

**SENATE BILL 5163**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By Senator Talmadge.**

Read first time January 22, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to alternative dispute resolution; amending RCW  
2 7.04.010, 7.06.010, 70.05.145, 7.06.040, 7.06.050, 4.48.040, 4.48.130,  
3 4.84.250, 4.84.280, 3.66.020, 7.75.035, 26.12.010, 26.12.060,  
4 43.08.250, 26.12.220, 13.40.150, and 13.40.190; reenacting and amending  
5 RCW 7.06.020 and 36.18.010; adding a new section to chapter 3.50 RCW;  
6 adding new sections to chapter 7.04 RCW; adding new sections to chapter  
7 7.06 RCW; adding a new section to chapter 4.24 RCW; adding new sections  
8 to chapter 26.09 RCW; adding a new section to chapter 2.56 RCW; adding  
9 a new section to chapter 3.66 RCW; adding a new section to chapter  
10 13.40 RCW; adding a new section to chapter 9.94A RCW; adding a new  
11 chapter to Title 7 RCW; repealing RCW 4.84.100; prescribing penalties;  
12 providing effective dates; and declaring an emergency.

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

14 NEW SECTION. **Sec. 1.** A new section is added to chapter 7.04 RCW  
15 to read as follows:

1 For the purposes of this chapter, the term "public agency" shall  
2 mean any agency, political subdivision, or unit of local government of  
3 this state including, but not limited to, municipal corporations,  
4 quasi-municipal corporations, special purpose districts, and local  
5 service districts; any agency of the state government; any agency of  
6 the United States; any Indian tribe recognized as such by the federal  
7 government; and any political subdivision of another state.

8 **Sec. 2.** RCW 7.04.010 and 1947 c 209 s 1 are each amended to read  
9 as follows:

10 (1) Two or more parties may agree in writing to submit to  
11 arbitration, in conformity with the provisions of this chapter, any  
12 controversy which may be the subject of an action existing between them  
13 at the time of the agreement to submit, or they may include in a  
14 written agreement a provision to settle by arbitration any controversy  
15 thereafter arising between them out of or in relation to such  
16 agreement. Such agreement shall be valid, enforceable and irrevocable  
17 save upon such grounds as exist in law or equity for the revocation of  
18 any agreement.

19 (2) The provisions of this chapter shall apply to any written  
20 arbitration agreement between public agencies.

21 (3) The provisions of this chapter shall not apply to any  
22 arbitration agreement between employers and employees or between  
23 employers and associations of employees, and as to any such agreement  
24 the parties thereto may provide for any method and procedure for the  
25 settlement of existing or future disputes and controversies, and such  
26 procedure shall be valid, enforceable and irrevocable save upon such  
27 grounds as exist in law or equity for the revocation of any agreement.

1       **Sec. 3.** RCW 7.06.010 and 1984 c 258 s 511 are each amended to read  
2 as follows:

3       (1) In counties of the second class and larger, the superior court  
4 of the county, by majority vote of the judges thereof, or the county  
5 legislative authority may authorize mandatory arbitration of civil  
6 actions under this chapter. In all other counties, the superior court  
7 of the county, by a majority vote of the judges thereof, may authorize  
8 mandatory arbitration of civil actions under this chapter.

9       (2) The district courts of each county may, by a majority vote of  
10 the judges thereof, authorize mandatory arbitration of civil actions  
11 under this chapter.

12       NEW SECTION. **Sec. 4.** A new section is added to chapter 3.50 RCW  
13 to read as follows:

14             Any arbitration under RCW 3.50.800 or 3.50.805 shall employ the  
15 standards and procedures provided in general contractual arbitration  
16 law, which are consistent with chapter 7.04 RCW, and applicable court  
17 rules.

18       **Sec. 5.** RCW 70.05.145 and 1983 1st ex.s. c 39 s 5 are each amended  
19 to read as follows:

20       (1) Each city or town which is part of a county health department  
21 established under chapter 70.05 RCW or a combined city-county health  
22 department established under chapter 70.08 RCW, or is purchasing health  
23 services from a health department under a contract authorized by RCW  
24 70.05.150 or 70.08.090, shall pay such sums to support the operations  
25 of such department as are agreed upon by the city or town and the  
26 jurisdiction operating the department, in accordance with guidelines  
27 established by the state board of health which specify those services

1 or types of services that cities, towns, and counties must provide, and  
2 those services which are optional.

3 (2) If no agreement can be reached between the jurisdiction  
4 operating the health department and such city or town following a  
5 reasonable period of good faith negotiations, including mediation where  
6 appropriate, the matter shall be resolved by a board of arbitrators  
7 which shall be convened at the request of either party.

8 (3) The board of arbitrators shall consist of a representative of  
9 the jurisdiction operating the health department, a representative from  
10 the city or town involved, and a third representative appointed by the  
11 other two representatives. If no agreement can be reached regarding the  
12 third representative, the third representative shall be appointed by a  
13 judge of the superior court of the county of the jurisdiction operating  
14 the department. The determination by the board of arbitrators of the  
15 amount to be paid by the city or town shall be binding on all parties.  
16 The cost, if any, of the representative appointed by each party shall  
17 be borne by that party. The cost, if any, of the third representative  
18 shall be shared equally by both parties.

