
HOUSE BILL 2111

State of Washington

54th Legislature

1995 Regular Session

By Representative Sheahan

Read first time . Referred to Committee on .

1 AN ACT Relating to juvenile offenders; amending RCW 5.60.060,
2 13.40.010, 13.40.025, 13.40.027, 13.40.030, 13.40.0357, 13.40.045,
3 13.40.050, 13.40.060, 13.40.080, 13.40.130, 13.40.150, 13.40.160, and
4 35.20.030; reenacting and amending RCW 13.04.030 and 13.40.020; adding
5 a new section to chapter 13.04 RCW; adding new sections to chapter
6 13.40 RCW; adding a new section to chapter 28A.175 RCW; adding a new
7 section to chapter 28A.225 RCW; creating a new section; prescribing
8 penalties; making an appropriation; providing an effective date;
9 providing an expiration date; and declaring an emergency.

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

11 **Sec. 1.** RCW 5.60.060 and 1995 c 240 s 1 are each amended to read
12 as follows:

13 (1) A husband shall not be examined for or against his wife,
14 without the consent of the wife, nor a wife for or against her husband
15 without the consent of the husband; nor can either during marriage or
16 afterward, be without the consent of the other, examined as to any
17 communication made by one to the other during marriage. But this
18 exception shall not apply to a civil action or proceeding by one
19 against the other, nor to a criminal action or proceeding for a crime

1 committed by one against the other, nor to a criminal action or
2 proceeding against a spouse if the marriage occurred subsequent to the
3 filing of formal charges against the defendant, nor to a criminal
4 action or proceeding for a crime committed by said husband or wife
5 against any child of whom said husband or wife is the parent or
6 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:
7 PROVIDED, That the spouse of a person sought to be detained under
8 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall
9 be so informed by the court prior to being called as a witness.

10 (2) An attorney or counselor shall not, without the consent of his
11 or her client, be examined as to any communication made by the client
12 to him or her, or his or her advice given thereon in the course of
13 professional employment.

14 (3) A parent shall not be examined as to a communication made by
15 that parent's minor child to the child's attorney after the filing of
16 juvenile offender or adult criminal charges, if the parent was present
17 at the time of the communication. This privilege does not extend to
18 communications made prior to filing of charges.

19 (4) A member of the clergy or a priest shall not, without the
20 consent of a person making the confession, be examined as to any
21 confession made to him or her in his or her professional character, in
22 the course of discipline enjoined by the church to which he or she
23 belongs.

24 ((+4)) (5) Subject to the limitations under RCW 70.96A.140 or
25 71.05.250, a physician or surgeon or osteopathic physician or surgeon
26 shall not, without the consent of his or her patient, be examined in a
27 civil action as to any information acquired in attending such patient,
28 which was necessary to enable him or her to prescribe or act for the
29 patient, except as follows:

30 (a) In any judicial proceedings regarding a child's injury,
31 neglect, or sexual abuse or the cause thereof; and

32 (b) Ninety days after filing an action for personal injuries or
33 wrongful death, the claimant shall be deemed to waive the physician-
34 patient privilege. Waiver of the physician-patient privilege for any
35 one physician or condition constitutes a waiver of the privilege as to
36 all physicians or conditions, subject to such limitations as a court
37 may impose pursuant to court rules.

1 (~~(5)~~) (6) A public officer shall not be examined as a witness as
2 to communications made to him or her in official confidence, when the
3 public interest would suffer by the disclosure.

4 (~~(6)~~) (7)(a) A peer support group counselor shall not, without
5 consent of the law enforcement officer making the communication, be
6 compelled to testify about any communication made to the counselor by
7 the officer while receiving counseling. The counselor must be
8 designated as such by the sheriff, police chief, or chief of the
9 Washington state patrol, prior to the incident that results in
10 counseling. The privilege only applies when the communication was made
11 to the counselor while acting in his or her capacity as a peer support
12 group counselor. The privilege does not apply if the counselor was an
13 initial responding officer, a witness, or a party to the incident which
14 prompted the delivery of peer support group counseling services to the
15 law enforcement officer.

16 (b) For purposes of this section, "peer support group counselor"
17 means a:

18 (i) Law enforcement officer, or civilian employee of a law
19 enforcement agency, who has received training to provide emotional and
20 moral support and counseling to an officer who needs those services as
21 a result of an incident in which the officer was involved while acting
22 in his or her official capacity; or

23 (ii) Nonemployee counselor who has been designated by the sheriff,
24 police chief, or chief of the Washington state patrol to provide
25 emotional and moral support and counseling to an officer who needs
26 those services as a result of an incident in which the officer was
27 involved while acting in his or her official capacity.

28 **Sec. 2.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15 are
29 each reenacted and amended to read as follows:

30 (1) Except as provided in subsection (2) of this section, the
31 juvenile courts in the several counties of this state, shall have
32 exclusive original jurisdiction over all proceedings:

33 (a) Under the interstate compact on placement of children as
34 provided in chapter 26.34 RCW;

35 (b) Relating to children alleged or found to be dependent as
36 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

37 (c) Relating to the termination of a parent and child relationship
38 as provided in RCW 13.34.180 through 13.34.210;

1 (d) To approve or disapprove out-of-home placement as provided in
2 RCW 13.32A.170;

3 (e) Relating to juveniles alleged or found to have committed
4 offenses, traffic infractions, civil infractions, or violations as
5 provided in RCW 13.40.020 through 13.40.230, unless:

6 (i) The juvenile court transfers jurisdiction of a particular
7 juvenile to adult criminal court pursuant to RCW 13.40.110; or

8 (ii) The statute of limitations applicable to adult prosecution for
9 the offense, traffic infraction, civil infraction, or violation has
10 expired; or

11 (iii) The alleged offense or infraction is a traffic, fish,
12 boating, or game offense or traffic or civil infraction committed by a
13 juvenile sixteen years of age or older and would, if committed by an
14 adult, be tried or heard in a court of limited jurisdiction, in which
15 instance the appropriate court of limited jurisdiction shall have
16 jurisdiction over the alleged offense or infraction: PROVIDED, That if
17 such an alleged offense or infraction and an alleged offense or
18 infraction subject to juvenile court jurisdiction arise out of the same
19 event or incident, the juvenile court may have jurisdiction of both
20 matters: PROVIDED FURTHER, That the jurisdiction under this subsection
21 does not constitute "transfer" or a "decline" for purposes of RCW
22 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That
23 courts of limited jurisdiction which confine juveniles for an alleged
24 offense or infraction may place juveniles in juvenile detention
25 facilities under an agreement with the officials responsible for the
26 administration of the juvenile detention facility in RCW 13.04.035 and
27 13.20.060; or

28 (iv) The alleged offense is a traffic or civil infraction, a
29 violation of compulsory school attendance provisions under chapter
30 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
31 assumed concurrent jurisdiction over those offenses as provided in
32 section 4 of this act; or

33 (v) The juvenile is sixteen or seventeen years old and the alleged
34 offense is: (A) A serious violent offense as defined in RCW 9.94A.030
35 committed on or after June 13, 1994; or (B) a violent offense as
36 defined in RCW 9.94A.030 committed on or after June 13, 1994, and the
37 juvenile has a criminal history consisting of: ((+I)) One or more
38 prior serious violent offenses; ((+II)) two or more prior violent
39 offenses; or ((+III)) three or more of any combination of the

1 following offenses: Any class A felony, any class B felony, vehicular
2 assault, or manslaughter in the second degree, all of which must have
3 been committed after the juvenile's thirteenth birthday and prosecuted
4 separately. In such a case the adult criminal court shall have
5 exclusive original jurisdiction.

6 If the juvenile challenges the state's determination of the
7 juvenile's criminal history, the state may establish the offender's
8 criminal history by a preponderance of the evidence. If the criminal
9 history consists of adjudications entered upon a plea of guilty, the
10 state shall not bear a burden of establishing the knowing and
11 voluntariness of the plea;

12 (f) Under the interstate compact on juveniles as provided in
13 chapter 13.24 RCW;

14 (g) Relating to termination of a diversion agreement under RCW
15 13.40.080, including a proceeding in which the divertee has attained
16 eighteen years of age;

17 (h) Relating to court validation of a voluntary consent to an out-
18 of-home placement under chapter 13.34 RCW, by the parent or Indian
19 custodian of an Indian child, except if the parent or Indian custodian
20 and child are residents of or domiciled within the boundaries of a
21 federally recognized Indian reservation over which the tribe exercises
22 exclusive jurisdiction; and

23 (i) Relating to petitions to compel disclosure of information filed
24 by the department of social and health services pursuant to RCW
25 74.13.--- (section 14, chapter 311, Laws of 1995).

26 (2) The family court shall have concurrent original jurisdiction
27 with the juvenile court over all proceedings under this section if the
28 superior court judges of a county authorize concurrent jurisdiction as
29 provided in RCW 26.12.010.

30 (3) A juvenile subject to adult superior court jurisdiction under
31 subsection (1)(e) (i) through ~~((iv))~~ (v) of this section, who is
32 detained pending trial, may be detained in a county detention facility
33 as defined in RCW 13.40.020 pending sentencing or a dismissal.

34 (4) A parent, guardian, or custodian who has custody of any
35 juvenile described in this section, if such parent, guardian, or
36 custodian was served with a summons, shall be subject to the
37 jurisdiction of the court for purposes of enforcing required attendance
38 at juvenile court hearings.

1 NEW SECTION. **Sec. 3.** The legislature finds that a swift and
2 certain response to a juvenile who begins engaging in acts of
3 delinquency may prevent the offender from becoming a chronic or more
4 serious offender. However, given pressing demands to address serious
5 offenders, the system does not always respond to minor offenders
6 expeditiously and effectively. Consequently, sections 4, 23, and 24 of
7 this act are adopted to implement an experiment to determine whether
8 granting courts of limited jurisdiction concurrent jurisdiction over
9 certain juvenile offenses will improve the system's effectiveness in
10 curbing delinquency. The legislature may ascertain whether this
11 approach might be successful on a larger scale by conducting an
12 experiment with local governments, which are the laboratories of
13 democracy.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 13.04 RCW
15 to read as follows:

16 (1) Any county with a population of at least one hundred seventy-
17 five thousand but less than two hundred fifty thousand that has a city
18 with a population of at least fifty-nine thousand may authorize a pilot
19 project to allow courts of limited jurisdiction within the county to
20 exercise concurrent jurisdiction with the juvenile court under certain
21 circumstances. District and municipal courts of limited jurisdiction
22 at the local option of the county or any city or town located within
23 the county may exercise concurrent original jurisdiction with the
24 juvenile court over traffic or civil infractions, violations of
25 compulsory school attendance provisions under chapter 28A.225 RCW, and
26 misdemeanors when those offenses are allegedly committed by juveniles
27 and:

28 (a)(i) The offense, which if committed by an adult, is punishable
29 by sanctions that do not include incarceration; or

30 (ii) The offender's standard range disposition does not include
31 confinement as defined in RCW 13.40.020;

32 (b) The court of limited jurisdiction has a computer system that is
33 linked to the state-wide criminal history information data system used
34 by juvenile courts to track and record juvenile offenders' criminal
35 history;

36 (c) The county legislative authority of the county has authorized
37 creation of concurrent jurisdiction between the court of limited
38 jurisdiction and the juvenile court; and

1 (d) The court of limited jurisdiction has an agreement with
2 officials responsible for administering the county juvenile detention
3 facility pursuant to RCW 13.04.035 and 13.20.060 that the court may
4 order juveniles into the detention facility for an offense in cases in
5 which the court finds that a disposition without confinement would be
6 a manifest injustice.

