
SUBSTITUTE SENATE BILL 5491

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Smith, Oke, Wood, Winsley, Hale, Prince, Long and Schow; by request of Governor Lowry and Attorney General)

Read first time 02/20/95.

1 AN ACT Relating to juvenile offenders; amending RCW 13.40.0357,
2 13.40.050, 13.40.130, 5.60.060, 13.40.080, 13.40.010, 13.40.120,
3 13.40.025, 13.40.027, 13.40.030, 9.94A.040, 9.94A.050, 13.40.210,
4 13.40.045, and 13.40.060; reenacting and amending RCW 13.40.020; adding
5 new sections to chapter 13.40 RCW; creating a new section; and
6 prescribing penalties.

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

8 **Sec. 1.** RCW 13.40.020 and 1994 sp.s. c 7 s 520, 1994 c 271 s 803,
9 and 1994 c 261 s 18 are each reenacted and amended to read as follows:

10 For the purposes of this chapter:

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

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

15 (b) Manslaughter in the first degree; or

16 (c) Assault in the second degree, extortion in the first degree,
17 child molestation in the second degree, kidnapping in the second
18 degree, robbery in the second degree, residential burglary, or burglary
19 in the second degree, where such offenses include the infliction of

1 bodily harm upon another or where during the commission of or immediate
2 withdrawal from such an offense the perpetrator is armed with a deadly
3 weapon;

4 (2) "Community service" means compulsory service, without
5 compensation, performed for the benefit of the community by the
6 offender as punishment for committing an offense. Community service
7 may be performed through public or private organizations or through
8 work crews;

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

22 (a) Community-based sanctions;

23 (b) Community-based rehabilitation;

24 (c) Monitoring and reporting requirements;

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

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

28 (b) Community service not to exceed one hundred fifty hours of
29 service;

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

38 (6) "Monitoring and reporting requirements" means one or more of
39 the following: Curfews; requirements to remain at home, school, work,

1 or court-ordered treatment programs during specified hours;
2 restrictions from leaving or entering specified geographical areas;
3 requirements to report to the probation officer as directed and to
4 remain under the probation officer's supervision; and other conditions
5 or limitations as the court may require which may not include
6 confinement;

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

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

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

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

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

31 (10) "Department" means the department of social and health
32 services;

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

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

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

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

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

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

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

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

36 (a) Four misdemeanors;

37 (b) Two misdemeanors and one gross misdemeanor;

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

39 (d) Three gross misdemeanors.

1 For purposes of this definition, current violations shall be
2 counted as misdemeanors;

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

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

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

19 (22) "Secretary" means the secretary of the department of social
20 and health services. "Assistant secretary" means the assistant
21 secretary for juvenile rehabilitation for the department;

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

26 (24) "Sex offense" means an offense defined as a sex offense in RCW
27 9.94A.030;

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

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

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

37 (28) "Violent offense" means a violent offense as defined in RCW
38 9.94A.030.

1	B	Burglary 2 (9A.52.030)	C
2	D	Burglary Tools (Possession of)	
3		(9A.52.060)	E
4	D	Criminal Trespass 1 (9A.52.070)	E
5	E	Criminal Trespass 2 (9A.52.080)	E
6	D	Vehicle Prowling (9A.52.100)	E
7		Drugs	
8	E	Possession/Consumption of Alcohol	
9		(66.44.270)	E
10	C	Illegally Obtaining Legend Drug	
11		(69.41.020)	D
12	C+	Sale, Delivery, Possession of Legend	
13		Drug with Intent to Sell	
14		(69.41.030)	D+
15	E	Possession of Legend Drug	
16		(69.41.030)	E
17	B+	Violation of Uniform Controlled	
18		Substances Act - Narcotic Sale	
19		(69.50.401(a)(1)(i))	B+
20	C	Violation of Uniform Controlled	
21		Substances Act - Nonnarcotic Sale	
22		(69.50.401(a)(1)(ii))	C
23	E	Possession of Marihuana <40 grams	
24		(69.50.401(e))	E
25	C	Fraudulently Obtaining Controlled	
26		Substance (69.50.403)	C
27	C+	Sale of Controlled Substance	
28		for Profit (69.50.410)	C+
29	E	Unlawful Inhalation (9.47A.020)	E
30	B	Violation of Uniform Controlled	
31		Substances Act - Narcotic	
32		Counterfeit Substances	
33		(69.50.401(b)(1)(i))	B
34	C	Violation of Uniform Controlled	
35		Substances Act - Nonnarcotic	
36		Counterfeit Substances	
37		(69.50.401(b)(1) (ii), (iii), (iv))	C

1	C	Violation of Uniform Controlled	
2		Substances Act - Possession of a	
3		Controlled Substance	
4		(69.50.401(d))	C
5	C	Violation of Uniform Controlled	
6		Substances Act - Possession of a	
7		Controlled Substance	
8		(69.50.401(c))	C
9		Firearms and Weapons	
10	E	Carrying Loaded Pistol Without	
11		Permit (9.41.050)	E
12	C	Possession of Firearms by	
13		Minor (<18) (9.41.040(1)(e))	C
14	D+	Possession of Dangerous Weapon	
15		(9.41.250)	E
16	D	Intimidating Another Person by use	
17		of Weapon (9.41.270)	E
18		Homicide	
19	A+	Murder 1 (9A.32.030)	A
20	A+	Murder 2 (9A.32.050)	B+
21	B+	Manslaughter 1 (9A.32.060)	C+
22	C+	Manslaughter 2 (9A.32.070)	D+
23	B+	Vehicular Homicide (46.61.520)	C+
24		Kidnapping	
25	A	Kidnap 1 (9A.40.020)	B+
26	B+	Kidnap 2 (9A.40.030)	C+
27	C+	Unlawful Imprisonment	
28		(9A.40.040)	D+
29		Obstructing Governmental Operation	
30	E	Obstructing a Public Servant	
31		(9A.76.020)	E
32	E	Resisting Arrest (9A.76.040)	E
33	B	Introducing Contraband 1	
34		(9A.76.140)	C
35	C	Introducing Contraband 2	
36		(9A.76.150)	D