19 (4) The arbitration shall employ the standards and procedures  
20 provided under general contractual law and applicable court rules.

21 **Sec. 6.** RCW 7.06.020 and 1987 c 212 s 101 and 1987 c 202 s 127 are  
22 each reenacted and amended to read as follows:

23 (1) All civil actions, except for appeals from municipal or  
24 district courts, which are at issue (~~((in the superior court))~~) in  
25 counties which have authorized arbitration, where the sole relief  
26 sought is a money judgment, and where no party asserts a claim in  
27 excess of (~~((fifteen))~~) twenty-five thousand dollars, or if approved by  
28 the superior court of a county by two-thirds or greater vote of the  
29 judges thereof, up to (~~((thirty-five))~~) thirty-eight thousand eight

1 hundred fifty dollars, exclusive of interest and costs, are subject to  
2 mandatory arbitration.

3 (2) (~~If approved by majority vote of the superior court judges of~~  
4 ~~a county which has authorized arbitration,~~) All civil actions (~~which~~  
5 ~~are~~) at issue in the superior court in which the sole relief sought is  
6 the establishment, termination, or modification of maintenance or child  
7 support payments are subject to mandatory arbitration. The  
8 arbitrability of any (~~such~~) maintenance or child support action shall  
9 not be affected by the amount or number of payments involved.

10 **Sec. 7.** RCW 7.06.040 and 1987 c 212 s 102 are each amended to read  
11 as follows:

12 The appointment of arbitrators shall be prescribed by rules adopted  
13 by the supreme court. An arbitrator must be a member of the state bar  
14 association who has been admitted to the bar for a minimum of (~~five~~)  
15 seven years and who has arbitration, mediation, or litigation  
16 experience, or who is a retired judge who has a minimum of seven years  
17 of judicial experience. The parties may stipulate to a nonlawyer  
18 arbitrator. The supreme court may prescribe by rule additional  
19 qualifications of arbitrators.

20 Arbitrators shall be compensated in the same amount and manner as  
21 judges pro tempore of the superior court.

22 **Sec. 8.** RCW 7.06.050 and 1982 c 188 s 2 are each amended to read  
23 as follows:

24 Following a hearing as prescribed by court rule, the arbitrator  
25 shall file his or her decision and award with the clerk of the  
26 (~~superior~~) court, together with proof of service thereof on the  
27 parties. Within twenty days after such filing, any aggrieved party may  
28 file with the clerk a written notice of appeal and request for a trial

1 de novo (~~(in the superior court)~~) on all issues of law and fact. Such  
2 trial de novo shall thereupon be held, including a right to jury, if  
3 demanded and otherwise provided by law.

4 If no appeal has been filed at the expiration of twenty days  
5 following filing of the arbitrator's decision and award, a judgment  
6 shall be entered and may be presented to the court by any party, on  
7 notice, which judgment when entered shall have the same force and  
8 effect as judgments in civil actions.

9 **Sec. 9.** RCW 4.48.040 and 1984 c 258 s 515 are each amended to read  
10 as follows:

11 A person appointed by the court as a referee or who serves as a  
12 referee with the consent of the parties shall be:

- 13 (1) Qualified as a juror as provided by statute(~~(-)~~);  
14 (2) Competent as juror between the parties(~~(-)~~); and  
15 (3) A (~~duly admitted and practicing~~) licensed attorney, or a  
16 former district, superior, or appellate court judge.

17 **Sec. 10.** RCW 4.48.130 and 1984 c 258 s 523 are each amended to  
18 read as follows:

19 (1) If an action is to be tried by a referee appointed under RCW  
20 4.48.010, at least five days before the date set for the trial the  
21 referee shall advise the clerk of the court of the time and place set  
22 for the trial. The clerk shall post in a conspicuous place in the  
23 courthouse a notice that includes the names of the parties to the  
24 action, the time and place set for the trial, the name of the referee,  
25 and a statement that the proceeding is being held before a referee  
26 agreed to by the parties under chapter 4.48 RCW.

27 (2) A person interested in attending a trial before a referee  
28 appointed under RCW (~~(4.84.010 [4.48.010])~~) 4.48.010 is entitled to do

1 so as in a trial of a civil action in superior court. Upon request by  
2 any person, the referee shall give the person notice of the time and  
3 place set for the trial.

