
SENATE BILL 5428

State of Washington 55th Legislature 1997 Regular Session

By Senators Zarelli, Roach, Benton, Stevens and Oke

Read first time 01/27/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to juvenile dispositions; amending RCW 13.40.0357,
2 13.40.038, 13.40.040, 13.40.070, 13.40.077, 13.40.080, 13.40.150,
3 13.40.160, 13.40.190, 13.40.193, 13.40.210, 13.40.230, 13.40.320,
4 13.50.050, and 9.94A.040; reenacting and amending RCW 13.40.020;
5 repealing RCW 13.40.0354 and 13.40.125; and prescribing penalties.

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

7 **Sec. 1.** RCW 13.40.020 and 1995 c 395 s 2 and 1995 c 134 s 1 are
8 each reenacted and amended to read as follows:

9 For the purposes of this chapter:

10 (1) "Serious offender" means a person (~~(fifteen years of age or~~
11 ~~older)~~) who has committed an offense which if committed by an adult
12 would be:

13 (a) A class A felony, or an attempt to commit a class A felony;

14 (b) Manslaughter in the first degree; (~~or~~)

15 (c) Assault in the second degree, extortion in the first degree,
16 child molestation in the second degree, kidnapping in the second
17 degree, robbery in the second degree, residential burglary, or burglary
18 in the second degree, where such offenses include the infliction of
19 bodily harm upon another or where during the commission of or immediate

1 withdrawal from such an offense the perpetrator is armed with a deadly
2 weapon;

3 (d) An attempt to commit any of the offenses listed in (c) of this
4 subsection, except residential burglary or burglary in the second
5 degree;

6 (e) The person's second or subsequent felony offense;

7 (f) The person's fifth or subsequent offense. If a respondent has
8 been convicted of two or more charges arising out of the same course of
9 conduct, it shall be counted as one offense for the purpose of this
10 subsection (1)(f);

11 (2) "Community service" means compulsory service, without
12 compensation, performed for the benefit of the community by the
13 offender as punishment for committing an offense. Community service
14 may be performed through public or private organizations or through
15 work crews;

16 (3) "Community supervision" means an order of disposition by the
17 court of an adjudicated youth not committed to the department (~~or an~~
18 ~~order granting a deferred adjudication pursuant to RCW 13.40.125~~). A
19 community supervision order for a single offense may be for a period of
20 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
21 (~~one year~~) eighteen months for other offenses. As a mandatory
22 condition of any term of community supervision, the court shall order
23 the juvenile to refrain from committing new offenses. As a mandatory
24 condition of community supervision, the court shall order the juvenile
25 to comply with the mandatory school attendance provisions of chapter
26 28A.225 RCW and to inform the school of the existence of this
27 requirement. Community supervision is an individualized program
28 comprised of one or more of the following:

29 (a) Community-based sanctions;

30 (b) Community-based rehabilitation;

31 (c) Monitoring and reporting requirements;

32 (d) Posting of a probation bond imposed pursuant to RCW 13.40.0357;

33 (4) Community-based sanctions may include (~~one or more of the~~
34 ~~following~~;

35 ~~(a) A fine, not to exceed one hundred dollars;~~

36 ~~(b))~~ community service not to exceed ((one)) two hundred ((fifty))
37 sixty hours of service;

38 (5) "Community-based rehabilitation" means one or more of the
39 following: Attendance of information classes; counseling, outpatient

1 substance abuse treatment programs, outpatient mental health programs,
2 anger management classes, education or outpatient treatment programs to
3 prevent animal cruelty, or other services; or attendance at school or
4 other educational programs appropriate for the juvenile as determined
5 by the school district. Placement in community-based rehabilitation
6 programs is subject to available funds;

7 (6) "Monitoring and reporting requirements" means one or more of
8 the following: Curfews; requirements to remain at home, school, work,
9 or court-ordered treatment programs during specified hours;
10 restrictions from leaving or entering specified geographical areas;
11 requirements to report to the probation officer as directed and to
12 remain under the probation officer's supervision; requirements to
13 submit to random urinalysis; and other conditions or limitations as the
14 court may require which may not include confinement;

15 (7) "Confinement" means physical custody by the department of
16 social and health services in a facility operated by or pursuant to a
17 contract with the state, or physical custody in a detention facility
18 operated by or pursuant to a contract with any county. The county may
19 operate or contract with vendors to operate county detention
20 facilities. The department may operate or contract to operate
21 detention facilities for juveniles committed to the department.
22 Pretrial confinement or confinement of less than thirty-one days
23 imposed as part of a disposition or modification order may be served
24 consecutively or intermittently, in the discretion of the court;

25 (8) "Court", when used without further qualification, means the
26 juvenile court judge(s) or commissioner(s);

27 (9) "Criminal history" includes all criminal complaints against the
28 respondent for which, prior to the commission of a current offense:

29 (a) The allegations were found correct by a court. If a respondent
30 is convicted of two or more charges arising out of the same course of
31 conduct, only the highest charge from among these shall count as an
32 offense for the purposes of this chapter; or

33 (b) The criminal complaint was diverted by a prosecutor pursuant to
34 the provisions of this chapter on agreement of the respondent and after
35 an advisement to the respondent that the criminal complaint would be
36 considered as part of the respondent's criminal history. A
37 successfully completed deferred adjudication shall not be considered
38 part of the respondent's criminal history;

1 (10) "Department" means the department of social and health
2 services;

3 (11) "Detention facility" means a county facility, paid for by the
4 county, for the physical confinement of a juvenile alleged to have
5 committed an offense or an adjudicated offender subject to a
6 disposition or modification order. "Detention facility" includes
7 county group homes, inpatient substance abuse programs, juvenile basic
8 training camps, and electronic monitoring;

9 (12) "Diversion unit" means any probation counselor who enters into
10 a diversion agreement with an alleged youthful offender, or any other
11 person, community accountability board, or other entity except a law
12 enforcement official or entity, with whom the juvenile court
13 administrator has contracted to arrange and supervise such agreements
14 pursuant to RCW 13.40.080, or any person, community accountability
15 board, or other entity specially funded by the legislature to arrange
16 and supervise diversion agreements in accordance with the requirements
17 of this chapter. For purposes of this subsection, "community
18 accountability board" means a board comprised of members of the local
19 community in which the juvenile offender resides. The superior court
20 shall appoint the members. The boards shall consist of at least three
21 and not more than seven members. If possible, the board should include
22 a variety of representatives from the community, such as a law
23 enforcement officer, teacher or school administrator, high school
24 student, parent, and business owner, and should represent the cultural
25 diversity of the local community;

26 (13) "Institution" means a juvenile facility established pursuant
27 to chapters 72.05 and 72.16 through 72.20 RCW;

28 (14) "Juvenile," "youth," and "child" mean any individual who is
29 under the chronological age of eighteen years and who has not been
30 previously transferred to adult court pursuant to RCW 13.40.110 or who
31 is otherwise under adult court jurisdiction;

32 (15) "Juvenile offender" means any juvenile who has been found by
33 the juvenile court to have committed an offense, including a person
34 eighteen years of age or older over whom jurisdiction has been extended
35 under RCW 13.40.300;

36 (16) "Manifest injustice" means a disposition that would either
37 impose an excessive penalty on the juvenile or would impose a serious,
38 and clear danger to society in light of the purposes of this chapter;

1 (17) "Middle offender" means a person who has committed an offense
2 and who is neither a (~~minor or first~~) misdemeanor offender nor a
3 serious offender;

4 (18) (~~"Minor or first offender" means a person whose current
5 offense(s) and criminal history fall entirely within one of the
6 following categories:~~

7 ~~(a) Four misdemeanors;~~

8 ~~(b) Two misdemeanors and one gross misdemeanor;~~

9 ~~(c) One misdemeanor and two gross misdemeanors; and~~

10 ~~(d) Three gross misdemeanors.~~

11 ~~For purposes of this definition, current violations shall be
12 counted as misdemeanors))~~ "Misdemeanor offender" means a person who has
13 no prior criminal history other than a diversion contract, and whose
14 current offense is a misdemeanor or gross misdemeanor;

15 (19) "Offense" means an act designated a violation or a crime if
16 committed by an adult under the law of this state, under any ordinance
17 of any city or county of this state, under any federal law, or under
18 the law of another state if the act occurred in that state;

19 (20) "Respondent" means a juvenile who is alleged or proven to have
20 committed an offense;

21 (21) "Restitution" means financial reimbursement by the offender to
22 the victim, and shall be limited to easily ascertainable damages for
23 injury to or loss of property, actual expenses incurred for medical
24 treatment for physical injury to persons, lost wages resulting from
25 physical injury, and costs of the victim's counseling reasonably
26 related to the offense if the offense is a sex offense. Restitution
27 shall not include reimbursement for damages for mental anguish, pain
28 and suffering, or other intangible losses. Nothing in this chapter
29 shall limit or replace civil remedies or defenses available to the
30 victim or offender;

31 (22) "Secretary" means the secretary of the department of social
32 and health services. "Assistant secretary" means the assistant
33 secretary for juvenile rehabilitation for the department;

34 (23) "Services" mean services which provide alternatives to
35 incarceration for those juveniles who have pleaded or been adjudicated
36 guilty of an offense or have signed a diversion agreement pursuant to
37 this chapter;

38 (24) "Sex offense" means an offense defined as a sex offense in RCW
39 9.94A.030;

1 (25) "Sexual motivation" means that one of the purposes for which
2 the respondent committed the offense was for the purpose of his or her
3 sexual gratification;

4 (26) "Foster care" means temporary physical care in a foster family
5 home or group care facility as defined in RCW 74.15.020 and licensed by
6 the department, or other legally authorized care;

7 (27) "Violation" means an act or omission, which if committed by an
8 adult, must be proven beyond a reasonable doubt, and is punishable by
9 sanctions which do not include incarceration;

10 (28) "Violent offense" means a violent offense as defined in RCW
11 9.94A.030;

12 (29) "Probation bond" means a bond, posted with sufficient security
13 by a surety justified and approved by the court, to secure the
14 offender's appearance at required court proceedings and compliance with
15 court-ordered community supervision or conditions of release ordered
16 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
17 cash or posting of other collateral in lieu of a bond if approved by
18 the court;

19 (30) "Surety" means an entity licensed under state insurance laws
20 or by the state department of licensing, to write corporate, property,
21 or probation bonds within the state, and justified and approved by the
22 superior court of the county having jurisdiction of the case.

23 **Sec. 2.** RCW 13.40.0357 and 1996 c 205 s 6 are each amended to read
24 as follows:

25 **SCHEDULE A**

26 **OFFENSE DESCRIPTION AND ((OFFENSE CATEGORY))**

27 **STANDARD RANGE FOR SERIOUS OFFENDERS**

28 ((JUVENILE		((JUVENILE DISPOSITION
29 DISPOSITION		CATEGORY FOR ATTEMPT, <u>STANDARD</u>
30 OFFENSE		BAILJUMP, CONSPIRACY, <u>RANGE FOR</u>
31 CATEGORY)) DESCRIPTION (RCW CITATION)		OR SOLICITATION)) <u>DETENTION</u>
32

33 **Arson and Malicious Mischief**

34 ((A)) Arson 1 (9A.48.020)	((B+)) <u>3 years to age 21</u>
35 ((B)) Arson 2 (9A.48.030)	((C)) <u>1-3 years</u>
36 ((C)) Reckless Burning 1 (9A.48.040)	((D)) <u>6-12 months</u>
37 ((D)) Reckless Burning 2 (9A.48.050)	((E)) <u>3-9 months</u>

