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INTRODUCTION

Adult offenders who commit felonies on or after July 1, 1984, are subject to the provisions of the Sentencing Reform Act (SRA). The enabling legislation (RCW 9.94A) contains guidelines and procedures used by the court to impose sentences. The SRA is based on a determinate sentencing model and eliminates extensive periods of parole and probation. When sufficient and compelling reasons exist, sentences outside the presumptive ranges can be imposed by the court. Sentences which depart from the standard presumptive ranges must meet certain requirements and can be appealed by either the prosecutor or the defendant.

The goal of the sentencing guidelines system is to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. Presumptive sentencing schedules are structured so that offenses involving greater harm to a victim and society result in greater punishment. The guidelines apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or a defendant's previous record.

The Sentencing Guidelines Commission developed the initial set of guidelines and continues to advise the legislature on necessary adjustments. The Commission consists of 15 voting members, twelve of whom are appointed by the Governor. These twelve appointed members include four Superior Court judges, two defense attorneys, two prosecutors, three citizens, and the chief of a local law enforcement agency. There are three ex-officio voting members: the Secretary of the Department of Corrections, the Director of the Office of Financial Management, and the Chair of the Clemency and Pardons Board¹. Four legislators (two representatives and two senators) are appointed by the leadership of the House and the Senate and serve as nonvoting members.

In order to advise the legislature, the Commission requires accurate information on felony offenders, their crimes, and the sentences imposed under the Sentencing Reform Act. This information is derived from copies of Judgment and Sentence forms sent by the court clerks to the Commission office. Any case involving an exceptional sentence must include written Findings of Fact and Conclusions of Law. A computerized database allows the Commission staff to produce descriptive information on sentences and also to analyze the prison and jail population consequences of changes in the law.

The Commission also prepares statistical summaries of sentencing practices under the Sentencing Reform Act. Please contact the Commission office for information on cost and availability of these reports, if you have questions about the guidelines, wish to be notified of Commission meetings, or if you desire copies of minutes from Commission meetings.

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USE OF THIS MANUAL

This edition of the manual is updated to reflect the 1992 Session Laws. Manual users should retain earlier editions of this manual for guidance on offenses committed prior to June 11, 1992. Those interested in a comprehensive legal analysis of the Sentencing Reform Act are advised to read *Sentencing in Washington* by David Boerner. This publication is available through Butterworth Legal Publishers.

1. Prior to July 1, 1992, this position was filled by the Chair of the Indeterminate Sentence Review Board.

SECTION I. SENTENCING GUIDELINES

This section explains the rules for applying the sentencing guidelines to felony crimes **committed on or after June 11, 1992**. 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

STEP 1 - DETERMINING THE OFFENSE SERIOUSNESS LEVEL

Determine the Offense Seriousness Level by the offense of conviction. For example, if an offender was charged with Second Degree Robbery but pleaded guilty or was tried and convicted of First Degree Theft, the Seriousness Level is determined by the First Degree Theft conviction.

The Seriousness Level is measured on the vertical axis of the sentencing guidelines grid. (See Table 1, page 3). RCW 9.94A.320 lists the crimes included within each Seriousness Level. (See Table 2, page 8). Felony offenses are divided into 15 levels of seriousness, ranging from low (Level I) to high (Level XV). Offenses in the same level are considered equivalent in seriousness.

The 1990 Legislature amended the sentencing grid for the first time, adding a new Seriousness Level and changing the penalties for Level XI. This edition of the manual includes the 1990 Sentencing Grid (see Table 2) and also includes the previous version of the grid (see Appendix C). Crimes committed after June 30, 1990 should be scored according to the 1990 grid.

Some felonies rarely charged or recently created by the legislature are not included in the Seriousness Level Table and do not have a standard sentence range; thus, no sentence calculations are necessary. Page 20 describes the sentencing options for unranked crimes.

**TABLE 1
SENTENCING GRID
FOR CRIMES COMMITTED AFTER JUNE 30, 1990**

SERIOUSNESS LEVEL	OFFENDER SCORE							
	0	1	2	3	4	5	6	7
XV Life Sentence without Parole/Death Penalty								
XIV	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
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
XII 9y	9y 11m 93 - 123	10y 9m 102 - 136	11y 8m 111 - 147	12y 6m 120 - 160	13y 5m 129 - 171	15y 9m 138 - 184	17y 3m 162 - 216	20y 3m 178 - 236
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
X 5y	5y 6m 51 - 68 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
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
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
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
VI 13m	18m 12+ - 14	2y 15 - 20	2y 6m 21 - 27	3y 26 - 34	3y 6m 31 - 41	4y 6m 36 - 48	5y 6m 46 - 61	6y 6m 57 - 75
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
IV 6m	9m 3 - 9 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
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
II 0 - 90	4m Days 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
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

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV Aggravated Murder 1 (RCW 10.95.020)
XIV Murder 1 (RCW 9A.32.030)
Homicide by abuse (RCW 9A.32.055)
XIII Murder 2 (RCW 9A.32.050)
XII Assault 1 (RCW 9A.36.011)
 Assault of a Child 1 (RCW 9A.36.120)
XI Rape 1 (RCW 9A.44.040)
 Rape of a Child 1 (RCW 9A.44.073)
X Kidnapping 1 (RCW 9A.40.020)
Rape 2 (RCW 9A.44.050)
 Rape of a Child 2 (RCW 9A.44.076)
 Child Molestation 1 (RCW 9A.44.083)
Damaging building, etc., by explosion with threat to
human being (RCW 70.74.280(1))
Over 18 and deliver heroin or narcotic from Schedule I
or II to someone under 18 (RCW 69.50.406)
 Leading Organized Crime (RCW 9A.82.060(1)(a))

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

VIII Arson 1 (RCW 9A.48.020)
Promoting Prostitution 1 (RCW 9A.88.070)
Selling for profit (controlled or counterfeit) any controlled
substance (RCW 69.50.410)
Manufacture, deliver, or possess with intent to
deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
Manufacture, deliver, or possess with intent to
deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
Vehicular Homicide, by being under the influence of
intoxicating liquor or any drug or by the operation
of any vehicle in a reckless manner (RCW 46.61.520)

TABLE 2 (continued)

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

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

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

VCriminal Mistreatment 1 (RCW 9A.42.020)
Rape 3 (RCW 9A.44.060)
Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
Child Molestation 3 (RCW 9A.44.089)
Kidnapping 2 (RCW 9A.40.030)
Extortion 1 (RCW 9A.56.120)
Incest 2 (RCW 9A.64.020(2))
Perjury 1 (RCW 9A.72.020)
Extortionate Extension of Credit (RCW 9A.82.020)
Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
Rendering Criminal Assistance 1 (RCW 9A.76.070)
Bail Jumping with class A felony (RCW 9A.76.170(2)(b))
Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))

TABLE 2 (continued)

