

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5491

State of Washington 54th Legislature 1995 Regular Session

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

Read first time 03/06/95.

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, 13.40.025,
3 13.40.027, 13.40.030, 9.94A.040, 9.94A.050, 13.40.210, 13.40.045,
4 13.40.060, 13.04.030, and 35.20.030; reenacting and amending RCW
5 13.40.020; adding new sections to chapter 13.40 RCW; adding a new
6 section to chapter 13.04 RCW; adding a new section to chapter 28A.225
7 RCW; creating a new section; and prescribing penalties.

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

9 **Sec. 1.** RCW 13.40.0357 and 1994 sp.s. c 7 s 522 are each amended
10 to read as follows:

SCHEDULE A

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
13		
14		
15		
16		
17		

1		Arson and Malicious Mischief	
2	A	Arson 1 (9A.48.020)	B+
3	B	Arson 2 (9A.48.030)	C
4	C	Reckless Burning 1 (9A.48.040)	D
5	D	Reckless Burning 2 (9A.48.050)	E
6	B	Malicious Mischief 1 (9A.48.070)	C
7	C	Malicious Mischief 2 (9A.48.080)	D
8	D	Malicious Mischief 3 (<\$50 is	
9		E class) (9A.48.090)	E
10	E	Tampering with Fire Alarm	
11		Apparatus (9.40.100)	E
12	A	Possession of Incendiary Device	
13		(9.40.120)	B+
14		Assault and Other Crimes	
15		Involving Physical Harm	
16	A	Assault 1 (9A.36.011)	B+
17	B+	Assault 2 (9A.36.021)	C+
18	C+	Assault 3 (9A.36.031)	D+
19	D+	Assault 4 (9A.36.041)	E
20	D+	Reckless Endangerment	
21		(9A.36.050)	E
22	C+	Promoting Suicide Attempt	
23		(9A.36.060)	D+
24	D+	Coercion (9A.36.070)	E
25	C+	Custodial Assault (9A.36.100)	D+
26		Burglary and Trespass	
27	B+	Burglary 1 (9A.52.020)	C+
28	B	Burglary 2 (9A.52.030)	C
29	D	Burglary Tools (Possession of)	
30		(9A.52.060)	E
31	D	Criminal Trespass 1 (9A.52.070)	E
32	E	Criminal Trespass 2 (9A.52.080)	E
33	D	Vehicle Prowling (9A.52.100)	E
34		Drugs	
35	E	Possession/Consumption of Alcohol	
36		(66.44.270)	E
37	C	Illegally Obtaining Legend Drug	
38		(69.41.020)	D

1	C+	Sale, Delivery, Possession of Legend	
2		Drug with Intent to Sell	
3		(69.41.030)	D+
4	E	Possession of Legend Drug	
5		(69.41.030)	E
6	B+	Violation of Uniform Controlled	
7		Substances Act - Narcotic Sale	
8		(69.50.401(a)(1)(i))	B+
9	C	Violation of Uniform Controlled	
10		Substances Act - Nonnarcotic Sale	
11		(69.50.401(a)(1)(ii))	C
12	E	Possession of Marihuana <40 grams	
13		(69.50.401(e))	E
14	C	Fraudulently Obtaining Controlled	
15		Substance (69.50.403)	C
16	C+	Sale of Controlled Substance	
17		for Profit (69.50.410)	C+
18	E	Unlawful Inhalation (9.47A.020)	E
19	B	Violation of Uniform Controlled	
20		Substances Act - Narcotic	
21		Counterfeit Substances	
22		(69.50.401(b)(1)(i))	B
23	C	Violation of Uniform Controlled	
24		Substances Act - Nonnarcotic	
25		Counterfeit Substances	
26		(69.50.401(b)(1) (ii), (iii), (iv))	C
27	C	Violation of Uniform Controlled	
28		Substances Act - Possession of a	
29		Controlled Substance	
30		(69.50.401(d))	C
31	C	Violation of Uniform Controlled	
32		Substances Act - Possession of a	
33		Controlled Substance	
34		(69.50.401(c))	C
35		Firearms and Weapons	
36	E	Carrying Loaded Pistol Without	
37		Permit (9.41.050)	E
38	C	Possession of Firearms by	
39		Minor (<18) (9.41.040(1)(e))	C

1	D+	Possession of Dangerous Weapon	
2		(9.41.250)	E
3	D	Intimidating Another Person by use	
4		of Weapon (9.41.270)	E
5		Homicide	
6	A+	Murder 1 (9A.32.030)	A
7	A+	Murder 2 (9A.32.050)	B+
8	B+	Manslaughter 1 (9A.32.060)	C+
9	C+	Manslaughter 2 (9A.32.070)	D+
10	B+	Vehicular Homicide (46.61.520)	C+
11		Kidnapping	
12	A	Kidnap 1 (9A.40.020)	B+
13	B+	Kidnap 2 (9A.40.030)	C+
14	C+	Unlawful Imprisonment	
15		(9A.40.040)	D+
16		Obstructing Governmental Operation	
17	E	Obstructing a Public Servant	
18		(9A.76.020)	E
19	E	Resisting Arrest (9A.76.040)	E
20	B	Introducing Contraband 1	
21		(9A.76.140)	C
22	C	Introducing Contraband 2	
23		(9A.76.150)	D
24	E	Introducing Contraband 3	
25		(9A.76.160)	E
26	B+	Intimidating a Public Servant	
27		(9A.76.180)	C+
28	B+	Intimidating a Witness	
29		(9A.72.110)	C+
30		Public Disturbance	
31	C+	Riot with Weapon (9A.84.010)	D+
32	D+	Riot Without Weapon	
33		(9A.84.010)	E
34	E	Failure to Disperse (9A.84.020)	E
35	E	Disorderly Conduct (9A.84.030)	E
36		Sex Crimes	
37	A	Rape 1 (9A.44.040)	B+

