
SENATE BILL 5172

State of Washington

55th Legislature

1997 Regular Session

By Senators Fairley and Patterson

Read first time 01/17/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to offenders; amending RCW 5.60.060, 13.40.010,
2 13.40.045, 13.40.050, 13.40.060, 13.40.080, 13.40.110, 13.40.120,
3 13.40.125, 13.40.130, 13.40.150, 13.40.190, 13.40.210, and 35.20.030;
4 reenacting and amending RCW 9.94A.030, 9.94A.360, 9.94A.390, 13.04.030,
5 and 13.40.020; adding new sections to chapter 9A.44 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; prescribing penalties; providing an
8 effective date; providing an expiration date; and declaring an
9 emergency.

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

11 **Sec. 1.** RCW 5.60.060 and 1996 c 156 s 1 are each amended to read
12 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (7) A sexual assault advocate may not, without the consent of the
29 victim, be examined as to any communication made by the victim to the
30 sexual assault advocate.

31 (a) For purposes of this section, "sexual assault advocate" means
32 the employee or volunteer from a rape crisis center, victim assistance
33 unit, program, or association, that provides information, medical or
34 legal advocacy, counseling, or support to victims of sexual assault,
35 who is designated by the victim to accompany the victim to the hospital
36 or other health care facility and to proceedings concerning the alleged
37 assault, including police and prosecution interviews and court
38 proceedings.

1 (b) A sexual assault advocate may disclose a confidential
2 communication without the consent of the victim if failure to disclose
3 is likely to result in a clear, imminent risk of serious physical
4 injury or death of the victim or another person. Any sexual assault
5 advocate participating in good faith in the disclosing of records and
6 communications under this section shall have immunity from any
7 liability, civil, criminal, or otherwise, that might result from the
8 action. In any proceeding, civil or criminal, arising out of a
9 disclosure under this section, the good faith of the sexual assault
10 advocate who disclosed the confidential communication shall be
11 presumed.

12 **Sec. 2.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are
13 each reenacted and amended to read as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

16 (1) "Collect," or any derivative thereof, "collect and remit," or
17 "collect and deliver," when used with reference to the department of
18 corrections, means that the department is responsible for monitoring
19 and enforcing the offender's sentence with regard to the legal
20 financial obligation, receiving payment thereof from the offender, and,
21 consistent with current law, delivering daily the entire payment to the
22 superior court clerk without depositing it in a departmental account.

23 (2) "Commission" means the sentencing guidelines commission.

24 (3) "Community corrections officer" means an employee of the
25 department who is responsible for carrying out specific duties in
26 supervision of sentenced offenders and monitoring of sentence
27 conditions.

28 (4) "Community custody" means that portion of an inmate's sentence
29 of confinement in lieu of earned early release time or imposed pursuant
30 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
31 controls placed on the inmate's movement and activities by the
32 department of corrections.

33 (5) "Community placement" means that period during which the
34 offender is subject to the conditions of community custody and/or
35 postrelease supervision, which begins either upon completion of the
36 term of confinement (postrelease supervision) or at such time as the
37 offender is transferred to community custody in lieu of earned early

1 release. Community placement may consist of entirely community
2 custody, entirely postrelease supervision, or a combination of the two.

3 (6) "Community service" means compulsory service, without
4 compensation, performed for the benefit of the community by the
5 offender.

6 (7) "Community supervision" means a period of time during which a
7 convicted offender is subject to crime-related prohibitions and other
8 sentence conditions imposed by a court pursuant to this chapter or RCW
9 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
10 may include crime-related prohibitions and other conditions imposed
11 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
12 for out-of-state supervision of parolees and probationers, RCW
13 9.95.270, community supervision is the functional equivalent of
14 probation and should be considered the same as probation by other
15 states.

16 (8) "Confinement" means total or partial confinement as defined in
17 this section.

18 (9) "Conviction" means an adjudication of guilt pursuant to Titles
19 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
20 acceptance of a plea of guilty.

21 (10) "Court-ordered legal financial obligation" means a sum of
22 money that is ordered by a superior court of the state of Washington
23 for legal financial obligations which may include restitution to the
24 victim, statutorily imposed crime victims' compensation fees as
25 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
26 drug funds, court-appointed attorneys' fees, and costs of defense,
27 fines, and any other financial obligation that is assessed to the
28 offender as a result of a felony conviction. Upon conviction for
29 vehicular assault while under the influence of intoxicating liquor or
30 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
31 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
32 legal financial obligations may also include payment to a public agency
33 of the expense of an emergency response to the incident resulting in
34 the conviction, subject to the provisions in RCW 38.52.430.

35 (11) "Crime-related prohibition" means an order of a court
36 prohibiting conduct that directly relates to the circumstances of the
37 crime for which the offender has been convicted, and shall not be
38 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct.

3 (12)(a) "Criminal history" means the list of a defendant's prior
4 convictions, whether in this state, in federal court, or elsewhere.
5 The history shall include, where known, for each conviction (i) whether
6 the defendant has been placed on probation and the length and terms
7 thereof; and (ii) whether the defendant has been incarcerated and the
8 length of incarceration.

9 (b) "Criminal history" shall always include juvenile convictions
10 for sex offenses and serious violent offenses and shall also include a
11 defendant's other prior convictions in juvenile court if: (i) The
12 conviction was for an offense which is a felony or a serious traffic
13 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
14 the defendant was fifteen years of age or older at the time the offense
15 was committed; and (iii) with respect to prior juvenile class B and C
16 felonies or serious traffic offenses, the defendant was less than
17 twenty-three years of age at the time the offense for which he or she
18 is being sentenced was committed.

19 (13) "Day fine" means a fine imposed by the sentencing judge that
20 equals the difference between the offender's net daily income and the
21 reasonable obligations that the offender has for the support of the
22 offender and any dependents.

23 (14) "Day reporting" means a program of enhanced supervision
24 designed to monitor the defendant's daily activities and compliance
25 with sentence conditions, and in which the defendant is required to
26 report daily to a specific location designated by the department or the
27 sentencing judge.

28 (15) "Department" means the department of corrections.

29 (16) "Determinate sentence" means a sentence that states with
30 exactitude the number of actual years, months, or days of total
31 confinement, of partial confinement, of community supervision, the
32 number of actual hours or days of community service work, or dollars or
33 terms of a legal financial obligation. The fact that an offender
34 through "earned early release" can reduce the actual period of
35 confinement shall not affect the classification of the sentence as a
36 determinate sentence.

37 (17) "Disposable earnings" means that part of the earnings of an
38 individual remaining after the deduction from those earnings of any
39 amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal
2 services, whether denominated as wages, salary, commission, bonuses, or
3 otherwise, and, notwithstanding any other provision of law making the
4 payments exempt from garnishment, attachment, or other process to
5 satisfy a court-ordered legal financial obligation, specifically
6 includes periodic payments pursuant to pension or retirement programs,
7 or insurance policies of any type, but does not include payments made
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
9 or Title 74 RCW.