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

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

IIICriminal mistreatment 2 (RCW 9A.42.030)
Extortion 2 (RCW 9A.56.130)
Unlawful Imprisonment (RCW 9A.40.040)
Assault 3 (RCW 9A.36.031)
Assault of a Child 3 (RCW 9A.36.140)
Custodial Assault (RCW 9A.36.100)
Unlawful possession of firearm or pistol by felon
(RCW 9.41.040)
Harassment (RCW 9A.46.020)
Promoting Prostitution 2 (RCW 9A.88.080)
Willful Failure to Return from Work Release
(RCW 72.65.070)
Burglary 2 (RCW 9A.52.030)
Introducing Contraband 2 (RCW 9A.76.150)
Communication with a Minor for Immoral Purposes
(RCW 9.68A.090)
Patronizing a Juvenile Prostitute (RCW 9.68A.100)
Escape 2 (RCW 9A.76.120)
Perjury 2 (RCW 9A.72.030)
Bail Jumping with class B or C Felony
(RCW 9A.76.170(2)(c))
(level III continued on next page)

TABLE 2 (continued)

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

III(level III continued from previous page)

Intimidating a Public Servant (RCW 9A.76.180)

Tampering with a Witness (RCW 9A.72.120)

Manufacture, deliver, or possess with intent to
deliver marijuana (RCW 69.50.401(a)(1)(ii))

Delivery of a material in lieu of a controlled
substance (RCW 69.50.401(c))

Manufacture, distribute, or possess with intent to distribute
an imitation controlled substance (RCW 69.52.030(1))

Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))

Theft of Livestock 2 (RCW 9A.56.080)

Securities Act violation (RCW 21.20.400)

II Malicious Mischief 1 (RCW 9A.48.070)

Possession of Stolen Property 1 (RCW 9A.56.150)

Theft 1 (RCW 9A.56.030)

Possession of controlled substance that is either
heroin or narcotics from Schedule I or II (RCW 69.50.401(d))

Possession of phencyclidine (PCP) (RCW 69.50.401(d))

Create, deliver, or possess a counterfeit controlled
substance (RCW 69.50.401(b))

Computer Trespass 1 (RCW 9A.52.110)

Reckless Endangerment 1 (RCW 9A.36.045)

Escape from Community Custody (RCW 72.09.310)

I Theft 2 (RCW 9A.56.040)

Possession of Stolen Property 2 (RCW 9A.56.160)

Forgery (RCW 9A.60.020)

Taking Motor Vehicle Without Permission
(RCW 9A.56.070)

Vehicle Prowl 1 (RCW 9A.52.095)

Attempting to Elude a Pursuing Police Vehicle
(RCW 46.61.024)

Malicious Mischief 2 (RCW 9A.48.080)

Reckless Burning 1 (RCW 9A.48.040)

Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)

Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))

False Verification for Welfare (RCW 74.08.055)

Forged Prescription (RCW 69.41.020)

Forged Prescription for a Controlled Substance
(RCW 69.50.403)

Possess Controlled Substance that is a Narcotic from
Schedule III, IV, or V or Non-narcotic from
Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

STEP 2 - DETERMINING THE OFFENDER SCORE

The Offender Score is measured on the horizontal axis of the sentencing guidelines grid. An offender can receive anywhere from 0 to 9+ points on that axis. In general terms, the number of points an offender receives depends on four factors: 1) the number of prior felony criminal convictions; 2) the relationship between any prior offense(s) and the current offense of conviction; 3) the presence of multiple prior or current convictions; and 4) whether the crime was committed while the offender was on community placement.

The following discussion covers calculation of the Offender Score. Included in this discussion are how to collect criminal history, how to score history, how to score multiple current convictions, and how to score the offender's status.

Criminal History Collection

RCW 9.94A.030(12) defines criminal history to include the defendant's prior adult convictions in this state, federal court, and elsewhere, as well as adjudications in juvenile court if certain tests are met. Some rules on criminal history refer to the crime's classification (A, B, or C). Appendix B contains a list of felony offenses by class and an explanation of how to determine the crime classification of a felony.

Adult Criminal History: The Criminal Justice Information Act (RCW 10.98) established the Washington State Patrol Identification and Criminal History Section as the primary source of information on state felony conviction histories. After filing charges, prosecutors contact this section for an offender's Washington criminal history. In this act, the judge is directed to ensure the felony defendant has been fingerprinted and an arrest and fingerprint form has been transmitted to the Washington State Patrol (RCW 10.98.050(2)). For out-of-state or federal criminal history information, prosecutors need to contact the Federal Bureau of Investigation for referral to the appropriate sources.

When gathering an offender's criminal history, focus on felony convictions. With one exception, misdemeanors are not calculated into the Offender Score. This exception is current convictions of felony traffic offenses², where serious traffic offenses are included in the Offender Score.

Collect information, if it is available, on whether an offender has participated in a program of deferred prosecution for a felony offense. This information is likely only to be available through county records. Persons who have participated in such a program do not meet the definition of a first-time offender (RCW 9.94A.030(20)).

A conviction is defined to include a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty. A prior conviction is defined 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.400.

2. Vehicular Homicide, Vehicular Assault, Hit-and-Run Injury Accident, and Attempting to Elude a Pursuing Police Vehicle.

Convictions with a finding of sexual motivation should also be noted. A sexual motivation finding changes the scoring rules on some prior offenses and influences the sentencing options. This finding is possible only for crimes committed after July 1, 1990, the effective date of the enacting legislation.

All prior adult felony convictions are counted separately, except:

- A) Prior adult offenses found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct. These are to be counted as one offense, the offense that yields the highest Offender Score.
- B) Multiple prior convictions for offenses committed before July 1, 1986. Priors served concurrently are to be counted as one offense, using the conviction for the offense that yields the highest Offender Score.
- C) For other prior convictions served concurrently, the current sentencing court shall determine whether those offenses shall be counted as one or separate offenses. If counted as one offense, the offense that yields the highest Offender Score is to be used.

Prior convictions for anticipatory offenses (criminal attempt, solicitation, or conspiracy) are scored as if they were convictions for completed offenses. If the present conviction is an anticipatory offense, each prior conviction counts the same as if the present conviction were a completed offense.

RCW 9.94A.030(12)(a) stipulates that where it is known, criminal history for a defendant shall include the length and terms of any probation as well as whether the defendant has been incarcerated and the length of incarceration. This information is often collected as part of the Presentence Investigation Report.

Juvenile Criminal History: Some, but not all, juvenile history is to be included as part of the Offender Score. RCW 9.94A.030(12)(b) and 9.94A.360(4) spell out the criteria to be used when scoring juvenile criminal history:

Basic Eligibility:

- The conduct must have resulted in an adjudication of guilt in juvenile court (i.e., diversions do not count).
- The juvenile offense must have been a felony unless the current crime is a felony traffic offense, in which case serious misdemeanor traffic offenses are included.

Special Considerations:

- If the conviction was for a sex offense, the offense is always included in history.
- For class A offenses, the offender must have been 15 years of age or older when the crime was committed.

For offenses other than sex offenses and Class A felonies, the offender must have been 15 years of age or older when the crime was committed and must have been less than 23 when the current offense of conviction was committed.

RCW 13.50.050(9) 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. RCW 13.50.050(15) provides that the sealing of a juvenile record of any Class A and sex offense adjudication is nullified by a subsequent adult felony conviction.

It is necessary to determine the date of adjudication for juvenile offenses. All offenses adjudicated on the same date count as one offense except for prior convictions for violent offenses with separate victims, which shall count as separate offenses (RCW 9.94A.360(6)(b)). Use the offense which yields the highest Offender Score as criminal history for cases adjudicated on the same day which do not meet this exclusion rule. As is the case with adult history, in most instances this offense will be the one with the highest Seriousness Level.