1	((B)) Malicious Mischief 1 (9A.48.070)	((C)) <u>9-12 months</u>
2	((C)) Malicious Mischief 2 (9A.48.080)	((D)) <u>6-12 months</u>
3	((D)) Malicious Mischief 3 (((<\$50 is	
4	E-class))) <u>(more than \$50)</u> (9A.48.090)	((E)) <u>3-9 months</u>
5	<u>Malicious Mischief 3 (\$50 or less)</u>	
6	<u>(9A.48.090)</u>	<u>3-9 months</u>
7	((E)) Tampering with Fire Alarm	
8	Apparatus (9.40.100)	((E)) <u>2 months</u>
9	((A)) Possession of Incendiary Device	
10	(9.40.120)	((B+)) <u>3-5 years</u>
11	Assault and Other Crimes	
12	Involving Physical Harm	
13	((A)) Assault 1 (9A.36.011)	((B+)) <u>To age 21</u>
14	((B+)) Assault 2 (9A.36.021)	((C+)) <u>3-5 years</u>
15	((C+)) Assault 3 (9A.36.031)	((D+)) <u>1-3 years</u>
16	((D+)) Assault 4 (9A.36.041)	((E)) <u>4-12 months</u>
17	<u>Reckless Endangerment 1</u>	
18	<u>(9A.36.045)</u>	<u>3-5 years</u>
19	((D+)) Reckless Endangerment <u>2</u>	
20	(9A.36.050)	((E)) <u>1-3 years</u>
21	((C+)) Promoting Suicide Attempt	
22	(9A.36.060)	((D+)) <u>1-3 years</u>
23	((D+)) Coercion (9A.36.070)	((E)) <u>6-12 months</u>
24	((C+)) Custodial Assault (9A.36.100)	((D+)) <u>1-3 years</u>
25	Burglary and Trespass	
26	((B+)) Burglary 1 (9A.52.020)	((C+)) <u>3-5 years</u>
27	<u>Residential Burglary (9A.52.025)</u>	<u>1-3 years</u>
28	((B)) Burglary 2 (9A.52.030)	((C)) <u>6-18 months</u>
29	((D)) Burglary Tools (Possession of)	
30	(9A.52.060)	((E)) <u>3-9 months</u>
31	((D)) Criminal Trespass 1 (9A.52.070)	((E)) <u>3-12 months</u>
32	((E)) Criminal Trespass 2 (9A.52.080)	((E)) <u>2-6 months</u>
33	((D)) Vehicle Prowling (9A.52.100)	((E)) <u>3-12 months</u>
34	Drugs	
35	((E)) Possession/Consumption of Alcohol	
36	(66.44.270)	((E)) <u>3 days</u>

1	((E))	Illegally Obtaining Legend Drug	
2		(69.41.020)	((D)) <u>3-9 months</u>
3	((E+))	Sale, Delivery, Possession of Legend	
4		Drug with Intent to Sell	
5		(69.41.030)	((D+)) <u>2-5 years</u>
6	((E))	Possession of Legend Drug	
7		(69.41.030)	((E)) <u>5-10 days</u>
8	((B+))	Violation of Uniform Controlled	
9		Substances Act - Narcotic or	
10		Methamphetamine Sale	
11		(69.50.401(a)(1)(i) or (ii))	((B+)) <u>2-5 years</u>
12	((E))	Violation of Uniform Controlled	
13		Substances Act - Nonnarcotic Sale	
14		(69.50.401(a)(1)(iii))	((E)) <u>2-5 years</u>
15	((E))	Possession of Marihuana <40 grams	
16		(69.50.401(e))	((E)) <u>5-10 days</u>
17	((E))	Fraudulently Obtaining Controlled	
18		Substance (69.50.403)	((E)) <u>3-9 months</u>
19	((E+))	Sale of Controlled Substance	
20		for Profit (69.50.410)	((E+)) <u>2-5 years</u>
21	((E))	Unlawful Inhalation (9.47A.020)	((E)) <u>5-10 days</u>
22	((B))	Violation of Uniform Controlled	
23		Substances Act - Narcotic or	
24		Methamphetamine	
25		Counterfeit Substances	
26		(69.50.401(b)(1)(i) or (ii))	((B)) <u>2-5 years</u>
27	((E))	Violation of Uniform Controlled	
28		Substances Act - Nonnarcotic	
29		Counterfeit Substances	
30		(69.50.401(b)(1) (iii), (iv),	
31		(v))	((E)) <u>2-5 years</u>
32	((E))	Violation of Uniform Controlled	
33		Substances Act - Possession of a	
34		Controlled Substance	
35		(69.50.401(d))	((E)) <u>6-18 months</u>
36	((E))	Violation of Uniform Controlled	
37		Substances Act - Possession of a	
38		Controlled Substance	
39		(69.50.401(c))	((E)) <u>9-18 months</u>

1	Public Disturbance	
2	((C+)) <u>Riot with Weapon (9A.84.010)</u>	((D+)) <u>6-18 months</u>
3	((D+)) <u>Riot Without Weapon</u>	
4	(9A.84.010)	((E)) <u>3-9 months</u>
5	((E)) <u>Failure to Disperse (9A.84.020)</u>	((E)) <u>2-6 months</u>
6	((E)) <u>Disorderly Conduct (9A.84.030)</u>	((E)) <u>2-6 months</u>
7	Sex Crimes	
8	((A)) <u>Rape 1 (9A.44.040)</u>	((B+)) <u>To age 21</u>
9	((A-)) <u>Rape 2 (9A.44.050)</u>	((B+)) <u>3 years to age 21</u>
10	((C+)) <u>Rape 3 (9A.44.060)</u>	((D+)) <u>2 years to age 21</u>
11	((A-)) <u>Rape of a Child 1 (9A.44.073)</u>	((B+)) <u>3 years to age 21</u>
12	((B)) <u>Rape of a Child 2 (9A.44.076)</u>	((C+)) <u>2 years to age 21</u>
13	((B)) <u>Incest 1 (9A.64.020(1))</u>	((E)) <u>2 years to age 21</u>
14	((E)) <u>Incest 2 (9A.64.020(2))</u>	((D)) <u>2 years to age 21</u>
15	((D+)) <u>Indecent Exposure</u>	
16	(Victim <14) (9A.88.010)	((E)) <u>6-18 months</u>
17	((E)) <u>Indecent Exposure</u>	
18	(Victim 14 or over) (9A.88.010)	((E)) <u>3-6 months</u>
19	((B+)) <u>Promoting Prostitution 1</u>	
20	(9A.88.070)	((C+)) <u>3-5 years</u>
21	((C+)) <u>Promoting Prostitution 2</u>	
22	(9A.88.080)	((D+)) <u>1-3 years</u>
23	((E)) <u>O & A (Prostitution) (9A.88.030)</u>	((E)) <u>6-18 months</u>
24	((B+)) <u>Indecent Liberties (9A.44.100)</u>	((C+)) <u>3 years to age 21</u>
25	((B+)) <u>Child Molestation 1 (9A.44.083)</u>	((C+)) <u>3 years to age 21</u>
26	((C+)) <u>Child Molestation 2 (9A.44.086)</u>	((E)) <u>2 years to age 21</u>
27	Theft, Robbery, Extortion, and Forgery	
28	((B)) <u>Theft 1 (9A.56.030)</u>	((E)) <u>9-12 months</u>
29	((E)) <u>Theft 2 (9A.56.040)</u>	((D)) <u>6-12 months</u>
30	((D)) <u>Theft 3 (9A.56.050)</u>	((E)) <u>3-9 months</u>
31	<u>Theft of Firearm (9A.56.300)</u>	<u>6-12 months</u>
32	((B)) <u>Theft of Livestock (9A.56.080)</u>	((E)) <u>9-12 months</u>
33	((E)) <u>Forgery (9A.60.020)</u>	((D)) <u>6-12 months</u>
34	((A)) <u>Robbery 1 (9A.56.200)</u>	((B+)) <u>To age 21</u>
35	((B+)) <u>Robbery 2 (9A.56.210)</u>	((C+)) <u>3-5 years</u>
36	((B+)) <u>Extortion 1 (9A.56.120)</u>	((C+)) <u>1-3 years</u>
37	((C+)) <u>Extortion 2 (9A.56.130)</u>	((D+)) <u>6-18 months</u>

1	((B)) Possession of Stolen Property 1	
2	(9A.56.150)	((C)) <u>9-12 months</u>
3	((C)) Possession of Stolen Property 2	
4	(9A.56.160)	((D)) <u>6-12 months</u>
5	((D)) Possession of Stolen Property 3	
6	(9A.56.170)	((E)) <u>3-9 months</u>
7	((C)) Taking Motor Vehicle Without	
8	Owner's Permission (9A.56.070)	((D)) <u>6-18 months</u>
9	Motor Vehicle Related Crimes	
10	((E)) Driving Without a License	
11	(46.20.021)	((E)) <u>2-6 months</u>
12	((C)) Hit and Run - Injury	
13	(46.52.020(4))	((D)) <u>6-18 months</u>
14	((D)) Hit and Run-Attended	
15	(46.52.020(5))	((E)) <u>3-9 months</u>
16	((E)) Hit and Run-Unattended	
17	(46.52.010)	((E)) <u>2-6 months</u>
18	((C)) Vehicular Assault (46.61.522)	((D)) <u>9 months to 2 years</u>
19	((C)) Attempting to Elude Pursuing	
20	Police Vehicle (46.61.024)	((D)) <u>6-12 months</u>
21	((E)) Reckless Driving (46.61.500)	((E)) <u>2-6 months</u>
22	((D)) Driving While Under the Influence	
23	(46.61.502 and 46.61.504)	((E)) <u>3-9 months</u>
24	((D)) Vehicle Prowling (9A.52.100)	((E)) <u>3-9 months</u>
25	((C)) Taking Motor Vehicle Without	
26	Owner's Permission (9A.56.070)	((D)) <u>6-18 months</u>
27	Other	
28	((B)) Bomb Threat (9.61.160)	((C)) <u>6-12 months</u>
29	((C)) Escape 1 (9A.76.110)	((C)) <u>6-18 months</u>
30	((C)) Escape 2 (9A.76.120)	((C)) <u>6-18 months</u>
31	((D)) Escape 3 (9A.76.130)	((E)) <u>3-9 months</u>
32	<u>Bail Jumping (9A.76.170)</u>	<u>5-10 days</u>
33	((E)) Obscene, Harassing, Etc.,	
34	Phone Calls (9.61.230)	((E)) <u>3-9 months</u>
35	((A)) Other Offense Equivalent to an	
36	Adult Class A Felony	((B+)) <u>3 years to age 21</u>
37	((B)) Other Offense Equivalent to an	
38	Adult Class B Felony	((C)) <u>2 years to age 21</u>

1 ((C)) Other Offense Equivalent to an
 2 Adult Class C Felony ((D)) 1-3 years
 3 ((D)) Other Offense Equivalent to an
 4 Adult Gross Misdemeanor ((E)) 3-18 months
 5 ((E)) Other Offense Equivalent to an
 6 Adult Misdemeanor ((E)) 2-6 months
 7 ((V) ~~Violation of Order of Restitution,~~
 8 ~~Community Supervision, or~~
 9 ~~Confinement (13.40.200).~~ V

10 ~~Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses~~
 11 ~~and the standard range is established as follows:~~

12 ~~1st escape or attempted escape during 12-month period - 4 weeks~~
 13 ~~confinement~~

14 ~~2nd escape or attempted escape during 12-month period - 8 weeks~~
 15 ~~confinement~~

16 ~~3rd and subsequent escape or attempted escape during 12-month~~
 17 ~~period - 12 weeks confinement~~

18 ~~If the court finds that a respondent has violated terms of an order,~~
 19 ~~it may impose a penalty of up to 30 days of confinement.))~~

20 This is a disqualifying offense. A juvenile committing this offense
 21 is not eligible for juvenile offender basic training camp.

22 For persons adjudicated of the anticipatory offenses of attempt,
 23 solicitation, or conspiracy to commit any offense in schedule A, the
 24 standard range for the offense shall have a minimum that is eighty
 25 percent of the minimum for the completed offense and a maximum that is
 26 the same as the maximum for the completed offense.

27 ((**SCHEDULE B**

28 **PRIOR OFFENSE INCREASE FACTOR**

29 ~~For use with all CURRENT OFFENSES occurring on or after July 1,~~
 30 ~~1989.~~

31 **TIME SPAN**

32 OFFENSE 0-12 13-24 25 Months

33 CATEGORY Months Months or More

34

35	A+	.9	.9	.9
36	A	.9	.8	.6

1	A	.9	.8	.5
2	B+	.9	.7	.4
3	B	.9	.6	.3
4	C+	.6	.3	.2
5	C	.5	.2	.2
6	D+	.3	.2	.1
7	D	.2	.1	.1
8	E	.1	.1	.1

9 ~~Prior history -- Any offense in which a diversion agreement or counsel~~
10 ~~and release form was signed, or any offense which has been adjudicated~~
11 ~~by court to be correct prior to the commission of the current~~
12 ~~offense(s).~~

13 **SCHEDULE C**

14 **CURRENT OFFENSE POINTS**

15 ~~For use with all CURRENT OFFENSES occurring on or after July 1,~~
16 ~~1989.~~

17 **AGE**

18	OFFENSE	12 &					
19	CATEGORY	Under	13	14	15	16	17
20						
21	A+	STANDARD RANGE	180-224	WEEKS			
22	A		250	300	350	375	375
23	A-		150	150	150	200	200
24	B+		110	110	120	130	140
25	B		45	45	50	50	57
26	C+		44	44	49	49	55
27	C		40	40	45	45	50
28	D+		16	18	20	22	24
29	D		14	16	18	20	22
30	E		4	4	4	6	8-10))

31 **JUVENILE SENTENCING STANDARDS**

32 **SCHEDULE D-1**

33 This schedule may only be used for ((minor/first)) misdemeanor
34 offenders. After the determination is made that a youth is a

1 ((minor/first)) misdemeanor offender, the court has the discretion to
2 select sentencing option A((~~7~~)) or B((~~7~~ or ~~C~~)).

