 – 280
X	5y 51 – 68	5y 6m 57 – 75	6y 62 – 82	6y 6m 67 – 89	7y 72 – 96	7y 6m 77 – 102	9y 6m 98 – 130	10y 6m 108 – 144	12y 6m 129 – 171	14y 6m 149 – 198
IX	3y 31 – 41	3y 6m 36 – 48	4y 41 – 54	4y 6m 46 – 61	5y 51 – 68	5y 6m 57 – 75	7y 6m 77 – 102	8y 6m 87 – 116	10y 6m 108 – 144	12y 6m 129 – 171
VIII	2y 21 – 27	2y 6m 26 – 34	3y 31 – 41	3y 6m 36 – 48	4y 41 – 54	4y 6m 46 – 61	6y 6m 67 – 89	7y 6m 77 – 102	8y 6m 87 – 116	10y 6m 108 – 144
VII	18m 15 – 20	2y 21 – 27	2y 6m 26 – 34	3y 31 – 41	3y 6m 36 – 48	4y 41 – 54	5y 6m 57 – 75	6y 6m 67 – 89	7y 6m 77 – 102	8y 6m 87 – 116
VI	13m 12+ - 14	18m 15 – 20	2y 21 - 27	2y 6m 26 – 34	3y 31 - 41	3y 6m 36 - 48	4y 6m 46 - 61	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102
V	9m 6 – 12	13m 12+ - 14	15m 13 - 17	18m 15 – 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 41 - 54	5y 51 - 68	6y 62 - 82	7y 72 - 96
IV	6m 3 – 9	9m 6 – 12	13m 12+ - 14	15m 13 – 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 2m 53 - 70	6y 2m 63 - 84
III	2m 1 – 3	5m 3 – 8	8m 4 - 12	11m 9 – 12	14m 12+ - 16	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 51 - 68
II	0 - 90 Days	4m 2 – 6	6m 3 - 9	8m 4 – 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
I	0 - 60 Days	0 – 90 Days	3m 2 - 5	4m 2 – 6	5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range* (Months) w/score of 0	Offense
XVI	Life/Death	Aggravated Murder 1° (RCW 10.95.020)
XV	240 - 320*	Homicide by Abuse (RCW 9A.32.055) Malicious Explosion 1° (RCW 70.74.280(1)) Murder 1° (RCW 9A.32.030)
XIV	123-220*	Murder 2° (RCW 9A.32.050) Trafficking 1° (RCW 9A.40.100(1))
XIII	123-164*	Malicious Explosion 2° (RCW 70.74.280(2)) Malicious Placement of an Explosive 1° (RCW 70.74.270(1))
XII	93-123*	Assault 1° (RCW 9A.36.011) Assault of a Child 1° (RCW 9A.36.120) Malicious Placement of an Imitation Device 1° (RCW 70.74.272(1)(a)) Rape 1° (RCW 9A.44.040) Rape of a Child 1° (RCW 9A.44.073) Trafficking 2° (RCW 9A.40.100(2))
XI	78-102*	Manslaughter 1° (RCW 9A.32.060) Rape 2° (RCW 9A.44.050) Rape of a Child 2° (RCW 9A.44.076)
X	51-68*	Child Molestation 1° (RCW 9A.44.083) Criminal Mistreatment 1° (RCW 9A.42.020) Indecent Liberties (with Forcible Compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1° (RCW 9A.40.020) Leading Organized Crime (RCW 9A.82.060(1)(a)) Malicious Explosion 3° (RCW 70.74.280(3)) Sexually Violent Predator Escape (RCW 9A.76.115)
IX	31-41*	Abandonment of Dependent Person 1° (RCW 9A.42.060) Assault of a Child 2° (RCW 9A.36.130) Explosive Devices Prohibited (RCW 70.74.180) Hit and Run—Death (RCW 46.52.020(4)(a)) Homicide by Watercraft, by Being Under the Influence of Intoxicating Liquor or any Drug (RCW 79A.60.050) Inciting Criminal Profiteering (RCW 9A.82.060(1)(b)) Malicious Placement of an Explosive 2° (RCW 70.74.270(2))

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range* (Months) w/score of 0	Offense
		Robbery 1° (RCW 9A.56.200) Sexual Exploitation (RCW 9.68A.040) Vehicular Homicide, by Being Under the Influence of Intoxicating Liquor or any Drug (RCW 46.61.520)
VIII	21-27*	Arson 1° (RCW 9A.48.020) Homicide by Watercraft, by the Operation of any Vessel in a Reckless Manner (RCW 79A.60.050) Manslaughter 2° (RCW 9A.32.070) Promoting Commercial Sex Abuse of a Minor (RCW 9.68A.101) Promoting Prostitution 1° (RCW 9A.88.070) Theft of Ammonia (RCW 69.55.010) Vehicular Homicide, by the Operation of Any Vehicle in a Reckless Manner (RCW 46.61.520)
VII	15-20*	Burglary 1° (RCW 9A.52.020) Child Molestation 2° (RCW 9A.44.086) Civil Disorder Training (RCW 9A.48.120) Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.050) Drive-by Shooting (RCW 9A.36.045) Homicide by Watercraft, by Disregard for the Safety of Others (RCW 79A.60.050) Indecent Liberties (without Forcible Compulsion) (RCW 9A.44.100(1)(b) and (c)) Introducing Contraband 1° (RCW 9A.76.140) Malicious Placement of an Explosive 3° (70.74.270(3)) Negligently Causing Death by Use of a Signal Preemption Device (RCW 46.37.675) Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.060) Unlawful Possession of a Firearm 1° (RCW 9.41.040(1)) Use of a Machine Gun in Commission of a Felony (RCW 9.41.225) Vehicular Homicide, by Disregard for the Safety of Others (RCW 46.61.520)
VI	12+ -14*	Bail Jumping with Murder 1° (RCW 9A.76.170(3)(a)) Bribery (RCW 9A.68.010) Incest 1° (RCW 9A.64.020(1)) Intimidating a Judge (RCW 9A.72.160) Intimidating a Juror/Witness (RCW 9A.72.110, RCW 9A.72.130) Malicious Placement of an Imitation Device 2° (RCW 70.74.272.(1)(b)) Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.070) Rape of a Child 3° (RCW 9A.44.079) Theft of a Firearm (RCW 9A.56.300)

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range* (Months) w/score of 0	Offense
		Unlawful Storage of Ammonia (RCW 69.55.020)
V	6-12*	Abandonment of a Dependent Person 2° (RCW 9A.42.070) Advancing Money or Property for Extortionate Extension of Credit (RCW 9A.82.030) Bail Jumping with Class A Felony (RCW 9A.76.170(3)(b)) Child Molestation 3° (RCW 9A.44.089) Criminal Mistreatment 2° (RCW 9A.42.030) Custodial Sexual Misconduct 1° (RCW 9A.44.160) Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070 or 74.34.145) Driving While Under the Influence (Fourth offense in 10 years or prior conviction for Vehicular Homicide/Assault While Under the Influence of Intoxicating Liquors) (RCW 46.61.502(6)) Extortion 1° (RCW 9A.56.120) Extortionate Extension of Credit (RCW 9A.82.020) Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040) Incest 2° (RCW 9A.64.020(2)) Kidnapping 2° (RCW 9A.40.030) Perjury 1° (RCW 9A.72.020) Persistent Prison Misbehavior (RCW 9.94.070) Physical Control of a Vehicle While Under the Influence (Fourth offense in 10 years or prior conviction for Vehicular Homicide/Assault While Under the Influence of Intoxicating Liquors) (RCW 46.61.504(6)) Possession of a Stolen Firearm (RCW 9A.56.310) Rape 3° (RCW 9A.44.060) Rendering Criminal Assistance 1° (RCW 9A.76.070) Sexual Misconduct with a Minor 1° (RCW 9A.44.093) Sexually Violating Human Remains (RCW 9A.44.105) Stalking (RCW 9A.46.110) Taking Motor Vehicle Without Permission 1° (RCW 9A.56.070)
IV	3-9*	Arson 2° (RCW 9A.48.030) Assault 2° (RCW 9A.36.021) Assault 3° (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h)) Assault by Watercraft (RCW 79A.60.060) Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100) Cheating 1° (RCW 9.46.1961) Commercial Bribery (RCW 9A.68.060) Counterfeiting (9.16.035(4)) Endangerment With a Controlled Substance (RCW 9A.42.100) Escape 1° (RCW 9A.76.110) Hit and Run - Injury (RCW 46.52.020(4)(b))

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range* (Months) w/score of 0	Offense
		Hit and Run with Vessel, Injury Accident (RCW 79A.60.200(3)) Identity Theft 1 (RCW 9.35.020(2)) Indecent Exposure to Person Under Age Fourteen (Subsequent Sex Offense) (RCW 9A.88.010) Influencing Outcome of Sporting Event (RCW 9A.82.070) Malicious Harassment (RCW 9A.36.080) Residential Burglary (RCW 9A.52.025) Robbery 2 ^o (RCW 9A.56.210) Theft of Livestock 1 ^o (RCW 9A.56.080) Threats to Bomb (RCW 9.61.160) Trafficking in Stolen Property 1 ^o (RCW 9A.82.050) Unlawful Factoring of a Credit Card or Payment Card Transaction (RCW 9A.56.290(4)(b)) Unlawful Transaction of Health Coverage as a Health Care Service Contractor (RCW 48.44.016(3)) Unlawful Transaction of Health Coverage as a Health Maintenance Organization (RCW 48.46.033(3)) Unlawful Transaction of Insurance Business (RCW 48.15.023(3)) Unlicensed Practice as an Insurance Professional (RCW 48.17.063(3)) (Effective July 1, 2009, subsection (3) is changed to subsection (2)) Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2)) Vehicular Assault, by Being Under the Influence of Intoxicating Liquor or any Drug, or by the Operation of a Vehicle in a Reckless Manner (RCW 46.61.522) Willful Failure to Return from Furlough (*RCW 72.66.060)
III	1-3*	Animal Cruelty 1 ^o (Sexual Conduct or Contact) (RCW 16.52.205(3)) Assault 3 ^o (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h)) Assault of a Child 3 ^o (RCW 9A.36.140) Bail Jumping with Class B or C Felony (RCW 9A.76.170(3)(c)) Burglary 2 ^o (RCW 9A.52.030) Commercial Sex Abuse of a Minor (RCW 9.68A.100) Communication with a Minor for Immoral Purposes (RCW 9.68A.090) Criminal Gang Intimidation (RCW 9A.46.120) Custodial Assault (RCW 9A.36.100) Cyberstalking (subsequent conviction or threat of death)(RCW 9.61.260(3)) Escape 2 ^o (RCW 9A.76.120) Extortion 2 ^o (RCW 9A.56.130) Harassment (RCW 9A.46.020) Intimidating a Public Servant (RCW 9A.76.180) Introducing Contraband 2 ^o (RCW 9A.76.150) Malicious Injury to Railroad Property (RCW 81.60.070) Mortgage Fraud (RCW 19.144.080)

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range* (Months) w/score of 0	Offense
		<p>Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)</p> <p>Organized Retail Theft 1 (RCW 9A.56.350(2))</p> <p>Perjury 2^o (RCW 9A.72.030)</p> <p>Possession of Incendiary Device (RCW 9.40.120)</p> <p>Possession of Machine Gun or Short Barreled Shotgun or Rifle (RCW 9.41.190)</p> <p>Promoting Prostitution 2^o (RCW 9A.88.080)</p> <p>Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))</p> <p>Securities Act Violation (RCW 21.20.400)</p> <p>Tampering with a Witness (RCW 9A.72.120)</p> <p>Telephone Harassment (Subsequent Conviction or Threat of Death) (RCW 9.61.230(2))</p> <p>Theft of Livestock 2^o (RCW 9A.56.083)</p> <p>Theft with the Intent to Resell 1 (RCW 9A.56.340(2))</p> <p>Trafficking in Stolen Property 2^o (RCW 9A.82.055)</p> <p>Unlawful Imprisonment (RCW 9A.40.040)</p> <p>Unlawful Possession of Firearm 2^o (RCW 9.41.040(2))</p> <p>Vehicular Assault, by the Operation or Driving of a Vehicle with Disregard for the Safety of Others (RCW 46.61.522)</p> <p>Willful Failure to Return from Work Release (RCW 72.65.070)(This statute was repealed in 2001)</p>
II	0-3*	<p>Computer Trespass 1^o (RCW 9A.52.110)</p> <p>Counterfeiting (RCW 9.16.035(3))</p> <p>Escape from Community Custody (RCW 72.09.310)</p> <p>Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130(11)(a))</p> <p>Health Care False Claims (RCW 48.80.030)</p> <p>Identity Theft 2^o (RCW 9.35.020(3))</p> <p>Improperly Obtaining Financial Information (RCW 9.35.010)</p> <p>Malicious Mischief 1^o (RCW 9A.48.070)</p> <p>Organized Retail Theft 2^o (RCW 9A.56.350(3))</p> <p>Possession of Stolen Property 1^o (RCW 9A.56.150)</p> <p>Possession of Stolen Vehicle (RCW 9A.56.068)</p> <p>Retail Theft with Extenuating Circumstances 2 (RCW 9A.56.360(3))</p> <p>Theft 1^o (RCW 9A.56.030)</p> <p>Theft of a Motor Vehicle (RCW 9A.56.065)</p> <p>Theft of Rental, Leased, or Lease-purchased Property (Valued at \$1,500 or More) (RCW 9A.56.096(5)(a))</p> <p>Theft with the Intent to Resell 2^o (RCW 9A.56.340(3))</p> <p>Trafficking in Insurance Claims (RCW 48.30A.015)</p>

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range* (Months) w/score of 0	Offense
		Unlawful Factoring of a Credit Card or Payment Card Transaction (RCW 9A.56.290(4)(a)) Unlawful Practice of Law (RCW 2.48.180) Unlicensed Practice of a Profession or Business (RCW 18.130.190(7)) Voyeurism (RCW 9A.44.115)
I	0-2*	Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024) False Verification for Welfare (RCW 74.08.055) Forgery (RCW 9A.60.020) Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060) Malicious Mischief 2 ^o (RCW 9A.48.080) Mineral Trespass (RCW 78.44.330) Possession of Stolen Property 2 ^o (RCW 9A.56.160) Reckless Burning 1 ^o (RCW 9A.48.040) Taking Motor Vehicle without Permission 2 ^o (RCW 9A.56.075) Theft 2 ^o (RCW 9A.56.040) Theft of Rental, Leased, or Lease-purchased Property (Valued at \$250 or more but less than \$1,500) (RCW 9A.56.096(5)(b)) Transaction of Insurance Business Beyond the Scope of Licensure (RCW 48.17.063(4)) (Effective July 1, 2009, Subsection (4) is deleted.) Unlawful Issuance of Checks or Drafts (RCW 9A.56.060) Unlawful Possession of Fictitious Identification (RCW 9A.56.320) Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320) Unlawful Possession of Payment Instruments (RCW 9A.56.320) Unlawful Possession of a Personal Identification Device (RCW 9A.56.320) Unlawful Production of Payment Instruments (RCW 9A.56.320) Unlawful Trafficking in Food Stamps (RCW 9.91.142) Unlawful Use of Food Stamps (RCW 9.91.144) Vehicle Prowl 1 ^o (RCW 9A.52.095)

**RCW 9.94A.517 Table 3—Drug offense sentencing grid.
(Effective July 1, 2003)**

Seriousness Level	Offender Score 0 to 2	Offender Score 3 to 5	Offender Score 6 to 9+
Level III	51 to 68 Months	68+ to 100 Months	100+ to 120 Months
Level II	12+ to 20 Months	20+ to 60 Months	60+ to 120 Months
Level I	0 to 6 Months	6+ to 18 Months	12+ to 24 Months

References to months represent the standard sentence ranges. 12+ equals one year and one day.