7 (2) The juvenile court shall retain jurisdiction over the offense
8 if the juvenile is charged with another offense arising out of the same
9 incident and the juvenile court has jurisdiction over the other
10 offense.

11 (3) Jurisdiction under this section does not constitute a decline
12 or transfer of juvenile court jurisdiction under RCW 13.40.110.

13 (4) The procedural and disposition provisions of chapter 13.40 RCW
14 shall apply to offenses prosecuted under this section.

15 (5) All diversions and adjudications entered by a court of limited
16 jurisdiction shall be included in an offender's criminal history as
17 provided in chapter 13.40 RCW.

18 (6) The provisions of this section shall be implemented as a pilot
19 project in the county and this section shall expire June 30, 1998.

20 **Sec. 5.** RCW 13.40.010 and 1992 c 205 s 101 are each amended to
21 read as follows:

22 (1) This chapter shall be known and cited as the Juvenile Justice
23 Act of 1977.

24 (2) It is the intent of the legislature that a system capable of
25 having primary responsibility for, being accountable for, and
26 responding to the needs of youthful offenders, as defined by this
27 chapter, be established. It is the further intent of the legislature
28 that youth, in turn, be held accountable for their offenses and that
29 (~~both~~) communities, families, and the juvenile courts carry out their
30 functions consistent with this intent. To effectuate these policies,
31 the legislature declares the following to be equally important purposes
32 of this chapter:

33 (a) Protect the citizenry from criminal behavior;

34 (b) Provide for determining whether accused juveniles have
35 committed offenses as defined by this chapter;

36 (c) Make the juvenile offender accountable for his or her criminal
37 behavior;

1 (d) Provide for punishment commensurate with the age, crime, and
2 criminal history of the juvenile offender;

3 (e) Provide due process for juveniles alleged to have committed an
4 offense;

5 (f) Provide necessary treatment, supervision, and custody for
6 juvenile offenders;

7 (g) Provide for the handling of juvenile offenders by communities
8 whenever consistent with public safety;

9 (h) Provide for restitution to victims of crime;

10 (i) Develop effective standards and goals for the operation,
11 funding, and evaluation of all components of the juvenile justice
12 system and related services at the state and local levels; ((and))

13 (j) Provide for a clear policy to determine what types of offenders
14 shall receive punishment, treatment, or both, and to determine the
15 jurisdictional limitations of the courts, institutions, and community
16 services; and

17 (k) Encourage the parents, guardian, or custodian of the juvenile
18 to actively participate in the juvenile justice process.

19 **Sec. 6.** RCW 13.40.020 and 1995 c 395 s 2 and 1995 c 134 s 1 are
20 each reenacted and amended to read as follows:

21 For the purposes of this chapter:

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

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

26 (b) Manslaughter in the first degree; or

27 (c) Assault in the second degree, extortion in the first degree,
28 child molestation in the second degree, kidnapping in the second
29 degree, robbery in the second degree, residential burglary, or burglary
30 in the second degree, where such offenses include the infliction of
31 bodily harm upon another or where during the commission of or immediate
32 withdrawal from such an offense the perpetrator is armed with a deadly
33 weapon;

34 (2) "Community service" means compulsory service, without
35 compensation, performed for the benefit of the community by the
36 offender as punishment for committing an offense. Community service
37 may be performed through public or private organizations or through
38 work crews;

1 (3) "Community supervision" means an order of disposition by the
2 court of an adjudicated youth not committed to the department or an
3 order granting a deferred adjudication pursuant to RCW 13.40.125. A
4 community supervision order for a single offense may be for a period of
5 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
6 one year for other offenses. As a mandatory condition of any term of
7 community supervision, the court shall order the juvenile to refrain
8 from committing new offenses. As a mandatory condition of community
9 supervision, the court shall order the juvenile to comply with the
10 mandatory school attendance provisions of chapter 28A.225 RCW and to
11 inform the school of the existence of this requirement. Community
12 supervision is an individualized program comprised of one or more of
13 the following:

14 (a) Community-based sanctions;

15 (b) Community-based rehabilitation;

16 (c) Monitoring and reporting requirements;

17 (d) Posting of a probation bond (~~((imposed pursuant to RCW~~
18 ~~13.40.0357))~~ as provided in RCW 13.40.--- (section 1, chapter 395, Laws
19 of 1995));

20 (4) Community-based sanctions may include one or more of the
21 following:

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

23 (b) Community service not to exceed one hundred fifty hours of
24 service;

25 (5) "Community-based rehabilitation" means one or more of the
26 following: Attendance of information classes; counseling, outpatient
27 substance abuse treatment programs, outpatient mental health programs,
28 anger management classes, education or outpatient treatment programs to
29 prevent animal cruelty, or other services; or attendance at school or
30 other educational programs appropriate for the juvenile as determined
31 by the school district. Placement in community-based rehabilitation
32 programs is subject to available funds;

33 (6) "Monitoring and reporting requirements" means one or more of
34 the following: Curfews; requirements to remain at home, school, work,
35 or court-ordered treatment programs during specified hours;
36 restrictions from leaving or entering specified geographical areas;
37 requirements to report to the probation officer as directed and to
38 remain under the probation officer's supervision; and other conditions

1 or limitations as the court may require which may not include
2 confinement;

3 (7) "Confinement" means physical custody by the department of
4 social and health services in a facility operated by or pursuant to a
5 contract with the state, or physical custody in a detention facility
6 operated by or pursuant to a contract with any county. The county may
7 operate or contract with vendors to operate county detention
8 facilities. The department may operate or contract to operate
9 detention facilities for juveniles committed to the department.
10 Pretrial confinement or confinement of less than thirty-one days
11 imposed as part of a disposition or modification order may be served
12 consecutively or intermittently, in the discretion of the court;

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

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

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

21 (b) The criminal complaint was diverted by a prosecutor pursuant to
22 the provisions of this chapter on agreement of the respondent and after
23 an advisement to the respondent that the criminal complaint would be
24 considered as part of the respondent's criminal history. A
25 successfully completed deferred adjudication shall not be considered
26 part of the respondent's criminal history;

27 (10) "Department" means the department of social and health
28 services;

29 (11) "Detention facility" means a county facility, paid for by the
30 county, for the physical confinement of a juvenile alleged to have
31 committed an offense or an adjudicated offender subject to a
32 disposition or modification order. "Detention facility" includes
33 county group homes, inpatient substance abuse programs, juvenile basic
34 training camps, and electronic monitoring;

35 (12) "Diversion unit" means any probation counselor who enters into
36 a diversion agreement with an alleged youthful offender, or any other
37 person, community accountability board, or other entity except a law
38 enforcement official or entity, with whom the juvenile court
39 administrator has contracted to arrange and supervise such agreements

1 pursuant to RCW 13.40.080, or any person, community accountability
2 board, or other entity specially funded by the legislature to arrange
3 and supervise diversion agreements in accordance with the requirements
4 of this chapter. For purposes of this subsection, "community
5 accountability board" means a board comprised of members of the local
6 community in which the juvenile offender resides. The superior court
7 shall appoint the members. The boards shall consist of at least three
8 and not more than seven members. If possible, the board should include
9 a variety of representatives from the community, such as a law
10 enforcement officer, teacher or school administrator, high school
11 student, parent, and business owner, and should represent the cultural
12 diversity of the local community;

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

15 (14) "Juvenile," "youth," and "child" mean any individual who is
16 under the chronological age of eighteen years and who has ~~((not))~~
17 neither been previously transferred to adult court pursuant to RCW
18 13.40.110 ~~((or who is otherwise under))~~ nor ever been subject to adult
19 criminal court jurisdiction pursuant to RCW 13.04.030(1)(e)(v);

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

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

27 (17) "Middle offender" means a person who has committed an offense
28 and who is neither a minor or first offender nor a serious offender;

29 (18) "Minor or first offender" means a person whose current
30 offense(s) and criminal history fall entirely within one of the
31 following categories:

32 (a) Four misdemeanors;

33 (b) Two misdemeanors and one gross misdemeanor;

34 (c) One misdemeanor and two gross misdemeanors; and

35 (d) Three gross misdemeanors.

36 For purposes of this definition, current violations shall be
37 counted as misdemeanors;

38 (19) "Offense" means an act designated a violation or a crime if
39 committed by an adult under the law of this state, under any ordinance

1 of any city or county of this state, under any federal law, or under
2 the law of another state if the act occurred in that state;

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

5 (21) "Restitution" means financial reimbursement by the offender to
6 the victim, and shall be limited to easily ascertainable damages for
7 injury to or loss of property, actual expenses incurred for medical
8 treatment for physical injury to persons, lost wages resulting from
9 physical injury, and costs of the victim's counseling reasonably
10 related to the offense if the offense is a sex offense. Restitution
11 shall not include reimbursement for damages for mental anguish, pain
12 and suffering, or other intangible losses. Nothing in this chapter
13 shall limit or replace civil remedies or defenses available to the
14 victim or offender;

15 (22) "Secretary" means the secretary of the department of social
16 and health services. "Assistant secretary" means the assistant
17 secretary for juvenile rehabilitation for the department;

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

22 (24) "Sex offense" means an offense defined as a sex offense in RCW
23 9.94A.030;

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

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

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

33 (28) "Violent offense" means a violent offense as defined in RCW
34 9.94A.030;

35 (29) "Probation bond" means a bond, posted with sufficient security
36 by a surety justified and approved by the court, to secure the
37 offender's appearance at required court proceedings and compliance with
38 court-ordered community supervision or conditions of release ordered
39 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of

1 cash or posting of other collateral in lieu of a bond if approved by
2 the court;

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

7 **Sec. 7.** RCW 13.40.025 and 1995 c 269 s 302 are each amended to
8 read as follows:

9 (1) There is established a juvenile disposition standards
10 commission to propose disposition standards to the legislature in
11 accordance with RCW 13.40.030 and perform the other responsibilities
12 set forth in this chapter.