1	A-	Rape 2 (9A.44.050)	B+
2	C+	Rape 3 (9A.44.060)	D+
3	A-	Rape of a Child 1_ (9A.44.073)	B+
4	B	Rape of a Child 2 (9A.44.076)	C+
5	B	Incest 1 (9A.64.020(1))	C
6	C	Incest 2 (9A.64.020(2))	D
7	D+	Indecent Exposure	
8		(Victim <14) (9A.88.010)	E
9	E	Indecent Exposure	
10		(Victim 14 or over) (9A.88.010)	E
11	B+	Promoting Prostitution 1	
12		(9A.88.070)	C+
13	C+	Promoting Prostitution 2	
14		(9A.88.080)	D+
15	E	O & A (Prostitution) (9A.88.030)	E
16	B+	Indecent Liberties (9A.44.100)	C+
17	B+	Child Molestation 1 ² (9A.44.083)	C+
18	C+	Child Molestation 2 (9A.44.086)	C
19	<u>C</u>	<u>Failure to Register</u>	
20		<u>(For Class A Felony)</u>	<u>D</u>
21	<u>D</u>	<u>Failure to Register</u>	
22		<u>(For Class B Felony or Less)</u>	<u>E</u>
23		Theft, Robbery, Extortion, and Forgery	
24	B	Theft 1 (9A.56.030)	C
25	C	Theft 2 (9A.56.040)	D
26	D	Theft 3 (9A.56.050)	E
27	B	Theft of Livestock (9A.56.080)	C
28	C	Forgery (9A.60.020)	D
29	A	Robbery 1 (9A.56.200)	B+
30	B+	Robbery 2 (9A.56.210)	C+
31	B+	Extortion 1 (9A.56.120)	C+
32	C+	Extortion 2 (9A.56.130)	D+
33	B	Possession of Stolen Property 1	
34		(9A.56.150)	C
35	C	Possession of Stolen Property 2	
36		(9A.56.160)	D
37	D	Possession of Stolen Property 3	
38		(9A.56.170)	E
39	C	Taking Motor Vehicle Without	

1		Owner's Permission (9A.56.070)	D
2		Motor Vehicle Related Crimes	
3	E	Driving Without a License	
4		(46.20.021)	E
5	C	Hit and Run - Injury	
6		(46.52.020(4))	D
7	D	Hit and Run-Attended	
8		(46.52.020(5))	E
9	E	Hit and Run-Unattended	
10		(46.52.010)	E
11	C	Vehicular Assault (46.61.522)	D
12	C	Attempting to Elude Pursuing	
13		Police Vehicle (46.61.024)	D
14	E	Reckless Driving (46.61.500)	E
15	D	Driving While Under the Influence	
16		(46.61.515)	E
17	D	Vehicle Prowling (9A.52.100)	E
18	C	Taking Motor Vehicle Without	
19		Owner's Permission (9A.56.070)	D
20		Other	
21	B	Bomb Threat (9.61.160)	C
22	C	Escape 1((3))_ (9A.76.110)	C
23	C	Escape 2((3))_ (9A.76.120)	C
24	D	Escape 3 (9A.76.130)	E
25	C	Failure to Appear in Court	
26		(10.19.130)	D
27	<u>C</u>	<u>Stalking (Repeat)</u>	<u>D</u>
28	<u>D</u>	<u>Stalking (1st Time)</u>	<u>E</u>
29	E	Obscene, Harassing, Etc.,	
30		Phone Calls (9.61.230)	E
31	A	Other Offense Equivalent to an	
32		Adult Class A Felony	B+
33	B	Other Offense Equivalent to an	
34		Adult Class B Felony	C
35	C	Other Offense Equivalent to an	
36		Adult Class C Felony	D
37	D	Other Offense Equivalent to an	
38		Adult Gross Misdemeanor	E

1 E Other Offense Equivalent to an
 2 Adult Misdemeanor E
 3 V Violation of Order of Restitution,
 4 Community Supervision, or
 5 Confinement (13.40.200)(~~3~~) V

6 1Rape of a Child 1 requires a mandatory minimum sentence of 52-65 weeks
 7 confinement

8 2Child Molestation 1 requires a mandatory minimum sentence of 21-28
 9 weeks confinement

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

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

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

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

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

20 **SCHEDULE B**

21 **PRIOR OFFENSE INCREASE FACTOR**

22 For use with all CURRENT OFFENSES occurring on or after July 1,
 23 1989.

24 **TIME SPAN**

25 OFFENSE	0-12	13-24	25 Months
26 CATEGORY	Months	Months	or More
27			
28 A+	.9	.9	.9
29 A	.9	.8	.6
30 A-	.9	.8	.5
31 B+	.9	.7	.4
32 B	.9	.6	.3
33 C+	.6	.3	.2
34 C	.5	.2	.2
35 D+	.3	.2	.1
36 D	.2	.1	.1

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

6 **SCHEDULE C**
7 **CURRENT OFFENSE POINTS**

8 For use with all CURRENT OFFENSES occurring on or after July 1,
9 1989.

10 **AGE**

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

24 **JUVENILE SENTENCING STANDARDS**
25 **SCHEDULE D-1**

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

29 **MINOR/FIRST OFFENDER**

30 **OPTION A**
31 **STANDARD RANGE**

32	Community		
33	Community	Service	
34	Points	Supervision	Hours
35			Fine
36			
36 ((1-9 0-3 months and/or 0-8 and/or 0-\$10			
37 10-19 0-3 months and/or 0-8 and/or 0-\$10			