10 (18) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession of
12 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
13 controlled substance (RCW 69.50.403);

14 (b) Any offense defined as a felony under federal law that relates
15 to the possession, manufacture, distribution, or transportation of a
16 controlled substance; or

17 (c) Any out-of-state conviction for an offense that under the laws
18 of this state would be a felony classified as a drug offense under (a)
19 of this subsection.

20 (19) "Escape" means:

21 (a) Escape in the first degree (RCW 9A.76.110), escape in the
22 second degree (RCW 9A.76.120), willful failure to return from furlough
23 (RCW 72.66.060), willful failure to return from work release (RCW
24 72.65.070), or willful failure to be available for supervision by the
25 department while in community custody (RCW 72.09.310); or

26 (b) Any federal or out-of-state conviction for an offense that
27 under the laws of this state would be a felony classified as an escape
28 under (a) of this subsection.

29 (20) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
31 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
32 and-run injury-accident (RCW 46.52.020(4)); or

33 (b) Any federal or out-of-state conviction for an offense that
34 under the laws of this state would be a felony classified as a felony
35 traffic offense under (a) of this subsection.

36 (21) "Fines" means the requirement that the offender pay a specific
37 sum of money over a specific period of time to the court.

38 (22)(a) "First-time offender" means any person who is convicted of
39 a felony (i) not classified as a violent offense or a sex offense under

1 this chapter, or (ii) that is not the manufacture, delivery, or
2 possession with intent to manufacture or deliver a controlled substance
3 classified in schedule I or II that is a narcotic drug, nor the
4 manufacture, delivery, or possession with intent to deliver
5 methamphetamine, its salts, isomers, and salts of its isomers as
6 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
7 controlled substance or counterfeit substance classified in schedule I,
8 RCW 69.50.204, except leaves and flowering tops of marihuana, and
9 except as provided in (b) of this subsection, who previously has never
10 been convicted of a felony in this state, federal court, or another
11 state, and who has never participated in a program of deferred
12 prosecution for a felony offense.

13 (b) For purposes of (a) of this subsection, a juvenile adjudication
14 for an offense committed before the age of fifteen years is not a
15 previous felony conviction except for adjudications of sex offenses and
16 serious violent offenses.

17 (23) "Most serious offense" means any of the following felonies or
18 a felony attempt to commit any of the following felonies, as now
19 existing or hereafter amended:

20 (a) Any felony defined under any law as a class A felony or
21 criminal solicitation of or criminal conspiracy to commit a class A
22 felony;

23 (b) Assault in the second degree;

24 (c) Assault of a child in the second degree;

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

28 (g) Incest when committed against a child under age fourteen;

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

38 (q) Vehicular assault;

1 (r) Vehicular homicide, when proximately caused by the driving of
2 any vehicle by any person while under the influence of intoxicating
3 liquor or any drug as defined by RCW 46.61.502, or by the operation of
4 any vehicle in a reckless manner;

5 (s) Any other class B felony offense with a finding of sexual
6 motivation, as "sexual motivation" is defined under this section;

7 (t) Any other felony with a deadly weapon verdict under RCW
8 9.94A.125;

9 (u) Any felony offense in effect at any time prior to December 2,
10 1993, that is comparable to a most serious offense under this
11 subsection, or any federal or out-of-state conviction for an offense
12 that under the laws of this state would be a felony classified as a
13 most serious offense under this subsection.

14 (24) "Nonviolent offense" means an offense which is not a violent
15 offense.

16 (25) "Offender" means a person who has committed a felony
17 established by state law and is eighteen years of age or older ((or)).
18 "Offender" also means a person who is less than eighteen years of age
19 but whose case has been transferred by the appropriate juvenile court
20 to a criminal court pursuant to RCW 13.40.110 or who is under adult
21 criminal court jurisdiction pursuant to RCW 13.04.030. Throughout this
22 chapter, the terms "offender" and "defendant" are used interchangeably.

23 (26) "Partial confinement" means confinement for no more than one
24 year in a facility or institution operated or utilized under contract
25 by the state or any other unit of government, or, if home detention or
26 work crew has been ordered by the court, in an approved residence, for
27 a substantial portion of each day with the balance of the day spent in
28 the community. Partial confinement includes work release, home
29 detention, work crew, and a combination of work crew and home detention
30 as defined in this section.

31 (27) "Persistent offender" is an offender who:

32 (a)(i) Has been convicted in this state of any felony considered a
33 most serious offense; and

34 (ii) Has, before the commission of the offense under (a) of this
35 subsection, been convicted as an offender on at least two separate
36 occasions, whether in this state or elsewhere, of felonies that under
37 the laws of this state would be considered most serious offenses and
38 would be included in the offender score under RCW 9.94A.360; provided
39 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted; or

3 (b)(i) Has been convicted of (A) rape in the first degree, rape in
4 the second degree, or indecent liberties by forcible compulsion; (B)
5 murder in the first degree, murder in the second degree, kidnapping in
6 the first degree, kidnapping in the second degree, assault in the first
7 degree, assault in the second degree, or burglary in the first degree,
8 with a finding of sexual motivation; or (C) an attempt to commit any
9 crime listed in this subsection (27)(b)(i); and

10 (ii) Has, before the commission of the offense under (b)(i) of this
11 subsection, been convicted as an offender on at least one occasion,
12 whether in this state or elsewhere, of an offense listed in (b)(i) of
13 this subsection.

14 (28) "Postrelease supervision" is that portion of an offender's
15 community placement that is not community custody.

16 (29) "Restitution" means the requirement that the offender pay a
17 specific sum of money over a specific period of time to the court as
18 payment of damages. The sum may include both public and private costs.
19 The imposition of a restitution order does not preclude civil redress.

20 (30) "Serious traffic offense" means:

21 (a) Driving while under the influence of intoxicating liquor or any
22 drug (RCW 46.61.502), actual physical control while under the influence
23 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
24 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
25 or

26 (b) Any federal, out-of-state, county, or municipal conviction for
27 an offense that under the laws of this state would be classified as a
28 serious traffic offense under (a) of this subsection.

29 (31) "Serious violent offense" is a subcategory of violent offense
30 and means:

31 (a) Murder in the first degree, homicide by abuse, murder in the
32 second degree, assault in the first degree, kidnapping in the first
33 degree, or rape in the first degree, assault of a child in the first
34 degree, or an attempt, criminal solicitation, or criminal conspiracy to
35 commit one of these felonies; or

36 (b) Any federal or out-of-state conviction for an offense that
37 under the laws of this state would be a felony classified as a serious
38 violent offense under (a) of this subsection.

1 (32) "Sentence range" means the sentencing court's discretionary
2 range in imposing a nonappealable sentence.

3 (33) "Sex offense" means:

4 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
5 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
6 criminal attempt, criminal solicitation, or criminal conspiracy to
7 commit such crimes;

8 (b) A felony with a finding of sexual motivation under RCW
9 9.94A.127 or 13.40.135; or

10 (c) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as a sex
12 offense under (a) of this subsection.