(2) The court may utilize any other sanctions or alternatives as authorized by law, including but not limited to the special drug offender sentencing alternative under RCW 9.94A.660 or drug court under RCW 2.28.170.

(3) Nothing in this section creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment.

**TABLE 4 (RCW 9.94A.518)
DRUG OFFENSES
INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

Level

- III** Any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under RCW 9.94A.602
 - Controlled Substance Homicide (RCW 69.50.415)
 - Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
 - Involving a minor in drug dealing (RCW 69.50.4015)
 - Manufacture of methamphetamine (RCW 69.50.401(2)(b))
 - Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
 - Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
 - Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine . (RCW 69.50.440)
 - Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)

- II Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.4011)
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(2)(b))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.4012)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(1)(f))
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(2)(b))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(2)(a))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(2) (c) through (e))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))

- I Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(2)(c))

- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (RCW 69.50.4013)
- Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.4013)
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)

DETERMINING THE OFFENDER SCORE

The offender score, one factor affecting a felony sentence, is measured on the horizontal axis of the sentencing guidelines grid. An offender may receive from 0 to 9+ points on that axis. In general, the number of points an offender receives depends on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of other current convictions; (4) the offender's community placement status at the time the crime was committed; and (5) the length of the offender's crime-free behavior between offenses.

CRIMINAL HISTORY COLLECTION

Pursuant to RCW 9.94A.030(14),¹ criminal history includes the defendant's prior adult convictions and juvenile court dispositions in any state or in federal court. Although an offender's criminal history consists almost exclusively of *felony* convictions, in some instances, it also includes specific misdemeanors. The effect of criminal history also often relates to the felony class of the crime (Class A, Class B or Class C), and the type of offense ("serious violent", "violent", "nonviolent", or "sex"). Appendix A contains a list of felony offenses, along with their class, and an explanation of how the class is determined. Appendix B contains, among other things, lists of each type of offense.

Adult Criminal History

The Criminal Justice Information Act (RCW 10.98) established the Washington State Patrol Identification and Criminal History Section (the Section) as the primary source of information on state felony conviction histories. The Act directs judges to ensure that felony defendants are fingerprinted and that arrest and fingerprint forms are transmitted to the Washington State Patrol (RCW 10.98.050(2)). After filing charges, prosecutors contact the Section for an offender's Washington criminal history. Prosecutors also obtain out-of-state or federal criminal history information from the Federal Bureau of Investigation or other appropriate sources.

A conviction is defined as a verdict of guilty, a finding of guilty or an acceptance of a plea of guilty. RCW 9.94A.525(1) defines a prior conviction as one existing before the date of the sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed are deemed "other current offenses" within the meaning of RCW 9.94A.589.

Prior adult convictions should be counted as criminal history unless:

- "Wash out" provisions apply; or
- A Court has previously determined that they constituted "same criminal conduct" as defined by RCW 9.94A.589; or
- They were not previously deemed "same criminal conduct" but their sentences were served concurrently and a Court now determines that they were committed at the same time, in the same place, and involved the same victim; or
- The sentences were served concurrently and they were committed before July 1, 1986.

¹ Effective until August 1, 2009, when RCW 9.94A.030(14) will be recodified as RCW 9.94A.030(12).

RCW 9.94A.030(14)² provides that when the information is available, criminal history should include the length and terms of any probation and/or incarceration. This information is often collected as part of the Pre-sentence Investigation Report.

Juvenile Criminal History

All felony dispositions in juvenile court must be counted as criminal history for purposes of adult sentencing, except under the general “wash-out” provisions that apply to adult offenses. Juvenile offenses sentenced on the same day must be counted separately unless they constitute the “same criminal conduct” as defined in RCW 9.94A.589(1)(a) or unless the date of the offenses were prior to July 1, 1986.

Although juvenile records generally are sealed, RCW 13.50.050(10) provides that after a charge has been filed, juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to the prosecution and defense counsel, subject to the rules of discovery. An adult felony charge nullifies the sealing of a juvenile record. (RCW 13.50.050(16)).

"Wash Out" of Certain Prior Felonies

The rules governing which prior convictions are included in the offender score can be found in RCW 9.94A.525 and are summarized as follows:

- Prior Class A and felony sex convictions are always included in the offender score.
- Prior Class B (juvenile or adult) felony convictions other than sex offenses are *not* included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or since the entry of judgment and sentence, the offender had spent ten consecutive years in the community without having been convicted of any crime.
- Prior Class C (juvenile or adult) felony convictions other than sex offenses are *not* included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or since the entry of judgment and sentence, the offender had spent five consecutive years in the community without having been convicted of any crime.
- Prior (juvenile or adult) serious traffic convictions are *not* included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or since the entry of judgment and sentence, the offender had spent five years in the community without having been convicted of any crime.
- If the present conviction is felony Driving Under the Influence or felony Physical Control of a Vehicle While Under the Influence of Intoxicating Liquor or Drug, prior convictions of these offenses and serious traffic offenses will be included in the offender score if they were committed within five years since the last date of release from confinement (including fulltime residential treatment) or entry of judgment and sentence; or if the prior offenses

² Effective until August 1, 2009, when RCW 9.94A.030(14) will be recodified as RCW 9.94A.030(12).

would be considered “prior offenses within ten years” as defined in RCW 46.61.5055. If the present conviction is for Vehicular Homicide/Assault or Homicide/Assault by Watercraft, then convictions for serious traffic offenses, Driving Under the Influence, Operating a Vessel Under the Influence, or Actual Physical Control of a Motor Vehicle While Under the Influence will also be counted.

The Sentencing Reform Act permits vacating records of conviction under certain conditions and provides that vacated convictions "shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction." RCW 9.94A.640. Vacation of the conviction record does not affect or prevent the use of an offender's prior conviction in a later criminal prosecution.

The eligibility rules for vacation of conviction record are similar to the “wash-out” rules. Because the washout rules are automatic and do not require court action, an offense will “wash out” before formal record vacation occurs. (The main distinction between vacation of record of conviction and “wash-out” is that, after vacation, an offender may indicate on employment forms that he or she was not convicted of that crime.)

Federal, Out-of-state or Foreign Convictions

In order for a prior federal, out-of-state or foreign conviction to be included in an offender’s history and thereby affect the offender score, the elements of the offense in other jurisdictions must be compared with Washington State laws. (RCW 9.94A.525(3)). In instances where the foreign conviction is not clearly comparable to an offense under Washington State law, or where the offense is usually considered a felony subject to exclusive federal jurisdiction, the offense is scored as a Class C felony equivalent.

SCORING CRIMINAL HISTORY

Once relevant prior convictions are identified, the criminal history portion of the offender score may be calculated. The rules for scoring prior convictions are contained in RCW 9.94A.525. It should be noted that the scoring rules for some offenses are calculated differently, depending upon the category of the offense. To make application of these rules easier, the offense reference sheets and scoring forms found in Section III of this Manual specify the correct number of points for prior convictions depending on the current offense. The forms are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. A thorough understanding of the criminal history rules is important in order to use these forms correctly and to perform calculations not covered by the forms.

General consideration should also be given to often-applicable exceptions to general scoring rules. For instance, misdemeanors generally are not included in offender score calculations. An exception exists where the current conviction is for a felony traffic offense. In such cases, serious traffic offenses are included in the offender score.³ Additionally, with present convictions of anticipatory offenses (criminal attempt, solicitation or conspiracy) prior convictions of felony anticipatory offenses count the same and are scored as if they were convictions for completed

³ See RCW 9.94A.525(2)(e), (11) and (12).

offenses.⁴ Exceptions to the general scoring rules also exist for Burglary 1°, Burglary 2° and Residential Burglary,⁵ for Manufacturing Methamphetamine and other drug offenses,⁶ for Escape offenses,⁷ for Failure to Register as a Sex Offender,⁸ or for crimes involving the taking, theft or possession of a stolen motor vehicle.⁹

Finally, an exception should also be noted for convictions with a finding of sexual motivation. A finding of sexual motivation changes the underlying offense to a sex offense as defined in RCW 9.94A.030(46),¹⁰ changing the scoring rules and influencing the sentence options. This scoring rule only applies to crimes committed on or after July 1, 1990. See RCW 9.94A.525 (17).

SCORING MULTIPLE CURRENT CONVICTIONS

Multiple convictions may also influence the offender score. For multiple current offenses, separate sentence calculations are necessary for *each* offense because the law requires that each receive a separate sentence unless the offenses are ruled the same criminal conduct See RCW 9.94A.589.

Multiple Offense Scoring Steps:

- (A) If the current offenses do *not* include two or more serious violent offenses¹¹ arising from separate and distinct criminal conduct, apply RCW 9.94A.589(1)(a):
- Calculate the score for *each* offense.
 - For each offense, score the prior adult and juvenile convictions.
 - For each offense, score the other current offenses on the scoring form line entitled "Other Current Offenses."
 - The court may find that some or all of the current offenses encompass the same criminal conduct¹² and are to be counted as one crime.
 - In cases of Vehicular Homicide or Vehicular Assault with multiple victims, offenses against each victim may be charged as separate offenses, even if the victims occupied the same vehicle. The resulting multiple convictions need not be scored as constituting the same criminal conduct.

⁴ See RCW 9.94A.525(4)-(6).

⁵ See RCW 9.94A.525 (16).

⁶ See RCW 9.94A.525(13).

⁷ See RCW 9.94A.525 (14) and (15).

⁸ See RCW 9.94A.525(18).

⁹ See RCW 9.94A.525 (20).

¹⁰ Effective August 1, 2009, RCW 9.94A.030(46) will be recodified as RCW 9.94A.030(39).

⁸ RCW 9.94A.030(37) provides: "'Serious violent offense' is a subcategory of violent offense and means: (a) Murder 1°, Homicide by Abuse, Murder 2°, Assault 1°, Kidnapping 1°, Rape 1°, Manslaughter 1°, Assault of a Child 1°, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or (b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection."

⁹ RCW 9.94A.589(1)(a) provides: "... 'Same criminal conduct'... means...two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." Cases involving vehicular homicide or vehicular assault need not be considered same criminal conduct..

- Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed are scored as "other current offenses"
- (B) If the current offenses include two or more serious violent offenses arising from separate and distinct conduct, apply RCW 9.94A.589(1)(b):
- Calculate the score for *each* offense.
 - Identify the serious violent offense with the *highest* seriousness level. Calculate the sentence for that crime using the offender's prior adult and juvenile convictions. Do not include any other current serious violent offenses as part of the offender score, but do include other current offenses that are not serious violent offenses.
 - Score all remaining serious violent current offenses, calculating the sentence for the crime using an offender score of *zero*.
 - For any current offenses that are not serious violent offenses, score according to the rules in (A) above.
- (C) If the current offenses include Unlawful Possession of a Firearm in the First or Second Degree and one, or both, of the felony crimes of Theft of a Firearm or Possession of a Stolen Firearm, score according to the rules in RCW 9.94A.589(1)(c).

Example: Assume that an offender is convicted of one count of First Degree Theft and one count of Forgery with both offenses arising from separate and distinct criminal conduct and that the offender's criminal history consisted of one conviction for Second Degree Burglary. In this case, the rules in RCW 9.94A.589(1)(a) apply, and the theft and forgery must be separately scored. The prior burglary and the current forgery are included in the offender score for the theft, resulting in an offender score of two and a sentence range of three to nine months. The prior burglary and the current theft are included in the offender score for the forgery, resulting in an offender score of two and a sentence range of two to five months. The sentence for each offense should run concurrently.

Example: Assume that an offender is convicted of one count of Second Degree Theft and one count of Second Degree Possession of Stolen Property in a circumstance where both counts encompassed the same criminal conduct, and that the offender had no criminal history. In this case, the other current offense is not counted in the offender score because under RCW 9.94A.589(1)(a) where current offenses are found to encompass the same criminal conduct, those current offenses shall be counted as one crime. Therefore, the theft and possession would both be scored with offender scores of zero, with a sentence range for each crime of 0 to 60 days. The sentence for each offense will run concurrently.

Example: Assume that an offender is convicted of two counts of First Degree Kidnapping and one count of First Degree Assault. These offenses constitute serious violent offenses. Assume further that these offenses arose from separate and distinct criminal conduct and that the offender's criminal history consists of one Third Degree Assault conviction. The scoring for this offender follows the rules in RCW 9.94A.589(1)(b). First, the crime with the highest seriousness level must be identified and scored. Since First Degree Assault is more serious (Level XII) than First Degree Kidnapping (Level X), that offense is scored by counting the prior Third Degree

Assault as part of the adult criminal history. This calculation results in an offender score of one and a sentence range of 102 to 136 months. Next, the First Degree Kidnapping convictions are scored using a criminal history of zero. These calculations result in two sentence ranges of 51 to 68 months. The three sentences run *consecutively*.