1	E	Introducing Contraband 3	
2		(9A.76.160)	E
3	B+	Intimidating a Public Servant	
4		(9A.76.180)	C+
5	B+	Intimidating a Witness	
6		(9A.72.110)	C+
7		Public Disturbance	
8	C+	Riot with Weapon (9A.84.010)	D+
9	D+	Riot Without Weapon	
10		(9A.84.010)	E
11	E	Failure to Disperse (9A.84.020)	E
12	E	Disorderly Conduct (9A.84.030)	E
13		Sex Crimes	
14	A	Rape 1 (9A.44.040)	B+
15	A-	Rape 2 (9A.44.050)	B+
16	C+	Rape 3 (9A.44.060)	D+
17	A-	Rape of a Child 1 (9A.44.073)	B+
18	B	Rape of a Child 2 (9A.44.076)	C+
19	B	Incest 1 (9A.64.020(1))	C
20	C	Incest 2 (9A.64.020(2))	D
21	D+	Indecent Exposure	
22		(Victim <14) (9A.88.010)	E
23	E	Indecent Exposure	
24		(Victim 14 or over) (9A.88.010)	E
25	B+	Promoting Prostitution 1	
26		(9A.88.070)	C+
27	C+	Promoting Prostitution 2	
28		(9A.88.080)	D+
29	E	O & A (Prostitution) (9A.88.030)	E
30	B+	Indecent Liberties (9A.44.100)	C+
31	B+	Child Molestation 1 ² (9A.44.083)	C+
32	C+	Child Molestation 2 (9A.44.086)	C
33	<u>C</u>	<u>Failure to Register</u>	
34		<u>(For Class A Felony)</u>	<u>D</u>
35	<u>D</u>	<u>Failure to Register</u>	
36		<u>(For Class B Felony or Less)</u>	<u>E</u>

1		Theft, Robbery, Extortion, and Forgery	
2	B	Theft 1 (9A.56.030)	C
3	C	Theft 2 (9A.56.040)	D
4	D	Theft 3 (9A.56.050)	E
5	B	Theft of Livestock (9A.56.080)	C
6	C	Forgery (9A.60.020)	D
7	A	Robbery 1 (9A.56.200)	B+
8	B+	Robbery 2 (9A.56.210)	C+
9	B+	Extortion 1 (9A.56.120)	C+
10	C+	Extortion 2 (9A.56.130)	D+
11	B	Possession of Stolen Property 1	
12		(9A.56.150)	C
13	C	Possession of Stolen Property 2	
14		(9A.56.160)	D
15	D	Possession of Stolen Property 3	
16		(9A.56.170)	E
17	C	Taking Motor Vehicle Without	
18		Owner's Permission (9A.56.070)	D
19		Motor Vehicle Related Crimes	
20	E	Driving Without a License	
21		(46.20.021)	E
22	C	Hit and Run - Injury	
23		(46.52.020(4))	D
24	D	Hit and Run-Attended	
25		(46.52.020(5))	E
26	E	Hit and Run-Unattended	
27		(46.52.010)	E
28	C	Vehicular Assault (46.61.522)	D
29	C	Attempting to Elude Pursuing	
30		Police Vehicle (46.61.024)	D
31	E	Reckless Driving (46.61.500)	E
32	D	Driving While Under the Influence	
33		(46.61.515)	E
34	D	Vehicle Prowling (9A.52.100)	E
35	C	Taking Motor Vehicle Without	
36		Owner's Permission (9A.56.070)	D
37		Other	
38	B	Bomb Threat (9.61.160)	C

1	C	Escape 1((3))_ (9A.76.110)	C
2	C	Escape 2((3))_ (9A.76.120)	C
3	D	Escape 3 (9A.76.130)	E
4	C	Failure to Appear in Court	
5		(10.19.130)	D
6	<u>C</u>	<u>Stalking (Repeat)</u>	<u>D</u>
7	<u>D</u>	<u>Stalking (1st Time)</u>	<u>E</u>
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 (13.40.200)((3))_	V

23 ¹Rape of a Child 1 requires a mandatory minimum sentence of 52-65 weeks
24 confinement

25 ²Child Molestation 1 requires a mandatory minimum sentence of 21-28
26 weeks confinement

27 ¶ \ Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C
28 offenses and the standard range is established as follows:

29 1st escape or attempted escape during 12-month period - 4 weeks
30 confinement

31 2nd escape or attempted escape during 12-month period - 8 weeks
32 confinement

33 3rd and subsequent escape or attempted escape during 12-month
34 period - 12 weeks confinement

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

1 **SCHEDULE B**

2 **PRIOR OFFENSE INCREASE FACTOR**

3 For use with all CURRENT OFFENSES occurring on or after July 1,
4 1989.

5 **TIME SPAN**

6 OFFENSE	0-12	13-24	25 Months
7 CATEGORY	Months	Months	or More
8			
9 A+	.9	.9	.9
10 A	.9	.8	.6
11 A-	.9	.8	.5
12 B+	.9	.7	.4
13 B	.9	.6	.3
14 C+	.6	.3	.2
15 C	.5	.2	.2
16 D+	.3	.2	.1
17 D	.2	.1	.1
18 E	.1	.1	.1