3 **((MINOR/FIRST)) MISDEMEANOR OFFENDER**

4 **OPTION A**

5 **STANDARD RANGE**

6		Community			
7	Community	Service			
8	((Points))	Supervision	Hours	Fine	<u>Detention</u>
9					<u>Range</u>
10				
11	((1-9	0-3 months	and/or 0-8	and/or 0-\$10	
12	10-19	0-3 months	and/or 0-8	and/or 0-\$10	
13	20-29	0-3 months	and/or 0-16	and/or 0-\$10	
14	30-39	0-3 months	and/or 8-24	and/or 0-\$25	
15	40-49	3-6 months	and/or 16-32	and/or 0-\$25	
16	50-59	3-6 months	and/or 24-40	and/or 0-\$25	
17	60-69	6-9 months	and/or 32-48	and/or 0-\$50	
18	70-79	6-9 months	and/or 40-56	and/or 0-\$50	
19	80-89	9-12 months	and/or 48-64	and/or 10-\$100	
20	90-109	9-12 months	and/or 56-72	and/or 10-\$100))	
21		<u>6-12 months</u>	<u>and 104-208</u>	<u>and \$0-\$100</u>	<u>and 0-10 days</u>

22 Community service hours shall be required at a rate of four hours
23 for each week of community supervision.

24 **OR**

25 **OPTION B**

26 **((~~STATUTORY OPTION~~**

- 27 ~~0-12 Months Community Supervision~~
- 28 ~~0-150 Hours Community Service~~
- 29 ~~0-100 Fine~~
- 30 ~~Posting of a Probation Bond~~

31 ~~A term of community supervision with a maximum of 150 hours, \$100.00~~
32 ~~fine, and 12 months supervision.~~

33 **OR**

34 **OPTION C))**

1 **MANIFEST INJUSTICE**

2 (~~When a term of community supervision~~) If the court determines that
3 a disposition under option A would effectuate a manifest injustice,
4 another disposition may be imposed. When a judge imposes a sentence of
5 confinement exceeding 30 days, the court shall sentence the juvenile to
6 a maximum term and the provisions of RCW 13.40.030(2) shall be used to
7 determine the range.

8 **JUVENILE SENTENCING STANDARDS**
9 **SCHEDULE D-2**

10 This schedule may only be used for middle offenders. After the
11 determination is made that a youth is a middle offender, the court has
12 the discretion to select sentencing option A(~~(7)~~) or B(~~(7 or C)~~).

13 **MIDDLE OFFENDER**

14 **OPTION A**
15 **STANDARD RANGE**

	Community	Community	Service	Fine	Confinement
(Points)	Supervision	Hours			Days ((Weeks))
.....					
1-9	0-3 months	and/or 0-8	and/or 0	\$10	and/or 0
10-19	0-3 months	and/or 0-8	and/or 0	\$10	and/or 0
20-29	0-3 months	and/or 0-16	and/or 0	\$10	and/or 0
30-39	0-3 months	and/or 8-24	and/or 0	\$25	and/or 2-4
40-49	3-6 months	and/or 16-32	and/or 0	\$25	and/or 2-4
50-59	3-6 months	and/or 24-40	and/or 0	\$25	and/or 5-10
60-69	6-9 months	and/or 32-48	and/or 0	\$50	and/or 5-10
70-79	6-9 months	and/or 40-56	and/or 0	\$50	and/or 10-20
80-89	9-12 months	and/or 48-64	and/or 0	\$100	and/or 10-20
90-109	9-12 months	and/or 56-72	and/or 0	\$100	and/or 15-30
110-129					8-12
130-149					13-16
150-199					21-28
200-249					30-40
250-299					52-65
300-374					80-100
375+					103-129))
	<u>12-18 months</u>	<u>and 208-260</u>	<u>and \$0-\$100</u>		<u>and 5-30</u>

38 (~~Middle offenders with 110 points or more do not have to be committed.~~
39 ~~They may be assigned community supervision under option B.~~

1 ~~All A+ offenses 180-224 weeks))~~

2 Community service hours shall be required at a rate of four hours
3 for each week of community supervision.

4 OR

5 OPTION B

6 ((~~STATUTORY OPTION~~

7 ~~0-12 Months Community Supervision~~

8 ~~0-150 Hours Community Service~~

9 ~~0-100 Fine~~

10 ~~Posting of a Probation Bond~~

11 ~~If the offender has less than 110 points, the court may impose a~~
12 ~~determinate disposition of community supervision and/or up to 30 days~~
13 ~~confinement; in which case, if confinement has been imposed, the court~~
14 ~~shall state either aggravating or mitigating factors as set forth in~~
15 ~~RCW 13.40.150.~~

16 ~~If the middle offender has 110 points or more, the court may impose~~
17 ~~a disposition under option A and may suspend the disposition on the~~
18 ~~condition that the offender serve up to thirty days of confinement and~~
19 ~~follow all conditions of community supervision. If the offender fails~~
20 ~~to comply with the terms of community supervision, the court may impose~~
21 ~~sanctions pursuant to RCW 13.40.200 or may revoke the suspended~~
22 ~~disposition and order execution of the disposition. If the court~~
23 ~~imposes confinement for offenders with 110 points or more, the court~~
24 ~~shall state either aggravating or mitigating factors set forth in RCW~~
25 ~~13.40.150.~~

26 OR

27 OPTION C))

28 MANIFEST INJUSTICE

29 If the court determines that a disposition under option A ((~~or B~~))
30 would effectuate a manifest injustice, the court shall sentence the
31 juvenile to a maximum term and the provisions of RCW 13.40.030(2) shall
32 be used to determine the range.

1 **JUVENILE SENTENCING STANDARDS**

2 **SCHEDULE D-3**

3 This schedule may only be used for serious offenders. After the
4 determination is made that a youth is a serious offender, the court has
5 the discretion to select sentencing option A or B.

6 **SERIOUS OFFENDER**

7 **OPTION A**

8 **STANDARD RANGE**

9 ((Points-----Institution Time))

10 Fine Detention Range

11

12 ((0-129-----8-12 weeks

13 130-149-----13-16 weeks

14 150-199-----21-28 weeks

15 200-249-----30-40 weeks

16 250-299-----52-65 weeks

17 300-374-----80-100 weeks

18 375+-----103-129 weeks

19 All A+ Offenses-----180-224 weeks))

20 \$0-\$100 As indicated in

21 Schedule A

22 **OR**

23 **OPTION B**

24 **MANIFEST INJUSTICE**

25 A disposition outside the standard range shall be determined and shall
26 be comprised of confinement or community supervision including posting
27 a probation bond or a combination thereof. When a judge finds a
28 manifest injustice and imposes a sentence of confinement exceeding 30
29 days, the court shall sentence the juvenile to a maximum term, and the
30 provisions of RCW 13.40.030(2) shall be used to determine the range.
31 If the standard range is less than 30 days of detention, then the
32 provisions of schedule D-1 may be used.

33 **Sec. 3.** RCW 13.40.038 and 1992 c 205 s 105 are each amended to
34 read as follows:

1 It is the policy of this state that all county juvenile detention
2 facilities provide a humane, safe, and rehabilitative environment ((and
3 that unadjudicated youth remain in the community whenever possible,
4 consistent with public safety and the provisions of chapter 13.40
5 RCW)). It is the policy of this state that a juvenile suspect be
6 removed from a confrontational situation as soon as possible. Counties
7 should emphasize immediate enforcement by arrest, booking, and release
8 to a parent or guardian as provided in RCW 13.40.040.

9 The counties shall develop and implement detention intake standards
10 and risk assessment standards to determine whether detention is
11 warranted and if so whether the juvenile should be placed in secure,
12 nonsecure, or home detention to implement the goals of this section.
13 Inability to pay for a less restrictive detention placement shall not
14 be a basis for denying a respondent a less restrictive placement in the
15 community. The detention and risk assessment standards shall be
16 developed and implemented no later than December 31, 1992.

17 **Sec. 4.** RCW 13.40.040 and 1995 c 395 s 4 are each amended to read
18 as follows:

19 (1) A juvenile may be taken into custody:

20 (a) Pursuant to a court order if a complaint is filed with the
21 court alleging, and the court finds probable cause to believe, that the
22 juvenile has committed an offense or has violated terms of a
23 disposition order or release order; or

24 (b) Without a court order, by a law enforcement officer if grounds
25 exist for the arrest of an adult in identical circumstances. Admission
26 to, and continued custody in, a court detention facility shall be
27 governed by subsections (2) and (3) of this section; or

28 (c) Pursuant to a court order that the juvenile be held as a
29 material witness; or

30 (d) Where the secretary or the secretary's designee has suspended
31 the parole of a juvenile offender.

32 (2) A juvenile taken into custody may be held in detention until
33 the juvenile can be released into the custody of a parent or guardian,
34 if a parent or guardian is available to accept custody of the juvenile.

35 (3) Except as provided in subsection (2) of this section, a
36 juvenile may not be held in detention unless there is probable cause to
37 believe that:

1 (a) The juvenile has committed an offense or has violated the terms
2 of a disposition order; and

3 (i) The juvenile will likely fail to appear for further
4 proceedings; or

5 (ii) Detention is required to protect the juvenile from himself or
6 herself; or

7 (iii) The juvenile is a threat to community safety; or

8 (iv) The juvenile will intimidate witnesses or otherwise unlawfully
9 interfere with the administration of justice; or

10 (v) The juvenile has committed a crime while another case was
11 pending; or

12 (b) The juvenile is a fugitive from justice; or

13 (c) The juvenile's parole has been suspended or modified; or

14 (d) The juvenile is a material witness.

15 (~~(3)~~) (4) Upon a finding that members of the community have
16 threatened the health of a juvenile taken into custody, at the
17 juvenile's request the court may order continued detention pending
18 further order of the court.

19 (~~(4)~~) (5) A juvenile detained under this section may be released
20 upon posting a probation bond set by the court. The juvenile's parent
21 or guardian may sign for the probation bond. A court authorizing such
22 a release shall issue an order containing a statement of conditions
23 imposed upon the juvenile and shall set the date of his or her next
24 court appearance. The court shall advise the juvenile of any
25 conditions specified in the order and may at any time amend such an
26 order in order to impose additional or different conditions of release
27 upon the juvenile or to return the juvenile to custody for failing to
28 conform to the conditions imposed. In addition to requiring the
29 juvenile to appear at the next court date, the court may condition the
30 probation bond on the juvenile's compliance with conditions of release.
31 The juvenile's parent or guardian may notify the court that the
32 juvenile has failed to conform to the conditions of release or the
33 provisions in the probation bond. If the parent notifies the court of
34 the juvenile's failure to comply with the probation bond, the court
35 shall notify the surety. As provided in the terms of the bond, the
36 surety shall provide notice to the court of the offender's
37 noncompliance. Failure to appear on the date scheduled by the court
38 pursuant to this section shall constitute the crime of bail jumping.

1 **Sec. 5.** RCW 13.40.070 and 1994 sp.s. c 7 s 543 are each amended to
2 read as follows:

3 (1) Complaints referred to the juvenile court alleging the
4 commission of an offense shall be referred directly to the prosecutor.
5 The prosecutor, upon receipt of a complaint, shall screen the complaint
6 to determine whether:

7 (a) The alleged facts bring the case within the jurisdiction of the
8 court; and

9 (b) On a basis of available evidence there is probable cause to
10 believe that the juvenile did commit the offense.

11 (2) If the identical alleged acts constitute an offense under both
12 the law of this state and an ordinance of any city or county of this
13 state, state law shall govern the prosecutor's screening and charging
14 decision for both filed and diverted cases.

15 (3) If the requirements of subsections (1)(a) and (b) of this
16 section are met, the prosecutor shall either file an information in
17 juvenile court or divert the case, as set forth in subsections (5),
18 (6), and (7) of this section. If the prosecutor finds that the
19 requirements of subsection (1)(a) and (b) of this section are not met,
20 the prosecutor shall maintain a record, for one year, of such decision
21 and the reasons therefor. In lieu of filing an information or
22 diverting an offense a prosecutor may file a motion to modify community
23 supervision where such offense constitutes a violation of community
24 supervision.

25 (4) An information shall be a plain, concise, and definite written
26 statement of the essential facts constituting the offense charged. It
27 shall be signed by the prosecuting attorney and conform to chapter
28 10.37 RCW.