4 **Sec. 11.** RCW 4.84.250 and 1984 c 258 s 88 are each amended to read  
5 as follows:

6 Notwithstanding any other provisions of chapter 4.84 RCW and RCW  
7 12.20.060, in any action for damages where the amount pleaded by the  
8 prevailing party as hereinafter defined, exclusive of costs, is  
9 ~~((seven))~~ twenty-five thousand ~~((five hundred))~~ dollars or less, there  
10 shall be taxed and allowed to the prevailing party as a part of the  
11 costs of the action a reasonable amount to be fixed by the court as  
12 attorneys' fees. ~~((After July 1, 1985, the maximum amount of the  
13 pleading under this section shall be ten thousand dollars.))~~

14 **Sec. 12.** RCW 4.84.280 and 1983 c 282 s 1 are each amended to read  
15 as follows:

16 Offers of settlement shall be served on the adverse party in the  
17 manner prescribed by applicable court rules at least ten days prior to  
18 trial and for the purposes of determining the prevailing party under  
19 RCW 4.84.260 or 4.84.270 such offer shall remain open for a period of  
20 ten days unless otherwise agreed by the parties. Offers of settlement  
21 shall not be served until thirty days after the completion of the  
22 service and filing of the summons and complaint. Offers of settlement  
23 shall not be filed or communicated to the trier of the fact until after  
24 judgment, at which time a copy of said offer of settlement shall be  
25 filed for the purposes of determining attorneys' fees as set forth in  
26 RCW 4.84.250.

1       **Sec. 13.** RCW 3.66.020 and 1984 c 258 s 41 are each amended to read  
2 as follows:

3       The district court shall have jurisdiction and cognizance of the  
4 following civil actions and proceedings if the value of the sum claimed  
5 or at issue does not exceed twenty-five thousand dollars, exclusive of  
6 interest, costs, and attorneys' fees:

7       (1) ~~((Of an))~~ Actions arising on contract for the recovery of money  
8 only ~~((in which the sum claimed does not exceed seven thousand five~~  
9 ~~hundred dollars))~~;

10       (2) ~~((Of an))~~ Actions for damages for injuries to the person, or  
11 for taking or detaining personal property, or for injuring personal  
12 property, or for an injury to real property when no issue raised by the  
13 answer involves the plaintiff's title to or possession of the same ~~((~~  
14 ~~when the amount of damages claimed does not exceed seven thousand five~~  
15 ~~hundred dollars; also of))~~;

16       (3) Actions to recover the possession of personal property ~~((when~~  
17 ~~the value of such property as alleged in the complaint, does not exceed~~  
18 ~~seven thousand five hundred dollars))~~;

19       ~~((3) Of an))~~ (4) Actions for a penalty ~~((not exceeding seven~~  
20 ~~thousand five hundred dollars))~~;

21       ~~((4) Of an))~~ (5) Actions upon a bond conditioned for the payment  
22 of money, ~~((when the amount claimed does not exceed seven thousand five~~  
23 ~~hundred dollars,~~) though the penalty of the bond exceeds ~~((that sum))~~  
24 the court's jurisdictional limit, the judgment to be given for the sum  
25 actually due, not exceeding the amount claimed in the complaint;

26       ~~((5) Of an))~~ (6) Actions on an undertaking or surety bond taken by  
27 the court ~~((~~, when the amount claimed does not exceed seven thousand  
28 ~~five hundred dollars))~~;

1       ~~((6) Of an)~~ (7) Actions for damages for fraud in the sale,  
2 purchase, or exchange of personal property(~~(, when the damages claimed~~  
3 ~~do not exceed seven thousand five hundred dollars)~~);

4       ~~((7))~~ (8) Proceedings to take and enter judgment on confession of  
5 a defendant(~~(, when the amount of the judgment confessed does not~~  
6 ~~exceed seven thousand five hundred dollars)~~);

7       ~~((8))~~ (9) Proceedings to issue writs of attachment, garnishment,  
8 and replevin upon goods, chattels, moneys, and effects(~~(, when the~~  
9 ~~amount does not exceed seven thousand five hundred dollars)~~); and

10       ~~((9) Of)~~ (10) All other actions and proceedings of which  
11 jurisdiction is specially conferred by statute(~~(, when the amount~~  
12 ~~involved does not exceed seven thousand five hundred dollars)~~) and the  
13 title to, or right of possession of, or a lien upon real property is  
14 not involved.

15       ~~((The seven thousand five hundred dollar amounts provided in~~  
16 ~~subsections (1) through (9) of this section shall remain in effect~~  
17 ~~until June 30, 1985; effective July 1, 1985, such amount shall be~~  
18 ~~increased to ten thousand dollars.~~

19       ~~The amounts of money referred to in this section shall be exclusive~~  
20 ~~of interest, costs and attorney's fees.)~~

21       **Sec. 14.** RCW 7.75.035 and 1990 c 172 s 1 are each amended to read  
22 as follows:

23       (1) A county legislative authority may impose a surcharge of up to  
24 ten dollars on each civil filing fee in district court and a surcharge  
25 of up to fifteen dollars on each filing fee for small claims actions  
26 for the purpose of funding dispute resolution centers established under  
27 this chapter.