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

23 **SCHEDULE C**

24 **CURRENT OFFENSE POINTS**

25 For use with all CURRENT OFFENSES occurring on or after July 1,
26 1989.

27 **AGE**

28 OFFENSE	12 &					
29 CATEGORY	Under	13	14	15	16	17
30						
31 A+	STANDARD RANGE 180-224 WEEKS					
32 A	250	300	350	375	375	375
33 A-	150	150	150	200	200	200
34 B+	110	110	120	130	140	150
35 B	45	45	50	50	57	57
36 C+	44	44	49	49	55	55
37 C	40	40	45	45	50	50

1	D+	16	18	20	22	24	26
2	D	14	16	18	20	22	24
3	E	4	4	4	6	8	10

JUVENILE SENTENCING STANDARDS
SCHEDULE D-1

6 This schedule may only be used for minor/first offenders. After the
7 determination is made that a youth is a minor/first offender, the court
8 has the discretion to select sentencing option A, B, or C.

MINOR/FIRST OFFENDER

OPTION A

STANDARD RANGE

	Community Supervision	Community Service Hours	Fine
12	Points		
13		
16	0-3 months	and/or 0-8	and/or 0-\$10
17	10-19	and/or 0-8	and/or 0-\$10
18	20-29	and/or 0-16	and/or 0-\$10
19	30-39	and/or 8-24	and/or 0-\$25
20	40-49	and/or 16-32	and/or 0-\$25
21	50-59	and/or 24-40	and/or 0-\$25
22	60-69	and/or 32-48	and/or 0-\$50
23	70-79	and/or 40-56	and/or 0-\$50
24	80-89	and/or 48-64	and/or 10-\$100
25	90-109	and/or 56-72	and/or 10-\$100))
26	<u>1-109</u>	<u>0-12 months</u>	<u>and/or 0-150</u> <u>and/or 0-\$100</u>

((OR

OPTION B

STATUTORY OPTION

- 30 ~~0-12 Months Community Supervision~~
- 31 ~~0-150 Hours Community Service~~
- 32 ~~0-100 Fine~~

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

OR

OPTION ((C) B

MANIFEST INJUSTICE

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

6 **JUVENILE SENTENCING STANDARDS**
 7 **SCHEDULE D-2**

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

11 **MIDDLE OFFENDER**

12 **OPTION A**
 13 **STANDARD RANGE**

	Community			Confinement	
	Community	Service			
Points	Supervision	Hours	Fine	Days Weeks	
.....					
18	(1-9	0-3 months	and/or 0-8	and/or 0-\$10	and/or 0
19	10-19	0-3 months	and/or 0-8	and/or 0-\$10	and/or 0
20	20-29	0-3 months	and/or 0-16	and/or 0-\$10	and/or 0
21	30-39	0-3 months	and/or 8-24	and/or 0-\$25	and/or 2-4
22	40-49	3-6 months	and/or 16-32	and/or 0-\$25	and/or 2-4
23	50-59	3-6 months	and/or 24-40	and/or 0-\$25	and/or 5-10
24	60-69	6-9 months	and/or 32-48	and/or 0-\$50	and/or 5-10
25	70-79	6-9 months	and/or 40-56	and/or 0-\$50	and/or 10-20
26	80-89	9-12 months	and/or 48-64	and/or 0-\$100	and/or 10-20
27	90-109	9-12 months	and/or 56-72	and/or 0-\$100	and/or 15-30))
28	<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>
29	110-129				8-12
30	130-149				13-16
31	150-199				21-28
32	200-249				30-40
33	250-299				52-65
34	300-374				80-100
35	375+				103-129

36 For all determinate dispositions of up to 30 days confinement for
 37 middle offenders with fewer than 110 points the court shall state its
 38 reasons in writing why alternatives to confinement are not used.

1 Middle offenders with more than 110 points do not have to be committed.
2 They may be assigned community supervision under option B.
3 All A+ offenses 180-224 weeks

4 OR

5
6 **OPTION B**
7 **STATUTORY OPTION**

8 0-12 Months Community Supervision
9 0-150 Hours Community Service
10 0-100 Fine

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

15 OR

16
17 **OPTION C**
18 **MANIFEST INJUSTICE**

19 If the court determines that a disposition under A or B would
20 effectuate a manifest injustice, the court shall sentence the juvenile
21 to a maximum term and the provisions of RCW 13.40.030(2) shall be used
22 to determine the range.

23 **JUVENILE SENTENCING STANDARDS**
24 **SCHEDULE D-3**

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

28 **SERIOUS OFFENDER**
29 **OPTION A**
30 **STANDARD RANGE**

31	Points	Institution Time
32
33	0-129	8-12 weeks
34	130-149	13-16 weeks

1	150-199	21-28 weeks
2	200-249	30-40 weeks
3	250-299	52-65 weeks
4	300-374	80-100 weeks
5	375+	103-129 weeks
6	All A+ Offenses	180-224 weeks

7 OR

8
9 OPTION B

10 MANIFEST INJUSTICE

11 A disposition outside the standard range shall be determined and shall
12 be comprised of confinement or community supervision or a combination
13 thereof. When a judge finds a manifest injustice and imposes a
14 sentence of confinement exceeding 30 days, the court shall sentence the
15 juvenile to a maximum term, and the provisions of RCW 13.40.030(2)
16 shall be used to determine the range.