29 (5) Where a case is legally sufficient, the prosecutor shall file
30 an information with the juvenile court if:

31 (a) An alleged offender is accused of a class A felony, a class B
32 felony, an attempt to commit a class B felony, a class C felony listed
33 in RCW 9.94A.440(2) as a crime against persons or listed in RCW
34 9A.46.060 as a crime of harassment, a class C felony that is a
35 violation of RCW 9.41.080 or 9.41.040(1)((~~e~~)) (b)(iii), or any other
36 offense listed in RCW 13.40.020(1) (b) or (c); or

37 (b) An alleged offender is accused of a felony (~~and~~) or has a
38 criminal history of any felony, (~~or at least two~~) gross
39 misdemeanor(~~s~~), or (~~at least two~~) misdemeanor(~~s~~); or

1 (c) An alleged offender has previously been committed to the
2 department; or

3 (d) An alleged offender has been referred by a diversion unit for
4 prosecution or desires prosecution instead of diversion; or

5 (e) An alleged offender has ~~((two))~~ one or more diversion contracts
6 on the alleged offender's criminal history; or

7 (f) A special allegation has been filed that the offender or an
8 accomplice was armed with a firearm when the offense was committed.

9 (6) Where a case is legally sufficient the prosecutor shall divert
10 the case if the alleged offense is a misdemeanor or gross misdemeanor
11 or violation and the alleged offense is the offender's first offense or
12 violation. If the alleged offender is charged with a related offense
13 that must or may be filed under subsections (5) and (7) of this
14 section, a case under this subsection may also be filed.

15 (7) Where a case is legally sufficient and falls into neither
16 subsection (5) nor (6) of this section, it ~~((may))~~ must be filed ~~((or~~
17 ~~diverted. In deciding whether to file or divert an offense under this~~
18 ~~section the prosecutor shall be guided only by the length, seriousness,~~
19 ~~and recency of the alleged offender's criminal history and the~~
20 ~~circumstances surrounding the commission of the alleged offense))~~.

21 (8) Whenever a juvenile is placed in custody or, where not placed
22 in custody, referred to a diversionary interview, the parent or legal
23 guardian of the juvenile shall be notified as soon as possible
24 concerning the allegation made against the juvenile and the current
25 status of the juvenile. Where a case involves victims of crimes
26 against persons or victims whose property has not been recovered at the
27 time a juvenile is referred to a diversionary unit, the victim shall be
28 notified of the referral and informed how to contact the unit.

29 (9) The responsibilities of the prosecutor under subsections (1)
30 through (8) of this section may be performed by a juvenile court
31 probation counselor for any complaint referred to the court alleging
32 the commission of an offense which would not be a felony if committed
33 by an adult, if the prosecutor has given sufficient written notice to
34 the juvenile court that the prosecutor will not review such complaints.

35 (10) The prosecutor, juvenile court probation counselor, or
36 diversion unit may, in exercising their authority under this section or
37 RCW 13.40.080, refer juveniles to mediation or victim offender
38 reconciliation programs. Such mediation or victim offender
39 reconciliation programs shall be voluntary for victims.

1 **Sec. 6.** RCW 13.40.077 and 1996 c 9 s 1 are each amended to read as
2 follows:

3 RECOMMENDED PROSECUTING STANDARDS
4 FOR CHARGING AND PLEA DISPOSITIONS

5 INTRODUCTION: These standards are intended solely for the guidance
6 of prosecutors in the state of Washington. They are not intended to,
7 do not, and may not be relied upon to create a right or benefit,
8 substantive or procedural, enforceable at law by a party in litigation
9 with the state.

10 Evidentiary sufficiency.

11 (1) Decision not to prosecute.

12 STANDARD: A prosecuting attorney may decline to prosecute, even
13 though technically sufficient evidence to prosecute exists, in
14 situations where prosecution would serve no public purpose, would
15 defeat the underlying purpose of the law in question, or would result
16 in decreased respect for the law. The decision not to prosecute or
17 divert shall not be influenced by the race, gender, religion, or creed
18 of the suspect.

19 GUIDELINES/COMMENTARY:

20 Examples

21 The following are examples of reasons not to prosecute which could
22 satisfy the standard.

23 (a) Contrary to Legislative Intent - It may be proper to decline to
24 charge where the application of criminal sanctions would be clearly
25 contrary to the intent of the legislature in enacting the particular
26 statute.

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

29 (i) ~~((It has not been enforced for many years;~~

30 ~~(ii) Most members of society act as if it were no longer in~~
31 ~~existence;~~

32 ~~(iii))~~) It serves no deterrent or protective purpose in today's
33 society; and

34 ~~((iv))~~) (ii) The statute has not been recently reconsidered by the
35 legislature.

36 This reason is not to be construed as the basis for declining cases
37 because the law in question is unpopular or because it is difficult to
38 enforce.

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

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

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

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

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

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

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

18 (ii) Conviction in the pending prosecution is imminent; and

19 ~~(iii) ((The new offense is either a misdemeanor or a felony which
20 is not particularly aggravated; and~~

21 ~~(iv))) Conviction of the new offense would not serve any
22 significant deterrent purpose.~~

23 ~~(f) ((High Disproportionate Cost of Prosecution—It may be proper
24 to decline to charge where the cost of locating or transporting, or the
25 burden on, prosecution witnesses is highly disproportionate to the
26 importance of prosecuting the offense in question. The reason should
27 be limited to minor cases and should not be relied upon in serious
28 cases.~~

29 ~~(g))) Improper Motives of Complainant - It may be proper to decline
30 charges because the motives of the complainant are improper and
31 prosecution would serve no public purpose, would defeat the underlying
32 purpose of the law in question, or would result in decreased respect
33 for the law.~~

34 ~~((h))) (g) Immunity - It may be proper to decline to charge where
35 immunity is to be given to an accused in order to prosecute another
36 where the accused information or testimony will reasonably lead to the
37 conviction of others who are responsible for more serious criminal
38 conduct or who represent a greater danger to the public interest.~~

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

4 (i) Assault cases where the victim has suffered little or no
5 injury;

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

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

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

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

13 Notification

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

16 (2) Decision to prosecute.

17 STANDARD:

18 Crimes against persons will be filed if sufficient admissible
19 evidence exists, which, when considered with the most plausible,
20 reasonably foreseeable defense that could be raised under the evidence,
21 would justify conviction by a reasonable and objective fact-finder.
22 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
23 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
24 9A.64.020 the prosecutor should avoid prefiling agreements or
25 diversions intended to place the accused in a program of treatment or
26 counseling, so that treatment, if determined to be beneficial, can be
27 proved under RCW 13.40.160(~~(+5)~~) (4).

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

33 The categorization of crimes for these charging standards shall be
34 the same as found in RCW 9.94A.440(2).

35 The decision to prosecute or use diversion shall not be influenced
36 by the race, gender, religion, or creed of the respondent.

37 (3) Selection of Charges/Degree of Charge

1 (a) The prosecutor should file charges which adequately describe
2 the nature of the respondent's conduct. Other offenses may be charged
3 only if they are necessary to ensure that the charges:

4 (i) Will significantly enhance the strength of the state's case at
5 trial; or

6 (ii) Will result in restitution to all victims.

7 (b) The prosecutor should not overcharge to obtain a guilty plea.
8 Overcharging includes:

9 (i) Charging a higher degree;

10 (ii) Charging additional counts.

11 This standard is intended to direct prosecutors to charge those
12 crimes which demonstrate the nature and seriousness of a respondent's
13 criminal conduct, but to decline to charge crimes which are not
14 necessary to such an indication. Crimes which do not merge as a matter
15 of law, but which arise from the same course of conduct, do not all
16 have to be charged.

17 (4) Police Investigation

18 A prosecuting attorney is dependent upon law enforcement agencies
19 to conduct the necessary factual investigation which must precede the
20 decision to prosecute. The prosecuting attorney shall ensure that a
21 thorough factual investigation has been conducted before a decision to
22 prosecute is made. In ordinary circumstances the investigation should
23 include the following:

24 (a) The interviewing of all material witnesses, together with the
25 obtaining of written statements whenever possible;

26 (b) The completion of necessary laboratory tests; and

27 (c) The obtaining, in accordance with constitutional requirements,
28 of the suspect's version of the events.

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

32 (5) Exceptions

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

35 (a) Probable cause exists to believe the suspect is guilty; and

36 (b) The suspect presents a danger to the community or is likely to
37 flee if not apprehended; or

38 (c) The arrest of the suspect is necessary to complete the
39 investigation of the crime.

1 In the event that the exception (~~that to~~) to the standard is
2 applied, the prosecuting attorney shall obtain a commitment from the
3 law enforcement agency involved to complete the investigation in a
4 timely manner. If the subsequent investigation does not produce
5 sufficient evidence to meet the normal charging standard, the complaint
6 should be dismissed.

7 (6) Investigation Techniques

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

10 (a) Polygraph testing;

11 (b) Hypnosis;

12 (c) Electronic surveillance;

13 (d) Use of informants.

14 (7) Prefiling Discussions with Defendant

15 Discussions with the defendant or his or her representative
16 regarding the selection or disposition of charges may occur prior to
17 the filing of charges, and potential agreements can be reached.

18 (8) Plea dispositions:

19 STANDARD

20 (a) Except as provided in subsection (2) of this section, a
21 respondent will normally be expected to plead guilty to the charge or
22 charges which adequately describe the nature of his or her criminal
23 conduct or go to trial.

24 (b) In certain circumstances, a plea agreement with a respondent in
25 exchange for a plea of guilty to a charge or charges that may not fully
26 describe the nature of his or her criminal conduct may be necessary and
27 in the public interest. Such situations may include the following:

28 (i) Evidentiary problems which make conviction of the original
29 charges doubtful;

30 (ii) The respondent's willingness to cooperate in the investigation
31 or prosecution of others whose criminal conduct is more serious or
32 represents a greater public threat;

33 (iii) A request by the victim when it is not the result of pressure
34 from the respondent;

35 (iv) The discovery of facts which mitigate the seriousness of the
36 respondent's conduct;

37 (v) The correction of errors in the initial charging decision;

38 (vi) The respondent's history with respect to criminal activity;

1 (vii) The nature and seriousness of the offense or offenses
2 charged;

3 (viii) The probable effect of witnesses.

4 (c) No plea agreement shall be influenced by the race, gender,
5 religion, or creed of the respondent. This includes but is not limited
6 to the prosecutor's decision to utilize such disposition alternatives
7 as (~~"Option—B,"~~) the Special Sex Offender Disposition
8 Alternative((7)) and manifest injustice.

9 (9) Disposition recommendations:

10 STANDARD

11 The prosecutor may reach an agreement regarding disposition
12 recommendations.

13 The prosecutor shall not agree to withhold relevant information
14 from the court concerning the plea agreement.

15 **Sec. 7.** RCW 13.40.080 and 1996 c 124 s 1 are each amended to read
16 as follows:

17 (1) A diversion agreement shall be a contract between a juvenile
18 accused of an offense and a diversionary unit whereby the juvenile
19 agrees to fulfill certain conditions in lieu of prosecution. A
20 juvenile is ineligible for participation in a diversion program if he
21 or she is accused of a felony or has a criminal history consisting of
22 at least one offense or a diversion contract. Such agreements may be
23 entered into only after the prosecutor, or probation counselor pursuant
24 to this chapter, has determined that probable cause exists to believe
25 that a crime has been committed and that the juvenile committed it.
26 Such agreements shall be entered into as expeditiously as possible.

27 (2) A diversion agreement shall be limited to one or more of the
28 following:

29 (a) Community service not to exceed one hundred fifty hours, not to
30 be performed during school hours if the juvenile is attending school;

31 (b) Restitution limited to the amount of actual loss incurred by
32 the victim;

33 (c) Attendance at up to ten hours of counseling and/or up to twenty
34 hours of educational or informational sessions at a community agency.
35 The educational or informational sessions may include sessions relating
36 to respect for self, others, and authority; victim awareness;
37 accountability; self-worth; responsibility; work ethics; good
38 citizenship; and life skills. For purposes of this section, "community

1 agency" may also mean a community-based nonprofit organization, if
2 approved by the diversion unit. The state shall not be liable for
3 costs resulting from the diversionary unit exercising the option to
4 permit diversion agreements to mandate attendance at up to ten hours of
5 counseling and/or up to twenty hours of educational or informational
6 sessions;

7 (d) A fine, not to exceed one hundred dollars(~~(. In determining~~
8 ~~the amount of the fine, the diversion unit shall consider only the~~
9 ~~juvenile's financial resources and whether the juvenile has the means~~
10 ~~to pay the fine. The diversion unit shall not consider the financial~~
11 ~~resources of the juvenile's parents, guardian, or custodian in~~
12 ~~determining the fine to be imposed))); and~~

13 (e) Requirements to remain during specified hours at home, school,
14 or work, and restrictions on leaving or entering specified geographical
15 areas.