1 20-29 — 0-3 months — and/or 0-16 — and/or 0-\$10
2 30-39 — 0-3 months — and/or 8-24 — and/or 0-\$25
3 40-49 — 3-6 months — and/or 16-32 — and/or 0-\$25
4 50-59 — 3-6 months — and/or 24-40 — and/or 0-\$25
5 60-69 — 6-9 months — and/or 32-48 — and/or 0-\$50
6 70-79 — 6-9 months — and/or 40-56 — and/or 0-\$50
7 80-89 — 9-12 months — and/or 48-64 — and/or 10-\$100
8 90-109 — 9-12 months — and/or 56-72 — and/or 10-\$100))
9 1-109 0-12 months and/or 0-150 and/or 0-\$100

10 ((OR

11 **OPTION B**

12 **~~STATUTORY OPTION~~**

13 ~~0-12 Months Community Supervision~~
14 ~~0-150 Hours Community Service~~
15 ~~0-100 Fine~~

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

18 OR

19 **OPTION ((C) B**

20 **MANIFEST INJUSTICE**

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

26 **JUVENILE SENTENCING STANDARDS**

27 **SCHEDULE D-2**

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

31 **MIDDLE OFFENDER**

32 **OPTION A**

33 **STANDARD RANGE**

34 Community

35 Community Service

Confinement

	Points	Supervision	Hours	Fine	Days Weeks
1					
2				
3	(1-9	0-3 months	and/or 0-8	and/or 0-\$10	and/or 0
4	10-19	0-3 months	and/or 0-8	and/or 0-\$10	and/or 0
5	20-29	0-3 months	and/or 0-16	and/or 0-\$10	and/or 0
6	30-39	0-3 months	and/or 8-24	and/or 0-\$25	and/or 2-4
7	40-49	3-6 months	and/or 16-32	and/or 0-\$25	and/or 2-4
8	50-59	3-6 months	and/or 24-40	and/or 0-\$25	and/or 5-10
9	60-69	6-9 months	and/or 32-48	and/or 0-\$50	and/or 5-10
10	70-79	6-9 months	and/or 40-56	and/or 0-\$50	and/or 10-20
11	80-89	9-12 months	and/or 48-64	and/or 0-\$100	and/or 10-20
12	90-109	9-12 months	and/or 56-72	and/or 0-\$100	and/or 15-30))
13	<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>
14	110-129				8-12
15	130-149				13-16
16	150-199				21-28
17	200-249				30-40
18	250-299				52-65
19	300-374				80-100
20	375+				103-129

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

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

27 **OR**

28
29 **OPTION B**

30 **STATUTORY OPTION**

- 31 0-12 Months Community Supervision
- 32 0-150 Hours Community Service
- 33 0-100 Fine

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

38 **OR**

39
40 **OPTION C**

1 **MANIFEST INJUSTICE**

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

6 **JUVENILE SENTENCING STANDARDS**
7 **SCHEDULE D-3**

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

11 **SERIOUS OFFENDER**
12 **OPTION A**
13 **STANDARD RANGE**

14	Points	Institution Time
15
16	0-129	8-12 weeks
17	130-149	13-16 weeks
18	150-199	21-28 weeks
19	200-249	30-40 weeks
20	250-299	52-65 weeks
21	300-374	80-100 weeks
22	375+	103-129 weeks
23	All A+ Offenses	180-224 weeks

24 **OR**

25
26 **OPTION B**
27 **MANIFEST INJUSTICE**

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

1 **Sec. 2.** RCW 13.40.050 and 1992 c 205 s 106 are each amended to
2 read as follows:

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

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

8 (b) A detention hearing, a community supervision modification or
9 termination of diversion petition, or a parole modification petition
10 shall be held within seventy-two hours, Saturdays, Sundays, and
11 holidays excluded, from the time of filing the information or petition,
12 to determine whether continued detention is necessary under RCW
13 13.40.040.

14 (2) Notice of the detention hearing, stating the time, place, and
15 purpose of the hearing, (~~and stating~~) the right to counsel, and
16 commanding them to appear, shall be given to the parent, guardian, or
17 custodian if such person can be found and shall also be given to the
18 juvenile if over twelve years of age. The parent, guardian, or
19 custodian shall attend the detention hearing.

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

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

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

33 (6) If detention is not necessary under RCW 13.40.040, as now or
34 hereafter amended, the court shall impose the most appropriate of the
35 following conditions or, if necessary, any combination of the following
36 conditions:

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

1 (b) Place restrictions on the travel of the juvenile during the
2 period of release;

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

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

7 (e) Require that the juvenile return to detention during specified
8 hours.

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

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

16 **Sec. 3.** RCW 13.40.130 and 1981 c 299 s 10 are each amended to read
17 as follows:

18 (1) The respondent shall be advised of the allegations in the
19 information and shall be required to plead guilty or not guilty to the
20 allegation(s). The state or the respondent may make preliminary
21 motions up to the time of the plea.

22 (2) If the respondent pleads guilty, the court may proceed with
23 disposition or may continue the case for a dispositional hearing. If
24 the respondent denies guilt, an adjudicatory hearing date shall be set.
25 The court shall notify the parent, guardian, or custodian of any
26 juvenile described in the charging document of the date, time, and
27 place of the dispositional or adjudicatory hearing and the parent,
28 guardian, or custodian shall attend.

29 (3) At the adjudicatory hearing it shall be the burden of the
30 prosecution to prove the allegations of the information beyond a
31 reasonable doubt.

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

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

37 (6) If the respondent is found guilty the court may immediately
38 proceed to disposition or may continue the case for a dispositional

1 hearing. Notice of the time and place of the continued hearing may be
2 given in open court. If notice is not given in open court to a party,
3 the party and the parent, guardian, or custodian shall be notified by
4 mail of the time and place of the continued hearings. The notice shall
5 command the parent, guardian, or custodian to attend the hearing.

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

9 (8) The disposition hearing shall be held within fourteen days
10 after the adjudicatory hearing or plea of guilty unless good cause is
11 shown for further delay, or within twenty-one days if the juvenile is
12 not held in a detention facility, unless good cause is shown for
13 further delay.