"Washout" of Certain Prior Felonies: In certain instances, prior felony convictions are not calculated into the Offender Score. The rules regarding which prior felonies are included can be found in RCW 9.94A.360(2) and are summarized as follows:

- A) Prior Class A and sex offense felony convictions are always included in the offender score.
- B) Prior Class B felony convictions are not included if: 1) the offender has spent ten years in the community; and 2) has not been convicted of any felonies since the most recent of either the last date of release from confinement pursuant to a felony conviction (including full-time residential treatment), or the day the sentence was entered.
- C) Prior Class C felony convictions are not included if the offender has spent five years in the community and has not been convicted of any felonies since the most recent of either the last date of release from confinement pursuant to a felony conviction (including full-time residential treatment) or the day the sentence was entered.
- D) Prior serious traffic convictions³ are not included if the offender has spent five years in the community and has not been convicted of any serious traffic or felony traffic offenses since the most recent of either the last date of release from confinement pursuant to a felony conviction (including full-time residential treatment) or the day the sentence was entered.
- (E) Once a crime meets the washout rules, it is always washed out. The washout test can be met by any consecutive five- or ten-year period of crime-free behavior.

3. RCW 9.94A.030(26): "'Serious traffic offense' means:

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

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

The Sentencing Reform Act allows the record of conviction to be vacated under certain conditions. RCW 9.94A.230 provides that vacated convictions "shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction." This vacation 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 washout rules. Since the washout rules are automatic and do not require court action, an offense will washout before formal record vacation occurs. (The main distinction between vacation of record of conviction and washout is that after vacation, an offender can indicate on employment forms that he or she was not convicted of that crime.)

Federal, Out-of-State, or Foreign Convictions: For a prior federal, out-of-state or foreign conviction, compare the elements of the offense in that jurisdiction to Washington State laws to determine how to score the offense (RCW 9.94A.360(3)). Judicial decisions on the comparability of non-Washington convictions will occur at the sentencing hearing.

Scoring Criminal History

Once the relevant prior convictions have been identified, the criminal history portion of the Offender Score can be calculated. The rules for scoring prior convictions are contained in RCW 9.94A.360. To make application of these rules easier, the Offense Reference Sheets and Scoring Forms indicate the correct number of points for each prior conviction depending on the current offense. To use these forms correctly, an understanding of the criminal history rules is necessary. For example, the forms do not repeat the "washout" rules or the statutory requirements for juvenile history. The scoring rules for a drug or sex offense deserve special attention because of the increased points for certain prior offenses.

Scoring drug offenses⁴: The 1989 Legislature amended the scoring rules of drug offenses committed on or after July 23, 1989. Adult prior and other current drug offenses included in the offender score with a current drug offense count three points each, and juvenile prior offenses count two points each (9.94A.360(13)).

Scoring Sex Offenses⁵: A felony sex offense committed on or after July 1, 1990, also has special scoring

4.RCW 9.94A.030(16): "'Drug offense' means:

- a)Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);
- b)Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or
- c)Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this section."

Note that "Delivery of a Material in Lieu of a Controlled Substance" (RCW 69.50.401(c)) is defined as a drug offense; whereas, "Manufacture, Distribute, or Possess with Intent to Distribute an Imitation Controlled Substance (RCW 69.52.030(1)) is not.

5.RCW 9.94A.030(29): "'Sex offense' means:

- (a)A felony that is a violation of Chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;
- b)A felony with a finding of sexual motivation under RCW 9.94A.127.
- c)Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection."

rules. Sex offenses included in the Offender Score with a current sex offense count three points each (RCW 9.94A.360(17)).

Scoring Multiple Current Convictions

Multiple convictions can also influence the Offender Score. Keep in mind that for multiple current offenses, separate sentence calculations are necessary for each offense because the law requires that each receive a separate sentence (RCW 9.94A.400).

Multiple Offense Scoring Steps:

A) If the current offenses do not include two or more serious violent offenses⁶ arising from separate and distinct criminal conduct, apply RCW 9.94A.400(1)(a):

- Score each offense.
- For each offense, score the prior adult and juvenile convictions. Also, score the other current offenses on the scoring form line entitled "Other Current Offenses."
- The court can find that some or all of the current offenses encompass the same criminal conduct⁷ and are to be counted as one crime.
- 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" (RCW 9.94A.400(1)(a)).

B) If the current offenses include two or more serious violent offenses arising from separate and distinct conduct, apply RCW 9.94A.400(1)(b):

- Score 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.

6. RCW 9.94A.030(27): "'Serious violent offense' is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, 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 this (a) of this section."

7. RCW 9.94A.400(1)(a) "... '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. This definition does not apply in cases involving vehicular assault or vehicular homicide if the victims occupied the same vehicle."

·Score all remaining serious violent current offenses, but for those offenses, calculate the offender's criminal history as zero.

·For any current offenses that are not serious violent offenses, score according to the rules in A.

Example: An offender was convicted of one count of First Degree Theft and one count of Forgery. Both offenses arose from separate and distinct criminal conduct. The criminal history consisted of one conviction for Second Degree Burglary. In this case, the rules in RCW 9.94A.400(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 2 and a sentence range of 3 to 9 months. The prior burglary and the current theft are included in the Offender Score for the forgery, resulting in an Offender Score of 2 and a sentence range of 2 to 5 months. The sentence for each offense would run concurrently.

Example: An offender was convicted of one count of Second Degree Theft and one count of Second Degree Possession of Stolen Property. The court found that both counts encompassed the same criminal conduct and the offender had no criminal history. In this case, the other current offense is not counted in the Offender Score because RCW 9.94A.400(1)(a) stipulates that if some or all of the current offenses are found to encompass the same criminal conduct, then 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 would run concurrently.

Example: An offender was convicted of two counts of First Degree Rape and one count of First Degree Assault. These offenses, all serious violent, arose from separate and distinct criminal conduct. His criminal history consisted of one Third Degree Assault conviction. The scoring for this offender follows the rules in RCW 9.94A.400(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 Rape (Level XI), the First Degree Assault is scored counting the prior Third Degree Assault as adult criminal history. This calculation would result in a sentence range of 102 to 136 months. Next, the First Degree Rape convictions are scored using a criminal history of zero. These calculations result in two sentence ranges of 78 to 102 months. These three sentences would run consecutively.

Scoring Offender Status

The Offender Score also measures whether the offense was committed while the offender was under community placement. RCW 9.94A.360(18) applies to crimes committed on or after July 1, 1988. An additional point is added to the score under these circumstances.

STEP 3 - DETERMINING THE STANDARD SENTENCE RANGE

Sentencing Grid

Once the Offense Seriousness Level and Offender Score have been calculated, the preliminary standard sentence range can be established.

Determine the standard sentence range by referring to the sentencing grid (RCW 9.94A.310, Table 1, page 3). 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 produced for individual offenses on the Offense Reference Sheets (Section III). The court can sentence anywhere within this range. 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.420).

If the crime was committed prior to July 1, 1990, the Sentencing Grid in Appendix C should be used to determine the sentence.