16 (3) In assessing periods of community service to be performed and
17 restitution to be paid by a juvenile who has entered into a diversion
18 agreement, the court officer to whom this task is assigned shall
19 consult with the juvenile's custodial parent or parents or guardian and
20 victims who have contacted the diversionary unit and, to the extent
21 possible, involve members of the community. Such members of the
22 community shall meet with the juvenile and advise the court officer as
23 to the terms of the diversion agreement and shall supervise the
24 juvenile in carrying out its terms.

25 (4)(a) A diversion agreement may not exceed a period of six months
26 and may include a period extending beyond the eighteenth birthday of
27 the divertee.

28 (b) If additional time is necessary for the juvenile to complete
29 restitution to the victim, the time period limitations of this
30 subsection may be extended by an additional six months.

31 (c) If the juvenile has not paid the full amount of restitution by
32 the end of the additional six-month period, then the juvenile shall be
33 referred to the juvenile court for entry of an order establishing the
34 amount of restitution still owed to the victim. In this order, the
35 court shall also determine the terms and conditions of the restitution,
36 including a payment plan extending up to ten years or longer if the
37 court determines that the juvenile does not have the means to make full
38 restitution over a shorter period. For the purposes of this subsection
39 (4)(c), the juvenile shall remain under the court's jurisdiction for a

1 maximum term of ten years after the juvenile's eighteenth birthday or
2 longer if necessary to recover the full amount of restitution. ((The
3 court may not require the juvenile to pay full or partial restitution
4 if the juvenile reasonably satisfies the court that he or she does not
5 have the means to make full or partial restitution and could not
6 reasonably acquire the means to pay the restitution over a ten-year
7 period.)) The county clerk shall make disbursements to victims named
8 in the order. The restitution to victims named in the order shall be
9 paid prior to any payment for other penalties or monetary assessments.
10 A juvenile under obligation to pay restitution may petition the court
11 for modification of the restitution order.

12 (5) The juvenile shall retain the right to be referred to the court
13 at any time prior to the signing of the diversion agreement.

14 (6) Divertees and potential divertees shall be afforded due process
15 in all contacts with a diversionary unit regardless of whether the
16 juveniles are accepted for diversion or whether the diversion program
17 is successfully completed. Such due process shall include, but not be
18 limited to, the following:

19 (a) A written diversion agreement shall be executed stating all
20 conditions in clearly understandable language;

21 (b) Violation of the terms of the agreement shall be the only
22 grounds for termination;

23 (c) No divertee may be terminated from a diversion program without
24 being given a court hearing, which hearing shall be preceded by:

25 (i) Written notice of alleged violations of the conditions of the
26 diversion program; and

27 (ii) Disclosure of all evidence to be offered against the divertee;

28 (d) The hearing shall be conducted by the juvenile court and shall
29 include:

30 (i) Opportunity to be heard in person and to present evidence;

31 (ii) The right to confront and cross-examine all adverse witnesses;

32 (iii) A written statement by the court as to the evidence relied on
33 and the reasons for termination, should that be the decision; and

34 (iv) Demonstration by evidence that the divertee has
35 ((substantially)) violated the terms of his or her diversion agreement.

36 (e) The prosecutor may file an information on the offense for which
37 the divertee was diverted:

38 (i) In juvenile court if the divertee is under eighteen years of
39 age; or

1 (ii) In superior court or the appropriate court of limited
2 jurisdiction if the divertee is eighteen years of age or older.

3 (7) The diversion unit shall, subject to available funds, be
4 responsible for providing interpreters when juveniles need interpreters
5 to effectively communicate during diversion unit hearings or
6 negotiations.

7 (8) The diversion unit shall be responsible for advising a divertee
8 of his or her rights as provided in this chapter.

9 (9) The diversion unit may refer a juvenile to community-based
10 counseling or treatment programs.

11 (10) The right to counsel shall inure prior to the initial
12 interview for purposes of advising the juvenile as to whether he or she
13 desires to participate in the diversion process or to appear in the
14 juvenile court. The juvenile may be represented by counsel at any
15 critical stage of the diversion process, including intake interviews
16 and termination hearings. The juvenile shall be fully advised at the
17 intake of his or her right to an attorney and of the relevant services
18 an attorney can provide. For the purpose of this section, intake
19 interviews mean all interviews regarding the diversion agreement
20 process.

21 The juvenile shall be advised that a diversion agreement shall
22 constitute a part of the juvenile's criminal history as defined by RCW
23 13.40.020(9). A signed acknowledgment of such advisement shall be
24 obtained from the juvenile, and the document shall be maintained by the
25 diversionary unit together with the diversion agreement, and a copy of
26 both documents shall be delivered to the prosecutor if requested by the
27 prosecutor. The supreme court shall promulgate rules setting forth the
28 content of such advisement in simple language.

29 (11) When a juvenile enters into a diversion agreement, the
30 juvenile court may receive only the following information for
31 dispositional purposes:

32 (a) The fact that a charge or charges were made;

33 (b) The fact that a diversion agreement was entered into;

34 (c) The juvenile's obligations under such agreement;

35 (d) Whether the alleged offender performed his or her obligations
36 under such agreement; and

37 (e) The facts of the alleged offense.

38 (12) A diversionary unit may refuse to enter into a diversion
39 agreement with a juvenile. When a diversionary unit refuses to enter

1 a diversion agreement with a juvenile, it shall immediately refer such
2 juvenile to the court for action and shall forward to the court the
3 criminal complaint and a detailed statement of its reasons for refusing
4 to enter into a diversion agreement. The diversionary unit shall also
5 immediately refer the case to the prosecuting attorney for action if
6 such juvenile violates the terms of the diversion agreement.

7 (13) A diversionary unit may, in instances where it determines that
8 the act or omission of an act for which a juvenile has been referred to
9 it involved no victim, or where it determines that the juvenile
10 referred to it has no prior criminal history and is alleged to have
11 committed an illegal act involving no threat of or instance of actual
12 physical harm and involving not more than fifty dollars in property
13 loss or damage and that there is no loss outstanding to the person or
14 firm suffering such damage or loss, counsel and release or release such
15 a juvenile without entering into a diversion agreement. A diversion
16 unit's authority to counsel and release a juvenile under this
17 subsection shall include the authority to refer the juvenile to
18 community-based counseling or treatment programs. Any juvenile
19 released under this subsection shall be advised that the act or
20 omission of any act for which he or she had been referred shall
21 constitute a part of the juvenile's criminal history as defined by RCW
22 13.40.020(9). A signed acknowledgment of such advisement shall be
23 obtained from the juvenile, and the document shall be maintained by the
24 unit, and a copy of the document shall be delivered to the prosecutor
25 if requested by the prosecutor. The supreme court shall promulgate
26 rules setting forth the content of such advisement in simple language.
27 A juvenile determined to be eligible by a diversionary unit for release
28 as provided in this subsection shall retain the same right to counsel
29 and right to have his or her case referred to the court for formal
30 action as any other juvenile referred to the unit.

31 (14) A diversion unit may supervise the fulfillment of a diversion
32 agreement entered into before the juvenile's eighteenth birthday and
33 which includes a period extending beyond the diverttee's eighteenth
34 birthday.

35 (15) If a fine required by a diversion agreement cannot reasonably
36 be paid due to a change of circumstance, the diversion agreement may be
37 modified at the request of the diverttee and with the concurrence of the
38 diversion unit to convert an unpaid fine into community service. The
39 modification of the diversion agreement shall be in writing and signed

1 by the divertee and the diversion unit. The number of hours of
2 community service in lieu of a monetary penalty shall be converted at
3 the rate of the prevailing state minimum wage per hour.

4 (16) Fines imposed under this section shall be collected and paid
5 into the county general fund in accordance with procedures established
6 by the juvenile court administrator under RCW 13.04.040 and may be used
7 only for juvenile services. In the expenditure of funds for juvenile
8 services, there shall be a maintenance of effort whereby counties
9 exhaust existing resources before using amounts collected under this
10 section.

11 **Sec. 8.** RCW 13.40.150 and 1995 c 268 s 5 are each amended to read
12 as follows:

13 (1) In disposition hearings all relevant and material evidence,
14 including oral and written reports, may be received by the court and
15 may be relied upon to the extent of its probative value, even though
16 such evidence may not be admissible in a hearing on the information.
17 The youth or the youth's counsel and the prosecuting attorney shall be
18 afforded an opportunity to examine and controvert written reports so
19 received and to cross-examine individuals making reports when such
20 individuals are reasonably available, but sources of confidential
21 information need not be disclosed. The prosecutor and counsel for the
22 juvenile may submit recommendations for disposition.

23 (2) For purposes of disposition:

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

25 (b) Violations may not count as part of the offender's criminal
26 history;

27 (c) In no event may a disposition for a violation include
28 confinement.

29 (3) Before entering a dispositional order as to a respondent found
30 to have committed an offense, the court shall hold a disposition
31 hearing, at which the court shall:

32 (a) Consider the facts supporting the allegations of criminal
33 conduct by the respondent;

34 (b) Consider information and arguments offered by parties and their
35 counsel;

36 (c) Consider any predisposition reports;

37 (d) Consult with the respondent's parent, guardian, or custodian on
38 the appropriateness of dispositional options under consideration and

1 afford the respondent and the respondent's parent, guardian, or
2 custodian an opportunity to speak in the respondent's behalf;

3 (e) Allow the victim or a representative of the victim and an
4 investigative law enforcement officer to speak;

5 (f) Determine the amount of restitution owing to the victim, if
6 any;

7 (g) Determine whether the respondent is a serious offender, a
8 middle offender, or a (~~minor or first~~) misdemeanor offender;

9 (h) Consider whether or not any of the following mitigating factors
10 exist:

11 (i) The respondent's conduct neither caused nor threatened serious
12 bodily injury or the respondent did not contemplate that his or her
13 conduct would cause or threaten serious bodily injury;

14 (ii) The respondent acted under strong and immediate provocation;

15 (iii) The respondent was suffering from a mental or physical
16 condition that significantly reduced his or her culpability for the
17 offense though failing to establish a defense;

18 (iv) Prior to his or her detection, the respondent compensated or
19 made a good faith attempt to compensate the victim for the injury or
20 loss sustained; and

21 (v) There has been at least one year between the respondent's
22 current offense and any prior criminal offense;

23 (i) Consider whether or not any of the following aggravating
24 factors exist:

25 (i) In the commission of the offense, or in flight therefrom, the
26 respondent inflicted or attempted to inflict serious bodily injury to
27 another;

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

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

31 (iv) The respondent has a recent criminal history or has failed to
32 comply with conditions of a recent dispositional order or diversion
33 agreement;

34 (v) The current offense included a finding of sexual motivation
35 pursuant to RCW 13.40.135;

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

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

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

6 (a) The sex of the respondent;

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

8 (c) The creed or religion of the respondent or the respondent's
9 family;

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

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

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

17 **Sec. 9.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to read
18 as follows:

19 (1) When the respondent is found to be a serious offender, the
20 court shall commit the offender to the department for the standard
21 range of (~~(disposition)~~) detention for the offense, as indicated in
22 option A of schedule D-3, RCW 13.40.0357 except as provided in
23 subsections (~~((+5))~~) (4) and (~~((+6))~~) (5) of this section.

24 If the court concludes, and enters reasons for its conclusion, that
25 disposition within the standard range would effectuate a manifest
26 injustice the court shall impose a disposition outside the standard
27 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
28 court's finding of manifest injustice shall be supported by clear and
29 convincing evidence.

30 A disposition outside the standard range shall be determinate and
31 shall be comprised of confinement or community supervision, or a
32 combination thereof. When a judge finds a manifest injustice and
33 imposes a sentence of confinement exceeding thirty days, the court
34 shall sentence the juvenile to a maximum term, and the provisions of
35 RCW 13.40.030(2) shall be used to determine the range. A disposition
36 outside the standard range is appealable under RCW 13.40.230 by the
37 state or the respondent. A disposition within the standard range is
38 not appealable under RCW 13.40.230.

1 (2) Where the respondent is found to be a (~~minor or first~~)
2 misdemeanor offender, the court shall order that the respondent serve
3 a (~~term of community supervision~~) disposition as indicated in option
4 A (~~or option B~~) of schedule D-1, RCW 13.40.0357 except as provided in
5 subsections (~~(+5)~~) (4) and (~~(+6)~~) (5) of this section. If the court
6 determines that a disposition (~~of community supervision~~) within
7 schedule D-1 would effectuate a manifest injustice the court may impose
8 another disposition under option (~~(C)~~) B of schedule D-1, RCW
9 13.40.0357. (~~Except as provided in subsection (5) of this section,~~)
10 A disposition (other than a community supervision) under option B of
11 schedule D-1 may be imposed only after the court enters reasons upon
12 which it bases its conclusions that imposition of (~~community~~
13 ~~supervision~~) a disposition under option A of schedule D-1 would
14 effectuate a manifest injustice. When a judge finds a manifest
15 injustice and imposes a sentence of confinement exceeding thirty days,
16 the court shall sentence the juvenile to a maximum term, and the
17 provisions of RCW 13.40.030(2) shall be used to determine the range.
18 The court's finding of manifest injustice shall be supported by clear
19 and convincing evidence.

