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SENATE BILL 5491

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State of Washington

54th Legislature

1995 Regular Session

By Senators Smith, Oke, Wood, Winsley, Hale, Prince, Long and Schow; by request of Governor Lowry and Attorney General

Read first time 01/24/95. Referred to Committee on Law & Justice.

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

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

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

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

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

15 (b) Manslaughter in the first degree; or

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

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

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

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

22 (a) Community-based sanctions;

23 (b) Community-based rehabilitation;

24 (c) Monitoring and reporting requirements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (a) Four misdemeanors;

37 (b) Two misdemeanors and one gross misdemeanor;

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

39 (d) Three gross misdemeanors.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

1	C	Escape 1(( <del>3</del> ))_ (9A.76.110)	C
2	C	Escape 2(( <del>3</del> ))_ (9A.76.120)	C
3	D	Escape 3 (9A.76.130)	E
4	C	Failure to Appear in Court	
5		(10.19.130)	D
6	<u>C</u>	<u>Stalking (Repeat)</u>	<u>D</u>
7	<u>D</u>	<u>Stalking (1st Time)</u>	<u>E</u>
8	E	Obscene, Harassing, Etc.,	
9		Phone Calls (9.61.230)	E
10	A	Other Offense Equivalent to an	
11		Adult Class A Felony	B+
12	B	Other Offense Equivalent to an	
13		Adult Class B Felony	C
14	C	Other Offense Equivalent to an	
15		Adult Class C Felony	D
16	D	Other Offense Equivalent to an	
17		Adult Gross Misdemeanor	E
18	E	Other Offense Equivalent to an	
19		Adult Misdemeanor	E
20	V	Violation of Order of Restitution,	
21		Community Supervision, or	
22		Confinement (13.40.200)(( <del>3</del> ))_	V

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

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

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

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

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

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

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

**SCHEDULE B**

**PRIOR OFFENSE INCREASE FACTOR**

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

**TIME SPAN**

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

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

**SCHEDULE C**

**CURRENT OFFENSE POINTS**

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

**AGE**

OFFENSE CATEGORY	12 & Under					
	13	14	15	16	17	
A+	STANDARD RANGE 180-224 WEEKS					
A	250	300	350	375	375	375
A-	150	150	150	200	200	200
B+	110	110	120	130	140	150
B	45	45	50	50	57	57
C+	44	44	49	49	55	55
C	40	40	45	45	50	50

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

**JUVENILE SENTENCING STANDARDS  
SCHEDULE D-1**

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

**MINOR/FIRST OFFENDER**

**OPTION A**

**STANDARD RANGE**

	Community Supervision	Community Service Hours	Fine
12	Points		
13	.....		
16	<del>0-3 months</del>	<del>and/or 0-8</del>	<del>and/or 0-\$10</del>
17	<del>10-19</del>	<del>0-3 months</del>	<del>and/or 0-8</del>
18	<del>20-29</del>	<del>0-3 months</del>	<del>and/or 0-16</del>
19	<del>30-39</del>	<del>0-3 months</del>	<del>and/or 8-24</del>
20	<del>40-49</del>	<del>3-6 months</del>	<del>and/or 16-32</del>
21	<del>50-59</del>	<del>3-6 months</del>	<del>and/or 24-40</del>
22	<del>60-69</del>	<del>6-9 months</del>	<del>and/or 32-48</del>
23	<del>70-79</del>	<del>6-9 months</del>	<del>and/or 40-56</del>
24	<del>80-89</del>	<del>9-12 months</del>	<del>and/or 48-64</del>
25	<del>90-109</del>	<del>9-12 months</del>	<del>and/or 56-72</del>
26	<del>1-109</del>	<del>0-12 months</del>	<del>and/or 0-\$100</del>

~~((OR~~

~~OPTION B~~

~~STATUTORY OPTION~~

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

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

~~OR~~

~~OPTION ((C)) B~~

~~MANIFEST INJUSTICE~~

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

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

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

11 **MIDDLE OFFENDER**

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

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

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

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

4 OR

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

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

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

15 OR

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

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

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

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

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

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

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

7 OR

8

9 OPTION B

10 **MANIFEST INJUSTICE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (e) The facts of the alleged offense.

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

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

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

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

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

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

30 **Sec. 7.** RCW 13.40.010 and 1992 c 205 s 101 are each amended to  
31 read as follows:

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

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

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

5 (a) Protect the citizenry from criminal behavior;

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

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

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

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

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

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

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

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

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

24 (~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (d) Anticipated length of treatment; and

5 (e) Recommended crime-related prohibitions.

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

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

17 (b) If the court determines that this chemical dependent  
18 disposition alternative is appropriate, then the court shall impose the  
19 standard range for the offense, suspend execution of the disposition,  
20 and place the offender on community supervision for up to one year. As  
21 a condition of the suspended disposition, the court may impose the  
22 conditions of community supervision and other conditions, including up  
23 to thirty days of confinement and requirements that the offender do any  
24 one or more of the following:

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

26 (ii) Undergo available outpatient drug/alcohol treatment and/or  
27 inpatient drug/alcohol treatment not to exceed ninety days. For  
28 purposes of this section, the sum of confinement time and inpatient  
29 treatment may not exceed ninety days;

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

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

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

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

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

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

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

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

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

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

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

26 **Sec. 18.** RCW 13.40.060 and 1989 c 71 s 1 are each amended to read  
27 as follows:

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

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

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

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

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

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

15 RECOMMENDED PROSECUTING STANDARDS  
16 FOR CHARGING AND PLEA DISPOSITIONS

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

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

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

30 GUIDELINES/COMMENTARY:

31 Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Notification

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

28 (2) Decision to prosecute.

29 STANDARD:

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

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

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

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

#### 10 Selection of Charges/Degree of Charge

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

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

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

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

18 Overcharging includes:

19 (a) Charging a higher degree;

20 (b) Charging additional counts.

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

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

#### 30 GUIDELINES/COMMENTARY:

##### 31 Police Investigation

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

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

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

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

#### 7 Exceptions

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

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

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

#### 20 Investigation Techniques

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

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

#### 27 Prefiling Discussions with Defendant

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

#### 31 PLEA DISPOSITIONS:

##### 32 Standard

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

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

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

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

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

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

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

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

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

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

15 (h) The probable effect of witnesses.

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

21 DISPOSITION RECOMMENDATIONS:

22 Standard

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

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

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

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

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

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