17 **Sec. 3.** RCW 13.40.050 and 1992 c 205 s 106 are each amended to
18 read as follows:

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

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

24 (b) A detention hearing, a community supervision modification or
25 termination of diversion petition, or a parole modification petition
26 shall be held within seventy-two hours, Saturdays, Sundays, and
27 holidays excluded, from the time of filing the information or petition,
28 to determine whether continued detention is necessary under RCW
29 13.40.040.

30 (2) Notice of the detention hearing, stating the time, place, and
31 purpose of the hearing, (~~and stating~~) the right to counsel, and
32 commanding them to appear, shall be given to the parent, guardian, or
33 custodian if such person can be found and shall also be given to the
34 juvenile if over twelve years of age. The parent, guardian, or
35 custodian shall attend the detention hearing.

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

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

9 (5) Notwithstanding a determination that the case is properly
10 before the court and that probable cause exists, a juvenile shall at
11 the detention hearing be ordered released on the juvenile's personal
12 recognizance pending further hearing unless the court finds detention
13 is necessary under RCW 13.40.040 as now or hereafter amended.

14 (6) If detention is not necessary under RCW 13.40.040, as now or
15 hereafter amended, the court shall impose the most appropriate of the
16 following conditions or, if necessary, any combination of the following
17 conditions:

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

20 (b) Place restrictions on the travel of the juvenile during the
21 period of release;

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

24 (d) Impose any condition other than detention deemed reasonably
25 necessary to assure appearance as required; or

26 (e) Require that the juvenile return to detention during specified
27 hours.

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

32 (8) If the person notified as provided in this section fails
33 without reasonable cause to appear, the person may be found in contempt
34 of court, pursuant to chapter 7.21 RCW.

35 **Sec. 4.** RCW 13.40.130 and 1981 c 299 s 10 are each amended to read
36 as follows:

37 (1) The respondent shall be advised of the allegations in the
38 information and shall be required to plead guilty or not guilty to the

1 allegation(s). The state or the respondent may make preliminary
2 motions up to the time of the plea.

3 (2) If the respondent pleads guilty, the court may proceed with
4 disposition or may continue the case for a dispositional hearing. If
5 the respondent denies guilt, an adjudicatory hearing date shall be set.
6 The court shall notify the parent, guardian, or custodian of any
7 juvenile described in the charging document of the date, time, and
8 place of the dispositional or adjudicatory hearing and the parent,
9 guardian, or custodian shall attend.

10 (3) At the adjudicatory hearing it shall be the burden of the
11 prosecution to prove the allegations of the information beyond a
12 reasonable doubt.

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

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

18 (6) If the respondent is found guilty the court may immediately
19 proceed to disposition or may continue the case for a dispositional
20 hearing. Notice of the time and place of the continued hearing may be
21 given in open court. If notice is not given in open court to a party,
22 the party and the parent, guardian, or custodian shall be notified by
23 mail of the time and place of the continued hearings. The notice shall
24 command the parent, guardian, or custodian to attend the hearing.

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

28 (8) The disposition hearing shall be held within fourteen days
29 after the adjudicatory hearing or plea of guilty unless good cause is
30 shown for further delay, or within twenty-one days if the juvenile is
31 not held in a detention facility, unless good cause is shown for
32 further delay.

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

35 (10) If the person notified as provided in this section fails
36 without reasonable cause to appear, the person may be found in contempt
37 of court, pursuant to chapter 7.21 RCW.

1 **Sec. 5.** RCW 5.60.060 and 1989 c 271 s 301 are each amended to read
2 as follows:

3 (1) A husband shall not be examined for or against his wife,
4 without the consent of the wife, nor a wife for or against her husband
5 without the consent of the husband; nor can either during marriage or
6 afterward, be without the consent of the other, examined as to any
7 communication made by one to the other during marriage. But this
8 exception shall not apply to a civil action or proceeding by one
9 against the other, nor to a criminal action or proceeding for a crime
10 committed by one against the other, nor to a criminal action or
11 proceeding against a spouse if the marriage occurred subsequent to the
12 filing of formal charges against the defendant, nor to a criminal
13 action or proceeding for a crime committed by said husband or wife
14 against any child of whom said husband or wife is the parent or
15 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:
16 PROVIDED, That the spouse of a person sought to be detained under
17 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall
18 be so informed by the court prior to being called as a witness.

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

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

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

33 (~~(4)~~) (5) Subject to the limitations under RCW 70.96A.140 or
34 71.05.250, a physician or surgeon or osteopathic physician or surgeon
35 shall not, without the consent of his or her patient, be examined in a
36 civil action as to any information acquired in attending such patient,
37 which was necessary to enable him or her to prescribe or act for the
38 patient, except as follows:

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

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

9 ~~((+5))~~ (6) A public officer shall not be examined as a witness as
10 to communications made to him or her in official confidence, when the
11 public interest would suffer by the disclosure.

12 **Sec. 6.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended to
13 read as follows:

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

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

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

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

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

1 permit diversion agreements to mandate attendance at (~~up to ten hours~~
2 ~~of~~) counseling and/or (~~up to twenty hours of~~) educational or
3 informational sessions;

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

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

13 (f) Participation in adult mentoring programs and community
14 monitoring programs.