20 Except for disposition (~~of community supervision~~) under option A
21 of schedule D-1 or a disposition imposed pursuant to subsection (~~(+5)~~)
22 (4) of this section, a disposition may be appealed as provided in RCW
23 13.40.230 by the state or the respondent. A disposition (~~of community~~
24 ~~supervision~~) under option A of schedule D-1 or a disposition imposed
25 pursuant to subsection (~~(+5)~~) (4) of this section may not be appealed
26 under RCW 13.40.230.

27 (3) (~~Where a respondent is found to have committed an offense for~~
28 ~~which the respondent declined to enter into a diversion agreement, the~~
29 ~~court shall impose a term of community supervision limited to the~~
30 ~~conditions allowed in a diversion agreement as provided in RCW~~
31 ~~13.40.080(2).~~

32 (~~4~~) If a respondent is found to be a middle offender:

33 (a) The court shall impose a determinate disposition within the
34 standard range(s) for such offense, as indicated in option A of
35 schedule D-2, RCW 13.40.0357 except as provided in subsections (~~(+5)~~)
36 (4) and (~~(+6)~~) (5) of this section. (~~If the standard range includes~~
37 ~~a term of confinement exceeding thirty days, commitment shall be to the~~
38 ~~department for the standard range of confinement; or~~

1 ~~(b) If the middle offender has less than 110 points, the court~~
2 ~~shall impose a determinate disposition of community supervision and/or~~
3 ~~up to thirty days confinement, as indicated in option B of schedule D-~~
4 ~~2, RCW 13.40.0357 in which case, if confinement has been imposed, the~~
5 ~~court shall state either aggravating or mitigating factors as set forth~~
6 ~~in RCW 13.40.150. If the middle offender has 110 points or more, the~~
7 ~~court may impose a disposition under option A and may suspend the~~
8 ~~disposition on the condition that the offender serve up to thirty days~~
9 ~~of confinement and follow all conditions of community supervision. If~~
10 ~~the offender violates any condition of the disposition including~~
11 ~~conditions of a probation bond, the court may impose sanctions pursuant~~
12 ~~to RCW 13.40.200 or may revoke the suspension and order execution of~~
13 ~~the disposition. The court shall give credit for any confinement time~~
14 ~~previously served if that confinement was for the offense for which the~~
15 ~~suspension is being revoked.~~

16 ~~(e))~~ (b) Only if the court concludes, and enters reasons for its
17 conclusions, that disposition as provided in (a) of this subsection
18 ~~((4) (a) or (b) of this section))~~ would effectuate a manifest
19 injustice, the court shall sentence the juvenile to a maximum term, and
20 the provisions of RCW 13.40.030(2) shall be used to determine the
21 range. The court's finding of manifest injustice shall be supported by
22 clear and convincing evidence.

23 ~~((d))~~ (c) A disposition pursuant to (b) of this subsection
24 ~~((4)(c) of this section))~~ is appealable under RCW 13.40.230 by the
25 state or the respondent. A disposition pursuant to (a) of this
26 subsection ~~((4) (a) or (b) of this section))~~ is not appealable under
27 RCW 13.40.230.

28 ~~((5))~~ (4) When a serious, middle, or ~~((minor first))~~ misdemeanor
29 offender is found to have committed a sex offense, other than a sex
30 offense that is also a serious violent offense as defined by RCW
31 9.94A.030, and has no history of a prior sex offense, the court, on its
32 own motion or the motion of the state or the respondent, may order an
33 examination to determine whether the respondent is amenable to
34 treatment.

35 The report of the examination shall include at a minimum the
36 following: The respondent's version of the facts and the official
37 version of the facts, the respondent's offense history, an assessment
38 of problems in addition to alleged deviant behaviors, the respondent's
39 social, educational, and employment situation, and other evaluation

1 measures used. The report shall set forth the sources of the
2 evaluator's information.

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

7 (a)(i) Frequency and type of contact between the offender and
8 therapist;

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

11 (iii) Monitoring plans, including any requirements regarding living
12 conditions, lifestyle requirements, and monitoring by family members,
13 legal guardians, or others;

14 (iv) Anticipated length of treatment; and

15 (v) Recommended crime-related prohibitions.

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

22 After receipt of reports of the examination, the court shall then
23 consider whether the offender and the community will benefit from use
24 of this special sex offender disposition alternative and consider the
25 victim's opinion whether the offender should receive a treatment
26 disposition under this section. If the court determines that this
27 special sex offender disposition alternative is appropriate, then the
28 court shall impose a determinate disposition within the standard range
29 for the offense, and the court may suspend the execution of the
30 disposition and place the offender on community supervision for up to
31 two years. As a condition of the suspended disposition, the court may
32 impose the conditions of community supervision and other conditions,
33 including up to thirty days of confinement and requirements that the
34 offender do any one or more of the following:

35 (b)(i) Devote time to a specific education, employment, or
36 occupation;

37 (ii) Undergo available outpatient sex offender treatment for up to
38 two years, or inpatient sex offender treatment not to exceed the
39 standard range of confinement for that offense. A community mental

1 health center may not be used for such treatment unless it has an
2 appropriate program designed for sex offender treatment. The
3 respondent shall not change sex offender treatment providers or
4 treatment conditions without first notifying the prosecutor, the
5 probation counselor, and the court, and shall not change providers
6 without court approval after a hearing if the prosecutor or probation
7 counselor object to the change;

8 (iii) Remain within prescribed geographical boundaries and notify
9 the court or the probation counselor prior to any change in the
10 offender's address, educational program, or employment;

11 (iv) Report to the prosecutor and the probation counselor prior to
12 any change in a sex offender treatment provider. This change shall
13 have prior approval by the court;

14 (v) Report as directed to the court and a probation counselor;

15 (vi) Pay all court-ordered legal financial obligations, perform
16 community service, or any combination thereof;

17 (vii) Make restitution to the victim for the cost of any counseling
18 reasonably related to the offense; or

19 (viii) Comply with the conditions of any court-ordered probation
20 bond.

21 The sex offender treatment provider shall submit quarterly reports
22 on the respondent's progress in treatment to the court and the parties.
23 The reports shall reference the treatment plan and include at a minimum
24 the following: Dates of attendance, respondent's compliance with
25 requirements, treatment activities, the respondent's relative progress
26 in treatment, and any other material specified by the court at the time
27 of the disposition.

28 At the time of the disposition, the court may set treatment review
29 hearings as the court considers appropriate.

30 Except as provided in this subsection (~~((+5+))~~) (4), after July 1,
31 1991, examinations and treatment ordered pursuant to this subsection
32 shall only be conducted by sex offender treatment providers certified
33 by the department of health pursuant to chapter 18.155 RCW. A sex
34 offender therapist who examines or treats a juvenile sex offender
35 pursuant to this subsection does not have to be certified by the
36 department of health pursuant to chapter 18.155 RCW if the court finds
37 that: (A) The offender has already moved to another state or plans to
38 move to another state for reasons other than circumventing the
39 certification requirements; (B) no certified providers are available

1 for treatment within a reasonable geographical distance of the
2 offender's home; and (C) the evaluation and treatment plan comply with
3 this subsection (~~((+5))~~) (4) and the rules adopted by the department of
4 health.

5 If the offender violates any condition of the disposition or the
6 court finds that the respondent is failing to make satisfactory
7 progress in treatment, the court may revoke the suspension and order
8 execution of the disposition or the court may impose a penalty of up to
9 thirty days' confinement for violating conditions of the disposition.
10 The court may order both execution of the disposition and up to thirty
11 days' confinement for the violation of the conditions of the
12 disposition. The court shall give credit for any confinement time
13 previously served if that confinement was for the offense for which the
14 suspension is being revoked.

15 For purposes of this section, "victim" means any person who has
16 sustained emotional, psychological, physical, or financial injury to
17 person or property as a direct result of the crime charged. "Victim"
18 may also include a known parent or guardian of a victim who is a minor
19 child unless the parent or guardian is the perpetrator of the offense.

20 (~~((+6))~~) (5) RCW 13.40.193 shall govern the disposition of any
21 juvenile adjudicated of possessing a firearm in violation of RCW
22 9.41.040(1)(~~((+e))~~) (b)(iii) or any crime in which a special finding is
23 entered that the juvenile was armed with a firearm.

24 (~~((+7))~~) (6) Whenever a juvenile offender is entitled to credit for
25 time spent in detention prior to a dispositional order, the
26 dispositional order shall specifically state the number of days of
27 credit for time served.

28 (~~((+8))~~) (7) Except as provided for in subsection (4)(~~((+b) or (+5))~~)
29 of this section (~~((or RCW 13.40.125))~~), the court shall not suspend or
30 defer the imposition or the execution of the disposition.

31 (~~((+9) In no case shall the term of confinement imposed by the court
32 at disposition exceed that to which an adult could be subjected for the
33 same offense.))~~)

34 **Sec. 10.** RCW 13.40.190 and 1996 c 124 s 2 are each amended to read
35 as follows:

36 (1) In its dispositional order, the court shall require the
37 respondent to make restitution to any persons who have suffered loss or
38 damage as a result of the offense committed by the respondent. In

1 addition, restitution (~~(may)~~) shall be ordered for loss or damage if
2 the offender pleads guilty to a lesser offense or fewer offenses and
3 agrees with the prosecutor's recommendation that the offender be
4 required to pay restitution to a victim of an offense or offenses
5 which, pursuant to a plea agreement, are not prosecuted. The payment
6 of restitution shall be in addition to any punishment which is imposed
7 pursuant to the other provisions of this chapter. The court may
8 determine the amount, terms, and conditions of the restitution
9 including a payment plan extending up to ten years or longer if the
10 court determines that the respondent does not have the means to make
11 full restitution over a shorter period. Restitution may include the
12 costs of counseling reasonably related to the offense. If the
13 respondent participated in the crime with another person or other
14 persons, all such participants shall be jointly and severally
15 responsible for the payment of restitution. For the purposes of this
16 section, the respondent shall remain under the court's jurisdiction for
17 a maximum term of ten years after the respondent's eighteenth birthday
18 or longer if necessary to recover the full amount of restitution.
19 (~~The court may not require the respondent to pay full or partial~~
20 ~~restitution if the respondent reasonably satisfies the court that he or~~
21 ~~she does not have the means to make full or partial restitution and~~
22 ~~could not reasonably acquire the means to pay such restitution over a~~
23 ~~ten-year period.))~~

24 (2) (~~Regardless of the provisions of subsection (1) of this~~
25 ~~section, the court shall order restitution in all cases where the~~
26 ~~victim is entitled to benefits under the crime victims' compensation~~
27 ~~act, chapter 7.68 RCW.)) If the court does not order restitution and
28 the victim of the crime has been determined to be entitled to benefits
29 under the crime victims' compensation act, the department of labor and
30 industries, as administrator of the crime victims' compensation
31 program, may petition the court within one year of entry of the
32 disposition order for entry of a restitution order. Upon receipt of a
33 petition from the department of labor and industries, the court shall
34 hold a restitution hearing and shall enter a restitution order.~~

35 (3) If an order includes restitution as one of the monetary
36 assessments, the county clerk shall make disbursements to victims named
37 in the order. The restitution to victims named in the order shall be
38 paid prior to any payment for other penalties or monetary assessments.

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

3 **Sec. 11.** RCW 13.40.193 and 1994 sp.s. c 7 s 525 are each amended
4 to read as follows:

5 (1) If a respondent is found to have been in possession of a
6 firearm in violation of RCW 9.41.040(1)((+e)) (b)(iii), the court
7 shall impose a determinate disposition of ten days of confinement and
8 up to twelve months of community supervision. If the offender's
9 standard range of disposition for the offense as indicated in RCW
10 13.40.0357 is more than thirty days of confinement, the court shall
11 commit the offender to the department for the standard range
12 disposition. The offender shall not be released until the offender has
13 served a minimum of ten days in confinement.