13 (34) "Sexual motivation" means that one of the purposes for which
14 the defendant committed the crime was for the purpose of his or her
15 sexual gratification.

16 (35) "Total confinement" means confinement inside the physical
17 boundaries of a facility or institution operated or utilized under
18 contract by the state or any other unit of government for twenty-four
19 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

20 (36) "Transition training" means written and verbal instructions
21 and assistance provided by the department to the offender during the
22 two weeks prior to the offender's successful completion of the work
23 ethic camp program. The transition training shall include instructions
24 in the offender's requirements and obligations during the offender's
25 period of community custody.

26 (37) "Victim" means any person who has sustained emotional,
27 psychological, physical, or financial injury to person or property as
28 a direct result of the crime charged.

29 (38) "Violent offense" means:

30 (a) Any of the following felonies, as now existing or hereafter
31 amended: Any felony defined under any law as a class A felony or an
32 attempt to commit a class A felony, criminal solicitation of or
33 criminal conspiracy to commit a class A felony, manslaughter in the
34 first degree, manslaughter in the second degree, indecent liberties if
35 committed by forcible compulsion, kidnapping in the second degree,
36 arson in the second degree, assault in the second degree, assault of a
37 child in the second degree, extortion in the first degree, robbery in
38 the second degree, vehicular assault, and vehicular homicide, when
39 proximately caused by the driving of any vehicle by any person while

1 under the influence of intoxicating liquor or any drug as defined by
2 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

3 (b) Any conviction for a felony offense in effect at any time prior
4 to July 1, 1976, that is comparable to a felony classified as a violent
5 offense in (a) of this subsection; and

6 (c) Any federal or out-of-state conviction for an offense that
7 under the laws of this state would be a felony classified as a violent
8 offense under (a) or (b) of this subsection.

9 (39) "Work crew" means a program of partial confinement consisting
10 of civic improvement tasks for the benefit of the community of not less
11 than thirty-five hours per week that complies with RCW 9.94A.135. The
12 civic improvement tasks shall have minimal negative impact on existing
13 private industries or the labor force in the county where the service
14 or labor is performed. The civic improvement tasks shall not affect
15 employment opportunities for people with developmental disabilities
16 contracted through sheltered workshops as defined in RCW 82.04.385.
17 Only those offenders sentenced to a facility operated or utilized under
18 contract by a county or the state are eligible to participate on a work
19 crew. Offenders sentenced for a sex offense as defined in subsection
20 (33) of this section are not eligible for the work crew program.

21 (40) "Work ethic camp" means an alternative incarceration program
22 designed to reduce recidivism and lower the cost of corrections by
23 requiring offenders to complete a comprehensive array of real-world job
24 and vocational experiences, character-building work ethics training,
25 life management skills development, substance abuse rehabilitation,
26 counseling, literacy training, and basic adult education.

27 (41) "Work release" means a program of partial confinement
28 available to offenders who are employed or engaged as a student in a
29 regular course of study at school. Participation in work release shall
30 be conditioned upon the offender attending work or school at regularly
31 defined hours and abiding by the rules of the work release facility.

32 (42) "Home detention" means a program of partial confinement
33 available to offenders wherein the offender is confined in a private
34 residence subject to electronic surveillance.

35 **Sec. 3.** RCW 9.94A.360 and 1995 c 316 s 1 and 1995 c 101 s 1 are
36 each reenacted and amended to read as follows:

37 The offender score is measured on the horizontal axis of the
38 sentencing grid. The offender score rules are as follows:

1 The offender score is the sum of points accrued under this section
2 rounded down to the nearest whole number.

3 (1) A prior conviction is a conviction which exists before the date
4 of sentencing for the offense for which the offender score is being
5 computed. Convictions entered or sentenced on the same date as the
6 conviction for which the offender score is being computed shall be
7 deemed "other current offenses" within the meaning of RCW 9.94A.400.

8 (2) Except as provided in subsection (4) of this section, class A
9 and sex prior felony convictions shall always be included in the
10 offender score. Class B prior felony convictions other than sex
11 offenses shall not be included in the offender score, if since the last
12 date of release from confinement (including full-time residential
13 treatment) pursuant to a felony conviction, if any, or entry of
14 judgment and sentence, the offender had spent ten consecutive years in
15 the community without committing any crime that subsequently results in
16 a conviction. Class C prior felony convictions other than sex offenses
17 shall not be included in the offender score if, since the last date of
18 release from confinement (including full-time residential treatment)
19 pursuant to a felony conviction, if any, or entry of judgment and
20 sentence, the offender had spent five consecutive years in the
21 community without committing any crime that subsequently results in a
22 conviction. Serious traffic convictions shall not be included in the
23 offender score if, since the last date of release from confinement
24 (including full-time residential treatment) pursuant to a felony
25 conviction, if any, or entry of judgment and sentence, the offender
26 spent five years in the community without committing any crime that
27 subsequently results in a conviction. This subsection applies to both
28 adult and juvenile prior convictions.

29 (3) Out-of-state convictions for offenses shall be classified
30 according to the comparable offense definitions and sentences provided
31 by Washington law. Federal convictions for offenses shall be
32 classified according to the comparable offense definitions and
33 sentences provided by Washington law. If there is no clearly
34 comparable offense under Washington law or the offense is one that is
35 usually considered subject to exclusive federal jurisdiction, the
36 offense shall be scored as a class C felony equivalent if it was a
37 felony under the relevant federal statute.

38 (4) Always include juvenile convictions for sex offenses and
39 serious violent offenses. Include other class A juvenile felonies only

1 if the offender was 15 or older at the time the juvenile offense was
2 committed. Include other class B and C juvenile felony convictions
3 only if the offender was 15 or older at the time the juvenile offense
4 was committed and the offender was less than 23 at the time the offense
5 for which he or she is being sentenced was committed.

6 (5) Score prior convictions for felony anticipatory offenses
7 (attempts, criminal solicitations, and criminal conspiracies) the same
8 as if they were convictions for completed offenses.

9 (6)(a) In the case of multiple prior convictions, for the purpose
10 of computing the offender score, count all convictions separately,
11 except:

12 (i) Prior adult offenses which were found, under RCW
13 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
14 counted as one offense, the offense that yields the highest offender
15 score. The current sentencing court shall determine with respect to
16 other prior adult offenses for which sentences were served concurrently
17 whether those offenses shall be counted as one offense or as separate
18 offenses using the "same criminal conduct" analysis found in RCW
19 9.94A.400(1)(a), and if the court finds that they shall be counted as
20 one offense, then the offense that yields the highest offender score
21 shall be used. The current sentencing court may presume that such
22 other prior adult offenses were not the same criminal conduct from
23 sentences imposed on separate dates, or in separate counties or
24 jurisdictions, or in separate complaints, indictments, or informations;

25 (ii) Juvenile prior convictions entered or sentenced on the same
26 date shall count as one offense, the offense that yields the highest
27 offender score, except for juvenile prior convictions for violent
28 offenses with separate victims, which shall count as separate offenses;
29 and

30 (iii) In the case of multiple prior convictions for offenses
31 committed before July 1, 1986, for the purpose of computing the
32 offender score, count all adult convictions served concurrently as one
33 offense, and count all juvenile convictions entered on the same date as
34 one offense. Use the conviction for the offense that yields the
35 highest offender score.