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

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

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

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

38 (a) A written diversion agreement shall be executed stating all
39 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 diverttee 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 diverttee;

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 diverttee 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 diverttee was diverted:

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

20 (ii) In superior court or the appropriate court of limited
21 jurisdiction if the diverttee 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 diverttee
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. 7.** RCW 13.40.010 and 1992 c 205 s 101 are each amended to
31 read as follows:

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

34 (2) It is the intent of the legislature that a system capable of
35 having primary responsibility for, being accountable for, and
36 responding to the needs of youthful offenders, as defined by this
37 chapter, be established. It is the further intent of the legislature
38 that youth, in turn, be held accountable for their offenses and that

1 (~~both~~) communities, families, and the juvenile courts carry out their
2 functions consistent with this intent. To effectuate these policies,
3 the legislature declares the following to be equally important purposes
4 of this chapter:

5 (a) Protect the citizenry from criminal behavior;

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

8 (c) Make the juvenile offender accountable for his or her criminal
9 behavior;

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

12 (e) Provide due process for juveniles alleged to have committed an
13 offense;

14 (f) Ensure that racial and ethnic minority families are not
15 disproportionately affected by the juvenile justice system;

16 (g) Provide necessary treatment, supervision, and custody for
17 juvenile offenders;

18 (~~(g)~~) (h) Provide for the handling of juvenile offenders by
19 communities whenever consistent with public safety;

20 (~~(h)~~) (i) Provide for restitution to victims of crime;

21 (~~(i)~~) (j) Develop effective standards and goals for the
22 operation, funding, and evaluation of all components of the juvenile
23 justice system and related services at the state and local levels;

24 (~~and~~

25 ~~(j)~~) (k) Provide for a clear policy to determine what types of
26 offenders shall receive punishment, treatment, or both, and to
27 determine the jurisdictional limitations of the courts, institutions,
28 and community services; and

29 (l) Encourage the parents, guardian, or custodian of the juvenile
30 to actively participate in the juvenile justice process.

31 **Sec. 8.** RCW 13.40.120 and 1981 c 299 s 9 are each amended to read
32 as follows:

33 All hearings may be conducted at any time or place within the
34 limits of the judicial district, and such cases may not be heard in
35 conjunction with other business of any other division of the superior
36 court. The court, if possible, shall hold hearings during nonstandard
37 hours and take such other actions as are necessary to facilitate
38 parental participation.

1 **Sec. 9.** RCW 13.40.025 and 1986 c 288 s 8 are each amended to read
2 as follows:

3 (1) There is established a juvenile disposition standards
4 commission to propose disposition standards to the legislature in
5 accordance with RCW 13.40.030 and perform the other responsibilities
6 set forth in this chapter.

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

29 (3) The ~~((secretary or the secretary's designee shall serve as~~
30 ~~chairman))~~ governor shall designate a chair of the commission.

31 (4) The ~~((secretary shall serve on the commission during the~~
32 ~~secretary's tenure as secretary of the department. The term of the~~
33 ~~remaining members of the commission shall be three years. The initial~~
34 ~~terms shall be determined by lot conducted at the commission's first~~
35 ~~meeting as follows: (a) Four members shall serve a two-year term; and~~
36 ~~(b) four members shall serve a three-year term. In the event of a~~
37 ~~vacancy, the appointing authority shall designate a new member to~~
38 ~~complete the remainder of the unexpired term))~~ speaker of the house of
39 representatives and the president of the senate may each appoint two

1 nonvoting members to the commission, one from each of the two largest
2 caucuses in each house.

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

7 (6) The juvenile disposition standards commission shall (~~meet at~~
8 ~~least once every three months~~) cease to exist on June 30, 1997, and
9 its powers and duties shall be transferred to the sentencing guidelines
10 commission established under RCW 9.94A.040.

11 **Sec. 10.** RCW 13.40.027 and 1993 c 415 s 9 are each amended to read
12 as follows:

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

27 (2) It is the responsibility of the department to: (a) Provide the
28 commission with available data concerning the implementation of the
29 disposition standards and related statutes and their effect on the
30 performance of the department's responsibilities relating to juvenile
31 offenders; and (b) (~~at the request of the commission, provide~~
32 ~~technical and administrative assistance to the commission in the~~
33 ~~performance of its responsibilities; and (c)) provide the commission
34 and legislature with recommendations for modification of the
35 disposition standards.~~

36 (3) It is the responsibility of the sentencing guidelines
37 commission established under RCW 9.94A.040 to provide staffing and
38 services to the commission.

1 **Sec. 11.** RCW 13.40.030 and 1989 c 407 s 3 are each amended to read
2 as follows:

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

25 ~~((b) The secretary shall submit guidelines pertaining to the~~
26 ~~nature of the security to be imposed on youth placed in his or her~~
27 ~~custody based on the age, offense(s), and criminal history of the~~
28 ~~juvenile offender. Such guidelines shall be submitted to the~~
29 ~~legislature for its review no later than November 1st of each year. At~~
30 ~~the same time the secretary shall submit a report on security at~~
31 ~~juvenile facilities during the preceding year. The report shall~~
32 ~~include the number of escapes from each juvenile facility, the most~~
33 ~~serious offense for which each escapee had been confined, the number~~
34 ~~and nature of offenses found to have been committed by juveniles while~~
35 ~~on escape status, the number of authorized leaves granted, the number~~
36 ~~of failures to comply with leave requirements, the number and nature of~~
37 ~~offenses committed while on leave, and the number and nature of~~
38 ~~offenses committed by juveniles while in the community on minimum~~
39 ~~security status; to the extent this information is available to the~~

1 ~~secretary. The department shall include security status definitions in~~
2 ~~the security guidelines it submits to the legislature pursuant to this~~
3 ~~section.))~~

4 (2) In developing recommended disposition standards, the commission
5 shall emphasize confinement for violent and repeat offenders. The
6 commission shall also ensure increased judicial flexibility and
7 discretion, and emphasize alternatives to total confinement for
8 nonviolent, chemically dependent, or mentally ill offenders. The
9 commission's recommended disposition standards shall result in a
10 simplified sentencing system.