28       (2) Any surcharge imposed shall be collected by the clerk of the  
29 court and remitted to the county treasurer (~~for deposit in a~~

1 separate)). The county treasurer shall remit the surcharge to the  
2 state treasurer for deposit in the public safety and education account.  
3 Each county remitting funds under this section shall receive an  
4 appropriation for the entire amount remitted to be used solely for  
5 dispute resolution centers established under this chapter. Money  
6 received under this section is not subject to RCW 3.62.020(2) or  
7 3.62.090. The accounts created pursuant to this subsection shall be  
8 audited by the state auditor in accordance with RCW 43.09.260.

9       **Sec. 15.** RCW 26.12.010 and 1983 c 219 s 1 are each amended to read  
10 as follows:

11       Each superior court shall exercise the jurisdiction conferred by  
12 this chapter and while sitting in the exercise of such jurisdiction  
13 shall be known and referred to as the "family court." A family law  
14 proceeding under this chapter is any proceeding under this title or any  
15 proceeding in which the family court is requested to adjudicate or  
16 enforce the rights of the parties or their children regarding the  
17 determination or modification of ~~((child custody, visitation, or))~~ a  
18 temporary or permanent parenting plan, maintenance or child support, or  
19 the distribution of property or obligations.

20       **Sec. 16.** RCW 26.12.060 and 1988 c 232 s 4 are each amended to read  
21 as follows:

22 The family court commissioners shall: (1) Receive all applications and  
23 complaints filed in the family court for the purpose of disposing of  
24 them pursuant to this chapter; (2) investigate the facts upon which to  
25 base warrants, subpoenas, orders or directions in actions or  
26 proceedings filed in or transferred to the family court pursuant to  
27 this chapter; (3) for the purpose of this chapter, exercise all the  
28 powers and perform all the duties of regular court commissioners; (4)

1 hold conciliation conferences with parties to and hearings in  
2 proceedings under this chapter and make written reports of all  
3 proceedings had which shall become a part of the record of the family  
4 court; (5) provide such supervision in connection with the exercise of  
5 its jurisdiction as the judge of the family court may order; (6) cause  
6 the orders and findings of the family court to be entered in the same  
7 manner as orders and findings are entered in cases in the superior  
8 court; (7) cause such other reports to be made and records kept as will  
9 indicate the value and extent of such conciliation service; (8) order  
10 the parties to participate in mediation proceedings as provided in RCW  
11 26.09.015 or refer the parties to a dispute resolution center  
12 established under chapter 7.75 RCW, if the judge finds that such  
13 proceedings would be beneficial to the parties, subject to the  
14 limitations of RCW 26.09.191; and ((+8)) (9) conduct hearings under  
15 chapter 13.34 RCW as provided in RCW 13.04.021.

16 **Sec. 17.** RCW 43.08.250 and 1985 c 57 s 27 are each amended to read  
17 as follows:

18 The money received by the state treasurer from fees, fines,  
19 forfeitures, penalties, reimbursements or assessments by any court  
20 organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be  
21 deposited in the public safety and education account which is hereby  
22 created in the state treasury. The legislature shall appropriate the  
23 funds in the account to promote traffic safety education, highway  
24 safety, criminal justice training, crime victims' compensation,  
25 judicial education, the judicial information system, winter recreation  
26 parking, dispute resolution centers, and state game programs. All  
27 earnings of investments of balances in the public safety and education  
28 account shall be credited to the general fund.

1       **Sec. 18.** RCW 26.12.220 and 1980 c 124 s 1 are each amended to read  
2 as follows:

3       (1) (~~The legislative authority of any county may impose a fee in~~  
4 ~~excess of that prescribed in RCW 36.18.010 for the issuance of a~~  
5 ~~marriage license: PROVIDED, That such fee shall not exceed eight~~  
6 ~~dollars.~~

7       (2)) In addition to any other funds used therefor, the ((governing  
8 body of any)) county legislative authority shall use the proceeds from  
9 the fee ((increase)) authorized by ((this section)) RCW 36.18.010(5)(d)  
10 to pay the expenses of family court ((under chapter 26.12 RCW)). If  
11 there is no family court in the county, the legislative authority may  
12 provide such services through other county agencies or may contract  
13 with a public or private agency or person to provide such services.

14       ((3)) (2) The county legislative authority may establish rules of  
15 eligibility for mediation and conciliation services funded under this  
16 section so long as its rules do not conflict with rules of the court  
17 adopted under chapter 26.12 RCW or any other statute.

18       ((4)) (3) Fees collected under ((this section)) RCW  
19 36.18.010(5)(d) shall be collected and deposited in the same manner as  
20 other county funds are collected and deposited, and shall be maintained  
21 in a separate account to be used as provided in this section.