Example: Assume an offender is convicted on one count of Third Degree Assault, with a criminal history consisting of adult convictions for Second Degree Theft and Forgery and a single adjudication of Second Degree Assault as a juvenile. Pursuant to RCW 9.94A.589(1)(a), the prior Second Degree Theft and Forgery are included in the offender score as one point each, and the juvenile Second Degree Assault also scores as one point, resulting in an offender score of three points. The sentence range is 9 to 12 months.

Scoring Offender Status While on Community Placement

The offender score also reflects whether the offense was committed while the offender was under community placement. An additional point is added to the offender score for crimes committed on or after July 1, 1988 while the offender was on community placement. RCW 9.94A.525(19).

DETERMINING THE STANDARD SENTENCE RANGE

USING THE SENTENCING GRID

Once the offense seriousness level has been determined and the offender score has been calculated, the presumptive standard sentence range may be identified on the appropriate sentencing grid.

The standard sentence range for any offense not covered under RCW 69.50 (drug crimes) is established by referring to the sentencing grid (RCW 9.94A.510, Table 1, pages I-2). For each current offense, the intersection of the column defined by the offender score and the row defined by the offense seriousness level determines the standard sentence range. Alternatively, the same range is identified for individual offenses on the offense reference sheets in Section III of this Manual. In those cases where the presumptive sentence exceeds the statutory maximum sentence for the crime, the statutory maximum sentence is the presumptive sentence (RCW 9.94A.599), as shown on the offense reference sheets in Section III of this Manual.

Sentences for drug crimes committed on or after July 1, 2003 should be calculated and entered in accordance with the grid set forth in Table 3 (RCW 9.94A.517) of this Manual.

Sentences for crimes committed on or after July 25, 1999, and not affected by the 2002 amendments to the SRA, should be determined by reference to Tables 1 and 2 in this Manual.

Sentences for crimes committed on or after July 27, 1997 and before July 25, 1999, should be determined by reference to Sentencing Grid C in Appendix C.

Sentences for crimes committed on or after July 1, 1990 and before July 27, 1997, should be determined by reference to Sentencing Grid B in Appendix C.

Sentences for crimes committed prior to July 1, 1990, should be determined by reference to Sentencing Grid A in Appendix C.

ANTICIPATORY OFFENSES (Non-VUCSA Attempts, Conspiracies and Solicitations)

The standard sentence range for persons convicted of an anticipatory offense (criminal attempt, solicitation or conspiracy) is 75 percent of the standard sentence range of the completed offense, determined by using the offender score and offense seriousness level. RCW 9.94A.595. For aid in calculating the range, refer to the anticipatory offense grids reproduced in the following Table- 5.

TABLE 5
ANTICIPATORY OFFENSE GRID
(75% of the standard sentence range for completed offenses in months)
(Does not apply to attempts or conspiracies to violate the
Uniform Controlled Substance Act)

LOW END OF RANGE (in months)										
Seriousness Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9/more
XV	180.00	187.50	195.75	203.25	210.75	218.25	234.00	253.50	227.50	308.25
XIV	92.25	100.50	108.00	115.50	123.75	131.25	146.25	162.00	192.75	223.50
XIII	92.25	100.50	108.00	115.50	123.75	131.25	146.25	162.00	192.75	223.50
XII	69.75	76.50	83.25	90.00	96.75	103.50	121.50	133.50	156.75	180.00
XI	58.50	64.50	71.25	76.50	83.25	90.00	109.50	119.25	138.75	157.50
X	38.25	42.75	46.50	50.25	54.00	57.75	73.50	81.00	96.75	111.75
IX	23.25	27.00	30.75	34.50	38.25	42.75	57.75	65.25	81.00	96.75
VIII	15.75	19.50	23.25	27.00	30.75	34.50	50.25	57.75	65.25	81.00
VII	11.25	15.75	19.50	23.25	27.00	30.75	42.75	50.25	57.75	65.25
VI	9.00	11.25	15.75	19.50	23.25	27.00	34.50	42.75	50.25	57.75
V	4.50	9.00	9.75	11.25	16.50	24.75	30.75	38.25	46.50	54.00
IV	2.25	4.50	9.00	9.75	11.25	16.50	24.75	32.25	39.75	47.25
III	0.75	2.25	3.00	6.75	9.00	12.75	16.50	24.75	32.25	38.25
II	0.00	1.50	2.25	3.00	9.00	10.50	12.75	16.50	24.75	32.25
I	0.00	0.00	1.50	1.50	2.25	3.00	9.00	10.50	12.75	16.50

HIGH END OF RANGE (in months)										
Seriousness Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9/more
XV	240.00	249.75	260.25	270.75	280.50	291.00	312.00	337.50	369.75	411.00
XIV	165.00	175.50	183.00	190.50	198.75	206.25	221.25	237.00	267.75	297.75
XIII	123.00	133.50	144.00	153.75	164.25	174.75	195.00	216.00	256.50	297.75
XII	92.25	102.00	110.25	120.00	128.25	138.00	162.00	177.00	207.75	238.50
XI	76.50	85.50	93.75	102.00	110.25	118.50	145.50	158.25	183.75	210.00
X	51.00	56.25	61.50	66.75	72.00	76.50	97.50	108.00	128.25	148.50
IX	30.75	36.00	40.50	45.75	51.00	56.25	76.50	87.00	108.00	128.25
VIII	20.25	25.50	30.75	36.00	40.50	45.75	66.75	76.50	87.00	108.00
VII	15.00	20.25	25.50	30.75	36.00	40.50	56.25	66.75	76.50	87.00
VI	10.50	15.00	20.25	25.50	30.75	36.00	45.75	56.25	66.75	76.50
V	9.00	10.50	12.75	15.00	21.75	32.25	40.50	51.00	61.50	72.00
IV	6.75	9.00	10.50	12.75	15.00	21.75	32.25	42.75	52.50	63.00
III	2.25	6.00	9.00	9.00	12.00	16.50	21.75	32.25	42.75	51.00
II	2.25	4.50	6.75	9.00	10.50	13.50	16.50	21.75	32.25	42.75
I	1.50	2.25	3.75	4.50	6.00	9.00	10.50	13.50	16.50	21.75

Note: The "low end" indicates the bottom end of the standard range, and the "high end" category indicates the top of the range. Determine the Seriousness Level and Offender Score; then find the low end of the range from the first grid and the high end from the second.

ATTEMPTS, CONSPIRACIES AND SOLICITATIONS TO VIOLATE THE UNIFORMED CONTROLLED SUBSTANCES ACT (“VUCSA” OFFENSES)

The calculation of sentences stemming from anticipatory VUCSA offenses (RCW 69.50) presents different challenges than calculating sentences for anticipatory offenses arising under the criminal code.

An attempt or conspiracy to commit a drug offense is specifically addressed in RCW 69.50.407, which provides that such offenses are punishable by "...imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense..." The appellate courts have consistently held that for VUCSA offenses, RCW 69.50.407 takes precedence over RCW 9A.28. Although current statute and case law should be reviewed for definitive guidance in this area, the following summarizes current sentencing practices:

An attempt or conspiracy to commit a drug offense is typically sentenced as an “unranked” offense (0-12 months). In *State v. Mendoza*, the Court of Appeals held that since “ a conspiracy conviction under RCW 69.50.407 has no sentencing directions from the Legislature, it is punished under the unspecified crimes provisions of RCW 9.94A.505(2)(b).” 63 Wn. App. 373 (1991).

A *solicitation* to commit a drug offense is not specifically addressed in RCW 69.50. It is usually charged under RCW 9A.28 and sentenced under RCW 9.94A.510(2) at 75 percent of the standard range. Solicitations to commit VUCSA offenses are not considered “drug offenses”, but do score as such and are subject to the multiple “scoring” requirement. See RCW 9.94A.525(4), (6) and *State v. Howell*, 102 Wn. App. 288, 6 P. 3d 1201 (2000).

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

A solicitation to commit a Class C felony is a gross misdemeanor under RCW 9A.28.

FELONY TRAFFIC ENHANCEMENTS

Two enhancements to the presumptive range apply to certain felony traffic offenses. The 1998 Legislature added a two-year enhancement to the presumptive sentence for Vehicular Homicide while Under the Influence of Intoxicating Liquor or any Drug, under RCW 46.61.520(2). A two-year enhancement is added for *each prior offense* as defined in RCW 46.61.505¹³. But prior

¹³ RCW 46.61.505(13)(a): A “prior offense” means any of the following:

- (i) A conviction for a violation of RCW [46.61.502](#) or an equivalent local ordinance;
- (ii) A conviction for a violation of RCW [46.61.504](#) or an equivalent local ordinance;
- (iii) A conviction for a violation of RCW [46.61.520](#) committed while under the influence of intoxicating liquor or any drug;
- (iv) A conviction for a violation of RCW [46.61.522](#) committed while under the influence of intoxicating liquor or any drug;
- (v) A conviction for a violation of RCW [46.61.5249](#), [46.61.500](#), or [9A.36.050](#) or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW [46.61.502](#) or [46.61.504](#), or an equivalent local ordinance, or of RCW [46.61.520](#) or [46.61.522](#);
- (vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;
- (vii) A deferred prosecution under chapter [10.05](#) RCW granted in a prosecution for a violation of RCW [46.61.502](#), [46.61.504](#), or an equivalent local ordinance; or
- (viii) A deferred prosecution under chapter [10.05](#) RCW granted in a prosecution for a violation of RCW [46.61.5249](#), or an

offenses which are used to enhance do not count towards the offender score. RCW 9.94A.525(11). The enhancement portion is subject to earned release time. See RCW 9.94A.728.

Effective June 12, 2008, is a twelve month and one day enhancement to the presumptive sentence for Attempting to Elude a Police Vehicle under RCW 46.61.021. RCW 9.94A.834. In order to obtain the enhancement, the State must file a special allegation and prove beyond a reasonable doubt that one or more persons other than the defendant or the pursuing law enforcement officer were threatened with physical injury or harm by the actions of the eluder.

FIREARM AND DEADLY WEAPON ENHANCEMENTS

Initiative 159, "Hard Time for Armed Crime," was passed during the 1995 legislative session and became effective for offenses committed after July 23, 1995. This initiative increased penalties and expanded the range of crimes eligible for weapon enhancements. For specified crimes, when a court makes a finding of fact or when a jury returns a special verdict finding that the accused or an accomplice was armed with a deadly weapon¹⁴ at the time of the commission of the crime, the sentence must be enhanced. The same is true if the offender or an accomplice was armed with a firearm¹⁵ at the time of the crime.

Enhancements apply to all felonies except where the use of a firearm is an element of the offense (Possession of a Machine Gun, Possession of a Stolen Firearm, Drive-by Shooting, Theft of a Firearm, Unlawful Possession of a Firearm in the First and Second Degrees and Use of a Machine Gun in a Felony). These sentence enhancements also apply to anticipatory offenses, which include attempts, conspiracies and solicitations to commit a crime. (RCW 9.94A.533(3), (4)). Additional time under either enhancement is added to the sentence *after* it has been calculated based on the particular seriousness level and the offender score (RCW 9.94A.530), and after the range adjustment for any anticipatory offense (if appropriate). If the presumptive standard range sentence exceeds the statutory maximum for the offense, the statutory maximum sentence becomes the presumptive sentence, unless the offender is a persistent offender, as defined in RCW 9.94A.030(37).¹⁶ The 1998 Legislature required that if the firearm enhancement or the deadly weapon enhancement increases a sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. As a result, in such a case the underlying sentence must be reduced so that the total confinement time does not exceed the statutory maximum. This takes effect for crimes committed on or after June 11, 1998.

equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW [46.61.502](#) or [46.61.504](#), or an equivalent local ordinance, or of RCW [46.61.520](#) or [46.61.522](#).

¹⁴ RCW 9.94A.602 provides: Deadly Weapon means "...an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas."

¹⁵ RCW 9.41.010(1) provides: "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder."

¹⁶ Effective until August 1, 2009, then recodified as RCW 9.94A.030(31).

If an offender is being sentenced for more than one offense, the firearm enhancement and other enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement.

Weapon enhancements for firearms differ from enhancements for deadly weapons other than firearms. Compare RCW 9.94A.533 (3) and (4). For scoring, see page III-7 and III-8 for the weapon enhancement scoring forms, including for offenses committed prior to July 24, 1995. Figure 1 also outlines the weapon enhancements for each type of offense and offender:

Figure 1. Weapon Enhancements*

FIREARM ONLY		
Class	First Offense	Repeat Offender**
A	60 Months	120 Months
B	36 Months	72 Months
C	18 Months	36 Months

OTHER DEADLY WEAPON		
Class	First Offense	Repeat Offender**
A	24 Months	48 Months
B	12 Months	24 Months
C	6 Months	12 Months

*All firearm and other deadly weapon enhancements are mandatory, shall be served in total confinement and shall run consecutively to all other sentencing provisions, including other additional firearm or other deadly weapon enhancements, for all offenses sentenced under RCW 9.94A.510.

** To be sentenced as a repeat offender, the offense with a weapon finding must have occurred after July 23, 1995.

DRUG-RELATED ENHANCEMENTS

Enhancements to the presumptive range are required for certain drug offenses that occur in a protected zone, in the presence of a child, or in correctional facilities.

Protected Zone

If an offender is sentenced for committing certain drug offenses in a protected zone, then RCW 9.94A.533(6) adds 24 months to the presumptive sentence and the maximum imprisonment and fine are doubled (RCW 69.50.435).¹⁷ Protected zones include the following:

- Schools or school buses;
- 1,000 feet of a school bus route stop or a school ground perimeter;

¹⁷ Drug offenses include violations of RCW 69.50.401(1): manufacturing, selling, delivering, or possessing with intent to manufacture, sell or deliver a controlled substance; and RCW 69.50.410: Selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana.

- Public parks;
- Public transit vehicles or public transit stops;
- Civic centers or public housing projects designated as a drug-free zone by the local governing authority; or
- 1,000 feet of the perimeter of a facility designated as a civic center, if the local governing authority specifically designates the 1,000-foot perimeter.