Attempt, Conspiracy, and Solicitation (Non-VUCSA)

For persons convicted of an anticipatory offense of criminal attempt, solicitation, or conspiracy under Chapter 9A.28 RCW, the standard sentence range is determined by using the Offender Score and Offense Seriousness Level to determine the standard sentence range, then multiplying that range by 75 percent (RCW 9.94A.410). To simplify calculations, refer to the anticipatory offense grid (Table 3, page 17). This adjustment does not apply to violations of the Uniform Controlled Substances Act (RCW 69.50), because these anticipatory offenses are punished under RCW 69.50.407, not RCW 9A.28.

Deadly Weapon Increase

For specified crimes, if the court makes a finding of fact or the jury returns a special verdict that the accused or an accomplice was armed with a deadly weapon⁸ at the time of the commission of the crime, the standard sentence range shall be increased. The crimes eligible for a deadly weapon increase are:

<u>Crime</u>	<u>Deadly Weapon Increase</u>
First Degree Kidnapping	24 months
First Degree Rape	24 months

8.RCW 9.94A.125: "...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."

TABLE 3
ANTICIPATORY OFFENSE GRID
(75% of the range for completed offenses in months)
(Does not apply to violations of the Uniform Controlled Substance Act)

LOW END OF RANGE

Seriousness Level	Offender Score									
	0	1	2	3	4	5	6	7	8	9/more
XIV	180.00	187.50	195.75	203.25	210.75	218.25	234.00	253.50	227.50	308.25
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

Seriousness Level	Offender score									
	0	1	2	3	4	5	6	7	8	9/more
XIV	240.00	249.75	260.25	270.75	280.50	291.00	312.00	337.50	369.75	411.00
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 high end 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.

First Degree Robbery	24 months
First Degree Burglary	18 months
Second Degree Assault	12 months
Second Degree Assault of a Child	12 months
First Degree Escape	12 months
Second Degree Kidnapping	12 months
Second Degree Burglary	12 months
Drug Offense ⁹	12 months
Theft of Livestock (First and Second Degree)	12 months

The deadly weapon increase also applies to anticipatory offenses (attempt, conspiracy, and solicitation to commit a crime, RCW 9.94A.310(3)). Additional time for a deadly weapon increase is added to the entire presumptive sentence range after it has been calculated based on the particular Seriousness Level and Offender Score; (RCW 9.94A.370), and after the range adjustment for anticipatory offenses (if appropriate).

Drug Related Enhancements

Enhancements to the presumptive range are required for certain drug offenses which occur in correctional facilities (RCW 9.94A.310(4) or in a protected zone (RCW 9.94A.310(5)). These enhancements are as follows:

Correctional Facility: If the offender or an accomplice committed certain drug offenses while in a county jail or state correctional facility, the following times are added to the presumptive sentence range:

<u>Crime</u>	<u>Enhancement</u>
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)	18 months
Selling for Profit (Controlled or Counterfeit) Any Controlled Substance	18 months
Manufacture, Deliver, Possess with Intent to Deliver Methamphetamine	15 months
Manufacture, Deliver, Possess with Intent to Deliver Schedule III-V Narcotics or Schedule I-V Non-narcotics (Except Marijuana or Methamphetamine)	15 months

9."Drug offense" is any felony violation of Chapter 69.50 RCW except Possession of a Controlled Substance, RCW 69.50.401(d), or Forged Prescription of a Controlled Substance, RCW 69.50.403.

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	12 months
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

Protected Zone: If the offender is sentenced for committing certain drug offenses¹⁰ in a protected zone, twenty-four months are added to the presumptive sentence, and the maximum imprisonment and fine are doubled (RCW 69.50.435). These protected zones are as follows:

- In a school or on a school bus
- Within 1,000 feet of a school bus route stop or a school ground perimeter;
- In a public park;
- On a public transit vehicle or in a public transit stop

STEP 4 - DETERMINING THE SENTENCING OPTIONS

The sentencing options available to the court vary depending on the offender's criminal history and the crime(s) of conviction. The court must impose a determinate sentence¹¹ in every case. The only exception to this law is for sentences imposed under the Special Sex Offender Sentencing Alternative (RCW 9.94A.120(7)(a)), which allows suspended sentences.

This section describes the available sentencing options. Table 4 (page 29) identifies the crimes eligible for the First-Time Offender Waiver, Special Sex Offender Sentencing Alternative, enhancements, home detention, and community placement. The Offense Reference Sheets also indicate the sentencing options available for individual felonies.

10.RCW 69.50.435(a) "[A violation of:]...RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with intent to manufacture, sell or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana..."

11.RCW 9.94A.030(14):"...a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation."

Standard Sentence Range

The sentencing grid determines the standard sentence range for the most commonly charged felonies. RCW 9.94A.420 states 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+) is to be served in a state facility or institution. A term of one year or less is to be served in a county facility, unless, when combined with other terms, the total time to be served exceeds one year (RCW 9.94A.190). For some offenders, the court can convert total confinement sentences to partial confinement or community service (see the discussion of alternative conversions, page 24). Offenders with a sentence greater than a year, who also have a sentence less than a year, are to serve the entire period of time in a state institution.

Unranked Crimes

For an offender convicted of a crime without an established Seriousness Level, no standard sentence range applies. In these cases, the court is to impose a determinate sentence which may include not more than one year of confinement, community service work, legal financial obligations, a term of community supervision not to exceed one year, and/or a fine. Sentences involving greater than one year of confinement are exceptional sentences and must be justified in writing (RCW 9.94A.120(6)).

First-time Offender Waiver

The court has a statutory alternative to the standard range for certain first-time offenders (RCW 9.94A.120(5)). Offenders are eligible for the First-time Offender Waiver if they:

- Have not been convicted of a violent offense;
- Have not been convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver a Schedule I or II Narcotic Drug;
- Have not been convicted of Selling for Profit any Controlled Substance or Counterfeit Substance
- Have not been convicted of a sex offense;
- Have not previously been convicted of a felony in this state, federal court, another state, or foreign country;
- Have never participated in a program of deferred prosecution for a felony offense (RCW 9.94A.030(20)); and
- Have no juvenile adjudication for a felony offense committed on or after the date they turned 15, and no adjudications for a sex offense committed at any age.

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

- Imposing 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;
- Requiring up to two years of community supervision which, in addition to crime-related prohibitions¹², may include requirements that the offender perform any one or more of the following:
 - a) Devote time to a specific employment or occupation;
 - b) Undergo available outpatient treatment for up to two years or inpatient treatment not to exceed the standard range of confinement for that offense;
 - c) Pursue a prescribed, secular course of study or vocational training;
 - d) Remain within prescribed geographical boundaries and notify the court or a Community Corrections Officer prior to any change in the offender's address or
 - e) Report as directed to the court and a Community Corrections Officer; or
 - f) Pay all court-ordered financial obligations, and/or perform some community service work.

The court's decision to impose or not impose the First-time Offender Waiver cannot be appealed by the prosecutor or defendant (RCW 9.94A.210(1)).