22       **Sec. 19.** RCW 36.18.010 and 1989 c 304 s 1 and 1989 c 204 s 6 are  
23 each reenacted and amended to read as follows:

24       County auditors shall collect the following fees for their official  
25 services:

26       (1) For recording instruments, for the first page, legal size  
27 (eight and one-half by thirteen inches or less), five dollars; for each  
28 additional legal size page, one dollar;

1       (2) For preparing and certifying copies, for the first legal size  
2 page, three dollars; for each additional legal size page, one dollar;

3       (3) For preparing noncertified copies, for each legal size page,  
4 one dollar;

5       (4) For administering an oath or taking an affidavit, with or  
6 without seal, two dollars;

7       (5) For issuing a marriage license((~~7~~)):

8       (a) Eight dollars((~~7~~-(this fee includes))) for taking necessary  
9 affidavits, filing returns, indexing, and transmittal of a record of  
10 the marriage to the state registrar of vital statistics(~~(~~7~~) plus an~~  
11 ~~additional five-dollar fee~~));

12       (b) Five dollars for use and support of the prevention of child  
13 abuse and neglect activities, to be transmitted monthly to the state  
14 treasurer and deposited in the state general fund(~~(~~7~~, which five-~~  
15 ~~dollar)~~). This fee shall expire June 30, 1995(~~(~~7~~, plus an additional~~  
16 ~~ten-dollar fee~~));

17       (c) Ten dollars to be transmitted monthly to the state treasurer  
18 and deposited in the state general fund. The legislature intends to  
19 appropriate an amount at least equal to the revenue generated by this  
20 fee for the purposes of the displaced homemaker act, chapter 28B.04  
21 RCW; and

22       (d) Eight dollars for family court or family court services as  
23 provided in RCW 26.12.220;

24       (6) For searching records per hour, eight dollars;

25       (7) For recording plats, fifty cents for each lot except cemetery  
26 plats for which the charge shall be twenty-five cents per lot; also one  
27 dollar for each acknowledgment, dedication, and description: PROVIDED,  
28 That there shall be a minimum fee of twenty-five dollars per plat;

1       (8) For recording of miscellaneous records, not listed above, for  
2 first legal size page, five dollars; for each additional legal size  
3 page, one dollar;

4       (9) For modernization and improvement of the recording and indexing  
5 system, a surcharge as provided in RCW 36.22.170.

6       NEW SECTION.   **Sec. 20.** A new section is added to chapter 7.04 RCW  
7 to read as follows:

8       Any arbitrator appointed under this chapter is immune from suit in  
9 any civil action based on any proceedings or other official acts  
10 performed in their capacity as arbitrators, except for acts of willful  
11 or wanton misconduct.

12       NEW SECTION.   **Sec. 21.** A new section is added to chapter 7.04 RCW  
13 to read as follows:

14       All memoranda, work notes or products, or case files of an  
15 arbitrator are confidential and privileged and are not subject to  
16 disclosure in any civil judicial or administrative proceeding, except  
17 when the willful or wanton misconduct of the arbitrator is at issue.

18       NEW SECTION.   **Sec. 22.** A new section is added to chapter 7.06 RCW  
19 to read as follows:

20       Any arbitrator appointed under this chapter is immune from suit in  
21 any civil action based on any proceedings or other official acts  
22 performed in their capacity as arbitrators, except for acts of willful  
23 or wanton misconduct.

24       NEW SECTION.   **Sec. 23.** A new section is added to chapter 7.06 RCW  
25 to read as follows:

1 All memoranda, work notes or products, or case files of an  
2 arbitrator are confidential and privileged and are not subject to  
3 disclosure in any civil judicial or administrative proceeding, except  
4 when the willful or wanton misconduct of the arbitrator is at issue.

5 NEW SECTION. **Sec. 24.** A new section is added to chapter 4.24 RCW  
6 to read as follows:

7 Any mediator appointed by the superior or district court is immune  
8 from suit in any civil action based on any proceedings or other  
9 official acts performed in their capacity as mediators, except for acts  
10 of willful or wanton misconduct.

11 NEW SECTION. **Sec. 25.** A new section is added to chapter 4.24 RCW  
12 to read as follows:

13 All memoranda, work notes or products, or case files of a mediator  
14 and statements made to a mediator, are confidential and privileged and  
15 are not subject to disclosure in any civil judicial or administrative  
16 proceeding, except when the willful or wanton misconduct of the  
17 mediator is at issue.

18 NEW SECTION. **Sec. 26.** A new section is added to chapter 26.09 RCW  
19 to read as follows:

20 Any mediator appointed by the superior or district court is immune  
21 from suit in any civil action based on any proceedings or other  
22 official acts performed in their capacity as mediators, except for acts  
23 of willful or wanton misconduct.

24 NEW SECTION. **Sec. 27.** A new section is added to chapter 26.09 RCW  
25 to read as follows:

1 All memoranda, work notes or products, or case files of a mediator  
2 and statements made to a mediator, are confidential and privileged and  
3 are not subject to disclosure in any civil judicial or administrative  
4 proceeding, except when the willful or wanton misconduct of the  
5 mediator is at issue.

6 NEW SECTION. **Sec. 28.** A new section is added to chapter 2.56 RCW  
7 to read as follows:

8 The department of community development shall adopt rules of  
9 professional conduct for nonlawyer arbitrators, mediators, and  
10 conciliators. Prior to adopting such rules the department shall  
11 consult with an advisory committee. The advisory committee membership  
12 shall include but is not limited to members of the alternative dispute  
13 resolution section of the Washington state bar association, and  
14 recognized professional nonlawyer arbitrators, mediators, and  
15 conciliators.