When a convicted drug offender is subject to both RCW 69.50.435 (which doubles the maximum sentence that may be imposed for a drug offense committed in or near a public place or facility as specified by the statute) and RCW 9.94A.533(3) (which mandates enhanced sentences for offenses committed while armed with a firearm), the maximum sentence for the firearm enhancement should equal the statutory maximum for the offenses as doubled by RCW 69.50.435. *State v. Barajas*, 88 Wn. App. 387 (1997).

Presence of a Child

When an offender is convicted under RCW 69.50.401, of the manufacture of methamphetamine or of the possession of ephedrine or pseudo-ephedrine with intent to manufacture methamphetamine, and there was a special allegation proven that the offender committed the crime when a person under the age of eighteen was present in or upon the premises of the manufacture, then RCW 9.94A.605 adds 24 months to the presumptive sentence.

Correctional Facility

If an offender or an accomplice committed certain violations of the Uniform Controlled Substance Act (VUCSA) while in a county jail or state correctional facility, the following additional time is added to the presumptive sentence range:

Figure 2. VUCSA Offense Enhancements in a Correctional Facility

Crime	Enhancement
Manufacture, Deliver, Possess with Intent to Deliver Heroin or Cocaine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Schedule I or II Narcotics (Except Heroin or Cocaine) or Flunitrazepam from Schedule IV	18 Months
Selling for Profit (Controlled or Counterfeit) Any Controlled Substance	18 Months
Deliver or Possess with Intent to Deliver Methamphetamine	18 Months
Manufacture of Methamphetamine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Amphetamine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Schedule III-V Narcotics or Schedule I-V Nonnarcotic (Except Marijuana, Amphetamine, Methamphetamine or Flunitrazepam)	15 Months
Manufacture, Deliver, Possess with Intent to Deliver Marijuana	15 Months
Possession of Controlled Substance that is either Heroin or Narcotics from Schedule I or II or Flunitrazepam from Schedule IV	12 Months

Figure 2. VUCSA Offense Enhancements in a Correctional Facility

Crime	Enhancement
Possession of Phencyclidine (PCP)	12 Months
Possession of a Controlled Substance that is a Narcotic from Schedule III-V or Nonnarcotic from Schedule I-V (Except Phencyclidine)	12 Months

SEX OFFENSE ENHANCEMENTS

Enhancements apply to certain child-sex offenses in which a fee is offered or given to the victim and to felony offenses committed with “sexual motivation”.

A one-year enhancement is mandatory for offenders convicted of Rape of a Child or Child Molestation (or an anticipatory offense) if the offender engaged, agreed, or offered to engage the victim in sexual intercourse or sexual contact in return for a fee. RCW 9.94A.533(9). If the offender is being sentenced for multiple offenses, the enhancement is added to the period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.

The “sexual motivation” enhancement is applicable to any felony offense committed after July 1, 2006. RCW 9.94A.533(8). The length of this mandatory enhancement depends on the nature of the underlying crime. A two-year enhancement applies to Class A felonies or those with a statutory maximum sentence of at least 20 years. An eighteen-month enhancement applies to Class B felonies or those with a statutory maximum of ten years. A one-year enhancement applies to Class C felonies or those with a statutory maximum of five years. If the offender has a prior sexual motivation enhancement (for which sentencing was on or after July 1, 2006) then any subsequent enhancement period is doubled. RCW 9.94A.533(8)((a)(iv).

Anticipatory offenses receive the same enhancement as if the crime had been completed. RCW 9.94A.533(8)(a). If the application of the enhancement causes the sentence to exceed the statutory maximum for the offense, the presumptive sentence shall be the statutory maximum. However, the enhancement portion of the sentence may not be reduced.

“Sexual motivation” enhancements are served in total confinement and run consecutive to all other sentencing provisions, including other sexual motivation enhancements. Earned early release time is to be credited after the term of total confinement is calculated. RCW 9.94A.533(e). However, offenders serving time for this enhancement may still be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4). RCW 9.9A.533(8)(b).

CRIMINAL STREET GANG-RELATED ENHANCEMENT

In 2007, the Legislature gave the State two alternative methods to increase the sentence of a gang-related offender who compensates, threatens or solicits a minor to involve the minor in the

commission of a felony: an enhancement and an aggravator.¹⁸ The enhancement is an alternative to the aggravator because, where the State gives notice that it will seek an exceptional sentence based on the aggravating factor, the enhancement is unavailable. RCW 9.94A.533(10)(c).

This enhancement is unique in that it increases the standard range sentence for the underlying crime. RCW 9.94A.533(10). When the State files a special allegation and proves that a felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense, the standard range for that felony is determined by multiplying the grid range by 125%. RCW 9.94A.533(10)(a). The enhancement does not apply to any criminal street gang-related felony for which involving a minor in the commission of the felony is already an element of the offense. RCW 9.94A.533.10(b).

DETERMINING THE SENTENCING OPTIONS

The sentencing options available to a court vary depending on the offender's criminal history and the crime(s) of conviction.

The following sections examine the standard sentence range, alternative sentencing options and supervision in the community. Sentencing options include the First-time Offender Waiver (FTOW), the Drug Offender Sentencing Alternative (DOSA), the Special Sex Offender Sentencing Alternative (SSOSA), Work Ethic Camp (WEC), Work Crew, home detention and other alternatives.

TERMS OF CONFINEMENT

STANDARD SENTENCE RANGE

The sentencing grid prescribes the standard sentence range for most of the commonly charged felonies. RCW 9.94A.599 provides that if the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence.

The ranges in the sentencing grid are expressed in terms of total confinement. A term of confinement of one year and one day (12+), or a sentence under the Drug Offender Sentencing Alternative, is to be served in a state facility or institution. In addition, any sex offense sentenced under RCW 9.94A.712¹⁹ of one year or less will be served in a state facility or institution. A term of one year or less (other than those described above) is to be served in a county facility unless, when combined with other felony terms, the total time to be served exceeds one year (RCW 9.94A.190). A court may convert total confinement sentences to partial confinement or community service (see the discussion of alternative conversions, page I-50) for some offenders. Offenders who have received a sentence greater than one year, and who also

¹⁸ The Legislature reports that this was the creation of a new *crime*: Involving a Juvenile in a Felony Offense. However, the amendments function as a new *sentence enhancement*. A special allegation must be filed and proven by the State, and then the standard sentence range for the underlying felony is increased.

¹⁹ Effective until August 1, 2009, then recodified as RCW 9.94A.507.

have received another sentence less than one year are required to serve the entire period of time in a state institution.

“UNRANKED” CRIMES

Offenders convicted of “unranked crimes,” crimes without an established seriousness level, are not subject to standard sentence ranges. In such cases, courts are required to impose a determinate sentence which may include zero to 365 days of confinement and may also include community service, legal financial obligations, a term of community supervision not to exceed one year and/or a fine. Orders of confinement longer than one year constitute exceptional sentences, which must be justified in writing. (RCW 9.94A.505(2)(b); RCW 9.94A.535).

PERSISTENT OFFENDERS

Voters approved Initiative 593 ("Three Strikes and You're Out") in 1993. The law, which became effective on December 2, 1993, established the penalty of life in prison without the possibility of release for “persistent offenders.” The life sentence applies to both “Three Strikes” and “Two Strikes” offenders.

“Three Strikes”

The original “Three Strikes” legislation defined a “persistent offender” as an offender who is convicted of a “most serious offense” and who has at least two prior convictions for most serious offenses that would be included in the offender score under 9.94A.525. In order to be applicable to the three strikes statute, the first prior conviction must have occurred before the second prior conviction offense was committed. The following are "most serious offenses" as defined by RCW 9.94A.030(32):²⁰

- Any Class A felony or solicitation or conspiracy to commit a Class A felony;
- Any Class B felony committed with sexual motivation;
- Any out-of-state conviction for a felony offense with a finding of sexual motivation if: the minimum sentence imposed was ten years or more, the out-of-state felony is comparable to a felony offense under RCW 9 or 9A. and the out-of-state definition of sexual-motivation is comparable with Washington’s definition;
- Any felony committed with a deadly weapon;
- Any out-of-state or federal felony in effect at any time prior to December 2, 1993, that is comparable to a “most serious offense” under Washington law;
- Assault in the Second Degree;
- Assault of a Child in the Second Degree;
- Child Molestation in the Second Degree;
- Controlled Substance Homicide;
- Extortion in the First Degree;
- Incest (when committed against a child under age fourteen);
- Indecent Liberties;²¹

²⁰ Effective until August 1, 2009, then recodified as RCW 9.94A.030(27).

²¹ Indecent Liberties includes:

- Kidnapping in the Second Degree;
- Leading Organized Crime;
- Manslaughter in the First Degree;
- Manslaughter in the Second Degree;
- Promoting Prostitution in the First Degree;
- Robbery in the Second Degree;
- Sexual Exploitation;
- Vehicular Assault (when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving a vehicle in a reckless manner); and
- Vehicular Homicide (when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner).

“Two Strikes”

The definition of persistent offender also includes “Two Strike” sex offenders. To qualify as a persistent sex offender, an offender must have two separate convictions of specified sex offenses. The 1997 Legislature broadened the list of offenses that qualify as strikes under the “Two Strike” law. The specific offenses qualifying as “Two Strikes” are enumerated in RCW 9.94A.030(37)(b)’s “persistent offender” definition and include:

- Rape First Degree, Rape Second Degree, Indecent Liberties by Forcible Compulsion, Rape of a Child First Degree (where the offender was age 16 or older at the time of the offense) Rape of a Child Second Degree (where the offender was 18 or older at the time the offense), Child Molestation in the First Degree; or
- any of the following offenses with a finding of sexual motivation: Murder First Degree, Murder Second Degree, Kidnapping First Degree, Kidnapping Second Degree, Assault First Degree, Assault Second Degree, Burglary First Degree, Homicide by Abuse or Assault of a Child in the First Degree and Assault of a Child in the Second Degree; or
- attempt to commit any of the crimes listed above.

An offender convicted of one of these offenses, who has at least one previous conviction for one of these offenses, must be sentenced to life in prison without the possibility of release.

NON-PERSISTENT SEX OFFENDERS

During the 2001 Second Special Session, the Legislature enacted 3ESSB 6151 – The Management of Sex Offenders in the Civil Commitment and Criminal Justice Systems. The resulting “non-persistent offender” system is also called “determinate-plus”, but it is an

-
- Convictions for violating of RCW 9A.44.100 as it currently exists; and
 - Convictions for violating RCW 9A.88.100(1)(a), (b), and (c) as it existed from 1975 until July 1, 1979; and
 - Convictions for violating RCW 9A.44.100(1)(a), (b), and (c) as it existed from July 1, 1979 until June 11, 1986; and
 - Convictions for violating RCW 9A.44.100(1)(a), (b), and (d) as it existed from June 11, 196, until July 1, 1988; and
 - Convictions for violating RCW 9A.44.100(1) (c) as it existed from June 11, 1986, until July 1, 1988 if: (a) the crime was committed against a child under the age of fourteen; or the relationship between the victim and the perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

indeterminate sentence. An offender must be sentenced to an indeterminate term if he is not a persistent offender but ,

- is sentenced for any of the “two strike” offenses listed in the above section; or
- of any sex offense, except failure to register, and has a prior conviction for a “two-strike” offenses listed above,

This sentencing rule does not apply to offenders seventeen years old or younger at the time of the offense and who have been convicted of rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree.

A “determinate-plus” sentence must contain a minimum term of confinement that falls within the standard range, according to the seriousness level of the offense and the offender score, and a maximum term equaling the statutory maximum sentence for the offense. The minimum term may also constitute an exceptional sentence as provided by RCW 9.94A.535. A “determinate-plus” offender is eligible for earned release pursuant to RCW 9.94A.728 and is given the opportunity of receiving sex offender treatment while incarcerated. Some “determinate-plus” offenders are eligible for the Special Sex Offender Sentencing Alternative as provided in RCW 9.94A.670, unless they have committed Rape in the First Degree, Rape in the Second Degree or any of the following offenses with sexual motivation: Murder in the First Degree, Murder in the Second Degree, Homicide by Abuse, Kidnapping in the First Degree, or Assault of a Child in the First Degree. Additionally, all sentences under this provision must be served in prison, regardless of the sentence length.

Offenders given “determinate plus” sentences fall under the purview of the Indeterminate Sentence Review Board through the maximum term of the sentence. Those released from prison will be supervised by the Department of Corrections and will remain on community custody through the maximum term of the sentence.

EXCEPTIONAL SENTENCES

The standard sentence range is presumed to be appropriate for the *typical* felony case. The SRA, at RCW 9.94A.535, however, provides that 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.”

An exceptional sentence must be for a determinate term and cannot exceed the statutory maximum for the crime. An exceptional sentence cannot include a term less than a mandatory minimum term of confinement if one exists. RCW 9.94A.540 sets a mandatory minimum term of confinement for the following crimes: First Degree Murder, First Degree Assault or First Degree Assault of a Child where the offender used force or means likely to result in death or intended to kill the victim, First Degree Rape, and Sexually Violent Predator Escape. RCW 10.95.030 sets a lifetime imprisonment term for Aggravated First Degree Murder. Per RCW 9.94A.570’s terms, persistent offenders sentenced to life in prison are not eligible for exceptional sentences.

Pursuant to the United States Supreme Court, before a court is permitted to impose sentences above the standard range, “[o]ther than the fact of a prior conviction, any fact that increases the

penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).²²

In 2005, the state Legislature passed SB5477. That Bill amended RCW 9.94A.530, RCW 9.94A.535, and created RCW 9.94A.537, in an attempt to bring Washington statutes into compliance with the procedures required in Blakely.²³ These changes were to take effect April 15, 2005. But in 2007, the Washington State Supreme Court ruled that these changes did not apply to cases where trials began prior to April 15, 2005, or to cases in which guilty pleas were entered before that date. State v. Pillatos, 159 Wn.2d 459 (2007). Pillatos also held that Courts do not have inherent power to impanel sentencing juries and seek exceptional sentences above the standard range in this fashion. However, “where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535, that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.” RCW 9.94A.537(2).