Sex Offender Sentencing Options

A special sentencing option allows community treatment of sex offenders on an outpatient basis. An inpatient sex offender treatment program is operated at Twin Rivers Corrections Center in Monroe. This program is not a sentencing option; offenders are admitted at the discretion of the Department of Corrections, rather than by court order.

Special Sex Offender Sentencing Alternative: The Special Sex Offender Sentencing Alternative (SSOSA) provides for a suspended sentence which can include a jail sentence of up to six months and required outpatient or inpatient treatment (RCW 9.94A.120(7)(a)). Examinations and treatment under SSOSA shall only be conducted by sex offender treatment providers certified by the Department of Health, unless the offender leaves the state for other than certification reasons or there are no certified providers available near the offender's home. To be eligible for this option, offenders must:

12.RCW 9.94A.030(11): "'Crime-related prohibition' means an order of a court prohibiting conduct that directly relates to the circumstances 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."

- Not be convicted of a serious violent offense with a sexual motivation finding or of Rape in the First Degree or an Attempted Rape in the First Degree, or Rape in the Second Degree.
- Be convicted of a violation of chapter 9A.44 RCW, Incest (RCW 9A.64.020), Communication with a Minor for Immoral Purposes (RCW 9.68A.090) or an offense with a finding of sexual motivation.
- Have had no prior convictions for sex offenses in this or any other state.
- Have a current offense and criminal history which permits the court to impose a sentence within the standard range of less than eight 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. 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 behaviors;
- The defendant's social and employment situation; and
- Other evaluation measures used.

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

- 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.

A second examination regarding the offender's amenability to treatment can be ordered by the court, with the evaluator selected by the party making the motion. The defendant is to pay the cost of any second examination ordered unless the court finds the defendant to be indigent, in which case the state pays the cost.

Once the examination report is received, the court determines whether the defendant and the community will benefit from use of this special sentencing alternative. The court also is to consider the victim's opinion whether the offender should receive a treatment sentence. If the court decides to impose a SSOSA sentence, the court then imposes a sentence within the standard sentence range. If the sentence is for less than eight years of confinement, the court may suspend execution of the sentence and place the offender on community supervision for the length of the suspended sentence or three years, whichever is greater. This is the only sentencing option where suspended sentences are possible.

The court shall order treatment for any period up to three years in duration. The court can order outpatient or inpatient treatment; however, a community mental health center may not be used for such treatment unless it has a special sex offender treatment program. The offender cannot change sex offender treatment providers without first notifying the prosecutor, the community corrections officer, and the court. In addition, the offender cannot change providers without court approval if the prosecutor or community corrections officer object to the change.

As a condition of the SSOSA sentence, the court may order the defendant to spend up to six months in confinement (not to exceed the standard range of confinement for that offense). The court may also include crime-related prohibitions and requirements that the offender:

- Devote time to a specific employment or occupation;
- Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- Report as directed to the court and a Community Corrections Officer;
- Pay all court-ordered legal financial obligations, perform some community service work, or any combination thereof; or
- Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

If the offender violates these sentence conditions, the court may revoke the suspension and order execution of the sentence. The 60-day penalty for sentence violation is also an option to the court (see page 47). All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

During the period of treatment, the sex offender therapist must submit quarterly reports on the offender's treatment progress to the court and parties. At a minimum, the reports shall reference the treatment plan and include the following: dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

At the sentencing hearing, the court is to set a treatment termination hearing for three months prior to the anticipated date of treatment completion. The sex offender therapist and community corrections officer are

to submit written reports to the court and parties prior to this hearing. The reports will address the offender's compliance with treatment and monitoring requirements and will contain recommendations regarding termination from treatment, including proposed community supervision conditions.

A second evaluation regarding the advisability of treatment termination can be requested by either party and ordered by the court. The cost shall be borne by the offender unless the court finds the person to be indigent in which case the state pays the cost.

As a result of the hearing, the court can modify the supervision conditions and shall either terminate treatment or extend treatment for up to the remaining period of community supervision.

Sex Offender Treatment in Prison: Sex offender treatment is available for some state prisoners. The statutory authorization and procedures vary depending on the date the offender committed the crime. For offenders who committed crimes after July 1, 1990, the Department of Corrections has the discretion to place them in a treatment program within Twin Rivers Correctional Center. No authority exists for converting confinement time to community supervision for offenders who successfully complete the program.

For an offender who committed a felony sex offense between July 1, 1987, and July 1, 1990, and received a sentence of more than one year but less than six years of confinement, the court may request that the Department of Corrections evaluate the person's amenability to treatment, and the department may place them in a treatment program within a correctional facility. If the offender completes a program before the expiration of his sentence, the department may request that the balance of confinement be converted to community supervision (except for offenders convicted of First and Second Degree Rape). 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 their crime prior to July 1, 1987, may, subject to available funds, request an evaluation by the Department of Corrections regarding their amenability to treatment. If such amenability is determined, the offender may request placement in a treatment program within the prison, subject again to available funds.

Alternative Conversions

The sentencing grid ranges are expressed in terms of total confinement (RCW 9.94A.370). For certain offenders, the court can convert terms of total confinement to partial confinement or 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 offender with a sentence range of one year or less, the reason why shall be stated on the Judgment and Sentence form (RCW 9.94A.380).

For all offenders with sentences of one year or less, one day of total confinement can be converted to one day of partial confinement. Nonviolent offenders with sentences of one year or less are also eligible for conversion of total confinement to community service (one day of confinement equals 8 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 directors can have the offender transferred to the county detention facility. The offender can 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 as total confinement (RCW 9.94A.180).

Work Crew

Work crew is a partial confinement option created by the 1991 Legislature. The offender must have committed the offense on or after July 28, 1991. The offense can not be a sex offense¹³ and the sentence must be one year or less in length. If the sentence is nine months or more, at least 30 days of total confinement must be served before being eligible for work crew. Work crew may be simultaneously imposed with electronic home detention. Work crew hours served can include work on civic improvement tasks, substance abuse counseling, job skills training, and 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 four 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 program where the 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 crimes committed June 9, 1988 or later. Because partial confinement programs are limited to sentences of one year or less, home detention is not an option for offenders with prison sentences.

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(d)) or Forged Prescription for a Controlled Substance (RCW 69.50.403) providing the offender is monitored for drug use.

13.RCW 9.94A.030(29): "'Sex offense' means:

- (a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;
- (b) A felony with a finding of sexual motivation under RCW 9.94A.127; or
- (c) Any federal or out-of state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection."

Offenders convicted of Second Degree or Residential Burglary must meet the following eligibility conditions: (a) successfully completing twenty-one days in a work release program; (b) having no convictions for Second Degree or Residential Burglary during the preceding two years and not more than two prior convictions for burglary; (c) having 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) having no prior charges of escape; and (e) fulfilling the other conditions of the home detention program. Participation in this program is conditioned upon: (a) employment or school attendance; (b) program rules adherence; and (c) compliance with court-ordered legal financial obligations, (RCW 9.94A.030(36)).

Home detention can also be ordered for offenders whose 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.

Community Supervision

If the sentence is one year or less, the court may impose up to one year of community supervision. An offender shall be on community supervision as of the date of sentencing. However, during any time the offender has absented him or herself from supervision without prior approval or during a period of confinement, the period of supervision shall toll (RCW 9.94A.170).