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

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

19 **Sec. 4.** RCW 5.60.060 and 1989 c 271 s 301 are each amended to read
20 as follows:

21 (1) A husband shall not be examined for or against his wife,
22 without the consent of the wife, nor a wife for or against her husband
23 without the consent of the husband; nor can either during marriage or
24 afterward, be without the consent of the other, examined as to any
25 communication made by one to the other during marriage. But this
26 exception shall not apply to a civil action or proceeding by one
27 against the other, nor to a criminal action or proceeding for a crime
28 committed by one against the other, nor to a criminal action or
29 proceeding against a spouse if the marriage occurred subsequent to the
30 filing of formal charges against the defendant, nor to a criminal
31 action or proceeding for a crime committed by said husband or wife
32 against any child of whom said husband or wife is the parent or
33 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:
34 PROVIDED, That the spouse of a person sought to be detained under
35 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall
36 be so informed by the court prior to being called as a witness.

37 (2) An attorney or counselor shall not, without the consent of his
38 or her client, be examined as to any communication made by the client

1 to him or her, or his or her advice given thereon in the course of
2 professional employment.

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

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

13 ~~((4))~~ (5) Subject to the limitations under RCW 70.96A.140 or
14 71.05.250, a physician or surgeon or osteopathic physician or surgeon
15 shall not, without the consent of his or her patient, be examined in a
16 civil action as to any information acquired in attending such patient,
17 which was necessary to enable him or her to prescribe or act for the
18 patient, except as follows:

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

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

27 ~~((5))~~ (6) A public officer shall not be examined as a witness as
28 to communications made to him or her in official confidence, when the
29 public interest would suffer by the disclosure.

30 **Sec. 5.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended to
31 read as follows:

32 (1) A diversion agreement shall be a contract between a juvenile
33 accused of an offense and a diversionary unit whereby the juvenile
34 agrees to fulfill certain conditions in lieu of prosecution. Such
35 agreements may be entered into only after the prosecutor, or probation
36 counselor pursuant to this chapter, has determined that probable cause
37 exists to believe that a crime has been committed and that the juvenile

1 committed it. Such agreements shall be entered into as expeditiously
2 as possible.

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

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

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

10 (c) Attendance at (~~up to ten hours of~~) counseling and/or (~~up to~~
11 ~~twenty hours of~~) educational or informational sessions at a community
12 agency for a specified period of time as determined by the diversion
13 unit. The educational or informational sessions may include sessions
14 relating to respect for self, others, and authority; victim awareness;
15 accountability; self-worth; responsibility; work ethics; good
16 citizenship; and life skills. For purposes of this section, "community
17 agency" may also mean a community-based nonprofit organization, if
18 approved by the diversion unit. The state shall not be liable for
19 costs resulting from the diversionary unit exercising the option to
20 permit diversion agreements to mandate attendance at (~~up to ten hours~~
21 ~~of~~) counseling and/or (~~up to twenty hours of~~) educational or
22 informational sessions;

23 (d) A fine, not to exceed one hundred dollars. In determining the
24 amount of the fine, the diversion unit shall consider only the
25 juvenile's financial resources and whether the juvenile has the means
26 to pay the fine. The diversion unit shall not consider the financial
27 resources of the juvenile's parents, guardian, or custodian in
28 determining the fine to be imposed; (~~and~~)

29 (e) Requirements to remain during specified hours at home, school,
30 or work, and restrictions on leaving or entering specified geographical
31 areas; and

32 (f) Participation in adult mentoring programs and community
33 monitoring programs.

34 (3) In assessing periods of community service to be performed and
35 restitution to be paid by a juvenile who has entered into a diversion
36 agreement, the court officer to whom this task is assigned shall
37 consult with the juvenile's custodial parent or parents or guardian and
38 victims who have contacted the diversionary unit and, to the extent
39 possible, involve members of the community. Such members of the

1 community shall meet with the juvenile and advise the court officer as
2 to the terms of the diversion agreement and shall supervise the
3 juvenile in carrying out its terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (e) The facts of the alleged offense.

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

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

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

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

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

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

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

11 **Sec. 6.** RCW 13.40.010 and 1992 c 205 s 101 are each amended to
12 read as follows:

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

15 (2) It is the intent of the legislature that a system capable of
16 having primary responsibility for, being accountable for, and
17 responding to the needs of youthful offenders, as defined by this
18 chapter, be established. It is the further intent of the legislature
19 that youth, in turn, be held accountable for their offenses and that
20 ~~((both))~~ communities, families, and the juvenile courts carry out their
21 functions consistent with this intent. To effectuate these policies,
22 the legislature declares the following to be equally important purposes
23 of this chapter:

24 (a) Protect the citizenry from criminal behavior;

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

27 (c) Make the juvenile offender accountable for his or her criminal
28 behavior;

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

31 (e) Provide due process for juveniles alleged to have committed an
32 offense;

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

35 (g) Provide necessary treatment, supervision, and custody for
36 juvenile offenders;

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

1 (~~(h)~~) (i) Provide for restitution to victims of crime;
2 (~~(i)~~) (j) Develop effective standards and goals for the
3 operation, funding, and evaluation of all components of the juvenile
4 justice system and related services at the state and local levels;
5 (~~and~~
6 (~~(j)~~) (k) Provide for a clear policy to determine what types of
7 offenders shall receive punishment, treatment, or both, and to
8 determine the jurisdictional limitations of the courts, institutions,
9 and community services; and
10 (l) Encourage the parents, guardian, or custodian of the juvenile
11 to actively participate in the juvenile justice process.