36 (b) As used in this subsection (6), "served concurrently" means
37 that: (i) The latter sentence was imposed with specific reference to
38 the former; (ii) the concurrent relationship of the sentences was
39 judicially imposed; and (iii) the concurrent timing of the sentences

1 was not the result of a probation or parole revocation on the former
2 offense.

3 (7) If the present conviction is one of the anticipatory offenses
4 of criminal attempt, solicitation, or conspiracy, count each prior
5 conviction as if the present conviction were for a completed offense.

6 (8) If the present conviction is for a nonviolent offense and not
7 covered by subsection (12) or (13) of this section, count one point for
8 each adult prior felony conviction and one point for each juvenile
9 prior violent felony conviction and 1/2 point for each juvenile prior
10 nonviolent felony conviction.

11 (9) If the present conviction is for a violent offense and not
12 covered in subsection (10), (11), (12), or (13) of this section, count
13 two points for each prior adult and juvenile violent felony conviction,
14 one point for each prior adult nonviolent felony conviction, and 1/2
15 point for each prior juvenile nonviolent felony conviction.

16 (10) If the present conviction is for Murder 1 or 2, Assault 1,
17 Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count
18 three points for prior adult and juvenile convictions for crimes in
19 these categories, two points for each prior adult and juvenile violent
20 conviction (not already counted), one point for each prior adult
21 nonviolent felony conviction, and 1/2 point for each prior juvenile
22 nonviolent felony conviction.

23 (11) If the present conviction is for Burglary 1, count prior
24 convictions as in subsection (9) of this section; however count two
25 points for each prior adult Burglary 2 or residential burglary
26 conviction, and one point for each prior juvenile Burglary 2 or
27 residential burglary conviction.

28 (12) If the present conviction is for a felony traffic offense
29 count two points for each adult or juvenile prior conviction for
30 Vehicular Homicide or Vehicular Assault; for each felony offense or
31 serious traffic offense, count one point for each adult and 1/2 point
32 for each juvenile prior conviction.

33 (13) If the present conviction is for a drug offense count three
34 points for each adult prior felony drug offense conviction and two
35 points for each juvenile drug offense. All other adult and juvenile
36 felonies are scored as in subsection (9) of this section if the current
37 drug offense is violent, or as in subsection (8) of this section if the
38 current drug offense is nonviolent.

1 (14) If the present conviction is for Willful Failure to Return
2 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
3 Release, RCW 72.65.070, or Escape from Community Custody, RCW
4 72.09.310, count only prior escape convictions in the offender score.
5 Count adult prior escape convictions as one point and juvenile prior
6 escape convictions as 1/2 point.

7 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
8 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
9 juvenile prior convictions as 1/2 point.

10 (16) If the present conviction is for Burglary 2 or residential
11 burglary, count priors as in subsection (8) of this section; however,
12 count two points for each adult and juvenile prior Burglary 1
13 conviction, two points for each adult prior Burglary 2 or residential
14 burglary conviction, and one point for each juvenile prior Burglary 2
15 or residential burglary conviction.

16 (17) If the present conviction is for a sex offense, count priors
17 as in subsections (8) through (16) of this section; however count three
18 points for each adult and juvenile prior sex offense conviction.

19 (18) If the present conviction is for an offense committed while
20 the offender was under community placement or juvenile parole pursuant
21 to RCW 13.40.215, add one point.

22 **Sec. 4.** RCW 9.94A.390 and 1996 c 248 s 2 and 1996 c 121 s 1 are
23 each reenacted and amended to read as follows:

24 If the sentencing court finds that an exceptional sentence outside
25 the standard range should be imposed in accordance with RCW
26 9.94A.120(2), the sentence is subject to review only as provided for in
27 RCW 9.94A.210(4).

28 The following are illustrative factors which the court may consider
29 in the exercise of its discretion to impose an exceptional sentence.
30 The following are illustrative only and are not intended to be
31 exclusive reasons for exceptional sentences.

32 (1) Mitigating Circumstances

33 (a) To a significant degree, the victim was an initiator, willing
34 participant, aggressor, or provoker of the incident.

35 (b) Before detection, the defendant compensated, or made a good
36 faith effort to compensate, the victim of the criminal conduct for any
37 damage or injury sustained.

1 (c) The defendant committed the crime under duress, coercion,
2 threat, or compulsion insufficient to constitute a complete defense but
3 which significantly affected his or her conduct.

4 (d) The defendant, with no apparent predisposition to do so, was
5 induced by others to participate in the crime.

6 (e) The defendant's capacity to appreciate the wrongfulness of his
7 or her conduct or to conform his or her conduct to the requirements of
8 the law, was significantly impaired (voluntary use of drugs or alcohol
9 is excluded).

10 (f) The offense was principally accomplished by another person and
11 the defendant manifested extreme caution or sincere concern for the
12 safety or well-being of the victim.

13 (g) The operation of the multiple offense policy of RCW 9.94A.400
14 results in a presumptive sentence that is clearly excessive in light of
15 the purpose of this chapter, as expressed in RCW 9.94A.010.

16 (h) The defendant or the defendant's children suffered a continuing
17 pattern of physical or sexual abuse by the victim of the offense and
18 the offense is a response to that abuse.

19 (2) Aggravating Circumstances

20 (a) The defendant's conduct during the commission of the current
21 offense manifested deliberate cruelty to the victim.

22 (b) The defendant knew or should have known that the victim of the
23 current offense was particularly vulnerable or incapable of resistance
24 due to extreme youth, advanced age, disability, or ill health.

25 (c) The current offense was a violent offense, and the defendant
26 knew that the victim of the current offense was pregnant.

27 (d) The current offense was a major economic offense or series of
28 offenses, so identified by a consideration of any of the following
29 factors:

30 (i) The current offense involved multiple victims or multiple
31 incidents per victim;

32 (ii) The current offense involved attempted or actual monetary loss
33 substantially greater than typical for the offense;

34 (iii) The current offense involved a high degree of sophistication
35 or planning or occurred over a lengthy period of time; or

36 (iv) The defendant used his or her position of trust, confidence,
37 or fiduciary responsibility to facilitate the commission of the current
38 offense.