13 (2) The commission shall be composed of the secretary or the
14 secretary's designee, the director of financial management or the
15 director's designee, and the following ~~((nine))~~ thirteen members
16 appointed by the governor, subject to confirmation by the senate: (a)
17 ~~((A))~~ Two superior court judges; (b) ~~((a))~~ two prosecuting attorneys or
18 deputy prosecuting attorneys; (c) a law enforcement officer; (d) ~~((an))~~
19 two administrators of juvenile court services; (e) ~~((a))~~ two public
20 defenders actively practicing in juvenile court; (f) a county
21 legislative official or county executive; and (g) three other persons
22 who have demonstrated significant interest in the adjudication and
23 disposition of juvenile offenders. In making the appointments, the
24 governor shall seek the recommendations of the association of superior
25 court judges in respect to the members who ~~((is a))~~ are superior court
26 judges; of Washington prosecutors in respect to the prosecuting
27 attorneys or deputy prosecuting attorney members; of the Washington
28 association of sheriffs and police chiefs in respect to the member who
29 is a law enforcement officer; of juvenile court administrators in
30 respect to the members who ~~((is a))~~ are juvenile court administrators;
31 ~~((and))~~ of the state bar association in respect to the public defender
32 members; and of the Washington association of counties in respect to
33 the member who is either a county legislative official or county
34 executive.

35 (3) The ~~((secretary or the secretary's designee shall serve as~~
36 ~~chairman of the))~~ commission members shall elect a chair from their
37 membership.

1 (4) ~~The ((secretary shall serve on the commission during the~~
2 ~~secretary's tenure as secretary of the department. The term of the~~
3 ~~remaining members of the commission shall be three years. The initial~~
4 ~~terms shall be determined by lot conducted at the commission's first~~
5 ~~meeting as follows: (a) Four members shall serve a two-year term; and~~
6 ~~(b) four members shall serve a three-year term. In the event of a~~
7 ~~vacancy, the appointing authority shall designate a new member to~~
8 ~~complete the remainder of the unexpired term)) speaker of the house of~~
9 ~~representatives and the president of the senate may each appoint two~~
10 ~~nonvoting members to the commission, one from each of the two largest~~
11 ~~caucuses in each house.~~

12 (5) Commission members shall be reimbursed for travel expenses as
13 provided in RCW 43.03.050 and 43.03.060. Legislative members shall be
14 reimbursed by their respective houses as provided under RCW 44.04.120.
15 Members shall be compensated in accordance with RCW 43.03.240.

16 (6) Other than the ex officio members, the voting members of the
17 commission shall serve a two-year term until the commission ceases to
18 exist on June 30, 1997.

19 (7) The commission shall cease to exist on June 30, 1997, and its
20 powers and duties shall be transferred to the sentencing guidelines
21 commission established under RCW 9.94A.040.

22 **Sec. 8.** RCW 13.40.027 and 1993 c 415 s 9 are each amended to read
23 as follows:

24 (1) It is the responsibility of the commission to: (a)(i) Evaluate
25 the effectiveness of existing disposition standards and related
26 statutes in implementing policies set forth in RCW 13.40.010 generally,
27 (ii) specifically review the guidelines relating to the confinement of
28 minor and first offenders as well as the use of diversion, and (iii)
29 review the application of current and proposed juvenile sentencing
30 standards and guidelines for potential adverse impacts on the
31 sentencing outcomes of racial and ethnic minority youth; (b) solicit
32 the comments and suggestions of the juvenile justice community
33 concerning disposition standards; and (c) make recommendations to the
34 legislature regarding revisions or modifications of the disposition
35 standards in accordance with RCW 13.40.030. The evaluations shall be
36 submitted to the legislature on December 1 of each even-numbered year
37 ((thereafter)).

1 (2) It is the responsibility of the department to: (a) Provide the
2 commission with available data concerning the implementation of the
3 disposition standards and related statutes and their effect on the
4 performance of the department's responsibilities relating to juvenile
5 offenders; and (b) ~~((at the request of the commission, provide~~
6 ~~technical and administrative assistance to the commission in the~~
7 ~~performance of its responsibilities; and (c))~~ provide the commission
8 and legislature with recommendations for modification of the
9 disposition standards.

10 (3) It is the responsibility of the sentencing guidelines
11 commission established under RCW 9.94A.040 to provide staffing and
12 services to the commission.

13 **Sec. 9.** RCW 13.40.030 and 1989 c 407 s 3 are each amended to read
14 as follows:

15 (1)~~((a))~~ The juvenile disposition standards commission shall
16 recommend to the legislature no later than ~~((November 1st of each~~
17 ~~year))~~ December 1, 1995, disposition standards for all offenses. The
18 standards shall establish, in accordance with the purposes of this
19 chapter, ranges which may include terms of confinement and/or community
20 supervision established on the basis of ~~((a youth's age,))~~ the instant
21 offense~~((,))~~ and the history and seriousness of previous offenses, but
22 in no case may the period of confinement and supervision exceed that to
23 which an adult may be subjected for the same offense(s). Standards
24 recommended for offenders listed in RCW 13.40.020(1) shall include a
25 range of confinement which may not be less than thirty days. No
26 standard range may include a period of confinement which includes both
27 more than thirty, and thirty or less, days. Disposition standards
28 recommended by the commission shall provide that in all cases where a
29 youth is sentenced to a term of confinement in excess of thirty days
30 the department may impose an additional period of parole ~~((not to~~
31 ~~exceed eighteen months))~~. Standards of confinement which may be
32 proposed may relate only to the length of the proposed terms and not to
33 the nature of the security to be imposed. ~~((In developing recommended~~
34 ~~disposition standards, the commission shall consider the capacity of~~
35 ~~the state juvenile facilities and the projected impact of the proposed~~
36 ~~standards on that capacity.~~

37 ~~(b) The secretary shall submit guidelines pertaining to the nature~~
38 ~~of the security to be imposed on youth placed in his or her custody~~

1 based on the age, offense(s), and criminal history of the juvenile
2 offender. Such guidelines shall be submitted to the legislature for
3 its review no later than November 1st of each year. At the same time
4 the secretary shall submit a report on security at juvenile facilities
5 during the preceding year. The report shall include the number of
6 escapes from each juvenile facility, the most serious offense for which
7 each escapee had been confined, the number and nature of offenses found
8 to have been committed by juveniles while on escape status, the number
9 of authorized leaves granted, the number of failures to comply with
10 leave requirements, the number and nature of offenses committed while
11 on leave, and the number and nature of offenses committed by juveniles
12 while in the community on minimum security status; to the extent this
13 information is available to the secretary. The department shall
14 include security status definitions in the security guidelines it
15 submits to the legislature pursuant to this section.)

16 (2) ((In developing recommendations for the permissible ranges of
17 confinement under this section the commission shall be subject to the
18 following limitations:

19 (a) Where the maximum term in the range is ninety days or less, the
20 minimum term in the range may be no less than fifty percent of the
21 maximum term in the range;

22 (b) Where the maximum term in the range is greater than ninety days
23 but not greater than one year, the minimum term in the range may be no
24 less than seventy five percent of the maximum term in the range; and

25 (c) Where the maximum term in the range is more than one year, the
26 minimum term in the range may be no less than eighty percent of the
27 maximum term in the range.))

28 The commission's recommendations for new disposition standards shall result in a simplified sentencing system.
29 In setting the new standards, the commission shall focus on the need to
30 protect public safety by emphasizing punishment, deterrence, and
31 confinement for violent and repeat offenders. The seriousness of the
32 offense shall be the most important factor in determining the length of
33 confinement, while the offender's age and criminal history shall count
34 as contributing factors. The commission shall increase judicial
35 flexibility and discretion by broadening standard ranges of
36 confinement. The commission shall provide for the use of basic
37 training camp programs. Alternatives to total confinement shall be
38 considered for nonviolent offenders. The commission shall take into
39 account, but not be limited by, the capacity of state juvenile

1 facilities, including the additional capacity that is being developed
2 or that can feasibly be developed in the near future.

3 In setting new standards, the commission must also recommend
4 disposition and institutional options for serious or chronic offenders
5 between the ages of fifteen and twenty-five who currently must either
6 be released from juvenile court jurisdiction at age twenty-one or who
7 are prosecuted as adults because the juvenile system is inadequate to
8 address their rehabilitation needs or protect the public. One option
9 must include development of a youthful offender disposition option that
10 combines adult criminal sentencing guidelines and juvenile disposition
11 standards and addresses: (a) Whether youthful offenders would be under
12 jurisdiction of the department of corrections or the department of
13 social and health services; (b) whether current age restrictions on
14 juvenile court jurisdiction would be modified; and (c) whether the
15 department of social and health services or the department of
16 corrections would provide institutional and community correctional
17 services. The option must also recommend an implementation timeline
18 and plan, identify funding and capital construction or improvement
19 options to provide separate facilities for youthful offenders, and
20 identify short and long-term fiscal impacts.

21 In developing the new standards, the commission must review
22 disposition options in other states and consult with interested parties
23 including superior court judges, prosecutors, defense attorneys,
24 juvenile court administrators, the sentencing guidelines commission,
25 victims advocates, the department of corrections and the department of
26 social and health services, and members of the legislature.

27 NEW SECTION. Sec. 10. A new section is added to chapter 13.40 RCW
28 to read as follows:

29 The secretary shall submit a report on security at juvenile
30 facilities during the preceding year. The report shall include the
31 number of escapes from each juvenile facility, the most serious offense
32 for which each escapee had been confined, the number and nature of
33 offenses found to have been committed by juveniles while on escape
34 status, the number of authorized leaves granted, the number of failures
35 to comply with leave requirements, the number and nature of offenses
36 committed while on leave, and the number and nature of offenses
37 committed by juveniles while in the community on minimum security
38 status; to the extent this information is available to the secretary.

1 The department shall include security status definitions in the report
2 it submits to the legislature pursuant to this section. The report
3 shall be submitted no later than December 15th of each year.