12 **Sec. 7.** RCW 13.40.020 and 1994 sp.s. c 7 s 520, 1994 c 271 s 803,
13 & 1994 c 261 s 18 are each reenacted and amended to read as follows:

14 For the purposes of this chapter:

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

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

18 (b) Manslaughter in the first degree; or

19 (c) Assault in the second degree, extortion in the first degree,
20 child molestation in the second degree, kidnapping in the second
21 degree, robbery in the second degree, residential burglary, or burglary
22 in the second degree, where such offenses include the infliction of
23 bodily harm upon another or where during the commission of or immediate
24 withdrawal from such an offense the perpetrator is armed with a deadly
25 weapon;

26 (2) "Community service" means compulsory service, without
27 compensation, performed for the benefit of the community by the
28 offender as punishment for committing an offense. Community service
29 may be performed through public or private organizations or through
30 work crews;

31 (3) "Community supervision" means an order of disposition by the
32 court of an adjudicated youth not committed to the department or an
33 order granting a deferred adjudication pursuant to RCW 13.40.125. A
34 community supervision order for a single offense may be for a period of
35 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
36 one year for other offenses. As a mandatory condition of any term of
37 community supervision, the court shall order the juvenile to refrain
38 from committing new offenses. As a mandatory condition of community

1 supervision, the court shall order the juvenile to comply with the
2 mandatory school attendance provisions of chapter 28A.225 RCW and to
3 inform the school of the existence of this requirement. Community
4 supervision is an individualized program comprised of one or more of
5 the following:

- 6 (a) Community-based sanctions;
- 7 (b) Community-based rehabilitation;
- 8 (c) Monitoring and reporting requirements;
- 9 (d) Home detention;

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

- 12 (a) A fine, not to exceed one hundred dollars;
- 13 (b) Community service not to exceed one hundred fifty hours of
14 service;

15 (5) "Community-based rehabilitation" means one or more of the
16 following: Attendance of information classes; counseling, outpatient
17 substance abuse treatment programs, outpatient mental health programs,
18 anger management classes, education or outpatient treatment programs to
19 prevent animal cruelty, or other services; or attendance at school or
20 other educational programs appropriate for the juvenile as determined
21 by the school district. Placement in community-based rehabilitation
22 programs is subject to available funds;

23 (6) "Monitoring and reporting requirements" means one or more of
24 the following: Curfews; requirements to remain at home, school, work,
25 or court-ordered treatment programs during specified hours;
26 restrictions from leaving or entering specified geographical areas;
27 requirements to report to the probation officer as directed and to
28 remain under the probation officer's supervision; and other conditions
29 or limitations as the court may require which may not include
30 confinement;

31 (7) "Confinement" means physical custody by the department of
32 social and health services in a facility operated by or pursuant to a
33 contract with the state, or physical custody in a detention facility
34 operated by or pursuant to a contract with any county. The county may
35 operate or contract with vendors to operate county detention
36 facilities. The department may operate or contract to operate
37 detention facilities for juveniles committed to the department.
38 Pretrial confinement or confinement of less than thirty-one days

1 imposed as part of a disposition or modification order may be served
2 consecutively or intermittently, in the discretion of the court;

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

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

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

11 (b) The criminal complaint was diverted by a prosecutor pursuant to
12 the provisions of this chapter on agreement of the respondent and after
13 an advisement to the respondent that the criminal complaint would be
14 considered as part of the respondent's criminal history. A
15 successfully completed deferred adjudication shall not be considered
16 part of the respondent's criminal history;

17 (10) "Department" means the department of social and health
18 services;

19 (11) "Detention facility" means a county facility, paid for by the
20 county, for the physical confinement of a juvenile alleged to have
21 committed an offense or an adjudicated offender subject to a
22 disposition or modification order. "Detention facility" includes
23 county group homes, inpatient substance abuse programs, juvenile basic
24 training camps, and electronic monitoring;

25 (12) "Diversion unit" means any probation counselor who enters into
26 a diversion agreement with an alleged youthful offender, or any other
27 person, community accountability board, or other entity except a law
28 enforcement official or entity, with whom the juvenile court
29 administrator has contracted to arrange and supervise such agreements
30 pursuant to RCW 13.40.080, or any person, community accountability
31 board, or other entity specially funded by the legislature to arrange
32 and supervise diversion agreements in accordance with the requirements
33 of this chapter. For purposes of this subsection, "community
34 accountability board" means a board comprised of members of the local
35 community in which the juvenile offender resides. The superior court
36 shall appoint the members. The boards shall consist of at least three
37 and not more than seven members. If possible, the board should include
38 a variety of representatives from the community, such as a law
39 enforcement officer, teacher or school administrator, high school

1 student, parent, and business owner, and should represent the cultural
2 diversity of the local community;

3 (13) "Home detention" means a program of partial confinement in
4 which an adjudicated youth not committed to the department or a
5 juvenile granted a deferral of adjudication is confined in a private
6 residence subject to electronic surveillance. Participation in home
7 detention shall include attending a regular course of school study at
8 regularly defined hours or maintaining current employment;

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

11 (~~(14)~~) (15) "Juvenile," "youth," and "child" mean any individual
12 who is under the chronological age of eighteen years and who has not
13 been previously transferred to adult court pursuant to RCW 13.40.110 or
14 who is otherwise under adult court jurisdiction;

15 (~~(15)~~) (16) "Juvenile offender" means any juvenile who has been
16 found by the juvenile court to have committed an offense, including a
17 person eighteen years of age or older over whom jurisdiction has been
18 extended under RCW 13.40.300;

19 (~~(16)~~) (17) "Manifest injustice" means a disposition that would
20 either impose an excessive penalty on the juvenile or would impose a
21 serious, and clear danger to society in light of the purposes of this
22 chapter;

23 (~~(17)~~) (18) "Middle offender" means a person who has committed an
24 offense and who is neither a minor or first offender nor a serious
25 offender;

26 (~~(18)~~) (19) "Minor or first offender" means a person whose
27 current offense(s) and criminal history fall entirely within one of the
28 following categories:

- 29 (a) Four misdemeanors;
- 30 (b) Two misdemeanors and one gross misdemeanor;
- 31 (c) One misdemeanor and two gross misdemeanors; and
- 32 (d) Three gross misdemeanors.