14 (2) If the court finds that the respondent or an accomplice was
15 armed with a firearm, the court shall determine the standard range
16 disposition for the offense pursuant to RCW 13.40.160. Ninety days of
17 confinement shall be added to the entire standard range disposition of
18 confinement if the offender or an accomplice was armed with a firearm
19 when the offender committed: (a) Any violent offense; or (b) escape in
20 the first degree; burglary in the second degree; theft of livestock in
21 the first or second degree; or any felony drug offense. If the
22 offender or an accomplice was armed with a firearm and the offender is
23 being adjudicated for an anticipatory felony offense under chapter
24 9A.28 RCW to commit one of the offenses listed in this subsection,
25 ninety days shall be added to the entire standard range disposition of
26 confinement. The ninety days shall be imposed regardless of the
27 offense's juvenile disposition (~~(offense category as designated in)~~)
28 under RCW 13.40.0357. The department shall not release the offender
29 until the offender has served a minimum of ninety days in confinement,
30 unless the juvenile is committed to and successfully completes the
31 juvenile offender basic training camp disposition option.

32 (~~(3) (Option B of schedule D-2, RCW 13.40.0357, shall not be~~
33 ~~available for middle offenders who receive a disposition under this~~
34 ~~section.))~~ When a disposition under this section would effectuate a
35 manifest injustice, the court may impose another disposition. When a
36 judge finds a manifest injustice and imposes a disposition of
37 confinement exceeding thirty days, the court shall commit the juvenile
38 to a maximum term, and the provisions of RCW 13.40.030(2) shall be used

1 to determine the range. When a judge finds a manifest injustice and
2 imposes a disposition of confinement less than thirty days, the
3 disposition shall be comprised of confinement or community supervision
4 or both.

5 (4) Any term of confinement ordered pursuant to this section may
6 run concurrently to any term of confinement imposed in the same
7 disposition for other offenses.

8 **Sec. 12.** RCW 13.40.210 and 1994 sp.s. c 7 s 527 are each amended
9 to read as follows:

10 (1) The secretary shall, except in the case of a juvenile committed
11 by a court to a term of confinement in a state institution outside the
12 appropriate standard range for the offense(s) for which the juvenile
13 was found to be guilty established pursuant to RCW 13.40.030, set a
14 release or discharge date for each juvenile committed to its custody.
15 The release or discharge date shall be within the prescribed range to
16 which a juvenile has been committed except as provided in RCW 13.40.320
17 concerning offenders the department determines are eligible for the
18 juvenile offender basic training camp program. Such dates shall be
19 determined prior to the expiration of sixty percent of a juvenile's
20 minimum term of confinement included within the prescribed range to
21 which the juvenile has been committed. The secretary shall release any
22 juvenile committed to the custody of the department within four
23 calendar days prior to the juvenile's release date or on the release
24 date set under this chapter. Days spent in the custody of the
25 department shall be tolled by any period of time during which a
26 juvenile has absented himself or herself from the department's
27 supervision without the prior approval of the secretary or the
28 secretary's designee.

29 (2) The secretary shall monitor the average daily population of the
30 state's juvenile residential facilities. When the secretary concludes
31 that in-residence population of residential facilities exceeds one
32 hundred five percent of the rated bed capacity specified in statute, or
33 in absence of such specification, as specified by the department in
34 rule, the secretary may recommend reductions to the governor. On
35 certification by the governor that the recommended reductions are
36 necessary, the secretary has authority to administratively release a
37 sufficient number of offenders to reduce in-residence population to one
38 hundred percent of rated bed capacity. The secretary shall release

1 those offenders who have served the greatest proportion of their
2 sentence. However, the secretary may deny release in a particular case
3 at the request of an offender, or if the secretary finds that there is
4 no responsible custodian, as determined by the department, to whom to
5 release the offender, or if the release of the offender would pose a
6 clear danger to society. The department shall notify the committing
7 court of the release at the time of release if any such early releases
8 have occurred as a result of excessive in-residence population. In no
9 event shall an offender adjudicated of a violent offense be granted
10 release under the provisions of this subsection.

11 (3) Following the juvenile's release under subsection (1) of this
12 section, the secretary (~~may~~) shall require the juvenile to comply
13 with a program of parole to be administered by the department in his or
14 her community which shall last (~~no longer than eighteen~~) a minimum of
15 twenty-four months(~~(, except that in the case of a juvenile sentenced~~
16 ~~for rape in the first or second degree, rape of a child in the first or~~
17 ~~second degree, child molestation in the first degree, or indecent~~
18 ~~liberties with forcible compulsion, the period of parole shall be~~
19 ~~twenty-four months~~)). A parole program is mandatory for offenders
20 released under subsection (2) of this section. The secretary shall,
21 for the period of parole, facilitate the juvenile's reintegration into
22 his or her community and to further this goal shall require the
23 juvenile to refrain from possessing a firearm or using a deadly weapon
24 and refrain from committing new offenses and may require the juvenile
25 to: (a) Undergo available medical, drug, or psychiatric treatment; (b)
26 report as directed to a parole officer; (c) pursue a course of study or
27 vocational training; and (d) remain within prescribed geographical
28 boundaries and notify the department of any change in his or her
29 address. After termination of the parole period, the juvenile shall be
30 discharged from the department's supervision.

31 (4)(a) The department may also modify parole for violation thereof.
32 If, after affording a juvenile all of the due process rights to which
33 he or she would be entitled if the juvenile were an adult, the
34 secretary finds that a juvenile has violated a condition of his or her
35 parole, the secretary shall order one of the following which is
36 reasonably likely to effectuate the purpose of the parole and to
37 protect the public: (i) Continued supervision under the same
38 conditions previously imposed; (ii) intensified supervision with
39 increased reporting requirements; (iii) additional conditions of

1 supervision authorized by this chapter; (iv) except as provided in
2 (a)(v) of this subsection, imposition of a period of confinement not to
3 exceed thirty days in a facility operated by or pursuant to a contract
4 with the state of Washington or any city or county for a portion of
5 each day or for a certain number of days each week with the balance of
6 the days or weeks spent under supervision; and (v) the secretary may
7 order any of the conditions or may return the offender to confinement
8 in an institution for the remainder of the sentence range if the
9 offense for which the offender was sentenced is rape in the first or
10 second degree, rape of a child in the first or second degree, child
11 molestation in the first degree, indecent liberties with forcible
12 compulsion, or a sex offense that is also a serious violent offense as
13 defined by RCW 9.94A.030.

14 (b) If the department finds that any juvenile in a program of
15 parole has possessed a firearm or used a deadly weapon during the
16 program of parole, the department shall modify the parole under (a) of
17 this subsection and confine the juvenile for at least thirty days.
18 Confinement shall be in a facility operated by or pursuant to a
19 contract with the state or any county.

20 (5) A parole officer of the department of social and health
21 services shall have the power to arrest a juvenile under his or her
22 supervision on the same grounds as a law enforcement officer would be
23 authorized to arrest the person.

24 (6) If so requested and approved under chapter 13.06 RCW, the
25 secretary shall permit a county or group of counties to perform
26 functions under subsections (3) through (5) of this section.

27 **Sec. 13.** RCW 13.40.230 and 1981 c 299 s 16 are each amended to
28 read as follows:

29 (1) Dispositions reviewed pursuant to RCW 13.40.160, as now or
30 hereafter amended, shall be reviewed in the appropriate division of the
31 court of appeals.

32 An appeal under this section shall be heard solely upon the record
33 that was before the disposition court. No written briefs may be
34 required, and the appeal shall be heard within thirty days following
35 the date of sentencing and a decision rendered within fifteen days
36 following the argument. The supreme court shall promulgate any
37 necessary rules to effectuate the purposes of this section.

1 (2) To uphold a disposition outside the standard range, or which
2 imposes confinement for a (~~minor or first~~) misdemeanor offender, the
3 court of appeals must find (a) that the reasons supplied by the
4 disposition judge are supported by the record which was before the
5 judge and that those reasons clearly and convincingly support the
6 conclusion that a disposition within the range, or nonconfinement for
7 a (~~minor or first~~) misdemeanor offender, would constitute a manifest
8 injustice, and (b) that the sentence imposed was neither clearly
9 excessive nor clearly too lenient.

10 (3) If the court does not find subsection (2)(a) of this section it
11 shall remand the case for disposition within the standard range or for
12 community supervision without confinement as would otherwise be
13 appropriate pursuant to this chapter.

14 (4) If the court finds subsection (2)(a) but not subsection (2)(b)
15 of this section it shall remand the case with instructions for further
16 proceedings consistent with the provisions of this chapter.

17 (5) Pending appeal, a respondent may not be committed or detained
18 for a period of time in excess of the standard range for the offense(s)
19 committed or sixty days, whichever is longer. The disposition court
20 may impose conditions on release pending appeal as provided in RCW
21 13.40.040(~~(+4)~~) (5) and 13.40.050(6). Upon the expiration of the
22 period of commitment or detention specified in this subsection, the
23 court may also impose such conditions on the respondent's release
24 pending disposition of the appeal.

25 (6) Appeal of a disposition under this section does not affect the
26 finality or appeal of the underlying adjudication of guilt.

27 **Sec. 14.** RCW 13.40.320 and 1995 c 40 s 1 are each amended to read
28 as follows:

29 (1) The department of social and health services shall establish
30 and operate a medium security juvenile offender basic training camp
31 program. The department shall site a juvenile offender basic training
32 camp facility in the most cost-effective facility possible and shall
33 review the possibility of using an existing abandoned and/or available
34 state, federally, or military-owned site or facility.

35 (2) The department may contract under this chapter with private
36 companies, the national guard, or other federal, state, or local
37 agencies to operate the juvenile offender basic training camp,
38 notwithstanding the provisions of RCW 41.06.380. Any contract must

1 contain a provision prohibiting the contractor from operating any other
2 correctional facility on that site without prior approval from the
3 Washington state legislature. Requests for proposals from possible
4 contractors shall not call for payment on a per diem basis.

5 (3) The juvenile offender basic training camp shall accommodate at
6 least seventy offenders. The beds shall count as additions to, and not
7 be used as replacements for, existing bed capacity at existing
8 department of social and health services juvenile facilities.

9 (4) The juvenile offender basic training camp shall be a structured
10 and regimented model lasting one hundred (~~twenty~~) eighty days
11 emphasizing the building up of an offender's self-esteem, confidence,
12 and discipline. The juvenile offender basic training camp program
13 shall provide participants with basic education, (~~prevocational~~
14 ~~training~~) work-based learning, live work, work ethic skills,
15 (~~conflict resolution counseling, substance abuse intervention, anger~~
16 ~~management counseling~~) and structured intensive physical training.
17 The juvenile offender basic training camp program shall have a
18 curriculum training and work schedule that incorporates a balanced
19 assignment of these (~~or other rehabilitation and training~~) components
20 for no less than sixteen hours per day, six days a week.

21 The department shall adopt rules for the safe and effective
22 operation of the juvenile offender basic training camp program,
23 standards for an offender's successful program completion, and rules
24 for the continued after-care supervision of offenders who have
25 successfully completed the program.

26 (5) Only serious offenders are eligible for the juvenile offender
27 basic training camp option (~~shall be those with a disposition of not~~
28 ~~more than seventy-eight weeks~~). Violent and sex offenders (~~shall not~~
29 ~~be~~), other offenders committing offenses identified in RCW 13.40.0357,
30 schedule A, as disqualifying offenses, and those offenders who are
31 already incarcerated when convicted of a new crime are not eligible for
32 the juvenile offender basic training camp program.

33 (6) If the court determines that the offender is eligible for the
34 juvenile offender basic training camp option, the court may recommend
35 that the department place the offender in the program. The department
36 shall evaluate the offender and may place the offender in the program.
37 The evaluation shall include, at a minimum, a risk assessment developed
38 by the department and designed to determine the offender's suitability
39 for the program. No juvenile who is assessed as a high risk offender

1 or suffers from any mental or physical problems that could endanger his
2 or her health or drastically affect his or her performance in the
3 program shall be admitted to or retained in the juvenile offender basic
4 training camp program.

5 (7) All juvenile offenders eligible for the juvenile offender basic
6 training camp sentencing option shall spend one hundred (~~twenty~~)
7 eighty days of their disposition in a juvenile offender basic training
8 camp. If the juvenile offender's activities while in the juvenile
9 offender basic training camp are so disruptive to the juvenile offender
10 basic training camp program, as determined by the secretary according
11 to rules adopted by the department, as to result in the removal of the
12 juvenile offender from the juvenile offender basic training camp
13 program, (~~or if the offender cannot complete the juvenile offender~~
14 ~~basic training camp program due to medical problems,~~) the secretary
15 shall require that the offender be committed to a juvenile institution
16 to serve the entire (~~remainder~~) standard range term of his or her
17 disposition(~~(, less the amount of time already served in the juvenile~~
18 ~~offender basic training camp program)~~). If the offender cannot
19 complete the juvenile offender basic training camp program due to a
20 medical problem, the secretary shall require that the offender be
21 committed to a juvenile institution to serve the entire remainder of
22 his or her disposition.