4 **Sec. 11.** RCW 13.40.0357 and 1995 c 395 s 3 are each amended to
5 read as follows:

6 SCHEDULE A
7 DESCRIPTION AND OFFENSE CATEGORY

8 JUVENILE
9 JUVENILE DISPOSITION DISPOSITION
10 DISPOSITION CATEGORY FOR ATTEMPT,
11 OFFENSE BAILJUMP, CONSPIRACY,
12 CATEGORY DESCRIPTION (RCW CITATION) OR SOLICITATION
13

14 **Arson and Malicious Mischief**

15 A Arson 1 (9A.48.020) B+
16 B Arson 2 (9A.48.030) C
17 C Reckless Burning 1 (9A.48.040) D
18 D Reckless Burning 2 (9A.48.050) E
19 B Malicious Mischief 1 (9A.48.070) C
20 C Malicious Mischief 2 (9A.48.080) D
21 D Malicious Mischief 3 (<\$50 is
22 E class) (9A.48.090) E
23 E Tampering with Fire Alarm
24 Apparatus (9.40.100) E
25 A Possession of Incendiary Device
26 (9.40.120) B+

27 **Assault and Other Crimes**
28 **Involving Physical Harm**

29 A Assault 1 (9A.36.011) B+
30 B+ Assault 2 (9A.36.021) C+
31 C+ Assault 3 (9A.36.031) D+
32 D+ Assault 4 (9A.36.041) E
33 D+ Reckless Endangerment
34 (9A.36.050) E

1	C+	Promoting Suicide Attempt	
2		(9A.36.060)	D+
3	D+	Coercion (9A.36.070)	E
4	C+	Custodial Assault (9A.36.100)	D+
5		Burglary and Trespass	
6	B+	Burglary 1 (9A.52.020)	C+
7	<u>B</u>	<u>Residential Burglary (9A.52.025)</u>	<u>C</u>
8	B	Burglary 2 (9A.52.030)	C
9	D	Burglary Tools (Possession of)	
10		(9A.52.060)	E
11	D	Criminal Trespass 1 (9A.52.070)	E
12	E	Criminal Trespass 2 (9A.52.080)	E
13	D	Vehicle Prowling (9A.52.100)	E
14		Drugs	
15	E	Possession/Consumption of Alcohol	
16		(66.44.270)	E
17	C	Illegally Obtaining Legend Drug	
18		(69.41.020)	D
19	C+	Sale, Delivery, Possession of Legend	
20		Drug with Intent to Sell	
21		(69.41.030)	D+
22	E	Possession of Legend Drug	
23		(69.41.030)	E
24	B+	Violation of Uniform Controlled	
25		Substances Act - Narcotic Sale	
26		(69.50.401(a)(1)(i))	B+
27	C	Violation of Uniform Controlled	
28		Substances Act - Nonnarcotic Sale	
29		(69.50.401(a)(1)(ii))	C
30	E	Possession of Marihuana <40 grams	
31		(69.50.401(e))	E
32	C	Fraudulently Obtaining Controlled	
33		Substance (69.50.403)	C
34	C+	Sale of Controlled Substance	
35		for Profit (69.50.410)	C+
36	E	Unlawful Inhalation (9.47A.020)	E

1	B	Violation of Uniform Controlled	
2		Substances Act - Narcotic	
3		Counterfeit Substances	
4		(69.50.401(b)(1)(i))	B
5	C	Violation of Uniform Controlled	
6		Substances Act - Nonnarcotic	
7		Counterfeit Substances	
8		(69.50.401(b)(1) (ii), (iii), (iv))	C
9	C	Violation of Uniform Controlled	
10		Substances Act - Possession of a	
11		Controlled Substance	
12		(69.50.401(d))	C
13	C	Violation of Uniform Controlled	
14		Substances Act - Possession of a	
15		Controlled Substance	
16		(69.50.401(c))	C
17		Firearms and Weapons	
18	E	Carrying Loaded Pistol Without	
19		Permit (9.41.050)	E
20	C	Possession of Firearms by	
21		Minor (<18) (9.41.040(1)(e))	C
22	D+	Possession of Dangerous Weapon	
23		(9.41.250)	E
24	D	Intimidating Another Person by use	
25		of Weapon (9.41.270)	E
26		Homicide	
27	A+	Murder 1 (9A.32.030)	A
28	A+	Murder 2 (9A.32.050)	B+
29	B+	Manslaughter 1 (9A.32.060)	C+
30	C+	Manslaughter 2 (9A.32.070)	D+
31	B+	Vehicular Homicide (46.61.520)	C+
32		Kidnapping	
33	A	Kidnap 1 (9A.40.020)	B+
34	B+	Kidnap 2 (9A.40.030)	C+
35	C+	Unlawful Imprisonment	
36		(9A.40.040)	D+

1		Obstructing Governmental Operation	
2	E	Obstructing a Law Enforcement Officer	
3		(9A.76.020)	E
4	E	Resisting Arrest (9A.76.040)	E
5	B	Introducing Contraband 1	
6		(9A.76.140)	C
7	C	Introducing Contraband 2	
8		(9A.76.150)	D
9	E	Introducing Contraband 3	
10		(9A.76.160)	E
11	B+	Intimidating a Public Servant	
12		(9A.76.180)	C+
13	B+	Intimidating a Witness	
14		(9A.72.110)	C+
15		Public Disturbance	
16	C+	Riot with Weapon (9A.84.010)	D+
17	D+	Riot Without Weapon	
18		(9A.84.010)	E
19	E	Failure to Disperse (9A.84.020)	E
20	E	Disorderly Conduct (9A.84.030)	E
21		Sex Crimes	
22	A	Rape 1 (9A.44.040)	B+
23	A-	Rape 2 (9A.44.050)	B+
24	C+	Rape 3 (9A.44.060)	D+
25	A-	Rape of a Child 1 (9A.44.073)	B+
26	B	Rape of a Child 2 (9A.44.076)	C+
27	B	Incest 1 (9A.64.020(1))	C
28	C	Incest 2 (9A.64.020(2))	D
29	D+	Indecent Exposure	
30		(Victim <14) (9A.88.010)	E
31	E	Indecent Exposure	
32		(Victim 14 or over) (9A.88.010)	E
33	B+	Promoting Prostitution 1	
34		(9A.88.070)	C+
35	C+	Promoting Prostitution 2	
36		(9A.88.080)	D+
37	E	O & A (Prostitution) (9A.88.030)	E

1	B+	Indecent Liberties (9A.44.100)	C+
2	B+	Child Molestation 1 (9A.44.083)	C+
3	C+	Child Molestation 2 (9A.44.086)	C
4		Theft, Robbery, Extortion, and Forgery	
5	B	Theft 1 (9A.56.030)	C
6	C	Theft 2 (9A.56.040)	D
7	D	Theft 3 (9A.56.050)	E
8	B	Theft of Livestock (9A.56.080)	C
9	C	Forgery (9A.60.020)	D
10	A	Robbery 1 (9A.56.200)	B+
11	B+	Robbery 2 (9A.56.210)	C+
12	B+	Extortion 1 (9A.56.120)	C+
13	C+	Extortion 2 (9A.56.130)	D+
14	B	Possession of Stolen Property 1	
15		(9A.56.150)	C
16	C	Possession of Stolen Property 2	
17		(9A.56.160)	D
18	D	Possession of Stolen Property 3	
19		(9A.56.170)	E
20	C	Taking Motor Vehicle Without	
21		Owner's Permission (9A.56.070)	D
22		Motor Vehicle Related Crimes	
23	E	Driving Without a License	
24		(46.20.021)	E
25	C	Hit and Run - Injury	
26		(46.52.020(4))	D
27	D	Hit and Run-Attended	
28		(46.52.020(5))	E
29	E	Hit and Run-Unattended	
30		(46.52.010)	E
31	C	Vehicular Assault (46.61.522)	D
32	C	Attempting to Elude Pursuing	
33		Police Vehicle (46.61.024)	D
34	E	Reckless Driving (46.61.500)	E
35	D	Driving While Under the Influence	
36		(46.61.502 and 46.61.504)	E
37	D	Vehicle Prowling (9A.52.100)	E

1	C	Taking Motor Vehicle Without	
2		Owner's Permission (9A.56.070)	D
3		Other	
4	B	Bomb Threat (9.61.160)	C
5	C	Escape 1 (9A.76.110)	C
6	C	Escape 2 (9A.76.120)	C
7	D	Escape 3 (9A.76.130)	E
8	E	Obscene, Harassing, Etc.,	
9		Phone Calls (9.61.230)	E
10	A	Other Offense Equivalent to an	
11		Adult Class A Felony	B+
12	B	Other Offense Equivalent to an	
13		Adult Class B Felony	C
14	C	Other Offense Equivalent to an	
15		Adult Class C Felony	D
16	D	Other Offense Equivalent to an	
17		Adult Gross Misdemeanor	E
18	E	Other Offense Equivalent to an	
19		Adult Misdemeanor	E
20	V	Violation of Order of Restitution,	
21		Community Supervision, or	
22		Confinement, (2)13.40.200) -	V

23 Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
24 and the standard range is established as follows:

25 1st escape or attempted escape during 12-month period - 4 weeks
26 confinement

27 2nd escape or attempted escape during 12-month period - 8 weeks
28 confinement

29 3rd and subsequent escape or attempted escape during 12-month
30 period - 12 weeks confinement

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

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SCHEDULE B
PRIOR OFFENSE INCREASE FACTOR

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

TIME SPAN

OFFENSE	0-12	13-24	25 Months
CATEGORY	Months	Months	or More
.....			
A+	.9	.9	.9
A	.9	.8	.6
A-	.9	.8	.5
B+	.9	.7	.4
B	.9	.6	.3
C+	.6	.3	.2
C	.5	.2	.2
D+	.3	.2	.1
D	.2	.1	.1
E	.1	.1	.1

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

SCHEDULE C
CURRENT OFFENSE POINTS

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

1

AGE

2 OFFENSE	12 &						
3 CATEGORY	Under	13	14	15	16	17	
4							
5 A+	STANDARD	RANGE	180-224	WEEKS			
6 A	250	300	350	375	375	375	
7 A-	150	150	150	200	200	200	
8 B+	110	110	120	130	140	150	
9 B	45	45	50	50	57	57	
10 C+	44	44	49	49	55	55	
11 C	40	40	45	45	50	50	
12 D+	16	18	20	22	24	26	
13 D	14	16	18	20	22	24	
14 E	4	4	4	6	8	10	

15 JUVENILE SENTENCING STANDARDS
 16 SCHEDULE D-1

17 This schedule may only be used for minor/first offenders. After the
 18 determination is made that a youth is a minor/first offender, the court
 19 has the discretion to select sentencing option A(~~(7)~~) or B(~~(7-or-C)~~).