33 For purposes of this definition, current violations shall be
34 counted as misdemeanors;

35 (~~(19)~~) (20) "Offense" means an act designated a violation or a
36 crime if committed by an adult under the law of this state, under any
37 ordinance of any city or county of this state, under any federal law,
38 or under the law of another state if the act occurred in that state;

1 (~~(20)~~) (21) "Respondent" means a juvenile who is alleged or
2 proven to have committed an offense;

3 (~~(21)~~) (22) "Restitution" means financial reimbursement by the
4 offender to the victim, and shall be limited to easily ascertainable
5 damages for injury to or loss of property, actual expenses incurred for
6 medical treatment for physical injury to persons, lost wages resulting
7 from physical injury, and costs of the victim's counseling reasonably
8 related to the offense if the offense is a sex offense. Restitution
9 shall not include reimbursement for damages for mental anguish, pain
10 and suffering, or other intangible losses. Nothing in this chapter
11 shall limit or replace civil remedies or defenses available to the
12 victim or offender;

13 (~~(22)~~) (23) "Secretary" means the secretary of the department of
14 social and health services. "Assistant secretary" means the assistant
15 secretary for juvenile rehabilitation for the department;

16 (~~(23)~~) (24) "Services" mean services which provide alternatives
17 to incarceration for those juveniles who have pleaded or been
18 adjudicated guilty of an offense or have signed a diversion agreement
19 pursuant to this chapter;

20 (~~(24)~~) (25) "Sex offense" means an offense defined as a sex
21 offense in RCW 9.94A.030;

22 (~~(25)~~) (26) "Sexual motivation" means that one of the purposes
23 for which the respondent committed the offense was for the purpose of
24 his or her sexual gratification;

25 (~~(26)~~) (27) "Foster care" means temporary physical care in a
26 foster family home or group care facility as defined in RCW 74.15.020
27 and licensed by the department, or other legally authorized care;

28 (~~(27)~~) (28) "Violation" means an act or omission, which if
29 committed by an adult, must be proven beyond a reasonable doubt, and is
30 punishable by sanctions which do not include incarceration;

31 (~~(28)~~) (29) "Violent offense" means a violent offense as defined
32 in RCW 9.94A.030.

33 **Sec. 8.** RCW 13.40.025 and 1986 c 288 s 8 are each amended to read
34 as follows:

35 (1) There is established a juvenile disposition standards
36 commission to propose disposition standards to the legislature in
37 accordance with RCW 13.40.030 and perform the other responsibilities
38 set forth in this chapter.

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

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

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

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

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

5 **Sec. 9.** RCW 13.40.027 and 1993 c 415 s 9 are each amended to read
6 as follows:

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

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

30 (3) It is the responsibility of the sentencing guidelines
31 commission established under RCW 9.94A.040 to provide staffing and
32 services to the commission.

33 **Sec. 10.** RCW 13.40.030 and 1989 c 407 s 3 are each amended to read
34 as follows:

35 (1)((+a)) The juvenile disposition standards commission shall
36 recommend to the legislature no later than ((November 1st of each
37 year)) December 1, 1995, disposition standards for all offenses. The

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

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

38 (2) In developing recommended disposition standards, the commission
39 shall emphasize confinement for violent and repeat offenders. The

1 commission shall also ensure increased judicial flexibility and
2 discretion, and emphasize alternatives to total confinement for
3 nonviolent, chemically dependent, or mentally ill offenders. The
4 commission's recommended disposition standards shall result in a
5 simplified sentencing system.

6 (3) In developing recommendations for the permissible ranges of
7 confinement under this section the commission shall be subject to the
8 following limitations:

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

12 (b) Where the maximum term in the range is greater than ninety days
13 but not greater than one year, the minimum term in the range may be no
14 less than seventy-five percent of the maximum term in the range;
15 ((and))

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

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

23 NEW SECTION. Sec. 11. A new section is added to chapter 13.40 RCW
24 to read as follows:

25 The secretary shall submit a report on security at juvenile
26 facilities during the preceding year. The report shall include the
27 number of escapes from each juvenile facility, the most serious offense
28 for which each escapee had been confined, the number and nature of
29 offenses found to have been committed by juveniles while on escape
30 status, the number of authorized leaves granted, the number of failures
31 to comply with leave requirements, the number and nature of offenses
32 committed while on leave, and the number and nature of offenses
33 committed by juveniles while in the community on minimum security
34 status; to the extent this information is available to the secretary.
35 The department shall include security status definitions in the report
36 it submits to the legislature pursuant to this section. The report
37 shall be submitted no later than December 15th of each year.

1 **Sec. 12.** RCW 9.94A.040 and 1994 c 87 s 1 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

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

30 (5) In carrying out its duties under subsection (2) of this
31 section, the commission shall give consideration to the existing
32 guidelines adopted by the association of superior court judges and the
33 Washington association of prosecuting attorneys and the experience
34 gained through use of those guidelines. The commission shall emphasize
35 confinement for the violent offender and alternatives to total
36 confinement for the nonviolent offender.

37 (6) This commission shall conduct a study to determine the capacity
38 of correctional facilities and programs which are or will be available.
39 While the commission need not consider such capacity in arriving at its

1 recommendations, the commission shall project whether the
2 implementation of its recommendations would result in exceeding such
3 capacity. If the commission finds that this result would probably
4 occur, then the commission shall prepare an additional list of standard
5 sentences which shall be consistent with such capacity.

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

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

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

24 (10) The staff and executive (~~officer~~) director of the commission
25 may provide staffing and services to the juvenile disposition standards
26 commission, if authorized by RCW 13.40.025 and 13.40.027. The
27 commission may conduct joint meetings with the juvenile disposition
28 standards commission.