Community supervision for up to two years can be ordered with First-time Offender Waiver sentences and can be ordered for outpatient sex offender sentences (Special Sex Offender Sentencing Alternative) for the length of the suspended sentence or three years, whichever is greater. For consecutive sentences, community supervision is limited to 24 months (RCW 9.94A.400(5)).

Community supervision under the First-time Offender Waiver and Special Sex Offender Sentencing Alternative can include rehabilitative conditions. For all supervision sentences, the conditions can include crime-related prohibitions¹⁴ All community supervision sentences for crimes committed on or after July 28, 1991, include a requirement that offenders cannot own, use or possess firearms or ammunition (RCW9.94A.120(13)).

If the court decides that an offender's crime was caused by drug or alcohol use, a prohibition against such use can be imposed during community supervision, with regular monitoring by urinalysis or breathalyzer tests.

Community Placement

The 1988 Legislature created community placement, an after-prison supervision program for certain violent offenders, drug offenders, and sex offenders. Community placement consists of two programs: community custody and post-release supervision. Community placement begins upon completion of the confinement

14.RCW 9.94A.030(11): "'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."

term or when the offender is transferred to community custody in lieu of earned early release. If the offender is sentenced to the statutory maximum period of confinement, then the community placement portion of the sentence consists entirely of the community custody to which the offender may become eligible. Any period of community custody actually served is to be credited against the community placement portion of the sentence.

Community custody: This program is for inmates who earn "good time" while in prison and have a sentence which includes community placement. These offenders are transferred to community custody in lieu of earned early release time. They are subject to the same controls placed on prison inmates. Violations of sentence conditions are reviewed at an inmate disciplinary hearing conducted by the Department of Corrections. Sanctions may include transfer to a more restrictive confinement level to serve the remaining portion of the original sentence. Any detention ordered is served in a Department of Corrections work release or prison facility.

Post-release supervision: This program is for an offender released from prison who has an additional period of community placement to serve, but who is not on community custody. This could happen, for instance, if the offender received no earned early release credit, or if he or she had completed the community custody portion of the sentence. If they violate sentence conditions, these offenders are entitled to a court hearing. Sanctions may include up to 60 days for each violation, and detention time is served in a county jail.

Eligibility for community placement: Community placement for twelve months is a mandatory sentence condition for offenders sentenced to prison for the following offenses committed on or after July 1, 1988:

- Sex offense (must be committed before July 1, 1990);
- Serious violent offense (must be committed before July 1 1990);
- Second Degree Assault;
- Crime against a person with a deadly weapon finding¹⁵ under RCW 9.94A.125; or
- Any felony offense under Chapter 69.50 or 69.52 RCW.

There is a mandatory two year community placement sentence in addition to other terms of sentence for the following offenses if they were committed after June 30, 1990:

- Any sex offense; or

15.RCW 9.94A.125:

"...For purposes of this section, a deadly weapon is 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."

- Any serious violent offense.

Community placement conditions: Unless the conditions are waived by the court, an offender on community placement must:

- Report to and be available for contact with the assigned community corrections officer as directed;
- Receive prior approval for living arrangements and residence location.
- Work at Department of Corrections' approved education, employment, and/or community service;
- Not consume controlled substances that are not legally prescribed;
- Not possess controlled substances while on community custody;
- Not own, use or possess firearms or ammunition; and
- Pay supervision fees as determined by the Department of Corrections.

In addition to the above, the court may impose the following special conditions:

- Remain within or outside of specified geographical boundaries;
- Have no direct or indirect contact with the victim of the crime;
- Have no direct or indirect contact with a specified class of individuals (must be specified);
- Participate in crime-related treatment or counseling services;
- Consume no alcohol;
- Comply with crime-related prohibitions.

Conditions of community placement may be changed prior to transfer or during supervision, but they cannot be made more restrictive. If an offender commits a new felony while on community placement, an additional point is added to his or her Offender Score, thus increasing the sentencing range for the new felony.

TABLE 4

SENTENCE CONSIDERATIONS* BY OFFENSE

Offense	Alternatives (If Eligible)	Enhancements Available	Community Placement
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Advancing Money or Property for Extortionate Extension of Credit	F, H, W		
Aggravated Murder 1			
Arson 1			
Arson 2	W		
Assault 1			24
Assault 2	W	D12	12
Assault 3	F, W		
Assault of a Child 1			24
Assault of a Child 2		D12	12
Assault of a Child 3	W		
Attempting Elude Police Vehicle	F, H, W		
Bail Jumping with Class A, B, or C	F, H, W		
Bail Jumping with Murder 1			
Bribe Received by Witness	F, H, W		
Bribery	F, H		
Bribing a Witness	F, H, W		
Burglary 1		D18	if D then 12
Burglary 2	F, H?, W	D12	
Child Molestation 1	S		12
Child Molestation 2	S		12
Child Molestation 3	S		12
Communication with a Minor for Immoral Purposes	S		12

* Notes: "F", First-Time Offender Waiver; "S", Special Sexual Offender Alternative; "H", Home Detention; "D", Deadly Weapon Finding; "C", Correctional Facility Enhancement; "W", Work Crew; "P", Protected Zone Enhancement; "?", may be eligible. All numbers represent months.

TABLE 4 (continued)

SENTENCE CONSIDERATIONS* BY OFFENSE

Offense	Alternatives (If Eligible)	Enhancements Available	Community Placement
Controlled Substance Homicide, First Drug Conviction	F	D12	12
Controlled Substance Homicide, Subsequent Drug Conviction		D12	12
Create, Deliver, Possess Counterfeit Controlled Substance Schedule I/II, Narcotic, First Conviction	F, W	D12	12
Create, Deliver, Possess Counterfeit Controlled Substance Schedule I/II, Narcotic, Subsequent Conviction	W	D12	12
Create, Deliver, Possess Counterfeit Controlled Substance Schedule III-V Narcotic, Schedule I-V, Nonnarcotic	F, W	D12	12
Criminal Mistreatment 1	F, H, W		
Criminal Mistreatment 2	F, H, W		
Custodial Assault	F, H, W		
Damage Building by Explosion, No Human Threat	F, H		
Damage Building by Explosion, With Human Threat			
Dealing in Depiction of Minor Engaged in Sexually Explicit Conduct	F, H		
Delivery of Imitation Controlled Substance by Person 18 or Over to Person Under 18	F, H, W		12
Delivery of a Material in Lieu of a Controlled Substance	F, W	D12	12
Endanger Life/Property by Explosives No Human Threat	F, H		
Endanger Life/Property by Explosives With Human Threat			
Escape 1	H, W	D12	
Escape 2	F, H, W		
Escape from Community Custody	H, W		

* Notes: "F", First-Time Offender Waiver; "S", Special Sexual Offender Alternative; "H", Home Detention; "D", Deadly Weapon Finding; "C", Correctional Facility Enhancement; "W", Work Crew; "P", Protected Zone Enhancement; "?", may be eligible. All numbers represent months.