1 (e) The current offense was a major violation of the Uniform
2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
3 trafficking in controlled substances, which was more onerous than the
4 typical offense of its statutory definition: The presence of ANY of
5 the following may identify a current offense as a major VUCSA:

6 (i) The current offense involved at least three separate
7 transactions in which controlled substances were sold, transferred, or
8 possessed with intent to do so;

9 (ii) The current offense involved an attempted or actual sale or
10 transfer of controlled substances in quantities substantially larger
11 than for personal use;

12 (iii) The current offense involved the manufacture of controlled
13 substances for use by other parties;

14 (iv) The circumstances of the current offense reveal the offender
15 to have occupied a high position in the drug distribution hierarchy;

16 (v) The current offense involved a high degree of sophistication or
17 planning or occurred over a lengthy period of time or involved a broad
18 geographic area of disbursement; or

19 (vi) The offender used his or her position or status to facilitate
20 the commission of the current offense, including positions of trust,
21 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
22 other medical professional).

23 (f) The current offense included a finding of sexual motivation
24 pursuant to RCW 9.94A.127.

25 (g) The offense was part of an ongoing pattern of sexual abuse of
26 the same victim under the age of eighteen years manifested by multiple
27 incidents over a prolonged period of time.

28 (h) The current offense involved domestic violence, as defined in
29 RCW 10.99.020 and one or more of the following was present:

30 (i) The offense was part of an ongoing pattern of psychological,
31 physical, or sexual abuse of the victim manifested by multiple
32 incidents over a prolonged period of time;

33 (ii) The offense occurred within sight or sound of the victim's or
34 the offender's minor children under the age of eighteen years; or

35 (iii) The offender's conduct during the commission of the current
36 offense manifested deliberate cruelty or intimidation of the victim.

37 (i) The operation of the multiple offense policy of RCW 9.94A.400
38 results in a presumptive sentence that is clearly too lenient in light
39 of the purpose of this chapter, as expressed in RCW 9.94A.010.

1 (j) The defendant's prior unscored misdemeanor or prior unscored
2 foreign criminal history results in a presumptive sentence that is
3 clearly too lenient in light of the purpose of this chapter as
4 expressed in RCW 9.94A.010.

5 (k) The presumptive sentence is clearly too lenient in light of the
6 purposes of this chapter as expressed in RCW 9.94A.010 considering the
7 defendant's prior unscored juvenile misdemeanor or felony
8 adjudications.

9 NEW SECTION. Sec. 5. A new section is added to chapter 9A.44 RCW
10 to read as follows:

11 (1) A person is guilty of rape of a child in the fourth degree when
12 the person has sexual intercourse with another who is at least sixteen
13 years old but less than eighteen years old and not married to the
14 perpetrator and the perpetrator is at least ten years older than the
15 victim.

16 (2) Rape of a child in the fourth degree is a gross misdemeanor.

17 NEW SECTION. Sec. 6. A new section is added to chapter 9A.44 RCW
18 to read as follows:

19 (1) A person is guilty of child molestation in the fourth degree
20 when the person has, or knowingly causes another person under the age
21 of eighteen to have, sexual contact with another who is at least
22 sixteen years old but less than eighteen years old and not married to
23 the perpetrator and the perpetrator is at least ten years older than
24 the victim.

25 (2) Child molestation in the fourth degree is a gross misdemeanor.

26 NEW SECTION. Sec. 7. A new section is added to chapter 9A.44 RCW
27 to read as follows:

28 In a prosecution under section 5 or 6 of this act, it is an
29 affirmative defense that the defendant must prove by a preponderance of
30 the evidence, that the defendant did not know that the minor was
31 sixteen or seventeen years of age.

32 **Sec. 8.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15 are
33 each reenacted and amended to read as follows:

1 (1) Except as provided in subsection (2) of this section, the
2 juvenile courts in the several counties of this state((7)) shall have
3 exclusive original jurisdiction over all proceedings:

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

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

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

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

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

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

17 (ii) The statute of limitations applicable to adult prosecution for
18 the offense, traffic infraction, civil infraction, or violation has
19 expired; or

20 (iii) The alleged offense or infraction is a traffic, fish,
21 boating, or game offense or traffic or civil infraction committed by a
22 juvenile sixteen years of age or older and would, if committed by an
23 adult, be tried or heard in a court of limited jurisdiction, in which
24 instance the appropriate court of limited jurisdiction shall have
25 jurisdiction over the alleged offense or infraction: PROVIDED, That if
26 such an alleged offense or infraction and an alleged offense or
27 infraction subject to juvenile court jurisdiction arise out of the same
28 event or incident, the juvenile court may have jurisdiction of both
29 matters: PROVIDED FURTHER, That the jurisdiction under this subsection
30 does not constitute "transfer" or a "decline" for purposes of RCW
31 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That
32 courts of limited jurisdiction which confine juveniles for an alleged
33 offense or infraction may place juveniles in juvenile detention
34 facilities under an agreement with the officials responsible for the
35 administration of the juvenile detention facility in RCW 13.04.035 and
36 13.20.060; or

37 (iv) The alleged offense is a traffic or civil infraction, a
38 violation of compulsory school attendance provisions under chapter
39 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has

1 assumed concurrent jurisdiction over those offenses as provided in
2 section 9 of this act; or

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

15 If the juvenile challenges the state's determination of the
16 juvenile's criminal history, the state may establish the offender's
17 criminal history by a preponderance of the evidence. If the criminal
18 history consists of adjudications entered upon a plea of guilty, the
19 state shall not bear a burden of establishing the knowing and
20 voluntariness of the plea;

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

23 (g) Relating to termination of a diversion agreement under RCW
24 13.40.080, including a proceeding in which the divertee has attained
25 eighteen years of age;

26 (h) Relating to court validation of a voluntary consent to an out-
27 of-home placement under chapter 13.34 RCW, by the parent or Indian
28 custodian of an Indian child, except if the parent or Indian custodian
29 and child are residents of or domiciled within the boundaries of a
30 federally recognized Indian reservation over which the tribe exercises
31 exclusive jurisdiction; and

32 (i) Relating to petitions to compel disclosure of information filed
33 by the department of social and health services pursuant to RCW
34 74.13.042.

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

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

5 (4) A parent, guardian, or custodian who has custody of any
6 juvenile under juvenile court jurisdiction is subject to the
7 jurisdiction of the juvenile court for purposes of enforcing required
8 attendance at juvenile court hearings if the parent, guardian, or
9 custodian is served with a summons.

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

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

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

26 (ii) The offender's standard range disposition does not include
27 more than ten days in confinement as defined in RCW 13.40.020;

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

32 (c) The county legislative authority of the county has authorized
33 creation of concurrent jurisdiction between the court of limited
34 jurisdiction and the juvenile court; and

35 (d) The court of limited jurisdiction has an agreement with
36 officials responsible for administering the county juvenile detention
37 facility pursuant to RCW 13.04.035 and 13.20.060 that the court may
38 order juveniles into the detention facility for an offense in cases in

1 which the court finds that a disposition without confinement would be
2 a manifest injustice.

3 (2) The juvenile court shall retain jurisdiction over the offense
4 if the juvenile is charged with another offense arising out of the same
5 incident and the juvenile court has jurisdiction over the other
6 offense.