11 (3) In developing recommendations for the permissible ranges of
12 confinement under this section the commission shall be subject to the
13 following limitations:

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

17 (b) Where the maximum term in the range is greater than ninety days
18 but not greater than one year, the minimum term in the range may be no
19 less than seventy-five percent of the maximum term in the range;
20 ((and))

21 (c) Where the maximum term in the range is more than one year, the
22 minimum term in the range may be no less than eighty percent of the
23 maximum term in the range; and

24 (d) The seriousness of the offense shall be the most important
25 factor in determining the length of confinement. The offender's age
26 and criminal history should count as contributing, but less important
27 factors.

28 NEW SECTION. Sec. 12. A new section is added to chapter 13.40 RCW
29 to read as follows:

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

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

5 **Sec. 13.** RCW 9.94A.040 and 1994 c 87 s 1 are each amended to read
6 as follows:

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

9 (2) The commission shall, following a public hearing or hearings:

10 (a) Devise a series of recommended standard sentence ranges for all
11 felony offenses and a system for determining which range of punishment
12 applies to each offender based on the extent and nature of the
13 offender's criminal history, if any;

14 (b) Devise recommended prosecuting standards in respect to charging
15 of offenses and plea agreements; and

16 (c) Devise recommended standards to govern whether sentences are to
17 be served consecutively or concurrently.

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

21 (4) In devising the standard sentence ranges of total and partial
22 confinement under this section, the commission is subject to the
23 following limitations:

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

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

32 (c) The maximum term of confinement in a range may not exceed the
33 statutory maximum for the crime as provided in RCW 9A.20.020.

34 (5) In carrying out its duties under subsection (2) of this
35 section, the commission shall give consideration to the existing
36 guidelines adopted by the association of superior court judges and the
37 Washington association of prosecuting attorneys and the experience
38 gained through use of those guidelines. The commission shall emphasize

1 confinement for the violent offender and alternatives to total
2 confinement for the nonviolent offender.

3 (6) This commission shall conduct a study to determine the capacity
4 of correctional facilities and programs which are or will be available.
5 While the commission need not consider such capacity in arriving at its
6 recommendations, the commission shall project whether the
7 implementation of its recommendations would result in exceeding such
8 capacity. If the commission finds that this result would probably
9 occur, then the commission shall prepare an additional list of standard
10 sentences which shall be consistent with such capacity.

11 (7) The commission may recommend to the legislature revisions or
12 modifications to the standard sentence ranges and other standards. If
13 implementation of the revisions or modifications would result in
14 exceeding the capacity of correctional facilities, then the commission
15 shall accompany its recommendation with an additional list of standard
16 sentence ranges which are consistent with correction capacity.

17 (8) The commission shall study the existing criminal code and from
18 time to time make recommendations to the legislature for modification.

19 (9) The commission may (a) serve as a clearinghouse and information
20 center for the collection, preparation, analysis, and dissemination of
21 information on state and local sentencing practices; (b) develop and
22 maintain a computerized sentencing information system by individual
23 superior court judge consisting of offender, offense, history, and
24 sentence information entered from judgment and sentence forms for all
25 adult felons; and (c) conduct ongoing research regarding sentencing
26 guidelines, use of total confinement and alternatives to total
27 confinement, plea bargaining, and other matters relating to the
28 improvement of the criminal justice system.

29 (10) The staff and executive (~~officer~~) director of the commission
30 may provide staffing and services to the juvenile disposition standards
31 commission, if authorized by RCW 13.40.025 and 13.40.027. The
32 commission may conduct joint meetings with the juvenile disposition
33 standards commission.

34 (11) The commission shall assume the powers and duties of the
35 juvenile disposition standards commission after June 30, 1997.

36 (12) The commission shall exercise its duties under this section in
37 conformity with chapter 34.05 RCW.

1 **Sec. 14.** RCW 9.94A.050 and 1982 c 192 s 3 are each amended to read
2 as follows:

3 The commission shall be administered by an executive director, who
4 shall be appointed by, and serve at the pleasure of, the governor. The
5 (~~commission shall~~) executive director may appoint a research staff of
6 sufficient size and with sufficient resources to accomplish its duties.
7 The commission may request from the office of financial management, the
8 (~~board of prison terms and paroles~~) indeterminate sentence review
9 board, administrator for the courts, the department of corrections, and
10 the department of social and health services such data, information,
11 and data processing assistance as it may need to accomplish its duties,
12 and such services shall be provided without cost to the commission.
13 The commission shall adopt its own bylaws.

14 The salary for a full-time executive (~~officer, if any,~~) director
15 shall be fixed by the governor pursuant to RCW 43.03.040.

16 **Sec. 15.** RCW 13.40.210 and 1994 sp.s. c 77 s 527 are each amended
17 to read as follows:

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

37 (2) The secretary shall monitor the average daily population of the
38 state's juvenile residential facilities. When the secretary concludes

1 that in-residence population of residential facilities exceeds one
2 hundred five percent of the rated bed capacity specified in statute, or
3 in absence of such specification, as specified by the department in
4 rule, the secretary may recommend reductions to the governor. On
5 certification by the governor that the recommended reductions are
6 necessary, the secretary has authority to administratively release a
7 sufficient number of offenders to reduce in-residence population to one
8 hundred percent of rated bed capacity. The secretary shall release
9 those offenders who have served the greatest proportion of their
10 sentence. However, the secretary may deny release in a particular case
11 at the request of an offender, or if the secretary finds that there is
12 no responsible custodian, as determined by the department, to whom to
13 release the offender, or if the release of the offender would pose a
14 clear danger to society. The department shall notify the committing
15 court of the release at the time of release if any such early releases
16 have occurred as a result of excessive in-residence population. In no
17 event shall an offender adjudicated of a violent offense be granted
18 release under the provisions of this subsection.