TABLE 4 (continued)

SENTENCE CONSIDERATIONS* BY OFFENSE

Offense	Alternatives (If Eligible)	Enhancements Available	Community Placement
Explosive Devices Prohibited			
Extortion 1	W		
Extortion 2	F, H, W		
Extortionate Extension of Credit	F, H, W		
Extortionate Means to Collect Extensions of Credit	F, H, W		
False Verification for Welfare	F, H, W		
Forged Prescription for a Controlled Substance	F, H?, W		12
Forged Prescription for a Legend Drug	F, H, W		
Forgery	F, H, W		
Harassment	F, W		
Hit and Run Injury Accident	F, H, W		
Homicide by Abuse			24
Incest 1	S		12
Incest 2	S		12
Inciting Criminal Profiteering	F, H		
Indecent Liberties with Forcible Compulsion	S		12
Indecent Liberties Without Forcible Compulsion	S		12
Influencing Outcome of Sporting Event	F, H, W		
Intimidating a Judge	F, H		
Intimidating a Juror	F, H		
Intimidating a Public Servant	F, H, W		
Intimidating a Witness	F, H		
Introducing Contraband 1	F, H		
Introducing Contraband 2	F, H, W		
Involving a Minor in Drug Dealing	F	D12	12

* Notes: "F", First-Time Offender Waiver; "S", Special Sexual Offender Alternative; "H", Home Detention; "D", Deadly Weapon Finding; "C", Correctional Facility Enhancement; "W", Work Crew; "P", Protected Zone Enhancement; "?", may be eligible. All numbers represent months.

TABLE 4 (continued)

SENTENCE CONSIDERATIONS* BY OFFENSE

Offense	Alternatives (If Eligible)	Enhancements Available	Community Placement
Kidnapping 1		D24	24
Kidnapping 2	W	D12	if D then 12
Leading Organized Crime			
Malicious Harassment	F, H, W		
Malicious Mischief 1	F, H, W		
Malicious Mischief 2	F, H, W		
Manslaughter 1			
Manslaughter 2			
Manufacture, Deliver, Possess with Intent Schedule I/II Narcotic, Except Heroin or Cocaine; First Conviction, Not in a Protected Zone		D12, C18	12
Manufacture, Deliver, Possess with Intent Schedule I/II Narcotic, Except Heroin or Cocaine; Subsequent Con- viction or in a Protected Zone		D12, C18, P24	12
Manufacture, Deliver, Possess with Intent Heroin or Cocaine, First Con- viction, Not in a Protected Zone		D12, C18	12
Manufacture, Deliver, Possess with Intent Heroin or Cocaine, Subsequent Conviction or in a Protected Zone		D12, C18, P24	12
Manufacture Deliver Possess with Intent, Methamphetamine	F	D12, C15, P24	12
Manufacture, Deliver, Possess with Intent Schedule III-V Narcotic, Schedule I-V Nonnarcotic, Except Marijuana or Methamphetamine	F, W	D12, C15, P24	12
Manufacture, Deliver, Possess With Intent Marijuana	F, W	D12, C15, P24	12
Manufacture, Distribute, Possess With Intent Imitation Controlled Substance	F, H, W		12
Murder 1			24
Murder 2			24

* Notes: "F", First-Time Offender Waiver; "S", Special Sexual Offender Alternative; "H", Home Detention; "D", Deadly Weapon Finding; "C", Correctional Facility Enhancement; "W", Work Crew; "P", Protected Zone Enhancement; "?", may be eligible. All numbers represent months.

TABLE 4 (continued)

SENTENCE CONSIDERATIONS* BY OFFENSE

Offense	Alternatives (If Eligible)	Enhancements Available	Community Placement
Over 18 Years Old, Deliver Schedule I/II Narcotics to Someone Under 18		D12, C18, P24	12
Over 18, Deliver Schedule III-V Narcotic or Schedule I-V Nonnarcotic to Person Under 18 and 3 Years Junior	F	D12, C15, P24	12
Patronizing a Juvenile Prostitute	F, H, W		
Perjury 1	F, H, W		
Perjury 2	F, H, W		
Possess Controlled Substance, Heroin or a Narcotic from Schedule I/II	F, H?, W	C12	12
Possess Controlled Substance, Narcotic Schedule III-IV or Nonnarcotic from Schedule I-V, except Phencyclidine	F, H?, W	C12	12
Possess Phencyclidine (PCP)	F, H?, W	C12	12
Possess Stolen Property 1	F, H, W		
Possess Stolen Property 2	F, H, W		
Promoting Prostitution 1	F, H		
Promoting Prostitution 2	F, H, W		
Rape 1		D24	24
Rape 2			12
Rape 3	S		12
Rape of a Child 1	S		12
Rape of a Child 2	S		12
Rape of a Child 3	S		12
Reckless Burning 1	F, W		
Reckless Endangerment 1	F, H, W		
Rendering Criminal Assistance 1	F, H, W		
Residential Burglary	F, H?, W		
Robbery 1		D24	if D then 12
Robbery 2	W		
Securities Act Violation	F, H, W		

* Notes: "F", First-Time Offender Waiver; "S", Special Sexual Offender Alternative; "H", Home Detention; "D", Deadly Weapon Finding; "C", Correctional Facility Enhancement; "W", Work Crew; "P", Protected Zone Enhancement; "?", may be eligible. All numbers represent months.

TABLE 4 (continued)**SENTENCE CONSIDERATIONS* BY OFFENSE**

Offense	Alternatives (If Eligible)	Enhancements Available	Community Placement
Selling for Profit (Controlled or Counterfeit) Any Controlled Substance		D12, C18, P24	12
Sending, Bringing Depictions of Minor Engaged in Sexually Explicit Conduct	F, H		
Sexual Exploitation	F, H		
Sexual Misconduct With Minor 1	S		12
Taking a Motor Vehicle Without Owner's Permission	F, H, W		
Tampering With a Witness	F, H, W		
Theft 1	F, H, W		
Theft 2	F, H, W		
Theft of Livestock 1	F, H, W	D12	
Theft of Livestock 2	F, H, W	D12	
Threats to Bomb	F, H, W		
Trafficking in Stolen Property 1	F, H, W		
Trafficking in Stolen Property 2	F, H, W		
Unlawful Imprisonment	F, W		
Unlawful Issue of Checks or Drafts	F, H, W		
Unlawful Possession of Firearm or Pistol by Felon	F, H, W		
Unlawful Use of Food Stamps	F, H, W		
Use Proceeds of Criminal Profiteering	F, H, W		
Vehicle Prowl 1	F, H, W		
Vehicular Assault	W		
Vehicular Homicide by Being Under the Influence or By the Operation of Vehicle in Reckless Manner			
Vehicular Homicide by Disregard for the Safety of Others	F, H		
Willful Failure Return From Furlough	F, H, W		
Willful Fail Return From Work Release	F, H, W		
Unranked Offense (Not Violent, Sex or a Drug Offense)	F, H, W		

* Notes: "F", First-Time Offender Waiver; "S", Special Sexual Offender Alternative; "H", Home Detention; "D", Deadly Weapon Finding; "C", Correctional Facility Enhancement; "W", Work Crew; "P", Protected Zone Enhancement; "?", may be eligible. All numbers represent months.