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

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

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

14 (6) The provisions of this section shall be implemented as a pilot
15 project in the county.

16 **Sec. 10.** RCW 13.40.010 and 1992 c 205 s 101 are each amended to
17 read as follows:

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

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

29 (a) Protect the citizenry from criminal behavior;

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

32 (c) Make the juvenile offender accountable for his or her criminal
33 behavior;

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

36 (e) Provide due process for juveniles alleged to have committed an
37 offense;

1 (f) Promote equitable treatment of juveniles and their families
2 without regard to race, ethnicity, gender, creed, or religion;
3 (g) Provide necessary treatment, supervision, and custody for
4 juvenile offenders;
5 ~~((g))~~ (h) Provide for the handling of juvenile offenders by
6 communities whenever consistent with public safety;
7 ~~((h))~~ (i) Provide for restitution to victims of crime;
8 ~~((i))~~ (j) Develop effective standards and goals for the
9 operation, funding, and evaluation of all components of the juvenile
10 justice system and related services at the state and local levels;
11 ~~((and~~
12 ~~(j))~~) (k) Provide for a clear policy to determine what types of
13 offenders shall receive punishment, treatment, or both, and to
14 determine the jurisdictional limitations of the courts, institutions,
15 and community services; and
16 (l) Encourage the parents, guardian, or custodian of the juvenile
17 to actively participate in the juvenile justice process.

18 **Sec. 11.** RCW 13.40.020 and 1995 c 395 s 2 and 1995 c 134 s 1 are
19 each reenacted and amended to read as follows:

20 For the purposes of this chapter:

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

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

24 (b) Manslaughter in the first degree; or

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

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

37 (3) "Community supervision" means an order of disposition by the
38 court of an adjudicated youth not committed to the department or an

1 order granting a deferred adjudication pursuant to RCW 13.40.125. A
2 community supervision order for a single offense may be for a period of
3 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
4 one year for other offenses. As a mandatory condition of any term of
5 community supervision, the court shall order the juvenile to refrain
6 from committing new offenses. As a mandatory condition of community
7 supervision, the court shall order the juvenile to comply with the
8 mandatory school attendance provisions of chapter 28A.225 RCW and to
9 inform the school of the existence of this requirement. Community
10 supervision is an individualized program comprised of one or more of
11 the following:

12 (a) Community-based sanctions;

13 (b) Community-based rehabilitation;

14 (c) Monitoring and reporting requirements;

15 (d) Posting of a probation bond (~~imposed pursuant to RCW~~
16 ~~13.40.0357~~) as provided in RCW 13.40.054;

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

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

20 (b) Community service not to exceed one hundred fifty hours of
21 service;

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

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

38 (7) "Confinement" means physical custody by the department of
39 social and health services in a facility operated by or pursuant to a

1 contract with the state, or physical custody in a detention facility
2 operated by or pursuant to a contract with any county. The county may
3 operate or contract with vendors to operate county detention
4 facilities. The department may operate or contract to operate
5 detention facilities for juveniles committed to the department.
6 Pretrial confinement or confinement of less than thirty-one days
7 imposed as part of a disposition or modification order may be served
8 consecutively or intermittently, in the discretion of the court;

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

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

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

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

23 (10) "Department" means the department of social and health
24 services;

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

31 (12) "Diversion unit" means any probation counselor who enters into
32 a diversion agreement with an alleged youthful offender, or any other
33 person, community accountability board, or other entity except a law
34 enforcement official or entity, with whom the juvenile court
35 administrator has contracted to arrange and supervise such agreements
36 pursuant to RCW 13.40.080, or any person, community accountability
37 board, or other entity specially funded by the legislature to arrange
38 and supervise diversion agreements in accordance with the requirements
39 of this chapter. For purposes of this subsection, "community

1 accountability board" means a board comprised of members of the local
2 community in which the juvenile offender resides. The superior court
3 shall appoint the members. The boards shall consist of at least three
4 and not more than seven members. If possible, the board should include
5 a variety of representatives from the community, such as a law
6 enforcement officer, teacher or school administrator, high school
7 student, parent, and business owner, and should represent the cultural
8 diversity of the local community;

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

11 (14) "Juvenile," "youth," and "child" mean any individual who is
12 under the chronological age of eighteen years and who has not been
13 previously transferred to adult court pursuant to RCW 13.40.110 or who
14 is otherwise under adult criminal court jurisdiction pursuant to RCW
15 13.04.030;

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

20 (16) "Manifest injustice" means a disposition that would ~~((either))~~
21 impose an excessive penalty on the juvenile ~~((or))~~, would impose a
22 serious~~((r))~~ and clear danger to society in light of the purposes of
23 this chapter, or would fail to support the juvenile's need for sex
24 offender treatment;

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

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

30 (a) Four misdemeanors;

31 (b) Two misdemeanors and one gross misdemeanor;

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

33 (d) Three gross misdemeanors.

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

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

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

3 (21) "Restitution" means financial reimbursement by the offender to
4 the victim, and shall be limited to easily ascertainable damages for
5 injury to or loss of property, actual expenses incurred for medical
6 treatment for physical injury to persons, lost wages resulting from
7 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) "Secretary" means the secretary of the department of social
14 and health services. "Assistant secretary" means the assistant
15 secretary for juvenile rehabilitation for the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (2) Notice of the detention hearing, stating the time, place, and
29 purpose of the hearing, (~~and~~) stating the right to counsel, and
30 requiring attendance, shall be given to the parent, guardian, or
31 custodian if such person can be found and shall also be given to the
32 juvenile if over twelve years of age.

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

36 (4) The court shall, based upon the allegations in the information,
37 determine whether the case is properly before it or whether the case

1 should be treated as a diversion case under RCW 13.40.080. If the case
2 is not properly before the court the juvenile shall be ordered
3 released.

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

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

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

15 (b) Place restrictions on the travel of the juvenile during the
16 period of release;

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

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

21 (e) Require that the juvenile return to detention during specified
22 hours; or

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

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

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

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

34 (1) All actions under this chapter shall be commenced and tried in
35 the county where any element of the offense was committed except as
36 otherwise specially provided by statute. In cases in which diversion
37 is provided by statute, venue is in the county in which the juvenile

1 resides or in the county in which any element of the offense was
2 committed.

3 (2) For juveniles whose standard range disposition would include
4 confinement in excess of thirty days, the case and copies of all legal
5 and social documents pertaining thereto may in the discretion of the
6 court be transferred to the county where the juvenile resides for a
7 disposition hearing. All costs and arrangements for care and
8 transportation of the juvenile in custody shall be the responsibility
9 of the receiving county as of the date of the transfer of the juvenile
10 to such county, unless the counties otherwise agree.