If an exceptional sentence is given, the sentencing court is required to set forth the reasons for the departure from the standard range (RCW 9.94A.535) or from the consecutive/concurrent policy (RCW 9.94A.589(1) and (2)) in written Findings of Fact and Conclusions of Law. Exceptional sentences may be appealed by the offender or by the State.

RCW 9.94A.535 provides a list of factors that the court may consider in deciding whether to impose an exceptional sentence.

Mitigating Circumstances for Exceptional Sentences

Mitigating circumstances justifying a sentence below the standard range can found in RCW 9.94A.535(1). But the circumstances on this list are provided as examples only. It is not intended to be an exclusive list of reasons for a departure below the standard range. These are the factors on the list:

- To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.
- Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.
- The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected his or her conduct.
- The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

²² See discussion regarding Blakely v. Washington, Section II – 135.

²³ As of 2008, challenges to RCW .94A.537 were not yet final.

- The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired. (Voluntary use of drugs or alcohol is excluded).
- The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well being of the victim.
- The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of the Sentencing Reform Act, as expressed in RCW 9.94A.010.
- The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense, and the offense is a response to that abuse.

Aggravating Circumstances for Exceptional Sentences

Unlike Mitigating circumstances, an exceptional sentence that is aggravated must be based on one or more of the circumstances listed in the statute. The list is not illustrative.

The court may impose an aggravated exceptional sentence without a finding of fact by a jury if the defendant and state both stipulate that justice is best served by an exceptional sentence and the court agrees that the stipulation is in the interest of justice and consistent with the Sentencing Reform Act under RCW 9.94A.535(2). A court may also impose an aggravated exceptional sentence without a jury finding if the Court finds any of these factors:

- The offender's prior unscored misdemeanor or foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purposes expressed in RCW 9.94A.010.
- The defendant has committed multiple concurrent offenses and the defendant's high offender score results in some of the current offenses going unpunished.
- The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to the wash-out provisions of RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

The court may also impose an exceptional sentence above the standard range if the procedures specified in RCW 9.94A.537 are followed and a jury makes findings of fact supporting any of the following additional Aggravating circumstances:

- The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.
- The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.
- The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

- The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:
 - (a) The current offense involved multiple victims or multiple incidents per victim;
 - (b) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;
 - (c) The current offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time; or
 - (d) The defendant used his or her position of trust, confidence or fiduciary responsibility to facilitate the commission of the current offense.
- The current offense was a major violation of the Uniform Controlled Substances Act (VUCSA, RCW Chapter 69.50), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition. The presence of any of the following may identify an offense as a major VUCSA offense:
 - (a) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;
 - (b) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;
 - (c) The current offense involved the manufacture of controlled substances for use by other parties;
 - (d) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
 - (e) The current offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or
 - (f) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician or other medical professional).
- The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.
- The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years, manifested by multiple incidents over a prolonged period of time.
- The current offense involved domestic violence, as defined in RCW 10.99.020 and one or more of the following was present:
 - (a) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;
 - (b) The offense occurred within sight or sound of the victim's or offender's minor children under the age of eighteen years; or
 - (c) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.
- The offense resulted in the pregnancy of a child victim of rape.

- The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.
- The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.
- The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.
- The offense involved a high degree of sophistication or planning.
- The defendant used his or her position of trust, confidence or fiduciary responsibility to facilitate the commission of the current offense.
- The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.
- The offense involved an invasion of the victim's privacy.
- The defendant demonstrated or displayed an egregious lack of remorse.
- The offense involved a destructive and foreseeable impact on persons other than the victim.
- The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.
- The defendant committed the current offense shortly after being released from incarceration.
- The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.
- The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.
- The defendant committed the offense against a victim who was acting as a good Samaritan.
- The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

- The victim’s injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).
- (a) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (b) the stolen property involved is metal property (as defined in 19.290.010); and (c) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.
- The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang, its reputation, influence, or membership. If this aggravator is alleged, the State may not seek an enhanced sentence pursuant to RCW 9.94A.533(10).

CONSECUTIVE AND CONCURRENT SENTENCES

RCW 9.94A.589 sets forth the rules regarding consecutive and concurrent sentences. Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently unless there are two or more separate serious violent offenses or weapon offenses. In those cases, the sentences are served consecutively, unless an exceptional sentence is entered. RCW 9.94A.589(1)(a). The exceptions to this general rule are as follows:

Offenses that Constitute Same Criminal Conduct

If the Court enters a finding that some or all of the current offenses required the same criminal intent, were committed at the same time and place, and involved the same victim, the offenses are treated as one offense. RCW 9.94A.589(1)(a). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Multiple Serious Violent Offenses

In the case of two or more serious violent offenses arising from separate and distinct criminal conduct, the sentences for these serious violent offenses are served consecutively to each other and concurrently with any other sentences imposed for current offenses (RCW 9.94A.589(1)(b)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Certain Firearm-related Offenses

In the case of an offender convicted of Unlawful Possession of a Firearm in the First or Second Degree *and* for one or both of the crimes of Theft of a Firearm or Possession of a Stolen Firearm, the sentences for these crimes are served consecutively for each conviction of the felony crimes listed and for each firearm unlawfully possessed²⁴. (RCW 9.94A.589(1)(c)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

²⁴ Effective for offenses committed after July 23, 1995 (RCW 9.94A.589(1)(c)).

Weapon Enhancements

In the case of an offender receiving a deadly weapon enhancement for offenses committed after July 23, 1995, the deadly weapon enhancement portion of the standard range is served consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements (RCW 9.94A.533). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Felony Committed While Offender was Under Sentence for Another Felony

Whenever a current offense is committed while the offender is under sentence for a previous felony and the offender was also sentenced for another term of imprisonment, the latter term may not begin until expiration of all prior terms (RCW 9.94A.589(2)). A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

Felonies Committed While Offender was not Under Sentence for Another Felony

This rule applies when offenders face multiple charges or have multiple convictions from different jurisdictions. Subject to the above policies, whenever a person is sentenced under a felony that was committed while the person was *not* under sentence for a felony, the sentence runs concurrently with felony sentences previously imposed by any court in this or another state or by a federal court, unless the court pronouncing the subsequent sentence expressly orders that they be served consecutively (RCW 9.94A.589(3)).

Probation Revocation

Whenever any person granted probation under RCW 9.95.210 or RCW 9.92.060, or both, has a probationary sentence revoked and a prison sentence imposed, this sentence runs consecutively to any sentence imposed, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently (RCW 9.94A.589(4)). This rule applies when an offender's pre-Sentencing Reform Act case probation is revoked and he or she is also sentenced on a conviction for a crime committed after June 30, 1984, the inception date of the SRA.

Serving Total Confinement with Consecutive Sentences

In the case of consecutive sentences, all periods of total confinement must be served before any periods of partial confinement, community service, community supervision or any other requirement or condition of a sentence (RCW 9.94A.589(5)). This rule applies to offenders who have not completed their sentence requirements from a previous conviction and are sentenced to total confinement on a new offense. A departure from this rule requires an exceptional sentence (RCW 9.94A.535).

LIMITS ON EARNED RELEASE

RCW 9.94A.728 provides that an offender's sentence may be reduced by "earned release time." This time is earned through good behavior and good performance, as determined by the correctional agency that has jurisdiction over the inmate. An inmate can accumulate "earned release time" while serving a sentence and during pre-sentence incarceration.

During 2003 session the legislature passed ESSB 5990. That legislation amended RCW 9.94A.728, in part, to increase earned release time for good behavior up to fifty (50) percent of a sentence. The increase became effective July 1, 2003. The right to earn early release time at the rate of 50 percent will not apply to offenders convicted after July 1, 2010.

Offenders have the right to earn up to fifty percent of aggregate release time if they:

- (a) Are not confined pursuant to a sentence for a sex offense, violent offense, crime against persons, felony domestic violence, residential burglary, drug offense involving methamphetamine or delivery of any controlled substance to a child; and
- (b) Have not previously been convicted of any of these offenses; and
- (c) Are classified by the controlling correctional agency in one of the two lowest risk categories; and
- (d) Participate in available programming or activities as directed by the offender's individual reentry plan;²⁵ and
- (e) Have not committed a new felony while under community supervision community placement, or community custody.²⁶

Offenders convicted of a serious violent offense or a sex offense that is a Class A felony committed between July 1, 1990 and July 1, 2003 are prohibited from earning release time in excess of fifteen (15) percent. Offenders committing these offenses on or after July 1, 2003 will not earn release time credit in excess of ten (10) percent.

Offenders sentenced under the Special Sex Offender Sentencing Alternative are not eligible to accrue any earned release time while serving a suspended sentence.

An offender may not receive any earned release time for that portion of a sentence that results from any deadly weapon enhancements.

Finally, no matter how much release time has been earned under RCW 9.95A.728, an offender sentenced for a crime that has a mandatory minimum sentence shall not be released from total confinement before the completion of the mandatory minimum for that crime unless allowable under RCW 9.94A.540.

SENTENCING ALTERNATIVES

For some types of offenses and offenders, sentencing courts have discretion to order alternative sentences. These alternative sentences include the First-time Offender Waiver (FTOW), the Drug Offender Sentencing Alternative (DOSA), local options for some chemically dependent offenders, the Special Sex Offender Sentencing Alternative (SSOSA), other treatment options for sex offenders while in prison, and Work Ethic Camp (WEC).

²⁵ This factor went into effect July 22, 2007.

²⁶ This factor went into effect July 22, 2007.

FIRST-TIME OFFENDER WAIVER (FTOW)

RCW 9.94A.650 provides a statutory alternative to the standard range for certain offenders who have not been previously convicted of a felony offense in this state, in federal court, or in another state, and who have never participated in a program of deferred prosecution for any felony. Such offenders are eligible for the First-time Offender Waiver when they are facing sentencing for an offense that:

- is not a violent offense;
- is not Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver
 - (a) a Schedule I or II Narcotic Drug,
 - (b) Flunitrazepam classified in Schedule IV,
 - (c) Methamphetamine, or
 - (d) any of Methamphetamine's salts, isomers and salts of its isomers as defined in RCW 69.50.206(d)(2);
- is not Selling for Profit any Controlled or Counterfeit Substance;
- is not sex offense; and
- is not Felony Driving While Under the Influence of Intoxicating Liquor or any Drug or felony Physical Control of a Vehicle While Under the Influence of Intoxicating Liquor or any Drug.

For these offenders, the court is given broad discretion in setting the sentence. Choices available to the court include:

- Imposing as little as zero or up to 90 days of confinement in a facility operated or utilized under contract by the county
- Requiring that the offender refrain from committing new offenses; and
- Requiring a term of community supervision.²⁷

A court's decision to impose or not to impose the First-time Offender Waiver cannot be appealed by the prosecutor or defendant (RCW 9.94A.585(1)).

DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)

Prior to sentencing a defendant for a Violation of the Uniform Controlled Substances Act (“VUCSA”) offense, for a criminal solicitation offense, or for any other felony where the Court finds the offender has a chemical dependency that contributed to the crime, the court is required to order a chemical dependency screening report, to be completed by the Department of Corrections. RCW 9.94A.500. The court may explicitly waive that requirement.

²⁷ Until August 1, 2009, the conditions of community service for individuals who receive a First-time Offender Waiver are controlled by RCW 9.94A.650(2). After August 1, 2009, the conditions are primarily governed by RCW 9.94A.702 and .703. However, RCW 9.94A.650(4) also provides that the Court may order the offender to pay all court-ordered legal financial obligations and/or perform community restitution work.

Effective July 25, 1999, the Legislature created the Drug Offender Sentencing Alternative (DOSA) for certain VUCSA offenders. RCW 9.94A.660. For eligible offenders, the following conditions must be met:

- Standard sentence for the offense is more than one year;²⁸
- The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense;
- No current or prior sex offense;
- No current violent offense or prior violent offense within ten years before conviction of the current offense;
- No current offense of felony driving while under the influence of intoxicating liquor or any drug or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.
- No current deadly weapon or firearm enhancement (*prior* weapon and firearm enhancements are allowed);
- Not subject to a federal INS deportation detainer or deportation order; and
- The offense involved a small amount of drugs, as determined by the court.

If the Court determines that the offender meets these eligibility requirements, the defendant may bring a motion for a DOSA sentence. Upon such a motion, the Court is required to consider four factors:

- (1) Whether the offender suffers from a drug addiction;
- (2) Whether that addiction makes it probable that criminal behavior will occur in the future;
- (3) Whether effective treatment for that addiction are available from an appropriate treatment provider (RCW 9.94A.660(3) describes the minimum treatment and treatment provider requirements); and
- (4) Whether the offender and community will benefit from this sentence alternative.

If, after considering those factors, the court determines that a sentence under this section is appropriate, the court shall impose a DOSA sentence consisting of a prison-based alternative or a residential chemical dependency treatment-base alternative, instead of a standard range sentence.

The Prison-Based Alternative

The prison-based alternative to the standard range is provided by RCW 9.94A.660(5) and contains the following requirements:

²⁸ Offenders convicted of inchoate VUCSA offenses such as attempt and/or conspiracy, already receive sentences of less than one year and are therefore not eligible for a DOSA sentence.

- (a) a period of total confinement in a state-facility for one-half of the midpoint of the standard range or twelve months, whichever is greater, during which the offender is evaluated and given any available treatment;
- (b) the remainder of the midpoint of the standard range as community custody during which the offender must participate in substance abuse treatment;
- (c) imposition of crime-related prohibitions and conditions including abstinence from controlled substances; and
- (d) urinalysis.

If, after receiving the prison-based DOSA sentence, it is determined that the offender is subject to a valid deportation order, the Department of Corrections may require the offender to serve the remaining balance of the original sentence. RCW 9.94A.660(9).²⁹

The Residential Treatment-Based Alternative

This alternative to the standard range is provided for by RCW 9.94A.660(6) and contains the following requirements:

- (a) a term of community custody equal to one-half the midpoint of the standard range or two years, whichever is greater, during which the offender must enter and remain in treatment for three to six months;
- (b) imposition of crime-related prohibitions and conditions; and
- (c) a progress hearing.

Prohibitions and conditions that may be imposed.