19 (3) Following the juvenile's release under subsection (1) of this
20 section, the secretary may require the juvenile to comply with a
21 program of parole to be administered by the department in his or her
22 community which shall last no longer than eighteen months, except that
23 in the case of a juvenile sentenced for rape in the first or second
24 degree, rape of a child in the first or second degree, child
25 molestation in the first degree, or indecent liberties with forcible
26 compulsion, the period of parole shall be twenty-four months. A parole
27 program is mandatory for offenders released under subsection (2) of
28 this section. The secretary shall, for the period of parole,
29 facilitate the juvenile's reintegration into his or her community and
30 to further this goal shall require the juvenile to refrain from
31 possessing a firearm or using a deadly weapon and refrain from
32 committing new offenses and may require the juvenile to: (a) Undergo
33 available medical ((~~or~~)), psychiatric ((~~treatment~~)), drug and alcohol,
34 mental health, and other offense-related treatment services; (b) report
35 as directed to a parole officer and/or designee; (c) pursue a course of
36 study ((~~or~~)), vocational training, or employment; ((~~and~~)) (d) notify
37 the parole officer of the current address where he or she resides; (e)
38 be present at a particular address during specified hours; (f) remain
39 within prescribed geographical boundaries ((~~and notify the department~~

1 ~~of any change in his or her address)); (g) submit to electronic~~
2 ~~monitoring; (h) refrain from using illegal drugs and alcohol, and~~
3 ~~submit to random urinalysis when requested by the assigned parole~~
4 ~~officer; and (i) refrain from contact with specific individuals or a~~
5 ~~specified class of individuals. After termination of the parole~~
6 period, the juvenile shall be discharged from the department's
7 supervision.

8 (4)(a) The department may also modify parole for violation thereof.
9 If, after affording a juvenile all of the due process rights to which
10 he or she would be entitled if the juvenile were an adult, the
11 secretary finds that a juvenile has violated a condition of his or her
12 parole, the secretary shall order one of the following which is
13 reasonably likely to effectuate the purpose of the parole and to
14 protect the public: (i) Continued supervision under the same
15 conditions previously imposed; (ii) intensified supervision with
16 increased reporting requirements; (iii) additional conditions of
17 supervision authorized by this chapter; (iv) except as provided in
18 (a)(v) of this subsection, imposition of a period of confinement not to
19 exceed thirty days in a facility operated by or pursuant to a contract
20 with the state of Washington or any city or county for a portion of
21 each day or for a certain number of days each week with the balance of
22 the days or weeks spent under supervision; and (v) the secretary may
23 order any of the conditions or may return the offender to confinement
24 (~~in an institution~~) for the remainder of the sentence range if the
25 offense for which the offender was sentenced is rape in the first or
26 second degree, rape of a child in the first or second degree, child
27 molestation in the first degree, indecent liberties with forcible
28 compulsion, or a sex offense that is also a serious violent offense as
29 defined by RCW 9.94A.030.

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

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

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

4 **Sec. 16.** RCW 13.40.045 and 1994 sp.s. c 7 s 518 are each amended
5 to read as follows:

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

14 NEW SECTION. **Sec. 17.** A new section is added to chapter 13.40 RCW
15 to read as follows:

16 (1) When a middle offender with one hundred ten points or more is
17 found to have committed an offense that is not a violent or sex
18 offense, the court, on its own motion or the motion of the state or the
19 respondent, may order an examination by a chemical dependency counselor
20 from a chemical dependency treatment facility approved under chapter
21 70.96A RCW to determine if the youth is chemically dependent and
22 amenable to treatment.

23 (2) 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 drug-alcohol problems and previous treatment attempts, the
27 respondent's social, educational, and employment situation, and other
28 evaluation measures used. The report shall set forth the sources of
29 the examiner's information.

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

- 34 (a) Whether inpatient and/or outpatient treatment is recommended;
35 (b) Availability of appropriate treatment;

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

4 (d) Anticipated length of treatment; and

5 (e) Recommended crime-related prohibitions.

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

12 (5)(a) After receipt of reports of the examination, the court shall
13 then consider whether the offender and the community will benefit from
14 use of this chemical dependent disposition alternative and consider the
15 victim's opinion whether the offender should receive a treatment
16 disposition under this section.

17 (b) If the court determines that this chemical dependent
18 disposition alternative is appropriate, then the court shall impose the
19 standard range for the offense, suspend execution of the disposition,
20 and place the offender on community supervision for up to one year. As
21 a condition of the suspended disposition, the court shall require the
22 offender to undergo available outpatient drug/alcohol treatment and/or
23 inpatient drug/alcohol treatment. For purposes of this section, the
24 sum of confinement time and inpatient treatment may not exceed ninety
25 days. As a condition of the suspended disposition, the court may
26 impose the conditions of community supervision and other conditions,
27 including up to thirty days of confinement and requirements that the
28 offender do any one or more of the following:

29 (i) Devote time to a specific education, employment, or occupation;

30 (ii) Remain within prescribed geographical boundaries and notify
31 the court or the probation counselor prior to any change in the
32 offender's address, education program, or employment;

33 (iii) Report as directed to the court and a probation counselor;

34 (iv) Pay all court-ordered legal financial obligations, perform
35 community service, or any combination thereof;

36 (v) Make restitution to the victim for the cost of any counseling
37 reasonably related to the offense; or

38 (vi) Refrain from using illegal drugs and alcohol and submit to
39 random urinalysis if requested.