16 NEW SECTION. **Sec. 29.** A new section is added to chapter 3.66 RCW  
17 to read as follows:

18 The state bar association, superior court judge's association, and  
19 the district court judge's association shall review the civil  
20 jurisdictional limits of the district courts and make their  
21 recommendations, if any, to the legislature each biennium beginning  
22 December 15, 1992, regarding the increase of the jurisdictional limits.

23 NEW SECTION. **Sec. 30.** Unless the context clearly requires  
24 otherwise, the definitions in this section apply throughout this  
25 chapter.

26 (1) "Mediation" is the deliberate and knowing use of a neutral  
27 third person by disputing parties to help them negotiate a resolution

1 of their dispute. For the purposes of this chapter, a mediation  
2 commences at the time of initial contact with a mediator or mediation  
3 program and continues until such time as a resolution is agreed to by  
4 the parties or the mediation process is terminated.

5 (2) A "mediation communication" is any communication or behavior  
6 in connection with a mediation by or between any party, mediator,  
7 mediation program, or any other person present during a mediation  
8 session other than a party or mediator.

9 (3) A "mediation document" is any written material, including  
10 copies thereof, prepared for the purpose of or in the course of, or  
11 pursuant to, a mediation, including but not limited to, memoranda,  
12 notes, files, records, and work products of a mediator, mediation  
13 program, or party, except that it shall not include: (a) Agreements by  
14 the parties which specify that they may be disclosed or enforced, or  
15 (b) summary records of a mediation program necessary to evaluate or  
16 monitor the performance of the program.

17 (4) A "mediation program" is a plan or an organization through  
18 which mediators or mediation may be provided.

19 (5) A "mediator" is a person who performs mediation.

20 (6) A "party" is a mediation participant other than the mediator  
21 and may be a person, public officer, corporation, association, or other  
22 organization or entity, either public or private.

23 NEW SECTION. **Sec. 31.** A mediation proceeding to resolve any  
24 controversy may be held, under the terms and conditions of this  
25 chapter, pursuant to:

26 (1) A written stipulation of all parties to mediate a civil action  
27 at any time prior to trial;

28 (2) A written agreement by two or more parties to mediate any  
29 controversy existing between them at the time of the agreement;

1 (3) A written agreement by two or more parties to participate in  
2 mediation of any controversy thereafter arising between them, out of or  
3 in relation to such agreement; or

4 (4) A referral of the parties to mediation by any judge of the  
5 superior or district court. If a party to a case files with the court  
6 a written objection to the mediation, the action shall be removed from  
7 mediation and proceed in a normal fashion.

8 NEW SECTION. Sec. 32. (1) Parties electing to mediate under  
9 this chapter shall select a mediator as provided in their written  
10 agreement or as mutually agreed. The court shall appoint a mediator,  
11 upon application of any party, in any of the following cases:

12 (a) When the agreement does not prescribe a method for the  
13 appointment of a mediator and the parties cannot mutually agree to the  
14 mediator or mediation program;

15 (b) When the agreement does prescribe a method for the appointment  
16 of a mediator, but the mediator has not been appointed and the time  
17 within which the appointment was to have occurred has expired; or

18 (c) When the court refers the parties to mediation.

19 (2) During the period of any mediation under this chapter in which  
20 a civil action is pending, all trial and discovery time lines and  
21 requirements shall be tolled and stayed as to the participants. The  
22 tolling shall commence on the date of the written stipulation to  
23 mediate or the date of the court referral to mediation and shall end on  
24 the date the court is notified in writing of the termination of the  
25 mediation by the mediator or a party.

26 NEW SECTION. Sec. 33. (1) The mediator shall set the times  
27 and place for the mediation and notify the parties thereof, and may  
28 adjourn or postpone the mediation in his or her discretion.

1 (2) The mediator, with the consent of the parties, may adopt  
2 appropriate rules to facilitate the resolution of the dispute. The  
3 mediator may propose settlement terms to the parties either orally or  
4 in writing.

5 (3) Attorneys and other persons who are not parties to a mediation  
6 may be included in mediation discussions at the mediator's discretion,  
7 with the consent of the parties.

8 (4) All mediators shall encourage disputing parties to obtain  
9 individual legal advice and review of any mediated agreement prior to  
10 signing the agreement.

11 (5) Any agreement reached in mediation shall be in writing and  
12 signed by all parties to the agreement. The agreement shall be valid,  
13 enforceable, and irrevocable, except upon such grounds as exist in law  
14 concerning the validity or revocation of any agreement.

15 (6) The mediator shall provide written notification to the court  
16 within fourteen days of the completion or termination of the mediation.  
17 The mediator shall only report the fact of the agreement or the  
18 termination of the mediation.

19 (7) The court shall retain jurisdiction over all pending civil  
20 actions which are in mediation and shall issue orders as it deems  
21 appropriate.