20 MINOR/FIRST OFFENDER

21 OPTION A
 22 STANDARD RANGE

23	Community	Community	Service	
24	Supervision	Hours	Fine	
26 ((1-9	0-3 months	and/or 0-8	and/or 0-\$10	
27 10-19	0-3 months	and/or 0-8	and/or 0-\$10	
28 20-29	0-3 months	and/or 0-16	and/or 0-\$10	
29 30-39	0-3 months	and/or 8-24	and/or 0-\$25	
30 40-49	3-6 months	and/or 16-32	and/or 0-\$25	
31 50-59	3-6 months	and/or 24-40	and/or 0-\$25	
32 60-69	6-9 months	and/or 32-48	and/or 0-\$50	

1 ~~70-79~~ ~~6-9 months~~ ~~and/or~~ ~~40-56~~ ~~and/or~~ ~~0-\$50~~
2 ~~80-89~~ ~~9-12 months~~ ~~and/or~~ ~~48-64~~ ~~and/or~~ ~~10-\$100~~
3 ~~90-109~~ ~~9-12 months~~ ~~and/or~~ ~~56-72~~ ~~and/or~~ ~~10-\$100))~~
4 1-109 0-12 months and/or 0-150 and/or 0-\$100

5 OR

6 OPTION B
7 ((~~STATUTORY OPTION~~

8 ~~0-12 Months Community Supervision~~
9 ~~0-150 Hours Community Service~~
10 ~~0-100 Fine~~
11 ~~Posting of a Probation Bond~~

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

14 OR

15 (~~OPTION C~~)
16 MANIFEST INJUSTICE

17 When a term of community supervision would effectuate a manifest
18 injustice, another disposition may be imposed. When a judge imposes a
19 sentence of confinement exceeding 30 days, the court shall sentence the
20 juvenile to a maximum term and the provisions of ((~~RCW 13.40.030(2)~~)
21 section 19 of this act shall be used to determine the range.

22 JUVENILE SENTENCING STANDARDS
23 SCHEDULE D-2

24 This schedule may only be used for middle offenders. After the
25 determination is made that a youth is a middle offender, the court has
26 the discretion to select sentencing option A, B, or C.

MIDDLE OFFENDER

OPTION A

STANDARD RANGE

Points	Community Supervision	Community Service Hours	Fine	Confinement ((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))
				(Days)
<u>1-109</u>	<u>0-12 months</u>	<u>and/or 0-150</u>	<u>and/or 0-\$100</u>	<u>and/or 0-30</u>
				(Weeks)
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

Middle offenders with 110 points or more do not have to be committed to the department. They may be assigned community supervision under option B.

All A+ offenses 180-224 weeks

OR

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	((0-129	8-12 weeks
11	130-149	13-16 weeks))
12	<u>0-149</u>	<u>16-20 weeks</u>
13	150-199	21-28 weeks
14	200-249	30-40 weeks
15	250-299	52-65 weeks
16	300-374	80-100 weeks
17	375+	103-129 weeks
18	All A+	
19	Offenses	180-224 weeks

20 OR

21 OPTION B

22 MANIFEST INJUSTICE

23
24 A disposition outside the standard range shall be determined and shall
25 be comprised of confinement or community supervision including posting
26 a probation bond or a combination thereof. When a judge finds a
27 manifest injustice and imposes a sentence of confinement exceeding 30
28 days, the court shall sentence the juvenile to a maximum term, and the
29 provisions of ~~((RCW 13.40.030(2)))~~ section 19 of this act shall be used
30 to determine the range.

31 **Sec. 12.** RCW 13.40.045 and 1994 sp.s. c 7 s 518 are each amended
32 to read as follows:

1 The secretary, assistant secretary, or the secretary's designee
2 shall issue arrest warrants for juveniles who escape from department
3 residential custody or abscond from parole supervision or fail to meet
4 conditions of parole. These arrest warrants shall authorize any law
5 enforcement, probation and parole, or peace officer of this state, or
6 any other state where the juvenile is located, to arrest the juvenile
7 and to place the juvenile in physical custody pending the juvenile's
8 return to confinement in a state juvenile rehabilitation facility.

9 **Sec. 13.** RCW 13.40.050 and 1995 c 395 s 5 are each amended to read
10 as follows:

11 (1) When a juvenile taken into custody is held in detention:

12 (a) An information, a community supervision modification or
13 termination of diversion petition, or a parole modification petition
14 shall be filed within seventy-two hours, Saturdays, Sundays, and
15 holidays excluded, or the juvenile shall be released; and

16 (b) A detention hearing, a community supervision modification or
17 termination of diversion petition, or a parole modification petition
18 shall be held within seventy-two hours, Saturdays, Sundays, and
19 holidays excluded, from the time of filing the information or petition,
20 to determine whether continued detention is necessary under RCW
21 13.40.040.

22 (2) Notice of the detention hearing, stating the time, place, and
23 purpose of the hearing, (~~and~~) stating the right to counsel, and
24 requiring attendance, shall be given to the parent, guardian, or
25 custodian if such person can be found and shall also be given to the
26 juvenile if over twelve years of age.

27 (3) At the commencement of the detention hearing, the court shall
28 advise the parties of their rights under this chapter and shall appoint
29 counsel as specified in this chapter.

30 (4) The court shall, based upon the allegations in the information,
31 determine whether the case is properly before it or whether the case
32 should be treated as a diversion case under RCW 13.40.080. If the case
33 is not properly before the court the juvenile shall be ordered
34 released.

35 (5) Notwithstanding a determination that the case is properly
36 before the court and that probable cause exists, a juvenile shall at
37 the detention hearing be ordered released on the juvenile's personal

1 recognizance pending further hearing unless the court finds detention
2 is necessary under RCW 13.40.040 (~~as now or hereafter amended~~)).

3 (6) If detention is not necessary under RCW 13.40.040, (~~as now or~~
4 ~~hereafter amended,~~) the court shall impose the most appropriate of the
5 following conditions or, if necessary, any combination of the following
6 conditions:

7 (a) Place the juvenile in the custody of a designated person
8 agreeing to supervise such juvenile;

9 (b) Place restrictions on the travel of the juvenile during the
10 period of release;

11 (c) Require the juvenile to report regularly to and remain under
12 the supervision of the juvenile court;

13 (d) Impose any condition other than detention deemed reasonably
14 necessary to assure appearance as required;

15 (e) Require that the juvenile return to detention during specified
16 hours; or

17 (f) Require the juvenile to post a probation bond set by the court
18 under terms and conditions as provided in RCW 13.40.040(4).

19 (7) If the parent, guardian, or custodian of the juvenile in
20 detention is available, the court shall consult with them prior to a
21 determination to further detain or release the juvenile or treat the
22 case as a diversion case under RCW 13.40.080.

23 (8) If the parent, guardian, or custodian notified as provided in
24 this section fails without reasonable cause to appear, that person may
25 be proceeded against as for contempt of court for failing to appear.

26 **Sec. 14.** RCW 13.40.060 and 1989 c 71 s 1 are each amended to read
27 as follows:

28 (1) All actions under this chapter shall be commenced and tried in
29 the county where any element of the offense was committed except as
30 otherwise specially provided by statute. In cases in which diversion
31 is provided by statute, venue is in the county in which the juvenile
32 resides or in the county in which any element of the offense was
33 committed.

34 (2) For juveniles whose standard range disposition would include
35 confinement in excess of thirty days, the case and copies of all legal
36 and social documents pertaining thereto may in the discretion of the
37 court be transferred to the county where the juvenile resides for a
38 disposition hearing. All costs and arrangements for care and

1 transportation of the juvenile in custody shall be the responsibility
2 of the receiving county as of the date of the transfer of the juvenile
3 to such county, unless the counties otherwise agree.

4 (3) The case and copies of all legal and social documents
5 pertaining thereto may in the discretion of the court be transferred to
6 the county in which the juvenile resides for supervision and
7 enforcement of the disposition order. The court of the receiving
8 county has jurisdiction to modify and enforce the disposition order.

9 (4) The court upon motion of any party or upon its own motion may,
10 at any time, transfer a proceeding to another juvenile court when there
11 is reason to believe that an impartial proceeding cannot be held in the
12 county in which the proceeding was begun.

13 **Sec. 15.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended
14 to read as follows:

15 (1) A diversion agreement shall be a contract between a juvenile
16 accused of an offense and a diversionary unit whereby the juvenile
17 agrees to fulfill certain conditions in lieu of prosecution. Such
18 agreements may be entered into only after the prosecutor, or probation
19 counselor pursuant to this chapter, has determined that probable cause
20 exists to believe that a crime has been committed and that the juvenile
21 committed it. Such agreements shall be entered into as expeditiously
22 as possible.

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

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

27 (b) Restitution limited to the amount of actual loss incurred by
28 the victim, and to an amount the juvenile has the means or potential
29 means to pay;

30 (c) Attendance at (~~up to ten hours of~~) counseling and/or (~~up to~~
31 ~~twenty hours of~~) educational or informational sessions at a community
32 agency for a specified period of time as determined by the diversion
33 unit. The educational or informational sessions may include sessions
34 relating to respect for self, others, and authority; victim awareness;
35 accountability; self-worth; responsibility; work ethics; good
36 citizenship; and life skills. For purposes of this section, "community
37 agency" may also mean a community-based nonprofit organization, if
38 approved by the diversion unit. The state shall not be liable for

1 costs resulting from the diversionary unit exercising the option to
2 permit diversion agreements to mandate attendance at (~~up to ten hours~~
3 ~~of~~) counseling and/or (~~up to twenty hours of~~) educational or
4 informational sessions;

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

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

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

23 (4) A diversion agreement may not exceed a period of six months and
24 may include a period extending beyond the eighteenth birthday of the
25 divertee. Any restitution assessed during its term may not exceed an
26 amount which the juvenile could be reasonably expected to pay during
27 this period. If additional time is necessary for the juvenile to
28 complete restitution to the victim, the time period limitations of this
29 subsection may be extended by an additional six months.

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

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

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

1 (b) Violation of the terms of the agreement shall be the only
2 grounds for termination;

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

5 (i) Written notice of alleged violations of the conditions of the
6 diversion program; and

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

8 (d) The hearing shall be conducted by the juvenile court and shall
9 include:

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

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

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

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

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

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

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

22 (7) The diversion unit shall, subject to available funds, be
23 responsible for providing interpreters when juveniles need interpreters
24 to effectively communicate during diversion unit hearings or
25 negotiations.