1 (6) The drug/alcohol treatment provider shall submit monthly
2 reports on the respondent's progress in treatment to the court and the
3 parties. The reports shall reference the treatment plan and include at
4 a minimum the following: Dates of attendance, respondent's compliance
5 with requirements, treatment activities, the respondent's relative
6 progress in treatment, and any other material specified by the court at
7 the time of the disposition.

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

10 If the offender violates any condition of the disposition or the
11 court finds that the respondent is failing to make satisfactory
12 progress in treatment, the court may revoke the suspension and order
13 execution of the sentence. The court shall give credit for any
14 confinement time previously served if that confinement was for the
15 offense for which the suspension is being revoked.

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

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

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

26 **Sec. 18.** 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 NEW SECTION. **Sec. 19.** A new section is added to chapter 13.40 RCW
14 to read as follows:

15 RECOMMENDED PROSECUTING STANDARDS
16 FOR CHARGING AND PLEA DISPOSITIONS

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

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

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

30 GUIDELINES/COMMENTARY:

31 Examples

32 The following are examples of reasons not to prosecute which could
33 satisfy the standard.

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

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

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

4 (ii) Most members of society act as if it were no longer in
5 existence; and

6 (iii) It serves no deterrent or protective purpose in today's
7 society; and

8 (iv) The statute has not been recently reconsidered by the
9 legislature.

10 This reason is not to be construed as the basis for declining cases
11 because the law in question is unpopular or because it is difficult to
12 enforce.

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

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

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

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

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

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

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

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

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

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

35 (f) High Disproportionate Cost of Prosecution - It may be proper to
36 decline to charge where the cost of locating or transporting, or the
37 burden on, prosecution witnesses is highly disproportionate to the
38 importance of prosecuting the offense in question. The reason should

1 be limited to minor cases and should not be relied upon in serious
2 cases.

3 (g) Improper Motives of Complainant - It may be proper to decline
4 charges because the motives of the complainant are improper and
5 prosecution would serve no public purpose, would defeat the underlying
6 purpose of the law in question, or would result in decreased respect
7 for the law.

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

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

16 (i) Assault cases where the victim has suffered little or no
17 injury;

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

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

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

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

25 Notification

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

28 (2) Decision to prosecute.

29 STANDARD:

30 Crimes against persons will be filed if sufficient admissible
31 evidence exists, which, when considered with the most plausible,
32 reasonably foreseeable defense that could be raised under the evidence,
33 would justify conviction by a reasonable and objective fact-finder.
34 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
35 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
36 9A.64.020 the prosecutor should avoid prefiling agreements or
37 diversions intended to place the accused in a program of treatment or
38 counseling, so that treatment, if determined to be beneficial, can be
39 proved pursuant to RCW 13.40.160(5).

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

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

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

10 Selection of Charges/Degree of Charge

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

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

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

17 (2) The prosecutor should not overcharge to obtain a guilty plea.

18 Overcharging includes:

19 (a) Charging a higher degree;

20 (b) Charging additional counts.

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

27 The selection of charges and/or the degree of the charge shall not
28 be influenced by the race, gender, religion, or creed of the
29 respondent.

30 GUIDELINES/COMMENTARY:

31 Police Investigation

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

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

- 1 (2) The completion of necessary laboratory tests; and
2 (3) The obtaining, in accordance with constitutional requirements,
3 of the suspect's version of the events.

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

7 Exceptions

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

- 10 (1) Probable cause exists to believe the suspect is guilty; and
11 (2) The suspect presents a danger to the community or is likely to
12 flee if not apprehended; or
13 (3) The arrest of the suspect is necessary to complete the
14 investigation of the crime.

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

20 Investigation Techniques

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

- 23 (1) Polygraph testing;
24 (2) Hypnosis;
25 (3) Electronic surveillance;
26 (4) Use of informants.

27 Prefiling Discussions with Defendant

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

31 PLEA DISPOSITIONS:

32 Standard

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

37 (2) In certain circumstances, a plea agreement with a respondent in
38 exchange for a plea of guilty to a charge or charges that may not fully

1 describe the nature of his or her criminal conduct may be necessary and
2 in the public interest. Such situations may include the following:

3 (a) Evidentiary problems which make conviction of the original
4 charges doubtful;

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

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

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

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

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

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

15 (h) The probable effect of witnesses.

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

21 DISPOSITION RECOMMENDATIONS:

22 Standard

23 The prosecutor may reach an agreement regarding disposition
24 recommendations.

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

27 NEW SECTION. **Sec. 20.** (1) It is the intent of the legislature to
28 enhance the protection of our communities by keeping in confinement
29 those unrehabilitated juvenile offenders who otherwise would be
30 released from custody at age twenty-one. It is also the intent of the
31 legislature to provide juvenile offenders who are in confinement with
32 additional incentives to rehabilitate themselves. Further, it is the
33 intent of the legislature to develop a cost-effective way to achieve
34 these goals.

35 (2) The department of corrections and the department of social and
36 health services shall jointly develop recommendations for the creation
37 of a youthful offender sentencing option. The departments shall: (a)
38 Recommend which offenders would be eligible; (b) recommend a sentencing

1 disposition that combines adult criminal sentencing guidelines and
2 juvenile dispositions; (c) recommend whether the offender will be under
3 the jurisdiction of juvenile or adult court; (d) recommend whether
4 services will be provided by the department of corrections or the
5 department of social and health services; and (e) identify the short
6 and long-term fiscal impact of each of these recommendations. In
7 making its recommendations, the departments shall review similar
8 sentencing options in other states. The departments shall consult with
9 interested parties and shall report their recommendations to the
10 governor and the attorney general by December 1, 1995.

--- END ---