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

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

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

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

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

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

34 (b) Restitution limited to the amount of actual loss incurred by
35 the victim. The diversion contract must specify the full amount of
36 restitution due even if the juvenile does not have the means or
37 potential to pay the full amount;

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

14 (d) A fine, not to exceed one hundred dollars. In determining the
15 amount of the fine, the diversion unit shall consider only the
16 juvenile's financial resources and whether the juvenile has the means
17 to pay the fine. The diversion unit shall not consider the financial
18 resources of the juvenile's parents, guardian, or custodian in
19 determining the fine to be imposed; and

20 (e) Requirements to remain during specified hours at home, school,
21 or work, and restrictions on leaving or entering specified geographical
22 areas.

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

32 (4)(a) A diversion agreement may not exceed a period of six months
33 and may include a period extending beyond the eighteenth birthday of
34 the divertee.

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

38 (c) If the juvenile has not paid the full amount of restitution by
39 the end of the additional six-month period, then the juvenile shall be

1 referred to the juvenile court for entry of an order establishing the
2 amount of restitution still owed to the victim. In this order, the
3 court shall also determine the terms and conditions of the restitution,
4 including a payment plan extending up to ten years if the court
5 determines that the juvenile does not have the means to make full
6 restitution over a shorter period. For the purposes of this subsection
7 (4)(c), the juvenile shall remain under the court's jurisdiction for a
8 maximum term of ten years after the juvenile's eighteenth birthday.
9 The court may not require the juvenile to pay full or partial
10 restitution if the juvenile reasonably satisfies the court that he or
11 she does not have the means to make full or partial restitution and
12 could not reasonably acquire the means to pay the restitution over a
13 ten-year period. The county clerk shall make disbursements to victims
14 named in the order. The restitution to victims named in the order
15 shall be paid prior to any payment for other penalties or monetary
16 assessments. A juvenile under obligation to pay restitution may
17 petition the court for modification of the restitution order.

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

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

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

27 (b) Violation of the terms of the agreement shall be the only
28 grounds for termination;

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

31 (i) Written notice of alleged violations of the conditions of the
32 diversion program; and

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

34 (d) The hearing shall be conducted by the juvenile court and shall
35 include:

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

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

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

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

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

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

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

9 (7) The diversion unit shall, subject to available funds, be
10 responsible for providing interpreters when juveniles need interpreters
11 to effectively communicate during diversion unit hearings or
12 negotiations.

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

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

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

27 The juvenile shall be advised that a diversion agreement shall
28 constitute a part of the juvenile's criminal history as defined by RCW
29 13.40.020(9). A signed acknowledgment of such advisement shall be
30 obtained from the juvenile, and the document shall be maintained by the
31 diversionary unit together with the diversion agreement, and a copy of
32 both documents shall be delivered to the prosecutor if requested by the
33 prosecutor. The supreme court shall promulgate rules setting forth the
34 content of such advisement in simple language.

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

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

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

- 1 (c) The juvenile's obligations under such agreement;
2 (d) Whether the alleged offender performed his or her obligations
3 under such agreement; and
4 (e) The facts of the alleged offense.

5 (12) A diversionary unit may refuse to enter into a diversion
6 agreement with a juvenile. When a diversionary unit refuses to enter
7 a diversion agreement with a juvenile, it shall immediately refer such
8 juvenile to the court for action and shall forward to the court the
9 criminal complaint and a detailed statement of its reasons for refusing
10 to enter into a diversion agreement. The diversionary unit shall also
11 immediately refer the case to the prosecuting attorney for action if
12 such juvenile violates the terms of the diversion agreement.

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

37 (14) A diversion unit may supervise the fulfillment of a diversion
38 agreement entered into before the juvenile's eighteenth birthday and

1 which includes a period extending beyond the divertee's eighteenth
2 birthday.

3 (15) If a fine required by a diversion agreement cannot reasonably
4 be paid due to a change of circumstance, the diversion agreement may be
5 modified at the request of the divertee and with the concurrence of the
6 diversion unit to convert an unpaid fine into community service. The
7 modification of the diversion agreement shall be in writing and signed
8 by the divertee and the diversion unit. The number of hours of
9 community service in lieu of a monetary penalty shall be converted at
10 the rate of the prevailing state minimum wage per hour.

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

18 **Sec. 16.** RCW 13.40.110 and 1990 c 3 s 303 are each amended to read
19 as follows:

20 (1) The prosecutor, respondent, or the court on its own motion may,
21 before a hearing on the information on its merits, file a motion
22 requesting the court to transfer the respondent for adult criminal
23 prosecution and the matter shall be set for a hearing on the question
24 of declining jurisdiction. Unless waived by the court, the parties,
25 and their counsel, a decline hearing shall be held where:

26 (a) The respondent is fifteen, sixteen, or seventeen years of age
27 and the information alleges a class A felony or an attempt,
28 solicitation, or conspiracy to commit a class A felony; ~~((or))~~

29 (b) The respondent is seventeen years of age and the information
30 alleges assault in the second degree, extortion in the first degree,
31 indecent liberties, child molestation in the second degree, kidnapping
32 in the second degree, or robbery in the second degree; or

33 (c) The information alleges an escape by the respondent and the
34 respondent is serving a minimum juvenile sentence to age twenty-one.

35 (2) The court after a decline hearing may order the case
36 transferred for adult criminal prosecution upon a finding that the
37 declination would be in the best interest of the juvenile or the

1 public. The court shall consider the relevant reports, facts,
2 opinions, and arguments presented by the parties and their counsel.

3 (3) When the respondent is transferred for criminal prosecution or
4 retained for prosecution in juvenile court, the court shall set forth
5 in writing its finding which shall be supported by relevant facts and
6 opinions produced at the hearing.

7 **Sec. 17.** RCW 13.40.120 and 1981 c 299 s 9 are each amended to read
8 as follows:

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

15 **Sec. 18.** RCW 13.40.125 and 1995 c 395 s 6 are each amended to read
16 as follows:

17 (1) Upon motion at least fourteen days before commencement of
18 trial, the juvenile court has the power, after consulting the
19 juvenile's custodial parent or parents or guardian and with the consent
20 of the juvenile, to continue the case for ((~~adjudication~~)) disposition
21 for a period not to exceed one year from the date ((~~the motion is~~
22 ~~granted~~)) of entry of a plea of guilty or a finding of guilt following
23 a hearing under subsection (5) of this section. The court may continue
24 the case for an additional one-year period for good cause.

25 (2) Any juvenile granted a deferral of ((~~adjudication~~)) disposition
26 under this section shall be placed under community supervision. The
27 court may impose any conditions of supervision that it deems
28 appropriate including posting a probation bond. Payment of
29 restitution, as provided in RCW 13.40.190 shall also be a condition of
30 community supervision under this section.

31 (3) Upon full compliance with conditions of supervision, the
32 respondent's adjudication shall be vacated and the court shall dismiss
33 the case with prejudice.