22 NEW SECTION. **Sec. 34.** (1) All mediation documents and mediation  
23 communications are privileged and confidential and shall not be  
24 disclosed, except as otherwise provided in subsection (2) of this  
25 section. The mediation documents and mediation communications are not  
26 subject to disclosure through discovery or any other process, and are  
27 not admissible into evidence in any civil judicial or administrative  
28 proceeding.

1 (2) There is no privilege and no restriction on disclosure of  
2 mediation documents or mediation communications when:

3 (a) All parties consent in writing to disclosure;

4 (b) The documents or communications are used in a subsequent action  
5 between a party and a mediator or mediation program for damages arising  
6 out of the mediation; or

7 (c) Disclosure is otherwise provided for by law.

8 (3) No part of the proceedings of a mediation shall be considered  
9 a public record.

10 NEW SECTION. **Sec. 35.** Any mediator or mediation program appointed  
11 by the court or agreed on by the parties is immune from suit in any  
12 civil action based upon the proceedings or other official acts  
13 performed in their capacity as mediators, except for acts of willful or  
14 wanton misconduct.

15 NEW SECTION. **Sec. 36.** (1) Each party to a mediation under  
16 this chapter shall be equally responsible for the expense of the  
17 mediator, unless otherwise apportioned by the court or specified in the  
18 parties' agreement.

19 (2) Parties in mediation shall be free, at their own expense, to  
20 retain jointly or individually, experts, attorneys, fact-finders,  
21 arbitrators, and other persons to assist the mediation, and all such  
22 dispute resolution efforts shall be subject to the provisions of this  
23 chapter.

24 NEW SECTION. **Sec. 37.** All mediators and mediation programs  
25 providing services under this chapter shall abide by the rules of  
26 professional conduct adopted under section 28 of this act.

1        NEW SECTION.    **Sec. 38.**    A new section is added to chapter 13.40 RCW  
2 to read as follows:

3        (1) When a juvenile offender pleads guilty or is found guilty, the  
4 court shall provide an opportunity for the victim and the offender to  
5 participate in a victim-offender reconciliation program, if such  
6 program is available in the county. If such program is not available,  
7 the referral shall be to a dispute resolution center. Neither the  
8 victim nor the offender shall be required to participate in the  
9 program.

10       (2) The victim-offender reconciliation program shall provide an  
11 opportunity for the victim to:

12       (a) Meet with the offender in a safe, controlled environment;

13       (b) Give the offender, either orally or in writing, a summary of  
14 the financial, emotional, and physical effects of the offense on the  
15 victim and the victim's family; and

16       (c) Negotiate a restitution agreement for the damages incurred by  
17 the victim as a result of the offense. The agreement may be submitted  
18 to the court for its consideration at the time of disposition.

19       NEW SECTION.    **Sec. 39.**    A new section is added to chapter 9.94A RCW  
20 to read as follows:

21       (1) When an offender pleads guilty or is found guilty of a  
22 nonviolent offense, the court shall provide an opportunity for the  
23 victim and the offender to participate in a victim-offender  
24 reconciliation program, if such program is available in the county. If  
25 such program is not available, the referral shall be to a dispute  
26 resolution center. Neither the victim nor the offender shall be  
27 required to participate in the program.

28       (2) The victim-offender reconciliation program shall provide an  
29 opportunity for the victim to:

- 1 (a) Meet with the offender in a safe, controlled environment;
- 2 (b) Give the offender, either orally or in writing, a summary of
- 3 the financial, emotional, and physical effects of the offense on the
- 4 victim and the victim's family; and
- 5 (c) Negotiate a restitution agreement for the damages incurred by
- 6 the victim as a result of the offense. The agreement may be submitted
- 7 to the court for its consideration at the time of sentencing.

8 **Sec. 40.** RCW 13.40.150 and 1990 c 3 s 605 are each amended to read

9 as follows:

10 (1) In disposition hearings all relevant and material evidence,

11 including oral and written reports, may be received by the court and

12 may be relied upon to the extent of its probative value, even though

13 such evidence may not be admissible in a hearing on the information.

14 The youth or the youth's counsel and the prosecuting attorney shall be

15 afforded an opportunity to examine and controvert written reports so

16 received and to cross-examine individuals making reports when such

17 individuals are reasonably available, but sources of confidential

18 information need not be disclosed. The prosecutor and counsel for the

19 juvenile may submit recommendations for disposition.

20 (2) For purposes of disposition:

21 (a) Violations which are current offenses count as misdemeanors;

22 (b) Violations may not count as part of the offender's criminal

23 history;

24 (c) In no event may a disposition for a violation include

25 confinement.