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

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

30 (10) The right to counsel shall inure prior to the initial
31 interview for purposes of advising the juvenile as to whether he or she
32 desires to participate in the diversion process or to appear in the
33 juvenile court. The juvenile may be represented by counsel at any
34 critical stage of the diversion process, including intake interviews
35 and termination hearings. The juvenile shall be fully advised at the
36 intake of his or her right to an attorney and of the relevant services
37 an attorney can provide. For the purpose of this section, intake
38 interviews mean all interviews regarding the diversion agreement
39 process.

1 The juvenile shall be advised that a diversion agreement shall
2 constitute a part of the juvenile's criminal history as defined by RCW
3 13.40.020(9). A signed acknowledgment of such advisement shall be
4 obtained from the juvenile, and the document shall be maintained by the
5 diversionary unit together with the diversion agreement, and a copy of
6 both documents shall be delivered to the prosecutor if requested by the
7 prosecutor. The supreme court shall promulgate rules setting forth the
8 content of such advisement in simple language.

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

- 12 (a) The fact that a charge or charges were made;
- 13 (b) The fact that a diversion agreement was entered into;
- 14 (c) The juvenile's obligations under such agreement;
- 15 (d) Whether the alleged offender performed his or her obligations
16 under such agreement; and
- 17 (e) The facts of the alleged offense.

18 (12) A diversionary unit may refuse to enter into a diversion
19 agreement with a juvenile. When a diversionary unit refuses to enter
20 a diversion agreement with a juvenile, it shall immediately refer such
21 juvenile to the court for action and shall forward to the court the
22 criminal complaint and a detailed statement of its reasons for refusing
23 to enter into a diversion agreement. The diversionary unit shall also
24 immediately refer the case to the prosecuting attorney for action if
25 such juvenile violates the terms of the diversion agreement.

26 (13) A diversionary unit may, in instances where it determines that
27 the act or omission of an act for which a juvenile has been referred to
28 it involved no victim, or where it determines that the juvenile
29 referred to it has no prior criminal history and is alleged to have
30 committed an illegal act involving no threat of or instance of actual
31 physical harm and involving not more than fifty dollars in property
32 loss or damage and that there is no loss outstanding to the person or
33 firm suffering such damage or loss, counsel and release or release such
34 a juvenile without entering into a diversion agreement. A diversion
35 unit's authority to counsel and release a juvenile under this
36 subsection shall include the authority to refer the juvenile to
37 community-based counseling or treatment programs. Any juvenile
38 released under this subsection shall be advised that the act or
39 omission of any act for which he or she had been referred shall

1 constitute a part of the juvenile's criminal history as defined by RCW
2 13.40.020(9). A signed acknowledgment of such advisement shall be
3 obtained from the juvenile, and the document shall be maintained by the
4 unit, and a copy of the document shall be delivered to the prosecutor
5 if requested by the prosecutor. The supreme court shall promulgate
6 rules setting forth the content of such advisement in simple language.
7 A juvenile determined to be eligible by a diversionary unit for release
8 as provided in this subsection shall retain the same right to counsel
9 and right to have his or her case referred to the court for formal
10 action as any other juvenile referred to the unit.

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

15 (15) If a fine required by a diversion agreement cannot reasonably
16 be paid due to a change of circumstance, the diversion agreement may be
17 modified at the request of the diverttee and with the concurrence of the
18 diversion unit to convert an unpaid fine into community service. The
19 modification of the diversion agreement shall be in writing and signed
20 by the diverttee and the diversion unit. The number of hours of
21 community service in lieu of a monetary penalty shall be converted at
22 the rate of the prevailing state minimum wage per hour.

23 (16) Fines imposed under this section shall be collected and paid
24 into the county general fund in accordance with procedures established
25 by the juvenile court administrator under RCW 13.04.040 and may be used
26 only for juvenile services. In the expenditure of funds for juvenile
27 services, there shall be a maintenance of effort whereby counties
28 exhaust existing resources before using amounts collected under this
29 section.

30 **Sec. 16.** RCW 13.40.130 and 1981 c 299 s 10 are each amended to
31 read as follows:

32 (1) The respondent shall be advised of the allegations in the
33 information and shall be required to plead guilty or not guilty to the
34 allegation(s). The state or the respondent may make preliminary
35 motions up to the time of the plea.

36 (2) If the respondent pleads guilty, the court may proceed with
37 disposition or may continue the case for a dispositional hearing. If
38 the respondent denies guilt, an adjudicatory hearing date shall be set.

1 The court shall notify the parent, guardian, or custodian who has
2 custody of any juvenile described in the charging document of the date,
3 time, and place of the dispositional or adjudicatory hearing, and
4 require attendance.

5 (3) At the adjudicatory hearing it shall be the burden of the
6 prosecution to prove the allegations of the information beyond a
7 reasonable doubt.

8 (4) The court shall record its findings of fact and shall enter its
9 decision upon the record. Such findings shall set forth the evidence
10 relied upon by the court in reaching its decision.

11 (5) If the respondent is found not guilty he or she shall be
12 released from detention.

13 (6) If the respondent is found guilty the court may immediately
14 proceed to disposition or may continue the case for a dispositional
15 hearing. Notice of the time and place of the continued hearing may be
16 given in open court. If notice is not given in open court to a party,
17 the party and the parent, guardian, or custodian who has custody of the
18 juvenile shall be notified by mail of the time and place of the
19 continued hearing.

20 (7) The court following an adjudicatory hearing may request that a
21 predisposition study be prepared to aid the court in its evaluation of
22 the matters relevant to disposition of the case.

23 (8) The disposition hearing shall be held within fourteen days
24 after the adjudicatory hearing or plea of guilty unless good cause is
25 shown for further delay, or within twenty-one days if the juvenile is
26 not held in a detention facility, unless good cause is shown for
27 further delay.

28 (9) In sentencing an offender, the court shall use the disposition
29 standards in effect on the date of the offense.

30 (10) If the parent, guardian, or custodian notified as provided in
31 this section fails without reasonable cause to appear, that person may
32 be proceeded against as for contempt of court for failing to appear.

33 **Sec. 17.** RCW 13.40.150 and 1995 c 268 s 5 are each amended to read
34 as follows:

35 (1) In disposition hearings all relevant and material evidence,
36 including oral and written reports, may be received by the court and
37 may be relied upon to the extent of its probative value, even though
38 such evidence may not be admissible in a hearing on the information.

1 The youth or the youth's counsel and the prosecuting attorney shall be
2 afforded an opportunity to examine and controvert written reports so
3 received and to cross-examine individuals making reports when such
4 individuals are reasonably available, but sources of confidential
5 information need not be disclosed. The prosecutor and counsel for the
6 juvenile may submit recommendations for disposition.

7 (2) For purposes of disposition:

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

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

11 (c) In no event may a disposition for a violation include
12 confinement.

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

16 (a) Consider the facts supporting the allegations of criminal
17 conduct by the respondent;

18 (b) Consider information and arguments offered by parties and their
19 counsel;

20 (c) Consider any predisposition reports;

21 (d) Consult with the respondent's parent, guardian, or custodian on
22 the appropriateness of dispositional options under consideration and
23 afford the respondent and the respondent's parent, guardian, or
24 custodian an opportunity to speak in the respondent's behalf;

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

27 (f) Determine the amount of restitution owing to the victim, if
28 any;

29 (g) Determine whether the respondent is a serious offender, a
30 middle offender, or a minor or first offender;

31 (h) Consider whether or not any of the following mitigating factors
32 exist:

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

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

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

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

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

6 (i) Consider whether or not any of the following aggravating
7 factors exist:

8 (i) In the commission of the offense, or in flight therefrom, the
9 respondent inflicted or attempted to inflict serious bodily injury to
10 another;

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

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

14 (iv) The respondent has a recent criminal history or has failed to
15 comply with conditions of a recent dispositional order or diversion
16 agreement;

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

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

21 (vii) There are other complaints which have resulted in diversion
22 or a finding or plea of guilty but which are not included as criminal
23 history; and

24 (viii) The respondent is a sex offender eligible for the special
25 sex offender disposition alternative under RCW 13.40.160(5) and the
26 court finds that a longer disposition is necessary to provide an
27 incentive to comply with the terms of the disposition.

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

30 (a) The sex of the respondent;

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

32 (c) The creed or religion of the respondent or the respondent's
33 family;

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

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

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

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

6 (1) When the respondent is found to be a serious offender, the
7 court shall commit the offender to the department for the standard
8 range of disposition for the offense, as indicated in option A of
9 schedule D-3, RCW 13.40.0357 except as provided in subsections (5) and
10 (6) of this section.

11 If the court concludes, and enters reasons for its conclusion, that
12 disposition within the standard range would effectuate a manifest
13 injustice the court shall impose a disposition outside the standard
14 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
15 court's finding of manifest injustice shall be supported by clear and
16 convincing evidence.

17 A disposition outside the standard range shall be determinate and
18 shall be comprised of confinement or community supervision, or a
19 combination thereof. When a judge finds a manifest injustice and
20 imposes a sentence of confinement exceeding thirty days, the court
21 shall sentence the juvenile to a maximum term, and the provisions of
22 (~~RCW 13.40.030(2)~~) section 19 of this act shall be used to determine
23 the range. A disposition outside the standard range is appealable
24 under RCW 13.40.230 by the state or the respondent. A disposition
25 within the standard range is not appealable under RCW 13.40.230.

26 (2) Where the respondent is found to be a minor or first offender,
27 the court shall order that the respondent serve a term of community
28 supervision as indicated in option A (~~or option B~~) of schedule D-1,
29 RCW 13.40.0357 except as provided in subsections (5) and (6) of this
30 section. If the court determines that a disposition of community
31 supervision would effectuate a manifest injustice the court may impose
32 another disposition under option (~~C~~) (B) of schedule D-1, RCW
33 13.40.0357. Except as provided in subsection (5) of this section, a
34 disposition other than a community supervision may be imposed only
35 after the court enters reasons upon which it bases its conclusions that
36 imposition of community supervision would effectuate a manifest
37 injustice. When a judge finds a manifest injustice and imposes a
38 sentence of confinement exceeding thirty days, the court shall sentence

1 the juvenile to a maximum term, and the provisions of ((RCW
2 13.40.030(2))) section 19 of this act shall be used to determine the
3 range. The court's finding of manifest injustice shall be supported by
4 clear and convincing evidence.