23 (8) All offenders who successfully graduate from the one hundred
24 (~~twenty~~) eighty day juvenile offender basic training camp program
25 shall spend the remainder of their disposition or twenty-four months,
26 whichever is longer, on parole in a division of juvenile rehabilitation
27 intensive aftercare program in the local community. The program shall
28 provide for the needs of the offender based on his or her progress in
29 the aftercare program as indicated by ongoing assessment of those needs
30 and progress. The program shall make available prevocational training,
31 conflict resolution, anger management counseling, and substance abuse
32 intervention and treatment. The intensive aftercare program shall
33 monitor postprogram juvenile offenders and assist them to successfully
34 reintegrate into the community. In addition, the program shall develop
35 a process for closely monitoring and assessing public safety risks.
36 The intensive aftercare program shall be designed and funded by the
37 department of social and health services.

38 (9) The department shall also develop and maintain a data base to
39 measure recidivism rates specific to this incarceration program. The

1 data base shall maintain data on all juvenile offenders who complete
2 the juvenile offender basic training camp program for a period of two
3 years after they have completed the program. The data base shall also
4 maintain data on the criminal activity, educational progress, and
5 employment activities of all juvenile offenders who participated in the
6 program. The department shall produce an outcome evaluation report on
7 the progress of the juvenile offender basic training camp program to
8 the appropriate committees of the legislature no later than December
9 12, 1996.

10 **Sec. 15.** RCW 13.50.050 and 1992 c 188 s 7 are each amended to read
11 as follows:

12 (1) This section governs records relating to the commission of
13 juvenile offenses, including records relating to diversions.

14 (2) The official juvenile court file of any alleged or proven
15 juvenile offender shall be open to public inspection, unless sealed
16 pursuant to subsection (11) of this section.

17 (3) All records other than the official juvenile court file are
18 confidential and may be released only as provided in this section, RCW
19 13.50.010, 13.40.215, and 4.24.550.

20 (4) Except as otherwise provided in this section and RCW 13.50.010,
21 records retained or produced by any juvenile justice or care agency may
22 be released to other participants in the juvenile justice or care
23 system only when an investigation or case involving the juvenile in
24 question is being pursued by the other participant or when that other
25 participant is assigned the responsibility for supervising the
26 juvenile.

27 (5) Except as provided in RCW 4.24.550, information not in an
28 official juvenile court file concerning a juvenile or a juvenile's
29 family may be released to the public only when that information could
30 not reasonably be expected to identify the juvenile or the juvenile's
31 family.

32 (6) Notwithstanding any other provision of this chapter, the
33 release, to the juvenile or his or her attorney, of law enforcement and
34 prosecuting attorneys' records pertaining to investigation, diversion,
35 and prosecution of juvenile offenses shall be governed by the rules of
36 discovery and other rules of law applicable in adult criminal
37 investigations and prosecutions.

1 (7) The juvenile court and the prosecutor may set up and maintain
2 a central record-keeping system which may receive information on all
3 alleged juvenile offenders against whom a complaint has been filed
4 pursuant to RCW 13.40.070 whether or not their cases are currently
5 pending before the court. The central record-keeping system may be
6 computerized. If a complaint has been referred to a diversion unit,
7 the diversion unit shall promptly report to the juvenile court or the
8 prosecuting attorney when the juvenile has agreed to diversion. An
9 offense shall not be reported as criminal history in any central
10 record-keeping system without notification by the diversion unit of the
11 date on which the offender agreed to diversion.

12 (8) Upon request of the victim of a crime or the victim's immediate
13 family, the identity of an alleged or proven juvenile offender alleged
14 or found to have committed a crime against the victim and the identity
15 of the alleged or proven juvenile offender's parent, guardian, or
16 custodian and the circumstance of the alleged or proven crime shall be
17 released to the victim of the crime or the victim's immediate family.

18 (9) Subject to the rules of discovery applicable in adult criminal
19 prosecutions, the juvenile offense records of an adult criminal
20 defendant or witness in an adult criminal proceeding shall be released
21 upon request to prosecution and defense counsel after a charge has
22 actually been filed. The juvenile offense records of any adult
23 convicted of a crime and placed under the supervision of the adult
24 corrections system shall be released upon request to the adult
25 corrections system.

26 (10) In any case in which an information has been filed pursuant to
27 RCW 13.40.100 or a complaint has been filed with the prosecutor and
28 referred for diversion pursuant to RCW 13.40.070, the person the
29 subject of the information or complaint may file a motion with the
30 court to have the court vacate its order and findings, if any, and,
31 subject to subsections (24) and (26) of this section, order the sealing
32 of the official juvenile court file, the social file, and records of
33 the court and of any other agency in the case.

34 (11) The court shall grant the motion to seal records made pursuant
35 to subsection (10) of this section if it finds that:

36 (a) Two years have elapsed from the later of: (i) Final discharge
37 of the person from the supervision of any agency charged with
38 supervising juvenile offenders; or (ii) from the entry of a court order
39 relating to the commission of a juvenile offense or a criminal offense;

1 (b) No proceeding is pending against the moving party seeking the
2 conviction of a juvenile offense or a criminal offense; and

3 (c) No proceeding is pending seeking the formation of a diversion
4 agreement with that person.

5 (12) The person making a motion pursuant to subsection (10) of this
6 section shall give reasonable notice of the motion to the prosecution
7 and to any person or agency whose files are sought to be sealed.

8 (13) If the court grants the motion to seal made pursuant to
9 subsection (10) of this section, it shall, subject to subsection (24)
10 of this section, order sealed the official juvenile court file, the
11 social file, and other records relating to the case as are named in the
12 order. Thereafter, the proceedings in the case shall be treated as if
13 they never occurred, and the subject of the records may reply
14 accordingly to any inquiry about the events, records of which are
15 sealed. Any agency shall reply to any inquiry concerning confidential
16 or sealed records that records are confidential, and no information can
17 be given about the existence or nonexistence of records concerning an
18 individual.

19 (14) Inspection of the files and records included in the order to
20 seal may thereafter be permitted only by order of the court upon motion
21 made by the person who is the subject of the information or complaint,
22 except as otherwise provided in RCW 13.50.010(8) and subsection (24) of
23 this section.

24 (15) Any adjudication of a juvenile offense or a crime subsequent
25 to sealing has the effect of nullifying the sealing order. Any
26 conviction for any adult felony subsequent to the sealing has the
27 effect of nullifying the sealing order for the purposes of chapter
28 9.94A RCW for any juvenile adjudication of guilt for a class A offense
29 or a sex offense as defined in RCW 9.94A.030.

30 (16) In any case in which an information has been filed pursuant to
31 RCW 13.40.100 or a complaint has been filed with the prosecutor and
32 referred for diversion pursuant to RCW 13.40.070, the person who is the
33 subject of the information or complaint may file a motion with the
34 court to have the court vacate its order and findings, if any, and,
35 subject to subsections (24) and (26) of this section, order the
36 destruction of the official juvenile court file, the social file, and
37 records of the court and of any other agency in the case.

38 (17) The court may grant the motion to destroy records made
39 pursuant to subsection (16) of this section if it finds:

1 (a) The person making the motion is at least twenty-three years of
2 age;

3 (b) The person has not subsequently been convicted of a felony;

4 (c) No proceeding is pending against that person seeking the
5 conviction of a criminal offense; and

6 (d) The person has never been found guilty of a serious offense.

7 (18) A person eighteen years of age or older whose criminal history
8 consists of only one referral for diversion may request that the court
9 order the records in that case destroyed. The request shall be
10 granted, subject to subsection (24) of this section, if the court finds
11 that two years have elapsed since completion of the diversion
12 agreement.

13 (19) If the court grants the motion to destroy records made
14 pursuant to subsection (16) or (18) of this section, it shall, subject
15 to subsection (24) of this section, order the official juvenile court
16 file, the social file, and any other records named in the order to be
17 destroyed.

18 (20) The person making the motion pursuant to subsection (16) or
19 (18) of this section shall give reasonable notice of the motion to the
20 prosecuting attorney and to any agency whose records are sought to be
21 destroyed.

22 (21) Any juvenile to whom the provisions of this section may apply
23 shall be given written notice of his or her rights under this section
24 at the time of his or her disposition hearing or during the diversion
25 process.

26 (22) Nothing in this section may be construed to prevent a crime
27 victim or a member of the victim's family from divulging the identity
28 of the alleged or proven juvenile offender or his or her family when
29 necessary in a civil proceeding.

30 (23) Any juvenile justice or care agency may, subject to the
31 limitations in subsections (24) and (26) of this section and
32 (~~subparagraphs~~) (a) and (b) of this subsection, develop procedures
33 for the routine destruction of records relating to juvenile offenses
34 and diversions.

35 (a) Records may be routinely destroyed only when the person the
36 subject of the information or complaint: (i) Has attained (~~twenty-~~
37 three)) twenty-eight years of age or older and has no adult criminal
38 convictions within the last seven years, or (ii) is eighteen years of
39 age or older and his or her criminal history consists entirely of one

1 diversion agreement and two years have passed since completion of the
2 agreement.

3 (b) The court may not routinely destroy the official juvenile court
4 file or recordings or transcripts of any proceedings.

5 (24) No identifying information held by the Washington state patrol
6 in accordance with chapter 43.43 RCW is subject to destruction or
7 sealing under this section. For the purposes of this subsection,
8 identifying information includes photographs, fingerprints, palmprints,
9 soleprints, toeprints and any other data that identifies a person by
10 physical characteristics, name, birthdate or address, but does not
11 include information regarding criminal activity, arrest, charging,
12 diversion, conviction or other information about a person's treatment
13 by the criminal justice system or about the person's behavior.

14 (25) Information identifying child victims under age eighteen who
15 are victims of sexual assaults by juvenile offenders is confidential
16 and not subject to release to the press or public without the
17 permission of the child victim or the child's legal guardian.
18 Identifying information includes the child victim's name, addresses,
19 location, photographs, and in cases in which the child victim is a
20 relative of the alleged perpetrator, identification of the relationship
21 between the child and the alleged perpetrator. Information identifying
22 a child victim of sexual assault may be released to law enforcement,
23 prosecutors, judges, defense attorneys, or private or governmental
24 agencies that provide services to the child victim of sexual assault.

25 (26) The official juvenile court file, the social file, and the
26 records of the court and any other agency in the case of any person who
27 committed a sex offense or a serious violent offense may not be sealed
28 or destroyed.

29 **Sec. 16.** RCW 9.94A.040 and 1996 c 232 s 1 are each amended to read
30 as follows:

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

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

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

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

1 (ii) The intent of the legislature to emphasize confinement for the
2 violent offender and alternatives to confinement for the nonviolent
3 offender.

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

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

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

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

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

29 (f) Evaluate the effectiveness of existing disposition standards
30 and related statutes in implementing policies set forth in RCW
31 13.40.010 generally, specifically review the guidelines relating to the
32 confinement of (~~minor and first~~) misdemeanor offenders as well as the
33 use of diversion, and review the application of current and proposed
34 juvenile sentencing standards and guidelines for potential adverse
35 impacts on the sentencing outcomes of racial and ethnic minority youth;

36 (g) Solicit the comments and suggestions of the juvenile justice
37 community concerning disposition standards, and make recommendations to
38 the legislature regarding revisions or modifications of the standards
39 in accordance with RCW 9.94A.045. The evaluations shall be submitted

1 to the legislature on December 1 of each odd-numbered year. The
2 department of social and health services shall provide the commission
3 with available data concerning the implementation of the disposition
4 standards and related statutes and their effect on the performance of
5 the department's responsibilities relating to juvenile offenders, and
6 with recommendations for modification of the disposition standards.
7 The office of the administrator for the courts shall provide the
8 commission with available data on diversion and dispositions of
9 juvenile offenders under chapter 13.40 RCW; and

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

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

14 (ii) The capacity of state and local juvenile and adult facilities
15 and resources; and

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

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

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

22 (a) If the maximum term in the range is one year or less, the
23 minimum term in the range shall be no less than one-third of the
24 maximum term in the range, except that if the maximum term in the range
25 is ninety days or less, the minimum term may be less than one-third of
26 the maximum;

27 (b) If the maximum term in the range is greater than one year, the
28 minimum term in the range shall be no less than seventy-five percent of
29 the maximum term in the range; and

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

32 (5) The commission shall exercise its duties under this section in
33 conformity with chapter 34.05 RCW.

34 NEW SECTION. **Sec. 17.** The following acts or parts of acts are
35 each repealed:

36 (1) RCW 13.40.0354 and 1994 sp.s. c 7 s 521 & 1989 c 407 s 6; and

1 (2) RCW 13.40.125 and 1995 c 395 s 6 & 1994 sp.s. c 7 s 545.

--- **END** ---