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

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

33 **Sec. 13.** RCW 9.94A.050 and 1982 c 192 s 3 are each amended to read
34 as follows:

35 The commission shall be administered by an executive director, who
36 shall be appointed by, and serve at the pleasure of, the governor. The
37 (~~commission shall~~) executive director may appoint a research staff of
38 sufficient size and with sufficient resources to accomplish its duties.

1 The commission may request from the office of financial management, the
2 (~~board of prison terms and paroles~~) indeterminate sentence review
3 board, administrator for the courts, the department of corrections, and
4 the department of social and health services such data, information,
5 and data processing assistance as it may need to accomplish its duties,
6 and such services shall be provided without cost to the commission.
7 The commission shall adopt its own bylaws.

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

10 **Sec. 14.** RCW 13.40.210 and 1994 sp.s. c 77 s 527 are each amended
11 to read as follows:

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

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

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

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

1 period, the juvenile shall be discharged from the department's
2 supervision.

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

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

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

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

1 **Sec. 15.** RCW 13.40.045 and 1994 sp.s. c 7 s 518 are each amended
2 to read as follows:

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

11 NEW SECTION. **Sec. 16.** A new section is added to chapter 13.40 RCW
12 to read as follows:

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

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

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

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

33 (b) Availability of appropriate treatment;

34 (c) Monitoring plans, including any requirements regarding living
35 conditions, lifestyle requirements, and monitoring by family members,
36 legal guardians, or others;

37 (d) Anticipated length of treatment; and

38 (e) Recommended crime-related prohibitions.

1 (4) The court on its own motion may order, or on a motion by the
2 state shall order, a second examination regarding the offender's
3 amenability to treatment. The evaluator shall be selected by the party
4 making the motion. The defendant shall pay the cost of any examination
5 ordered under this subsection (4) or subsection (1) of this section
6 unless the court finds that the offender is indigent and no third party
7 insurance coverage is available, in which case the state shall pay the
8 cost.

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

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

- 26 (i) Devote time to a specific education, employment, or occupation;
- 27 (ii) Remain within prescribed geographical boundaries and notify
28 the court or the probation counselor prior to any change in the
29 offender's address, education program, or employment;
- 30 (iii) Report as directed to the court and a probation counselor;
- 31 (iv) Pay all court-ordered legal financial obligations, perform
32 community service, or any combination thereof;
- 33 (v) Make restitution to the victim for the cost of any counseling
34 reasonably related to the offense; or
- 35 (vi) Refrain from using illegal drugs and alcohol and submit to
36 random urinalysis if requested.

37 (6) The drug/alcohol treatment provider shall submit monthly
38 reports on the respondent's progress in treatment to the court and the
39 parties. The reports shall reference the treatment plan and include at

1 a minimum the following: Dates of attendance, respondent's compliance
2 with requirements, treatment activities, the respondent's relative
3 progress in treatment, and any other material specified by the court at
4 the time of the disposition.

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

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

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

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

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

23 **Sec. 17.** RCW 13.40.060 and 1989 c 71 s 1 are each amended to read
24 as follows:

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

31 (2) For juveniles whose standard range disposition would include
32 confinement in excess of thirty days, the case and copies of all legal
33 and social documents pertaining thereto may in the discretion of the
34 court be transferred to the county where the juvenile resides for a
35 disposition hearing. All costs and arrangements for care and
36 transportation of the juvenile in custody shall be the responsibility
37 of the receiving county as of the date of the transfer of the juvenile
38 to such county, unless the counties otherwise agree.

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

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

10 NEW SECTION. **Sec. 18.** A new section is added to chapter 13.40 RCW
11 to read as follows:

12 RECOMMENDED PROSECUTING STANDARDS
13 FOR CHARGING AND PLEA DISPOSITIONS

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

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

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

27 GUIDELINES/COMMENTARY:

28 Examples

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

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

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

37 (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. 19.** (1) It is the intent of the legislature to
24 enhance the protection of our communities by keeping in confinement
25 those unrehabilitated juvenile offenders who otherwise would be
26 released from custody at age twenty-one. It is also the intent of the
27 legislature to provide juvenile offenders who are in confinement with
28 additional incentives to rehabilitate themselves. Further, it is the
29 intent of the legislature to develop a cost-effective way to achieve
30 these goals.

31 (2) The department of corrections and the department of social and
32 health services shall jointly develop recommendations for the creation
33 of a youthful offender sentencing option. The departments shall: (a)
34 Recommend which offenders would be eligible; (b) recommend a sentencing
35 disposition that combines adult criminal sentencing guidelines and
36 juvenile dispositions; (c) recommend whether the offender will be under
37 the jurisdiction of juvenile or adult court; (d) recommend whether
38 services will be provided by the department of corrections or the

1 department of social and health services; and (e) identify the short
2 and long-term fiscal impact of each of these recommendations. In
3 making its recommendations, the departments shall review similar
4 sentencing options in other states. The departments shall consult with
5 interested parties and shall report their recommendations to the
6 governor and the attorney general by December 1, 1995.

7 **Sec. 20.** RCW 13.04.030 and 1994 sp.s. c 7 s 519 are each amended
8 to read as follows:

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

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

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

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

18 (d) To approve or disapprove alternative residential placement as
19 provided in RCW 13.32A.170;

20 (e) Relating to juveniles alleged or found to have committed
21 offenses, traffic infractions, or violations as provided in RCW
22 13.40.020 through 13.40.230, unless:

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

25 (ii) The statute of limitations applicable to adult prosecution for
26 the offense, traffic infraction, or violation has expired; or

27 (iii) The alleged offense or infraction is a traffic, fish,
28 boating, or game offense or traffic infraction committed by a juvenile
29 sixteen years of age or older and would, if committed by an adult, be
30 tried or heard in a court of limited jurisdiction, in which instance
31 the appropriate court of limited jurisdiction shall have jurisdiction
32 over the alleged offense or infraction: PROVIDED, That if such an
33 alleged offense or infraction and an alleged offense or infraction
34 subject to juvenile court jurisdiction arise out of the same event or
35 incident, the juvenile court may have jurisdiction of both matters:
36 PROVIDED FURTHER, That the jurisdiction under this subsection does not
37 constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1)
38 or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited

1 jurisdiction which confine juveniles for an alleged offense or
2 infraction may place juveniles in juvenile detention facilities under
3 an agreement with the officials responsible for the administration of
4 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

5 (iv) The alleged offense is a traffic infraction, a violation of
6 compulsory school attendance provisions under chapter 28A.225 RCW, or
7 a misdemeanor, and a court of limited jurisdiction has assumed
8 jurisdiction over those offenses as provided in section 21 of this act;
9 or

10 (v) The juvenile is sixteen or seventeen years old and the alleged
11 offense is: (A) A serious violent offense as defined in RCW 9.94A.030
12 committed on or after June 13, 1994; or (B) a violent offense as
13 defined in RCW 9.94A.030 committed on or after June 13, 1994, and the
14 juvenile has a criminal history consisting of: (I) One or more prior
15 serious violent offenses; (II) two or more prior violent offenses; or
16 (III) three or more of any combination of the following offenses: Any
17 class A felony, any class B felony, vehicular assault, or manslaughter
18 in the second degree, all of which must have been committed after the
19 juvenile's thirteenth birthday and prosecuted separately. In such a
20 case the adult criminal court shall have exclusive original
21 jurisdiction.

22 If the juvenile challenges the state's determination of the
23 juvenile's criminal history, the state may establish the offender's
24 criminal history by a preponderance of the evidence. If the criminal
25 history consists of adjudications entered upon a plea of guilty, the
26 state shall not bear a burden of establishing the knowing and
27 voluntariness of the plea;

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

30 (g) Relating to termination of a diversion agreement under RCW
31 13.40.080, including a proceeding in which the divertee has attained
32 eighteen years of age; and

33 (h) Relating to court validation of a voluntary consent to foster
34 care placement under chapter 13.34 RCW, by the parent or Indian
35 custodian of an Indian child, except if the parent or Indian custodian
36 and child are residents of or domiciled within the boundaries of a
37 federally recognized Indian reservation over which the tribe exercises
38 exclusive jurisdiction.

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

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

9 NEW SECTION. **Sec. 21.** A new section is added to chapter 13.04 RCW
10 to read as follows:

11 (1) Courts of limited jurisdiction, at local option of the county,
12 city, or town of the court of limited jurisdiction, may exercise
13 concurrent original jurisdiction with the juvenile court over traffic
14 infractions, violations of compulsory school attendance provisions
15 under chapter 28A.225 RCW, and misdemeanors when those offenses are
16 allegedly committed by juveniles and:

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

19 (ii) The prosecuting attorney's disposition recommendation does not
20 include confinement as defined in RCW 13.40.020 as part of the
21 disposition for the offense;

22 (b) The court of limited jurisdiction has a computer system which
23 is linked to the state-wide criminal history information data system
24 used by juvenile courts to track and record juvenile offenders'
25 criminal history;

26 (c) The county legislative authority of the county in which the
27 court of limited jurisdiction is located has authorized creation of
28 concurrent jurisdiction between the court of limited jurisdiction and
29 the county juvenile court; and

30 (d) The court of limited jurisdiction has an agreement with
31 officials responsible for administering the county juvenile detention
32 facility pursuant to RCW 13.04.035 and 13.20.060 that the court may
33 order juveniles into the detention facility for an offense.

34 (2) The juvenile court shall retain jurisdiction over the offense
35 if the juvenile is charged with another offense arising out of the same
36 incident and the juvenile court has jurisdiction over the other
37 offense.

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

3 (4) The provisions of chapter 13.40 RCW shall apply to offenses
4 prosecuted under this section.

5 NEW SECTION. **Sec. 22.** A new section is added to chapter 28A.225
6 RCW to read as follows:

7 References to juvenile court in this chapter mean, in addition to
8 the juvenile court of the superior court, courts of limited
9 jurisdiction which have acquired jurisdiction pursuant to RCW
10 13.04.030(1)(e)(iv) and section 21 of this act over juveniles who
11 violate the provisions of this chapter. If a court of limited
12 jurisdiction has jurisdiction over juveniles who violate this chapter,
13 that court also has jurisdiction over parents charged with violations
14 of this chapter.

15 **Sec. 23.** RCW 35.20.030 and 1993 c 83 s 3 are each amended to read
16 as follows:

17 The municipal court shall have jurisdiction to try violations of
18 all city ordinances and all other actions brought to enforce or recover
19 license penalties or forfeitures declared or given by any such
20 ordinances. It is empowered to forfeit cash bail or bail bonds and
21 issue execution thereon, to hear and determine all causes, civil or
22 criminal, arising under such ordinances, and to pronounce judgment in
23 accordance therewith: PROVIDED, That for a violation of the criminal
24 provisions of an ordinance no greater punishment shall be imposed than
25 a fine of five thousand dollars or imprisonment in the city jail not to
26 exceed one year, or both such fine and imprisonment, but the punishment
27 for any criminal ordinance shall be the same as the punishment provided
28 in state law for the same crime. The municipal court shall also have
29 jurisdiction over juvenile offenses prosecuted pursuant to chapter
30 13.40 RCW if the court has acquired jurisdiction pursuant to RCW
31 13.04.030(1)(e)(iv) and section 21 of this act. All civil and criminal
32 proceedings in municipal court, and judgments rendered therein, shall
33 be subject to review in the superior court by writ of review or on
34 appeal: PROVIDED, That an appeal from the court's determination or
35 order in a traffic infraction proceeding may be taken only in

1 accordance with RCW 46.63.090(5). Costs in civil and criminal cases
2 may be taxed as provided in district courts.

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