34 (4) If the juvenile fails to comply with the terms of supervision,
35 the court shall enter an order of ((~~adjudication and proceed to~~))
36 disposition. The juvenile's lack of compliance shall be determined by
37 the judge upon written motion by the prosecutor or the juvenile's

1 juvenile court community supervision counselor. A parent who signed
2 for a probation bond or deposited cash may notify the counselor if the
3 juvenile fails to comply with the bond or conditions of supervision.
4 The counselor shall notify the court and surety. A surety shall notify
5 the court of the juvenile's failure to comply with the probation bond.
6 The state shall bear the burden to prove by a preponderance of the
7 evidence that the juvenile has failed to comply with the terms of
8 community supervision.

9 (5) If the juvenile agrees to a deferral of ((~~adjudication~~))
10 disposition, the juvenile shall waive all rights:

11 (a) To a speedy trial and disposition;

12 (b) To call and confront witnesses; and

13 (c) To a hearing on the record. The adjudicatory hearing shall be
14 limited to a reading of the court's record.

15 (6) A juvenile is not eligible for a deferred ((~~adjudication~~))
16 disposition if:

17 (a) The juvenile's current offense is a sex or violent offense;

18 (b) The juvenile's criminal history includes any felony;

19 (c) The juvenile has a prior deferred ((~~adjudication~~)) disposition;

20 or

21 (d) The juvenile has had more than two diversions.

22 **Sec. 19.** RCW 13.40.130 and 1981 c 299 s 10 are each amended to
23 read as follows:

24 (1) The respondent shall be advised of the allegations in the
25 information and shall be required to plead guilty or not guilty to the
26 allegation(s). The state or the respondent may make preliminary
27 motions up to the time of the plea.

28 (2) If the respondent pleads guilty, the court may proceed with
29 disposition or may continue the case for a dispositional hearing. If
30 the respondent denies guilt, an adjudicatory hearing date shall be set.
31 The court shall notify the parent, guardian, or custodian who has
32 custody of any juvenile described in the charging document of the date,
33 time, and place of the dispositional or adjudicatory hearing, and
34 require attendance.

35 (3) At the adjudicatory hearing it shall be the burden of the
36 prosecution to prove the allegations of the information beyond a
37 reasonable doubt.

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

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

6 (6) If the respondent is found guilty the court may immediately
7 proceed to disposition or may continue the case for a dispositional
8 hearing. Notice of the time and place of the continued hearing may be
9 given in open court. If notice is not given in open court to a party,
10 the party and the parent, guardian, or custodian who has custody of the
11 juvenile shall be notified by mail of the time and place of the
12 continued hearing.

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

16 (8) The disposition hearing shall be held within fourteen days
17 after the adjudicatory hearing or plea of guilty unless good cause is
18 shown for further delay, or within twenty-one days if the juvenile is
19 not held in a detention facility, unless good cause is shown for
20 further delay.

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

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

26 **Sec. 20.** RCW 13.40.150 and 1995 c 268 s 5 are each amended to read
27 as follows:

28 (1) In disposition hearings all relevant and material evidence,
29 including oral and written reports, may be received by the court and
30 may be relied upon to the extent of its probative value, even though
31 such evidence may not be admissible in a hearing on the information.
32 The youth or the youth's counsel and the prosecuting attorney shall be
33 afforded an opportunity to examine and controvert written reports so
34 received and to cross-examine individuals making reports when such
35 individuals are reasonably available, but sources of confidential
36 information need not be disclosed. The prosecutor and counsel for the
37 juvenile may submit recommendations for disposition.

38 (2) For purposes of disposition:

1 (a) Violations which are current offenses count as misdemeanors;
2 (b) Violations may not count as part of the offender's criminal
3 history;

4 (c) In no event may a disposition for a violation include
5 confinement.

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

9 (a) Consider the facts supporting the allegations of criminal
10 conduct by the respondent;

11 (b) Consider information and arguments offered by parties and their
12 counsel;

13 (c) Consider any predisposition reports;

14 (d) Consult with the respondent's parent, guardian, or custodian on
15 the appropriateness of dispositional options under consideration and
16 afford the respondent and the respondent's parent, guardian, or
17 custodian an opportunity to speak in the respondent's behalf;

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

20 (f) Determine the amount of restitution owing to the victim, if
21 any;

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

24 (h) Consider whether or not any of the following mitigating factors
25 exist:

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

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

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

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

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

38 (i) Consider whether or not any of the following aggravating
39 factors exist:

1 (i) In the commission of the offense, or in flight therefrom, the
2 respondent inflicted or attempted to inflict serious bodily injury to
3 another;

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

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

7 (iv) The respondent has a recent criminal history or has failed to
8 comply with conditions of a recent dispositional order or diversion
9 agreement;

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

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

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

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

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

23 (a) The sex of the respondent;

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

25 (c) The creed or religion of the respondent or the respondent's
26 family;

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

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

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

34 **Sec. 21.** RCW 13.40.190 and 1996 c 124 s 2 are each amended to read
35 as follows:

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

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

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

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

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

3 **Sec. 22.** RCW 13.40.210 and 1994 sp.s. c 7 s 527 are each amended
4 to read as follows:

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

24 (2) The secretary shall monitor the average daily population of the
25 state's juvenile residential facilities. When the secretary concludes
26 that in-residence population of residential facilities exceeds one
27 hundred five percent of the rated bed capacity specified in statute, or
28 in absence of such specification, as specified by the department in
29 rule, the secretary may recommend reductions to the governor. On
30 certification by the governor that the recommended reductions are
31 necessary, the secretary has authority to administratively release a
32 sufficient number of offenders to reduce in-residence population to one
33 hundred percent of rated bed capacity. The secretary shall release
34 those offenders who have served the greatest proportion of their
35 sentence. However, the secretary may deny release in a particular case
36 at the request of an offender, or if the secretary finds that there is
37 no responsible custodian, as determined by the department, to whom to
38 release the offender, or if the release of the offender would pose a

1 clear danger to society. The department shall notify the committing
2 court of the release at the time of release if any such early releases
3 have occurred as a result of excessive in-residence population. In no
4 event shall an offender adjudicated of a violent offense be granted
5 release under the provisions of this subsection.

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

37 (4)(a) The department may also modify parole for violation thereof.
38 If, after affording a juvenile all of the due process rights to which
39 he or she would be entitled if the juvenile were an adult, the

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

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

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

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

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

35 References to juvenile court in this chapter mean, in addition to
36 the juvenile court of the superior court, courts of limited
37 jurisdiction that have acquired jurisdiction pursuant to RCW
38 13.04.030(1)(e)(iv) or section 9 of this act over juveniles who violate

1 the provisions of this chapter. If a court of limited jurisdiction has
2 jurisdiction over juveniles who violate this chapter, that court also
3 has jurisdiction over parents charged with violations of this chapter.

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

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

27 NEW SECTION. **Sec. 25.** Sections 2 through 9, 11, 15, 16, 20, 21,
28 23, and 24 of this act apply only to offenses committed on or after the
29 effective date of this section.

30 NEW SECTION. **Sec. 26.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 July 1, 1997.

34 NEW SECTION. **Sec. 27.** Sections 9, 23, and 24 of this act expire
35 June 30, 1999.

1 NEW SECTION. **Sec. 28.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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