5 Except for disposition of community supervision or a disposition
6 imposed pursuant to subsection (5) of this section, a disposition may
7 be appealed as provided in RCW 13.40.230 by the state or the
8 respondent. A disposition of community supervision or a disposition
9 imposed pursuant to subsection (5) of this section may not be appealed
10 under RCW 13.40.230.

11 (3) Where a respondent is found to have committed an offense for
12 which the respondent declined to enter into a diversion agreement, the
13 court shall impose a term of community supervision limited to the
14 conditions allowed in a diversion agreement as provided in RCW
15 13.40.080(2).

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

17 (a) The court shall impose a determinate disposition within the
18 standard range((+s)) for such offense, as indicated in option A of
19 schedule D-2, RCW 13.40.0357 except as provided in subsections (5) and
20 (6) of this section. If the standard range includes a term of
21 confinement exceeding thirty days, commitment shall be to the
22 department for the standard range of confinement; or

23 ~~(b) ((If the middle offender has less than 110 points, the court
24 shall impose a determinate disposition of community supervision and/or
25 up to thirty days confinement, as indicated in option B of schedule D-
26 2, RCW 13.40.0357 in which case, if confinement has been imposed, the
27 court shall state either aggravating or mitigating factors as set forth
28 in RCW 13.40.150.))~~ (i) If the middle offender has 110 points or more,
29 the court may impose a disposition under option A and may suspend the
30 disposition and impose a determinate disposition of community
31 supervision for a period of up to one year or the maximum term allowed
32 by the standard range whichever is longer, on the condition that the
33 offender serve up to thirty days of confinement and follow all
34 conditions of community supervision. If confinement has been imposed,
35 the court shall state either aggravating or mitigating factors as set
36 forth in RCW 13.40.150. If the offender violates any condition of the
37 disposition including conditions of a probation bond, the court may
38 impose sanctions pursuant to RCW 13.40.200 or may revoke the suspension
39 and order execution of the disposition. The court shall give credit

1 for any confinement time previously served if that confinement was for
2 the offense for which the suspension is being revoked; or

3 (ii) If the respondent is a middle offender with 110 points or more
4 the court may impose the special disposition option under section 20 of
5 this act.

6 (c) Only if the court concludes, and enters reasons for its
7 conclusions, that disposition as provided in subsection (4)(a) or (b)
8 of this section would effectuate a manifest injustice, the court shall
9 sentence the juvenile to a maximum term, and the provisions of ((RCW
10 13.40.030(2))) section 19 of this act shall be used to determine the
11 range. The court's finding of manifest injustice shall be supported by
12 clear and convincing evidence.

13 (d) A disposition pursuant to subsection (4)(c) of this section is
14 appealable under RCW 13.40.230 by the state or the respondent. A
15 disposition pursuant to subsection (4) (a) or (b) of this section is
16 not appealable under RCW 13.40.230.

17 (5) When a serious, middle, or minor first offender is found to
18 have committed a sex offense, other than a sex offense that is also a
19 serious violent offense as defined by RCW 9.94A.030, and has no history
20 of a prior sex offense, the court, on its own motion or the motion of
21 the state or the respondent, may order an examination to determine
22 whether the respondent is amenable to treatment.

23 The report of the examination shall include at a minimum the
24 following: The respondent's version of the facts and the official
25 version of the facts, the respondent's offense history, an assessment
26 of problems in addition to alleged deviant behaviors, the respondent's
27 social, educational, and employment situation, and other evaluation
28 measures used. The report shall set forth the sources of the
29 evaluator's information.

30 The examiner shall assess and report regarding the respondent's
31 amenability to treatment and relative risk to the community.

32 (a) A proposed treatment plan shall be provided and shall include,
33 at a minimum:

34 ~~((a))~~(i) Frequency and type of contact between the offender and
35 therapist;

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

1 (iii) Monitoring plans, including any requirements regarding living
2 conditions, lifestyle requirements, and monitoring by family members,
3 legal guardians, or others;

4 (iv) Anticipated length of treatment; and

5 (v) Recommended crime-related prohibitions.

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

12 After receipt of reports of the examination, the court shall then
13 consider whether the offender and the community will benefit from use
14 of this special sex offender disposition alternative and consider the
15 victim's opinion whether the offender should receive a treatment
16 disposition under this section. If the court determines that this
17 special sex offender disposition alternative is appropriate, then the
18 court shall impose a determinate disposition within the standard range
19 for the offense, ~~((and))~~ or if the court concludes, and enters reasons
20 for its conclusion, that such disposition would effectuate a manifest
21 injustice, the court shall impose a disposition pursuant to option B of
22 schedule D-1, option C of schedule D-2, or option B of schedule D-3 as
23 appropriate.

24 For either a standard range disposition or a manifest injustice
25 disposition the court may suspend the execution of the disposition and
26 place the offender on community supervision for up to two years.

27 (b) As a condition of the suspended disposition, the court may
28 impose the conditions of community supervision and other conditions,
29 including up to thirty days of confinement and requirements that the
30 offender do any one or more of the following:

31 ~~((b))~~(i) Devote time to a specific education, employment, or
32 occupation;

33 (ii) Undergo available outpatient sex offender treatment for up to
34 two years, or inpatient sex offender treatment not to exceed the
35 standard range of confinement for that offense. A community mental
36 health center may not be used for such treatment unless it has an
37 appropriate program designed for sex offender treatment. The
38 respondent shall not change sex offender treatment providers or
39 treatment conditions without first notifying the prosecutor, the

1 probation counselor, and the court, and shall not change providers
2 without court approval after a hearing if the prosecutor or probation
3 counselor object to the change;

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

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

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

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

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

15 (viii) Comply with the conditions of any court-ordered probation
16 bond.

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

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

26 Except as provided in this subsection (5), after July 1, 1991,
27 examinations and treatment ordered pursuant to this subsection shall
28 only be conducted by sex offender treatment providers certified by the
29 department of health pursuant to chapter 18.155 RCW. A sex offender
30 therapist who examines or treats a juvenile sex offender pursuant to
31 this subsection does not have to be certified by the department of
32 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
33 offender has already moved to another state or plans to move to another
34 state for reasons other than circumventing the certification
35 requirements; (B) no certified providers are available for treatment
36 within a reasonable geographical distance of the offender's home; and
37 (C) the evaluation and treatment plan comply with this subsection (5)
38 and the rules adopted by the department of health.

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

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

16 (6) RCW 13.40.193 shall govern the disposition of any juvenile
17 adjudicated of possessing a firearm in violation of RCW 9.41.040(1)(e)
18 or any crime in which a special finding is entered that the juvenile
19 was armed with a firearm.

20 (7) Whenever a juvenile offender is entitled to credit for time
21 spent in detention prior to a dispositional order, the dispositional
22 order shall specifically state the number of days of credit for time
23 served.

24 (8) Except as provided for in subsection (4)(b) or (5) of this
25 section or RCW 13.40.125, the court shall not suspend or defer the
26 imposition or the execution of the disposition.

27 (9) In no case shall the term of confinement imposed by the court
28 at disposition exceed that to which an adult could be subjected for the
29 same offense.

30 NEW SECTION. Sec. 19. A new section is added to chapter 13.40 RCW
31 to read as follows:

32 When the court finds a manifest injustice, imposes a sentence of
33 confinement exceeding thirty days, and sets the maximum term, the
34 department shall determine the range subject to the following
35 limitations:

36 (1) When the maximum term in the range is ninety days or less, the
37 minimum term in the range may be no less than fifty percent of the
38 maximum term in the range;

1 (2) When the maximum term in the range is greater than ninety days
2 but not greater than one year, the minimum term in the range may be no
3 less than seventy-five percent of the maximum term in the range; and

4 (3) When the maximum term in the range is more than one year, the
5 minimum term in the range may be no less than eighty percent of the
6 maximum term in the range.

7 NEW SECTION. **Sec. 20.** A new section is added to chapter 13.40 RCW
8 to read as follows:

9 (1) When a middle offender with one hundred ten points or more is
10 found to have committed an offense that is not a violent or sex
11 offense, the court, on its own motion or the motion of the state or the
12 respondent if the evidence shows that the offender may be chemically
13 dependent, may order an examination by a chemical dependency counselor
14 from a chemical dependency treatment facility approved under chapter
15 70.96A RCW to determine if the youth is chemically dependent and
16 amenable to treatment.

17 (2) The report of the examination shall include at a minimum the
18 following: The respondent's version of the facts and the official
19 version of the facts, the respondent's offense history, an assessment
20 of drug-alcohol problems and previous treatment attempts, the
21 respondent's social, educational, and employment situation, and other
22 evaluation measures used. The report shall set forth the sources of
23 the examiner's information.

24 (3) The examiner shall assess and report regarding the respondent's
25 amenability to treatment and relative risk to the community. A
26 proposed treatment plan shall be provided and shall include, at a
27 minimum:

28 (a) Whether inpatient and/or outpatient treatment is recommended;

29 (b) Availability of appropriate treatment;

30 (c) Monitoring plans, including any requirements regarding living
31 conditions, lifestyle requirements, and monitoring by family members,
32 legal guardians, or others;

33 (d) Anticipated length of treatment;

34 (e) Recommended crime-related prohibitions; and

35 (f) Whether the respondent is amenable to treatment.

36 (4) The court on its own motion may order, or on a motion by the
37 state shall order, a second examination regarding the offender's
38 amenability to treatment. The evaluator shall be selected by the party

1 making the motion. The defendant shall pay the cost of any examination
2 ordered under this subsection (4) or subsection (1) of this section
3 unless the court finds that the offender is indigent and no third party
4 insurance coverage is available, in which case the state shall pay the
5 cost.

6 (5)(a) After receipt of reports of the examination, the court shall
7 then consider whether the offender and the community will benefit from
8 use of this chemical dependent disposition alternative and consider the
9 victim's opinion whether the offender should receive a treatment
10 disposition under this section.

11 (b) If the court determines that this chemical dependent
12 disposition alternative is appropriate, then the court shall impose the
13 standard range for the offense, suspend execution of the disposition,
14 and place the offender on community supervision for up to one year. As
15 a condition of the suspended disposition, the court shall require the
16 offender to undergo available outpatient drug/alcohol treatment and/or
17 inpatient drug/alcohol treatment. For purposes of this section, the
18 sum of confinement time and inpatient treatment may not exceed ninety
19 days. As a condition of the suspended disposition, the court may
20 impose conditions of community supervision and other sanctions,
21 including up to thirty days of confinement, one hundred fifty hours of
22 community service, and payment of legal financial obligations and
23 restitution.