In conjunction with a DOSA sentence, both RCW 9.94A.607 and .660 permit the courts to impose crime-related prohibitions on offenders sentenced to DOSA, but courts may now also impose affirmative conditions reasonably related to the circumstances of the crime. A list of potential prohibitions and conditions can be found in RCW 9.94A.660(7).

Violations.

Offenders who violate the conditions of either DOSA program (including those offenders who successfully complete the confinement portion of the program and have been placed on community custody for the remainder of their sentence) are subject to sanctions, including termination and reclassification to serve the un-expired term of total confinement in prison.

Local Option for Chemically Dependent Offenders

Offenders whose standard range sentence amounts to one year or less are not eligible for DOSA and serve their confinement time in a local jail. However, courts are also permitted to authorize county jails to convert confinement time to a county-supervised community option for those offenders deemed to have a chemical dependency that contributed to the crime. In addition, courts may impose affirmative conditions on such chemically dependent offenders. See RCW 9.94A.680(3).

²⁹ Effective August 1, 2009, RCW 9.94A.660(9) will be recodified as RCW 9.94A.660(11).

SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE (SSOSA)

The Special Sex Offender Sentencing Alternative (SSOSA) is a special sentencing option which allows community treatment of sex offenders and a reduced period of confinement. RCW 9.94A.670.

To be eligible for the SSOSA option, offenders must:

- Have had no prior convictions for sex offenses in this or any other state; and
- Be convicted of a sex offense that is not a serious violent offense or Rape in the Second Degree; and
- Have no prior adult conviction for a violent offense committed within five years of the date the current offense was convicted; and
- Be convicted of an offense that did not result in substantial bodily harm to the victim; and
- Have an established relationship or connection to the victim other than the connection resulting from the commission of the crime; and
- As part of his or her plea of guilty, voluntarily and affirmatively admit to committing all of the elements of the crime of which the offender is pleading guilty (Alford pleas are not eligible for this sentencing alternative); and
- Have a current offense and criminal history that permits the court to impose a sentence within the standard range of less than 11 years of confinement.

If those criteria are met, the court, on its own motion or on the motion of the state or the defendant, may order an examination to determine if the defendant is amenable to treatment. Examinations may only be conducted by sex offender treatment providers certified by the Department of Health, unless the offender leaves the state for reasons other than for certification, or if there are no certified providers available near the offender's home. The examination report must include 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 the alleged deviant behavior;
- The defendant's social and employment situation;
- Other evaluation measures used; and

- The sources of the examiner's information

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

- Frequency and type of contact between offender and therapist;

- Specific issues to be addressed in the treatment and description of planned treatment modalities;
- Monitoring plans, including any requirements regarding living conditions, lifestyle requirements and monitoring by family members and others;
- Anticipated length of treatment; and
- Recommended crime-related prohibitions and affirmative conditions. At a minimum, these must include an identification of the specific activities (such as viewing or listening to pornography or use of alcohol or controlled substances) or behaviors that are precursors to the offender's offense cycle.

Upon the motion of the state or the court, a second examination regarding the offender's amenability to treatment may be ordered. The defendant is to pay the cost of any second examination ordered unless the court finds that the defendant is indigent, in which case the state pays the cost.

Once the examination report is received, the court must consider 6 factors before imposing a SSOSA sentence:

- (1) Whether the defendant and community will benefit from use of this special sentencing alternative;
- (2) Whether the alternative is too lenient in light of the extent and circumstances of the offense;
- (3) Whether the offender has victims in addition to the victim of the offense;
- (4) The risk the offender would present to the community;
- (5) Whether the offender is amenable to treatment; and
- (6) The victim's opinion whether the offender should receive a SSOSA (great weight is given to this opinion.)

If the Court then determines that a SSOSA is appropriate, the Court must:

- Impose a standard-range sentence or, if the defendant is otherwise eligible for "determinate-plus" sentencing under RCW 9.94A.712,³⁰ a "minimum term of sentence within the standard range." RCW 9.94A.670(4). The Court may then suspend that sentence and impose a reduced sentence that is at least 12 months or the maximum term within the standard range (whichever is less) or greater than 12 months and up to the maximum term within the standard range if an aggravating circumstance (See RCW 9.94A.535(3) is present. The term of confinement shall not exceed the statutory maximum sentence for the offense. An offender is serving this reduced sentence may serve all or part of it in partial confinement and is not eligible for earned release during this confinement.
- Place the offender on community custody for the balance of the suspended sentence, the length of the maximum term for any "determinate-plus" offender, or three years, whichever is greater. During the period of community custody, the offender must follow any conditions

³⁰ Effective August 1, 2009, RCW 9.94A.712 will be recodified as RCW 9.94A.507.

imposed by the Department under RCW 9.94A.720.³¹ If the Department finds the offender in violation of any of the conditions imposed by the Court or the Department, the Department may impose a sanction of 60 days confinement (for each violation) and submit a report to the court (see RCW 9.94A.737(3)(a)) or refer the violation to the court and recommend revocation of the suspended sentence. If the Department determines that a second violation has occurred, the Department is required to refer the matter to the court and recommend revocation of the suspended sentence.

- Order treatment for any period up to five years in duration. Treatment may be in or outpatient. Treatment under may only be conducted by sex offender treatment providers certified by the Department of Health, unless the offender leaves the state for reasons other than for certification, or if there are no certified providers available near the offender's home. Treatment cannot be with a community mental health center unless that facility has an appropriate program. Treatment providers may not be changed without the Court's approval.
- Impose specific prohibitions and affirmative conditions relating to the precursor activities or behaviors identified in the evaluation or during any subsequent annual review. RCW 9.94A.670(5) has a list of other crime-related prohibitions that may be ordered.
- Set a termination hearing for three months prior to the anticipated treatment-completion date. The Court must give the victim 14-days notice of this hearing and an opportunity to address the Court at the hearing. The court must also require the treatment provider and community corrections officer to submit written reports to the court and the parties regarding compliance and recommendations for termination from treatment, The Court may order an evaluation regarding the advisability of termination from treatment from a provider. The Court shall require the offender to pay for the costs of this re-evaluation. At this hearing the Court may modify the conditions of community custody, terminate treatment, or extend treatment in two-year increments for up to the remaining period of community custody.
- Require that quarterly reports on the offender's progress in treatment be sent to the Court and the parties.
- Conduct an annual hearing on the offender's progress in treatment. The victim shall be given 14-days notice of this hearing and an opportunity to address the Court. At the hearing, the Court may modify the conditions of community custody or revoke the suspended sentence.

In addition to the above, the Court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if the offender violates the conditions of the suspended sentence, or fails to make satisfactory progress in treatment. If revocation occurs, the offender is then given credit for all confinement served during the period of community custody.

³¹ Effective until August 1, 2009, and then repealed.

OTHER SEX OFFENDER TREATMENT WHILE IN PRISON

Inpatient sex offender treatment programs are available for some other sex offenders. This program is not a sentencing option; offenders are admitted at the discretion of the Department of Corrections rather than by court order. The statutory authorization and procedures vary depending on the date the offender committed the crime.

RCW 9.94A.800(1) applies to those offenders who committed a felony sex offense between July 1, 1987 and July 1, 1990, and who received a sentence of more than one year but less than six years of confinement.³² A court may request the DOC to evaluate such an offender's amenability to treatment, and the DOC may place the offender in a treatment program within a correctional facility. If the offender (other than those convicted of Rape in the First or Second Degree or the anticipatory offense of Rape in the First Degree) completes a program before the expiration of the sentence, the DOC may request that the balance of confinement be converted to community supervision with affirmative conditions. If the offender violates a condition of this community supervision, the court may impose a 60-day penalty or order the balance of community supervision to be served in prison.

Sex offenders who committed crimes prior to July 1, 1987 may request an evaluation by DOC regarding their amenability to treatment. RCW 9.94A.800(2).³³ If such amenability is determined, an offender may request placement in a treatment program within the prison, subject to available funding. There is no statutory authority permitting conversion of confinement to community supervision once these offenders complete treatment.

WORK ETHIC CAMP (WEC)

Effective July 25, 1999, offenders are eligible for the Work Ethic Camp if they:

- Are sentenced to between 12.03 months and 36 months confinement;
- Have no current drug offense (violation of the Uniform Controlled Substance Act, or "VUCSA"), including solicitation to commit a VUCSA offense;
- Have no current violation of a felony Driving While Under the Influence of Intoxicating Liquor or any Drug (RCW 46.61.502(6)), a violation of Physical Control of a Vehicle While Under the Influence of Intoxicating Liquor or any Drug (RCW 46.61.504(6)); and
- Have no current or prior violent or sex offense convictions.

If these requirements are met, the sentencing court shall impose a sentence within the standard range and may recommend that the sentence be served at WEC. The Department of Corrections is then required to place referred offenders in the program, subject to capacity and to the offender's agreement to participate, unless:

³² As of August 1, 2009, RCW 9.94A.800 is repealed.

³³ As of August 1, 2009, RCW 9.94A.800 is repealed. _____

- Physical or mental impairments are judged to preclude participation, or
- The Department determines that the offender’s custody level prevents placement, or
- The offender refuses to agree to the conditions of the program, or
- The offender has been found to be subject to a deportation detainer, or
- The offender has participated in WEC in the past.

The length of the program is between 120 and 180 days, including a two-week period of transition training. Upon completion of the program, offenders are released to complete the remaining sentence on community custody. Participants who fail to complete the program are required to serve the un-expired term of their sentence. *See* RCW 9.94A.690.

SUPERVISION IN THE COMMUNITY

Historically, felony offenders in Washington have been subject to supervision in the community under a variety of circumstances. The methods and terminology associated with this supervision has changed over time.

Prior to 2000, a felony offender could be sentenced to a term of “community placement” which consisted of both “community custody” and “post-release supervision.” If the offender violated the terms of community placement, he or she would be subject to sanctioning by the Department of Corrections. If the offender violated the terms of post-release supervision, the sentencing court determined whether sanctions would be imposed. Two pre-2000 time-periods are noteworthy for sex offenders. Sex offenders who committed their offense on or after July 1, 1990, but before June 6, 1996, faced community placement for two years or up to the period of earned release, whichever was longer. RCW 9.94A.700(2).³⁴ Sex offenders who committed their offense on or after June 6, 1996 and before July 1, 2000 faced community custody for three years or the period of earned release, whichever is longer. RCW 9.94A.710.³⁵

The Offender Accountability Act (“OAA”) became effective July 1, 2000. All individuals convicted of offenses committed prior to July 1, 2000, still faced community placement under the old regime. The OAA changed all supervision of offenders committing offenses after that date.

From 2000 to 2007, the Legislature made a number of changes to the OAA, causing confusion that often resulted in inaccurate sentences. In response, the 2007-08 Legislature passed SHB 2719. The bill takes effect August 1, 2009 and:

- Reorganizes the statutes relating to supervision of offenders in the community;
- Renames all supervision in the community to “community custody”;
- Consolidates all provisions relating to the conditions of an offender’s supervision into one section;

³⁴ Effective August 1, 2009, RCW 9.94A.700 is recodified as RCW 9.94B.050.

³⁵ Effective August 1, 2009, RCW 9.94A.710 is recodified as RCW 9.94B.070.

- Moves provisions relating to older forms of supervision to a new chapter in Title 9 RCW;³⁶ and
- Applies the OAA retroactively to offenders committing their offenses prior to July 1, 2000, to the extent that is constitutionally permissible.

SHB 2719's primary substantive change is for offenders who committed their crimes prior to July 1, 2000, when the Offender Accountability Act went into effect. Chapter 231, Laws of 2008. Starting August 1, 2009, offenders sentenced (or re-sentenced) for crimes committed before July 1, 2000, will be ordered to a term of community custody, rather than community placement or community supervision. To the extent constitutionally permissible, the terms of the offender's community custody will be as provided in the new law.

The 2007-08 legislature required the Sentence Guidelines Commission to prepare a summary of circumstances under which the new community custody regime, or parts thereof, cannot be applied retroactively without violating the constitution. This summary, when prepared, will be incorporated into this Manual. Individuals who cannot be sentenced to community custody will be sentenced to community placement. Effective August 1, 2009, those provisions are found in RCW 9.94B.

Offenders sentenced under the OAA must be given a term of "community custody" by the Court. Community custody must be imposed on the date of sentencing. RCW 9.94A.505(2)(a)(iii). This period of custody is tolled while the offender is in total or partial confinement. RCW 9.94A.545(1). But the offender begins serving the term of community custody upon release from confinement, upon transfer in lieu or earned release in accordance with RCW 9.94A.728 (1) or (2), or at the time of sentencing if the Court does not impose a term of confinement.³⁷

The length of the term depends on the crime of conviction and type of sentence. For some offenses, the term of community custody is set by statute. Other offenses are subject to a community custody range established by the Sentencing Guidelines Commission. RCW 9.94A.850(5); Chapter 437-20 WAC. These ranges do not affect or limit the authority to impose exceptional community custody ranges, either above or below the standard community custody range as authorized by RCW 9.94A.535.

The community custody range for offenders with multiple convictions must be based on the offense that dictates the longest term of community custody. The community custody range for offenders convicted of an offense that falls into more than one category is that which dictates the longest term of community custody. If offenders are sentenced for two or more offenses that run consecutively, the aggregate period of community supervision shall not exceed 24 months. RCW 9.94A.589(5).

³⁶ RCW 9.94B.

³⁷ This provision can be found in RCW 9.94A.545(1) until August 1, 2009, and in RCW 9.94A.707(1) thereafter.