26 (3) Before entering a dispositional order as to a respondent found

27 to have committed an offense, the court shall hold a disposition

28 hearing, at which the court shall:

- 1 (a) Consider the facts supporting the allegations of criminal  
2 conduct by the respondent;
- 3 (b) Consider information and arguments offered by parties and their  
4 counsel;
- 5 (c) Consider any predisposition reports;
- 6 (d) Afford the respondent and the respondent's parent, guardian, or  
7 custodian an opportunity to speak in the respondent's behalf;
- 8 (e) Allow the victim or a representative of the victim and an  
9 investigative law enforcement officer to speak;
- 10 (f) Consider any restitution agreement reached pursuant to section  
11 38 of this act;
- 12 (g) Determine the amount of restitution owing to the victim, if  
13 any;
- 14 (~~(g)~~) (h) Determine whether the respondent is a serious offender,  
15 a middle offender, or a minor or first offender;
- 16 (~~(h)~~) (i) Consider whether or not any of the following mitigating  
17 factors exist:
- 18 (i) The respondent's conduct neither caused nor threatened serious  
19 bodily injury or the respondent did not contemplate that his or her  
20 conduct would cause or threaten serious bodily injury;
- 21 (ii) The respondent acted under strong and immediate provocation;
- 22 (iii) The respondent was suffering from a mental or physical  
23 condition that significantly reduced his or her culpability for the  
24 offense though failing to establish a defense;
- 25 (iv) Prior to his or her detection, the respondent compensated or  
26 made a good faith attempt to compensate the victim for the injury or  
27 loss sustained; and
- 28 (v) There has been at least one year between the respondent's  
29 current offense and any prior criminal offense;

1       (~~(i)~~) (j) Consider whether or not any of the following  
2 aggravating factors exist:

3       (i) In the commission of the offense, or in flight therefrom, the  
4 respondent inflicted or attempted to inflict serious bodily injury to  
5 another;

6       (ii) The offense was committed in an especially heinous, cruel, or  
7 depraved manner;

8       (iii) The victim or victims were particularly vulnerable;

9       (iv) The respondent has a recent criminal history or has failed to  
10 comply with conditions of a recent dispositional order or diversion  
11 agreement;

12       (v) The current offense included a finding of sexual motivation  
13 pursuant to RCW 9.94A.127;

14       (vi) The respondent was the leader of a criminal enterprise  
15 involving several persons; and

16       (vii) There are other complaints which have resulted in diversion  
17 or a finding or plea of guilty but which are not included as criminal  
18 history.

19       (4) The following factors may not be considered in determining the  
20 punishment to be imposed:

21       (a) The sex of the respondent;

22       (b) The race or color of the respondent or the respondent's family;

23       (c) The creed or religion of the respondent or the respondent's  
24 family;

25       (d) The economic or social class of the respondent or the  
26 respondent's family; and

27       (e) Factors indicating that the respondent may be or is a dependent  
28 child within the meaning of this chapter.

1 (5) A court may not commit a juvenile to a state institution solely  
2 because of the lack of facilities, including treatment facilities,  
3 existing in the community.

4 **Sec. 41.** RCW 13.40.190 and 1987 c 281 s 5 are each amended to read  
5 as follows:

6 (1) In its dispositional order, the court shall require the  
7 respondent to make restitution to any persons who have suffered loss or  
8 damage as a result of the offense committed by the respondent. In  
9 addition, restitution may be ordered for loss or damage if the offender  
10 pleads guilty to a lesser offense or fewer offenses and agrees with the  
11 prosecutor's recommendation that the offender be required to pay  
12 restitution to a victim of an offense or offenses which, pursuant to a  
13 plea agreement, are not prosecuted. The payment of restitution shall  
14 be in addition to any punishment which is imposed pursuant to the other  
15 provisions of this chapter. The court shall consider any restitution  
16 agreement reached pursuant to section 38 of this act. The court may  
17 determine the amount, terms, and conditions of the restitution.  
18 Restitution may include the costs of counseling reasonably related to  
19 the offense. If the respondent participated in the crime with another  
20 person or other persons, all such participants shall be jointly and  
21 severally responsible for the payment of restitution. The court may  
22 not require the respondent to pay full or partial restitution if the  
23 respondent reasonably satisfies the court that he or she does not have  
24 the means to make full or partial restitution and could not reasonably  
25 acquire the means to pay such restitution. In cases where an offender  
26 has been committed to the department for a period of confinement  
27 exceeding fifteen weeks, restitution may be waived.

28 (2) If an order includes restitution as one of the monetary  
29 assessments, the county clerk shall make disbursements to victims named

1 in the order. The restitution to victims named in the order shall be  
2 paid prior to any payment for other penalties or monetary assessments.

3 (3) A respondent under obligation to pay restitution may petition  
4 the court for modification of the restitution order.

5 NEW SECTION. **Sec. 42.** RCW 4.84.100 and Code of 1881 s 515,  
6 1877 p 109 s 519, & 1854 p 203 s 377 are each repealed.

7 NEW SECTION. **Sec. 43.** Sections 30 through 37 of this act  
8 shall constitute a new chapter in Title 7 RCW.

9 NEW SECTION. **Sec. 44.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 45.** (1) Sections 30 through 37 of this act  
14 shall take effect July 1, 1992.

15 (2) The reminder of this act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of the  
17 state government and its existing public institutions, and shall take  
18 effect July 1, 1991.