24 (6) The drug/alcohol treatment provider shall submit monthly
25 reports on the respondent's progress in treatment to the court and the
26 parties. The reports shall reference the treatment plan and include at
27 a minimum the following: Dates of attendance, respondent's compliance
28 with requirements, treatment activities, the respondent's relative
29 progress in treatment, and any other material specified by the court at
30 the time of the disposition.

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

33 If the offender violates any condition of the disposition or the
34 court finds that the respondent is failing to make satisfactory
35 progress in treatment, the court may revoke the suspension and order
36 execution of the sentence. The court shall give credit for any
37 confinement time previously served if that confinement was for the
38 offense for which the suspension is being revoked.

1 (7) For purposes of this section, "victim" means any person who has
2 sustained emotional, psychological, physical, or financial injury to
3 person or property as a direct result of the crime charged.

4 (8) Whenever a juvenile offender is entitled to credit for time
5 spent in detention prior to a dispositional order, the dispositional
6 order shall specifically state the number of days of credit for time
7 served.

8 (9) In no case shall the term of confinement imposed by the court
9 at disposition exceed that to which an adult would be subjected for the
10 same offense.

11 NEW SECTION. **Sec. 21.** A new section is added to chapter 13.40 RCW
12 to read as follows:

13 RECOMMENDED PROSECUTING STANDARDS
14 FOR CHARGING AND PLEA DISPOSITIONS

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

20 Evidentiary sufficiency. (1) Decision not to prosecute.

21 STANDARD: A prosecuting attorney may decline to prosecute, even
22 though technically sufficient evidence to prosecute exists, in
23 situations where prosecution would serve no public purpose, would
24 defeat the underlying purpose of the law in question, or would result
25 in decreased respect for the law. The decision not to prosecute or
26 divert shall not be influenced by the race, gender, religion, or creed
27 of the suspect.

28 GUIDELINES/COMMENTARY:

29 Examples

30 The following are examples of reasons not to prosecute which could
31 satisfy the standard.

32 (a) Contrary to Legislative Intent - It may be proper to decline to
33 charge where the application of criminal sanctions would be clearly
34 contrary to the intent of the legislature in enacting the particular
35 statute.

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

38 (i) It has not been enforced for many years; and

- 1 (ii) Most members of society act as if it were no longer in
2 existence; and
3 (iii) It serves no deterrent or protective purpose in today's
4 society; and
5 (iv) The statute has not been recently reconsidered by the
6 legislature.

7 This reason is not to be construed as the basis for declining cases
8 because the law in question is unpopular or because it is difficult to
9 enforce.

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

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

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

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

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

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

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

27 (ii) Conviction in the pending prosecution is imminent;

28 (iii) The new offense is either a misdemeanor or a felony which is
29 not particularly aggravated; and

30 (iv) Conviction of the new offense would not serve any significant
31 deterrent purpose.

32 (f) High Disproportionate Cost of Prosecution - It may be proper to
33 decline to charge where the cost of locating or transporting, or the
34 burden on, prosecution witnesses is highly disproportionate to the
35 importance of prosecuting the offense in question. The reason should
36 be limited to minor cases and should not be relied upon in serious
37 cases.

38 (g) Improper Motives of Complainant - It may be proper to decline
39 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the underlying
2 purpose of the law in question, or would result in decreased respect
3 for the law.

4 (h) Immunity - It may be proper to decline to charge where immunity
5 is to be given to an accused in order to prosecute another where the
6 accused information or testimony will reasonably lead to the conviction
7 of others who are responsible for more serious criminal conduct or who
8 represent a greater danger to the public interest.

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

12 (i) Assault cases where the victim has suffered little or no
13 injury;

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

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

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

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

21 Notification

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

24 (2) Decision to prosecute.

25 STANDARD:

26 Crimes against persons will be filed if sufficient admissible
27 evidence exists, which, when considered with the most plausible,
28 reasonably foreseeable defense that could be raised under the evidence,
29 would justify conviction by a reasonable and objective fact-finder.
30 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
31 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
32 9A.64.020 the prosecutor should avoid prefiling agreements or
33 diversions intended to place the accused in a program of treatment or
34 counseling, so that treatment, if determined to be beneficial, can be
35 proved pursuant to RCW 13.40.160(5).

36 Crimes against property/other crimes will be filed if the
37 admissible evidence is of such convincing force as to make it probable
38 that a reasonable and objective fact-finder would convict after hearing

1 all the admissible evidence and the most plausible defense that could
2 be raised.

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

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

7 Selection of Charges/Degree of Charge

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

11 (a) Will significantly enhance the strength of the state's case at
12 trial; or

13 (b) Will result in restitution to all victims.

14 (2) The prosecutor should not overcharge to obtain a guilty plea.
15 Overcharging includes:

16 (a) Charging a higher degree;

17 (b) Charging additional counts.

18 This standard is intended to direct prosecutors to charge those
19 crimes which demonstrate the nature and seriousness of a respondent's
20 criminal conduct, but to decline to charge crimes which are not
21 necessary to such an indication. Crimes which do not merge as a matter
22 of law, but which arise from the same course of conduct, do not all
23 have to be charged.

24 The selection of charges and/or the degree of the charge shall not
25 be influenced by the race, gender, religion, or creed of the
26 respondent.

27 GUIDELINES/COMMENTARY:

28 Police Investigation

29 A prosecuting attorney is dependent upon law enforcement agencies
30 to conduct the necessary factual investigation which must precede the
31 decision to prosecute. The prosecuting attorney shall ensure that a
32 thorough factual investigation has been conducted before a decision to
33 prosecute is made. In ordinary circumstances the investigation should
34 include the following:

35 (1) The interviewing of all material witnesses, together with the
36 obtaining of written statements whenever possible;

37 (2) The completion of necessary laboratory tests; and

38 (3) The obtaining, in accordance with constitutional requirements,
39 of the suspect's version of the events.

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

4 Exceptions

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

7 (1) Probable cause exists to believe the suspect is guilty; and

8 (2) The suspect presents a danger to the community or is likely to
9 flee if not apprehended; or

10 (3) The arrest of the suspect is necessary to complete the
11 investigation of the crime.

12 In the event that the exception that the standard is applied, the
13 prosecuting attorney shall obtain a commitment from the law enforcement
14 agency involved to complete the investigation in a timely manner. If
15 the subsequent investigation does not produce sufficient evidence to
16 meet the normal charging standard, the complaint should be dismissed.

17 Investigation Techniques

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

20 (1) Polygraph testing;

21 (2) Hypnosis;

22 (3) Electronic surveillance;

23 (4) Use of informants.

24 Prefiling Discussions with Defendant

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

28 PLEA DISPOSITIONS:

29 Standard

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

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

38 (a) Evidentiary problems which make conviction of the original
39 charges doubtful;

1 (b) The respondent's willingness to cooperate in the investigation
2 or prosecution of others whose criminal conduct is more serious or
3 represents a greater public threat;

4 (c) A request by the victim when it is not the result of pressure
5 from the respondent;

6 (d) The discovery of facts which mitigate the seriousness of the
7 respondent's conduct;

8 (e) The correction of errors in the initial charging decision;

9 (f) The respondent's history with respect to criminal activity;

10 (g) The nature and seriousness of the offense or offenses charged;

11 (h) The probable effect of witnesses.

12 (3) No plea agreement shall be influenced by the race, gender,
13 religion, or creed of the respondent. This includes but is not limited
14 to the prosecutor's decision to utilize such disposition alternatives
15 as "Option B," the Special Sex Offender Disposition Alternative, and
16 manifest injustice.

17 DISPOSITION RECOMMENDATIONS:

18 Standard

19 The prosecutor may reach an agreement regarding disposition
20 recommendations.

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

23 NEW SECTION. **Sec. 22.** A new section is added to chapter 28A.175
24 RCW to read as follows:

25 A school may contract with public or private entities to provide
26 educational services for students who have been adjudicated of juvenile
27 offenses particularly when those students have truancy problems or have
28 been suspended or expelled, are academically at-risk, or have been
29 subject to disciplinary actions due to behavior problems.

30 NEW SECTION. **Sec. 23.** A new section is added to chapter 28A.225
31 RCW to read as follows:

32 References to juvenile court in this chapter mean, in addition to
33 the juvenile court of the superior court, courts of limited
34 jurisdiction that have acquired jurisdiction pursuant to RCW
35 13.04.030(1)(e)(iv) and section 4 of this act over juveniles who
36 violate the provisions of this chapter. If a court of limited
37 jurisdiction has jurisdiction over juveniles who violate this chapter,

1 that court also has jurisdiction over parents charged with violations
2 of this chapter.

3 **Sec. 24.** RCW 35.20.030 and 1993 c 83 s 3 are each amended to read
4 as follows:

5 The municipal court shall have jurisdiction to try violations of
6 all city ordinances and all other actions brought to enforce or recover
7 license penalties or forfeitures declared or given by any such
8 ordinances. It is empowered to forfeit cash bail or bail bonds and
9 issue execution thereon, to hear and determine all causes, civil or
10 criminal, arising under such ordinances, and to pronounce judgment in
11 accordance therewith: PROVIDED, That for a violation of the criminal
12 provisions of an ordinance no greater punishment shall be imposed than
13 a fine of five thousand dollars or imprisonment in the city jail not to
14 exceed one year, or both such fine and imprisonment, but the punishment
15 for any criminal ordinance shall be the same as the punishment provided
16 in state law for the same crime. The municipal court shall also have
17 jurisdiction over juvenile offenses prosecuted pursuant to chapter
18 13.40 RCW if the court has acquired jurisdiction pursuant to RCW
19 13.04.030(1)(e)(iv) and section 4 of this act. All civil and criminal
20 proceedings in municipal court, and judgments rendered therein, shall
21 be subject to review in the superior court by writ of review or on
22 appeal: PROVIDED, That an appeal from the court's determination or
23 order in a traffic infraction proceeding may be taken only in
24 accordance with RCW 46.63.090(5). Costs in civil and criminal cases
25 may be taxed as provided in district courts.

26 NEW SECTION. **Sec. 25.** The sum of four million two hundred forty-
27 eight thousand dollars, or as much thereof as may be necessary, is
28 appropriated for the biennium ending June 30, 1997, from the general
29 fund to the juvenile rehabilitation administration of the department of
30 social and health services for the purposes of implementation of this
31 act.

32 NEW SECTION. **Sec. 26.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 27.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect June 30, 1995.

5 NEW SECTION. **Sec. 28.** Sections 4, 23, and 24 of this act shall
6 expire June 30, 1998.

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