COMMUNITY CUSTODY RANGES

Community Custody for Sex Offenders

- Non-persistent sex offenders receive community custody under RCW 9.94A.712³⁸ before August 1, 2009 and under RCW 9.94A.507 after August 1, 2009. The court is required to impose a sentence to a maximum term of confinement, the statutory maximum for the offense, and a minimum term within the standard range for the offense or exceptional outside the standard range as allowed under RCW 9.94A.535. In addition to other terms of the sentence, the court must also sentence the offender to community supervision under the supervision of the Department of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time remaining between the date of release from total confinement and before the expiration of the statutory maximum sentence. In addition to the conditions faced by other offenders on community custody, offenders sentenced under this provision may be prohibited from residing in a community protection zone.
- Sex offenders not sentenced under RCW 9.94A.712, and who receive a term of confinement of more than one year receive community custody under RCW 9.94A.715 before August 1, 2009, and under RCW 9.94A.701 after August 1, 2009. These statutes require community custody for 36 to 48 months (the range specified in RCW 9.94A.850 and WAC 437-50) or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. In addition to the conditions faced by other offenders on community custody, offenders sentenced under this provision may be subject to electronic monitoring.³⁹ Finally, at any time prior to the completion of termination of this period of community custody, if “it finds that public safety would be enhanced”, the court can extend the conditions imposed on sex offenders (not the community custody, but the conditions) for the maximum allowable sentence for the crime.⁴⁰ But, the Department would no longer monitor compliance and any violation is only punishable by contempt of court under RCW 7.21.040.
- Sex offenders not sentenced under RCW 9.94A.712 and who receive a term of confinement of one year or less (except those convicted of Failure to Register) receive community custody under RCW 9.94A.545(1) before August 1, 2009 and under RCW 9.94A.702 after August 1, 2009. These statutes permit the Court to impose up to one year of community custody.
- Offenders convicted of Failing to Register committed on or after June 6, 2006 and sentenced to a term of confinement of one year or less receive community custody under RCW 9.94A.545(2) and .715 before August 1, 2009, and RCW 9.94A.701(2) after August 1, 2009. These statutes permit the Court to impose up to one year of community custody.

³⁸ RCW 9.94A.712 applies to specified offenses committed after September 1, 2001.

³⁹ This provision is found in RCW 9.94A.715(2)(b) until August 1, 2009, and in .704 thereafter.

⁴⁰ This provision is found in RCW 9.94A.715(5) until August 1, 2009, and in .709 thereafter.

- Offenders sentenced under the Sex Offender Sentence Alternative (“SSOSA”) receive community custody under RCW 9.94A.670 and, after August 1, 2009, RCW 9.94A.701(4).

Community Custody for Serious Violent Offenders

- Serious violent offenders receive community custody under RCW 9.94A.715 before August 1, 2009, and under RCW 9.94A.701 after August 1, 2009. These statutes require community custody for 24 to 48 months (the range specified in RCW 9.94A.850 and WAC 437-50) or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.

Community Custody for Violent Offenders

- Offenders convicted of violent offenses and sentenced to more than one year of confinement receive community custody under RCW 9.94A.715 before August 1, 2009, and under RCW 9.94A.701 after August 1, 2009. These statutes require community custody for 18 to 36 months (the range specified in RCW 9.94A.850 and WAC 437-50) or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.
- Offenders convicted of violent offenses and sentenced to a term of confinement of one year or less receive community custody under RCW 9.94A.545(1) before August 1, 2009, and under RCW 9.94A.702 after August 1, 2009. These statutes permit the Court to impose up to one year of community custody.

Community Custody for Crimes Against Persons (as defined in RCW 9.94A.411)

- Offenders convicted of crimes against persons and sentenced to more than one year of confinement receive community custody under RCW 9.94A.715 before August 1, 2009, and under RCW 9.94A.701 after August 1, 2009. These statutes require community custody for 9 to 18 months (the range specified in RCW 9.94A.850 and WAC 437-50) or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.
- Offenders convicted of crimes against persons and sentenced to a term of confinement of one year or less receive community custody under RCW 9.94A.545(1) before August 1, 2009, and under RCW 9.94A.702 after August 1, 2009. These statutes permit the Court to impose up to one year of community custody.

Community Custody for Felony Drug Offenders.

- Felony drug offenders sentenced to more than one year confinement receive community custody under RCW 9.94A.715 before August 1, 2009, and under RCW 9.94A.701 after August 1, 2009. These statutes require community custody for 9 to 12 months (the range specified in RCW 9.94A.850 and WAC 437-50) or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.

- Felony drug offenders sentenced to a term of confinement of one year or less receive community custody under RCW 9.94A.545(1) before August 1, 2009, and under RCW 9.94A.702 after August 1, 2009. These statutes permit the Court to impose up to one year of community custody.
- Felony drug offenders sentenced under the Drug Offender Sentence Alternative (“DOSA”) receive community custody under RCW 9.94A.660.

Community Custody for Street-Gang Related Unlawful Possession of a Firearm

In 2008, the Legislature enacted a series of laws aimed at offenders involved in unlawful street gangs. This legislation, in part, changed the community custody rules applicable to street-gang offenders or associates who are also convicted of the Unlawful Possession of a Firearm. In order to be subject to these rules, the State must have filed a special allegation and proven, by a preponderance of the evidence, that the accused is a criminal street-gang member or associate as defined in RCW 9.94A.030.

The applicable community custody rules are found in RCW 9.94A.545 and RCW 9.94A.715. They indicate that community custody is for a range specified in RCW 9.94A.850 and WAC 437-50. *At the time of this writing, SGC is processing a community custody range in accordance with this legislation.*

These amendments to RCW 9.94A.545 and RCW 9.94A.715 were made without cognizance of their repeal effective August 1, 2009. RCW 1.12.025 contains the rule of construction for statutes that are amended and repealed in the same legislative session.

Community Custody for Offenders Sentenced to Work-Ethic Camp

Community custody for offenders sentenced to Work-Ethic Camp is governed by RCW 9.94A.690. Upon completion of Work-Ethic Camp, the offender is released to community custody for the remainder (if any) of the standard range term of confinement.

Community Custody for Offenders Who Receive a First-Time Offender Waiver

Offenders who receive a First-Time Offender Waiver receive community custody under RCW 9.94A.650 and, after August 1, 2009, RCW 9.94A.702(2). Community Custody will last one year, unless an ongoing treatment program continues beyond the first year, after which supervision ends when treatment ends. Such supervision cannot exceed two years.

COMMUNITY CUSTODY CONDITIONS

The Department of Corrections supervises offenders on community custody, based on their risk to the community. DOC also has exclusive authority to sanction all violations.

Conditions of community custody and levels of supervision are generally based on risk. The statutes governing conditions also change effective August 1, 2009.

Conditions Prior to August 1, 2009:

Per RCW 9.94A.715(2), the sentencing Court must either specifically waive or impose the following conditions (found in RCW 9.94A.700(4))⁴¹:

- The offender shall report to and be available for contact with the assigned community corrections officers as directed;
- The offender shall work at Department-approved education, employment, or community restitution, or any combination thereof;
- The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- The offender shall pay supervision fees as determined by the Department; and
- The residence location and living arrangements shall be subject to the prior approval of the Department.

The sentencing court may also choose to impose these additional conditions (found in RCW 9.94A.700(5))⁴²:

- The offender shall remain within, or outside of, a specified geographical boundary;
- The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;
- The offender shall participate in crime-related treatment or counseling services (i.e., chemical dependency, mental health or domestic violence);
- The offender shall not consume alcohol; and
- The offender shall comply with any crime-related prohibitions.⁴³

The sentencing court may also impose additional affirmative conditions such as rehabilitative treatment, which are reasonably related to the circumstances of the offense, to the risk of recidivism and to community safety. And the court must require the offender to comply with any conditions imposed by the Department under RCW 9.94A.720. As one of these conditions, the Department may prohibit offenders (on community custody for crimes committed after June 6, 1996) from having contact with other specified individuals or classes of individuals. RCW 9.94A.720(1)(c). However, the Department “may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court ordered conditions.” RCW 9.94A.715(c).

All community custody for crimes committed on or after July 28, 1999, include a requirement that offenders cannot own, use or possess firearms or ammunition. RCW 9.94A.720(2).

⁴¹ Effective August 1, 2009, RCW 9.94A.700 is recodified as RCW 9.94B.050.

⁴² Effective August 1, 2009, RCW 9.94A.700 is recodified as RCW 9.94B.070.

²⁰ RCW 9.94A.030(13) provides: “‘Crime-related prohibition’ means an order of a court prohibiting conduct that directly relates to the circumstance of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.”

Conditions after August 1, 2009:

Under RCW 9.94A.703, certain conditions are “mandatory,” while others are “waivable” or “discretionary.” Finally, others are “special conditions”.

An offender on community custody shall:

- Inform the Department of Corrections of court-ordered treatment upon request of the Department;
- Comply with conditions imposed by the Department; and
- Be prohibited from residing in a community protection zone if sentenced under RCW 9.94A.507⁴⁴ for an offense listed in RCW 9.94A.507(1)(a)⁴⁵ and the victim of the offense was under eighteen years of age at the time of the offense.

Unless waived, the offender shall:

- Report to and be available for contact with the assigned community corrections officer as directed;
- Work at department-approved education, employment, or community restitution, or any combination thereof;
- Refrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions;
- Pay supervision fees as determined by the department; and
- Obtain prior approval of the department for the offender’s residence location and living arrangements.

The Court also has the discretion to order an offender to:

- Remain within, or outside of, a specified geographical boundary;
- Participate in crime-related treatment or counseling services;
- Participate in rehabilitative programs or otherwise perform affirmative conduct reasonable related to the circumstances of the offense, the offender’s risk of reoffending, or the safety of the community;
- Refrain from consuming alcohol; or
- Comply with any crime-related prohibitions.

Finally, the following special conditions exist:

- An offender must participate in a domestic violence perpetrator program approved under RCW 26.50.150 if convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child,
- If the offender is convicted of Driving While Under the Influence as defined by RCW 46.61.502; Actual Physical Control While Under the Influence as defined by RCW

⁴⁴ RCW 9.94A.712 is recodified as RCW 9.94A.507 effective August 1, 2009.

⁴⁵ RCW 9.94A.712 is recodified as RCW 9.94A.507 effective August 1, 2009.

46.61.504; Vehicular Assault as defined by RCW 46.61.522(1)(b); Homicide by Watercraft as defined by RCW 79A.60.050, or Assault by Watercraft as defined by RCW 79A.60.060, then the offender must complete a diagnostic evaluation by an approved alcohol or drug dependency agency or probation department, complete recommended treatment, and pay for the costs of the evaluation and treatment unless the offender is eligible for an existing program offered or approved by the department of social and health services

Offenders on community custody may not own, use or possess firearms or ammunition. RCW 9.94A.706.

The Department is required to impose additional conditions on community custody, and has the discretion to impose even more.

DOC shall require the offender to:

- Report as directed;
- Remain within prescribed geographical boundaries;
- Notify the Department of any change in the offender's address or employment;
- Pay the supervision fee assessment; and
- Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required in RCW 9.94A.722.

DOC may also require the offender to :

- Participate in rehabilitative programs;
- Perform affirmative conduct;
- Obey all laws; and
- If the offender was convicted a sex offense, the Department may require electronic monitoring.

If the offender is receiving mental health treatment, the Department may obtain information from an treatment provider without the offender's consent. RCW 9.94A.708(1).

Finally, offenders convicted of a sex offense and sentenced pursuant to RCW 9.94A.507⁴⁶ will be subject to assessment by the Indeterminate Sentence Review Board. RCW 9.94A.704(9)(a). The Department of Corrections will still assess the offender's risk of recidivism and report to the Board. RCW 9.94A.704(9)(b). The Board will then determine whether additional conditions will be ordered. RCW 9.94A.704(9)(b). If any emergency exists requiring the immediate imposition of additional conditions, the Department may do so and conditions will be in effect for up to seven working days. RCW 9.94A.704(9)(c). But, the Department may not impose conditions contrary to those set by the Board and the Court and may not contravene or decrease court-imposed or board-imposed conditions. RCW 9.94A.709(c).

⁴⁶ RCW 9.94A.712 is recodified as RCW 9.94A.507 effective August 1, 2009.

ALTERNATIVES TO CONFINEMENT

ALTERNATIVE CONVERSIONS

The sentencing grid ranges are expressed in terms of total confinement (RCW 9.94A.530). For certain offenders, a court may convert terms of total confinement to partial confinement or to community service. This provision allows courts to take advantage of available alternatives to confinement in cases where it is deemed appropriate. *If the court does not use an alternative conversion for a nonviolent offense with a sentence range of one year or less, the reason why must be stated on the Judgment and Sentence form (RCW 9.94A.680).*

The 1999 Legislature modified the requirements for offenders convicted of **non-violent or non-sex** offenses and received a sentence of one year or less. Where a court finds that a chemical dependency contributed to the crime, the court may authorize the county jail to convert jail confinement to an available county-supervised community option. The court may require the offender to perform affirmative conditions, such as rehabilitative treatment, which are reasonably related to the circumstances of the crime and are reasonably necessary or beneficial to the offender and to the community.

For all offenders with sentences of one year or less, one day of total confinement may be converted to one day of partial confinement. Non-violent offenders with sentences of one year or less are also eligible for conversion of total confinement to community service (one day of confinement equals eight hours of service). This community service conversion, however, is limited to 30 days or 240 hours. If a community service conversion is ordered, and the determinate sentence is greater than 30 days, the balance of the term is to be served in total or partial confinement.

Partial confinement sentences may allow the offender to serve the sentence in work release, home detention, work crew or a combination of work crew and home detention. If the offender violates the rules of the work release facility, work crew or home detention program, or fails to remain employed or enrolled in school, the facility director may transfer the offender to the county detention facility. The offender may then request an administrative hearing. Pending the hearing, or in the absence of a request for such a hearing, the offender shall serve the remainder of the term of confinement in total confinement (RCW 9.94A.731).

WORK CREW

Work crew is a partial confinement option created by the 1991 Legislature. Offenders who qualify must have committed the offense on or after July 28, 1991. The offense may not be a sex offense.⁴⁷ For offenses committed before July 25, 1993, the offender must be sentenced to a facility operated or utilized under contract by a county (*i.e.*, the sentence must be one year or less in length); this restriction does not apply to offenses committed after that date. If the sentence is 9 months or more, at least 30 days of total confinement must be served before the offender becomes eligible for work crew. Work crew may be simultaneously imposed with electronic

⁴⁷ RCW 9.94A.030(46) specifies which offenses are “sex offenses”. Effective August 1, 2009, this statute will be recodified as RCW 9.94A.030(39).

home detention. Work crew hours served may include work on civic improvement tasks, substance abuse counseling, job skills training or a maximum of 24 hours per week at approved, verified work.