Exceptional Sentences

The standard sentence range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, the court has the discretion to depart from the standard sentence range and impose an exceptional sentence. RCW 9.94A.120(2) states 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 a determinate sentence and cannot exceed the statutory maximum for the crime. In the case of the five crimes with statutory mandatory minimum sentences (Aggravated First Degree Murder, First Degree Murder, First Degree Assault, First Degree Assault of a Child, and First Degree Rape), a departure sentence cannot go below these minimum terms of confinement (RCW 10.95.030 and RCW 9.94A.120(4)).

If the court imposes a sentence outside a standard range, it must set forth the reasons for its decision in written Findings of Fact and Conclusions of Law (RCW 9.94A.120(3)). These procedures must also be followed if the court departs from the consecutive/concurrent policy in RCW 9.94A.400(1) and (2). Any departures can be appealed to the Court of Appeals by the defendant or the prosecutor.

The statute provides a list of illustrative factors the court may consider in deciding whether to impose an exceptional sentence. These mitigating and aggravating circumstances for exceptional sentences are provided as examples to the court and are not intended to be exclusive reasons for departures.

1. Mitigating Circumstances for Exceptional Sentences:

- a. To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.
- b. 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.
- c. 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.
- d. The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.
- e. 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).
- f. 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.
- g. The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

h. 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.

2. Aggravating Circumstances for Exceptional Sentences:

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

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

c. The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

i. The current offense involved multiple victims or multiple incidents per victim;

ii. The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

iii. The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

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

d. The current offense was a major violation of the Uniform Controlled Substances Act, (VUCSA, Chapter 69.50 RCW), 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:

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

ii. The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or

iii. The current offense involved the manufacture of controlled substances for use by other parties; or

iv. The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or

- v. 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
 - vi. 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).
- e. The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.
- f. 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.
- g. The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

Restitution

The court shall order restitution whenever a felony results in injury to person or damage or property loss. If restitution is not ordered, the court is to indicate the extraordinary reasons on the record (RCW 9.94A.120(16)).

Restitution can 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 shall not include reimbursement for damages for mental anguish, pain and suffering, and other intangible losses, but may include reimbursement for counselling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

Restitution is to be determined at the sentencing hearing or within 60 days. As part of the sentence, the court must set the terms and conditions under which the defendant shall make restitution. It is required that the court be specific about the payment schedule for restitution, so that these sentence conditions can be appropriately monitored by the Community Corrections Officer.

The offender's compliance with the restitution requirement can be supervised for ten years after the date of sentence or release from confinement. The restitution portion of the 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.

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

Cases Involving Fraud or Deceptive Practice

If an offender or organization is found guilty of an offense involving fraud or other deceptive practice, the 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 can be accomplished by mail, by advertising through designated media, or by other appropriate means (RCW 9.94A.142(3)).

Fines

On all sentences for felony offenses, the court may impose fines according to the following ranges (RCW 9.94A.386):

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 one thousand dollars in addition to any other fine or penalty imposed. This fine increases to \$2,000 if the violation is a second or subsequent violation of one of the laws specified.

Other Legal Financial Obligations

The Sentencing Reform Act allows the court to order several additional monetary obligations. These include:

- Court costs, including reimbursement for extradition costs (RCW 9.94A.030(10));
- Defense attorney's fees and defense costs (RCW 9.94A.030(10));
- Contributions to a county or interlocal drug fund (RCW 9.94A.030(10));
- Crime victims' compensation assessment (RCW 7.68.035);
- Recoupment 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.120(7)(a)(ii)(B));
and
- Payment for the cost of incarceration, at the rate of fifty dollars per day.

All such monetary obligations, except probationer assessments, shall be monitored by the Department of Corrections for up to ten years after the last date of release from confinement or the date the sentence was entered (RCW 9.94A.120(10)).

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

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

The department 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 department set the monthly assessment amount, the department may modify the monthly assessment without consulting the court.

Civil action for collection of unpaid legal financial obligations can be initiated by the Department of Corrections or any obligee. The law describes the wage assignment process. (See RCW 9.94A.145(3) and 9.94A.2001.)

Contact With Individuals

The court can prohibit the offender from having contact 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 (RCW 9.94A.120(17)).

Consecutive/Concurrent Sentences

RCW 9.94A.400 identifies several rules regarding consecutive/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. In those cases, the sentences are served consecutively. In some cases, the decision to run the sentences consecutively or concurrently is discretionary, but in others a departure from the policy requires an exceptional sentence. The specific rules are as follows:

Sentencing Persons Convicted of Multiple Offenses: Except for convictions of two or more separate serious violent offenses, all sentences for multiple offenses are served concurrently (RCW 9.94A.400(1)(a)). 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.400(1)(b)). 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.400.

A departure from this rule requires an exceptional sentence (RCW 9.94A.120(15)).

Felony Committed While Offender is Under Sentence for Another Felony: Whenever the current offense was committed while the offender was under sentence for a previous felony and the offender is sentenced to another term of imprisonment, the latter term shall not begin until expiration of all prior terms (RCW 9.94A.400(2)).

A departure from this rule requires an exceptional sentence (RCW 9.94A.120(15)).

Felonies Committed While Offender was not Under Sentence for Another Felony: Subject to the above policies, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run concurrent 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.400(3)). This rule applies when offenders have been charged in multiple informations or have multiple convictions from different jurisdictions.

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 shall run consecutively to any sentence imposed, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently (RCW 9.94A.400(4)). This rule applies when offenders with a pre-SRA case have their probation revoked and are also sentenced on a conviction for a crime committed after June 30, 1984.

Serving Total Confinement with Consecutive Sentences: In the case of consecutive sentences, all periods of total confinement shall be served before any periods of partial confinement, community service, community supervision, or any other requirement or condition of a sentence (RCW 9.94A.400(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.

STEP 5 - REVIEW OF SENTENCES

A sentence within the standard range cannot be appealed (RCW 9.94A.210). However, a sentence outside the standard range is subject to appeal by the defendant or the prosecutor. To reverse a sentence which is outside the sentence range, the Court of Appeals must find that:

(a) the reasons supplied by the sentencing judge were not supported by the record, or they do not justify a sentence outside the range; or

(b) 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 within ninety days of knowing about the sentence. The department must certify that all reasonable efforts to resolve the dispute at the Superior Court level have been exhausted.

STEP 6 - 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.200. 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 noncompliance. A summons or arrest warrant can be issued by the court for the offender's appearance.

If the 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 (i) convert a partial confinement term to total confinement; (ii) convert community service to total or partial confinement; or (iii) 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.

Any time served in confinement awaiting the hearing shall be credited against any confinement order. If the court finds the 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 can also be filed if appropriate.

STEP 7 - DISCHARGE AND VACATION OF CONVICTION RECORD

Discharge

When an offender completes his or her sentence requirements, the Department of Corrections shall notify the sentencing court in accordance with RCW 9.94A.220. 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.

Following discharge, the offender's prior record can be used to determine the sentence for later offenses and also used in later criminal prosecution as an element of an offense or for impeachment purposes.

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.230. 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(33));
- 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; and
- The offense was a Class C felony, and less than five years have passed since the date the applicant

was discharged.

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

- Permitted 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 shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction and the offender shall 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 for the limited number of offenses whose classification as a felony requires proof of a prior conviction (e.g., Communication with a Minor for Immoral Purposes).

The sentencing guidelines allow automatic "washout" of prior convictions which 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 11 for further discussion of this policy.)