To be eligible to receive credit for approved, verified work, offenders must first successfully complete 4 weeks of work crew, each week comprised of 35 hours of service. Work crew projects specified by the work crew supervisor must be completed in coordination with approved, verified work. Unless exempted by the court, offenders using approved, verified employment as part of their work crew hours must pay a monthly supervision assessment.

HOME DETENTION

Home detention is a partial confinement option in which an offender is confined to a private residence and subject to electronic surveillance. The option was created by the 1988 Legislature and is available for offenders convicted of (non violent or non sex offenses) ~~crimes~~ committed on or after June 9, 1988. Because partial confinement programs are limited to sentences of one year or less, home detention is not an option for offenders with prison sentences.

Eligibility for home detention is generally conditioned upon (a) employment or school attendance, (b) program rules adherence, and (c) compliance with court-ordered legal financial obligations (RCW 9.94A.731(3)).

Convictions for any of the following offenses make the offender **ineligible** for home detention: a violent offense, a sex offense, a drug offense, First or Second Degree Reckless Burning, Third Degree Assault, Third Degree Assault of a Child, Unlawful Imprisonment or Harassment.

Home detention may be imposed for offenders convicted of Possession of a Controlled Substance (RCW 69.50.401) or of Forged Prescription for a Controlled Substance (RCW 69.50.403), providing the offender is monitored for drug use.

Offenders convicted of Second Degree Burglary or Residential Burglary must meet the following eligibility conditions for home detention: (a) successful completion of a twenty-one day work release program; (b) no convictions for Second Degree Burglary or Residential Burglary during the preceding two years and not more than two prior convictions for burglary; (c) no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense; (d) no prior charges of escape; and (e) fulfillment of the other conditions of the home detention program.

Offenders convicted of Second Degree Theft of a Motor Vehicle Without Permission, Theft of a Motor Vehicle, or Possession of a Stolen Motor Vehicle must meet the following eligibility conditions for home detention: (a) no convictions for any of these crimes during the preceding five years and not more than two prior convictions for any of these offenses; (b) no prior convictions of a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense; (c) no prior charges of escape; and (d) fulfillment of the other conditions of the home detention program.

Home detention may also be ordered for offenders who's medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered legal financial obligations.

RESTITUTION

Restitution is generally governed by RCW 9.94A.750 and .753. But it is RCW 9.94A.505(7) that requires a court to order restitution whenever a felony results in injury to a person or damage or property loss. If restitution is not ordered, the court must indicate the extraordinary reasons on the record.

Restitution may also be ordered to pay for an injury, loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that he or she pay restitution for any offenses not prosecuted pursuant to a plea agreement.

Restitution is based on three factors:

- Easily ascertainable damages for injury to or loss of property;
- Actual expenses incurred in treatment for injury to persons; and
- Lost wages resulting from injury.

Restitution for the crimes of Rape of a Child in the First, Second or Third Degree, in which the victim becomes pregnant, must include:

- Victim's medical expenses associated with the rape; and
- Support for any child born as a result of the rape, if child support is ordered.

Restitution may *not* include reimbursement for damages for mental anguish, pain and suffering and other intangible losses, but may include reimbursement for counseling reasonably related to the offense. The amount of restitution may not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. (See RCW 9.94A.753(3)).

Restitution is to be determined at the sentencing hearing or within 180 days. As part of the sentence, the court must set the terms and conditions under which the defendant makes restitution. It is required that the court be specific about the payment schedule for restitution, so that these sentence conditions may be appropriately monitored by the community corrections officer. The court may not reduce the total amount of restitution ordered because of the offender's lack of ability to pay the total amount.

For offenses committed prior to July 1, 2000, an offender's compliance with the restitution requirement may be supervised for ten years after the date of sentence or release from confinement. The restitution portion of a sentence may be modified as to amount, terms and conditions during this period regardless of the community supervision term and the statutory

maximum of the crime. A court may extend the restitution requirement for a second ten-year period.

For offenses committed on or after July 1, 2000, RCW 9.94A.760(4) reads: “For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.4A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender’s compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.”

Restitution for victims is the first priority for payment by an offender.

Restitution in Cases Involving Fraud or Deceptive Practice

If an offender or organization is found guilty of an offense involving fraud or other deceptive practice, a court may require that notice be given to the class of persons or sector of the public affected by the conviction or financially interested in the subject matter of the offense. The notice may be accomplished by mail, by advertising through designated media, or by other appropriate means (RCW 9.94A.753(8), RCW 9.94A.750(7)).

FINES

The court may impose fines as part of all sentences for felony offenses according to the following ranges (RCW 9.94A.550):

Class A felonies	\$0 - \$50,000
Class B felonies	\$0 - \$20,000
Class C felonies	\$0 - \$10,000

Unless the court finds the offender to be indigent, every person convicted of certain VUCSA violations (RCW 69.50.401, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, 69.50.415) shall be fined \$1,000 in addition to any other fine or penalty imposed. The fine increases to \$2,000 if the violation is a second or subsequent violation of one of the laws specified.

When a fine is imposed for Manufacture, Delivery or Possession with Intent to Manufacture or Deliver Methamphetamine, or for Possession of Ephedrine or Pseudo Ephedrine with Intent to Manufacture Methamphetamine, the first \$3,000 may not be suspended and must be provided to the law enforcement entity responsible for cleaning up the methamphetamine lab site.

OTHER LEGAL FINANCIAL OBLIGATIONS

The Sentencing Reform Act allows a court to impose several additional monetary obligations. These include:

- Court costs, including reimbursement for extradition costs (RCW 9.94A.030(31)⁴⁸ and (RCW 7.68.035));
- Defense attorney's fees and defense costs (RCW 9.94A.030(31));⁴⁹
- Contributions to a county or local drug fund (RCW 9.94A.030(31));⁵⁰
- Crime victims' compensation assessment (RCW 9.94A.030(31)⁵¹ and (RCW 7.68.035));
- Recoupments to the victim for the cost of counseling as a result of the offender's crime, in cases where the Special Sex Offender Sentencing Alternative is exercised (RCW 9.94A.670(5)g);⁵²
- Payment for the cost of incarceration, at the rate of \$50 per day; and/or
- Payment of up to \$1,000 in costs incurred by public agencies in an emergency response to the incident that resulted in conviction for Vehicular Assault or Vehicular Homicide by being under the Influence of Intoxicating Liquor or Any Drug.

All such monetary obligations, except probationer assessments, are monitored by the Department of Corrections (DOC) for up to ten years after the last date of release from confinement or the date the sentence was entered (RCW 9.94A.505(4)). The court may extend its jurisdiction an additional ten years.

A court must designate the total amount of a legal financial obligation, distinguishing a separate assessment for restitution, costs, fines and other assessments. This designation must appear on the Judgment and Sentence form or on a subsequent order to pay, and must include the required schedule for monthly payment. If the court fails to set the monthly payment amount, the DOC sets the amount.

In order to assist the court in setting the monthly payment sum, the offender must truthfully report to the DOC regarding earnings, property and assets, and must supply requested documentation.

The DOC may recommend to the court modifications in the payment schedule if the offender's financial circumstances change during the period of supervision. In cases where the DOC sets the monthly assessment amount, the DOC may modify the monthly assessment without consulting the court.

Civil action for collection of unpaid legal financial obligations may be initiated by the DOC or by any obligee. Such collection is effected through a wage assignment process. (See RCW 9.94A.760(3) and 9.94A.7701.)

⁴⁸ Effective until August 1, 2009, then recodified as RCW 9.94A.030(26).

⁴⁹ Effective until August 1, 2009, then recodified as RCW 9.94A.030(26).

⁵⁰ Effective until August 1, 2009, then recodified as RCW 9.94A.030(26).

⁵¹ Effective until August 1, 2009, then recodified as RCW 9.94A.030(26).

⁵² Effective until August 1, 2009, then recodified as RCW 9.94A.670(6)(g).

CONTACT WITH INDIVIDUALS

A court may prohibit an offender from contacting with 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 community supervision or community placement term. The order prohibiting contact must relate directly to the circumstances of the crime of conviction

REVIEW OF SENTENCES

Sentences within the standard range cannot be appealed (RCW 9.94A.585). These include sentences imposed pursuant to the First Time Offender provisions found in RCW 9.94A.650. Sentences outside the standard range may be appealed by the defendant or by the prosecutor. Review is limited to the record made before the sentencing court. Pending review, the sentence court or the court of appeals may order the defendant confined or placed on condition release, including bond.

Before reversing a sentence that is outside the sentence range, the Court of Appeals must find that:

- The reasons supplied by the sentencing judge were not supported by the record, or they do not justify a sentence outside the range; or
- The sentence imposed was clearly excessive or clearly too lenient.

The Department of Corrections may request a review of a sentence committing an offender to the custody or jurisdiction of the Department. This review must be limited to errors of law and must be filed with the Court of Appeals no later than 90 days after the Department has actual knowledge of the term of the sentence. The Department must certify that all reasonable efforts to resolve the dispute at the Superior Court level have been exhausted.

PENALTY AND MODIFICATION HEARING

If an offender violates any sentence condition or requirement, the court may modify its judgment and sentence according to the rules in RCW 9.94A.634.⁵³

These rules initially provide the opportunity for the Department of Corrections and the offender to enter into stipulated agreement about what sanctions will be imposed. These sanctions could include work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community. Any stipulated agreement must be submitted to the Court. If the Court is not satisfied with the sanctions, the court may schedule a hearing and modify the Department's sanctions. If this happens, the offender may withdraw from the stipulated agreement. The Court may also take action if the offender fails to comply with sanctions stipulated to in the agreement.

⁵³ As of August 1, 2009, RCW 9.94A.634 is recodified as RCW .94B.040.

If no stipulated agreement is reached, the court, upon motion of the state or upon its own motion, must first require the offender to show cause why he or she shall not be punished for the non-compliance. A summons or an arrest warrant may be issued by the court for the offender's appearance. The state then has the burden of proving noncompliance by a preponderance of the evidence.

If a court finds that a violation of sentence conditions or requirements has occurred, it may order the offender confined for a period not to exceed 60 days for each violation. The court may: (1) convert a partial confinement term to total confinement; (2) convert community service to total or partial confinement; (3) convert monetary obligations (except restitution and the crime victim penalty assessment) to community service hours by calculating the obligation into hours using the state minimum wage as a calculation basis; or (4) order that the offender be subject to home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

In the violation involves the failure to undergo a mental status evaluation and/or outpatient mental health treatment, the Department must consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. But if the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of RCW 71.05 shall be considered in preference to incarceration.

Any time served in confinement awaiting the hearing must be credited against any confinement order. If a court finds that a violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and community service obligations. In all cases, escape charges may also be filed if appropriate.

DISCHARGE AND VACATION OF CONVICTION RECORD

DISCHARGE

When an offender reaches the end of supervision with the Department of Corrections, and has completed all of the requirements of sentence except payment of legal financial obligations, the Department shall notify the county clerk who will then supervise payment of legal financial obligations.

When an offender completes all of his or her sentence requirements, the Department (or the county clerk, if the clerk has been supervising payment of legal financial obligations) must notify the sentencing court in accordance with RCW 9.94A.637.

If an offender is not subject to supervision by the Department or does not complete all of his sentence requirements while under Department supervision, it is the offender's responsibility to provide the court with verification of the completion of sentence conditions other than the payment of legal financial obligations.

When the court has adequate notice from the Department, the court clerk, and/or the offender, the court then discharges the offender and provides him or her with a certificate of discharge. This certificate restores all civil rights lost upon conviction. It is not, however, based on a finding of rehabilitation.

Every signed certificate and order of discharge shall be filed with the county clerk of the sentencing county. The court shall also send a copy of the certificate and order to the Department. The county clerk shall also enter the offender's name, date of discharge and date of conviction and offense, into the database maintained by the administrator for the courts.

Following discharge, the offender's prior record may be used to determine the sentence for any later convictions and may also be used in later criminal prosecution as an element of an offense or for impeachment purposes. Unless specifically ordered by the sentencing court, the certificate of discharge will not terminate the offender's obligation to comply with an order issued under RCW 10.99 that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. Offenders may still be prosecuted for violating any such provisions.

An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term of community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

Upon release from custody, the offender may apply to the Department for counseling and help in adjusting to the community. The voluntary help may be provided for up to one year following the release from custody.

VACATION OF CONVICTION RECORD

Every offender discharged under the above provision may apply to the sentencing court for a vacation of the conviction record as provided in RCW 9.94A.640. The offender's record cannot be cleared if:

- Any criminal charges are pending against the offender in any court in this state, another state or federal court;
- The offense was a violent offense (as defined in RCW 9.94A.030(54));⁵⁴
- The offense was a crime against persons (as defined in RCW 43.43.830);
- The offender has been convicted of a new crime in this state, another state or federal court since the date of the offender's discharge;
- The offense was a Class B felony, and less than ten years have passed since the date the applicant was discharged; or
- The offense was a Class C felony, other than felony Driving Under the Influence of Intoxicating Liquor or Drugs or felony Physical Control While Under the Influence of

⁵⁴ Effective until August 1, 2009, then recodified as RCW 9.94A.030(47).

Intoxicating Liquor or Drugs and less than five years have passed since the date the applicant was discharged; or

- The offense was felony Driving Under the Influence of Intoxicating Liquor or Drugs or felony Physical Control While Under the Influence of Intoxicating Liquor or Drugs and less than ten years have passed since the applicant was discharged.

If the offender meets these tests, the court may clear the record of conviction by:

- Permitting the offender to withdraw his/her guilty plea and to enter a plea of not guilty; or
- Setting aside the guilty verdict, if the offender was convicted after a plea of not guilty; and
- Dismissing the information or indictment against the offender.

Once the court vacates a record of conviction, the offender's conviction may not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender must be released from all penalties and disabilities resulting from the offenses. For all purposes, including responding to questions on employment applications, an offender whose record of conviction has been vacated may state that he or she has never been convicted of that crime. However, a vacated conviction record may be used as an element of a crime in a later criminal prosecution..

The sentencing guidelines allow automatic "wash-out" of prior convictions that meet the requirements of vacation of conviction. This policy allows offenders who do not formally apply to the court to have eligible offenses excluded from their criminal history in subsequent convictions. (See page I-12 for further discussion of this policy.)