

2 **E2SHB 2219** - S COMM AMD
3 By Committee on Ways & Means

4 ADOPTED 2/29/96

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 5.60.060 and 1995 c 240 s 1 are each amended to read
8 as follows:

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

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

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

34 (3) A member of the clergy or a priest shall not, without the
35 consent of a person making the confession, be examined as to any
36 confession made to him or her in his or her professional character, in

1 the course of discipline enjoined by the church to which he or she
2 belongs.

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

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

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

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

20 (6)(a) A peer support group counselor shall not, without consent of
21 the law enforcement officer making the communication, be compelled to
22 testify about any communication made to the counselor by the officer
23 while receiving counseling. The counselor must be designated as such
24 by the sheriff, police chief, or chief of the Washington state patrol,
25 prior to the incident that results in counseling. The privilege only
26 applies when the communication was made to the counselor while acting
27 in his or her capacity as a peer support group counselor. The
28 privilege does not apply if the counselor was an initial responding
29 officer, a witness, or a party to the incident which prompted the
30 delivery of peer support group counseling services to the law
31 enforcement officer.

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

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

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

6 **Sec. 2.** RCW 9.94A.030 and 1995 c 268 s 2, 1995 c 108 s 1, and 1995
7 c 101 s 2 are each reenacted and amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

18 (3) "Community corrections officer" means an employee of the
19 department who is responsible for carrying out specific duties in
20 supervision of sentenced offenders and monitoring of sentence
21 conditions.

22 (4) "Community custody" means that portion of an inmate's sentence
23 of confinement in lieu of earned early release time or imposed pursuant
24 to RCW 9.94A.120(6) served in the community subject to controls placed
25 on the inmate's movement and activities by the department of
26 corrections.

27 (5) "Community placement" means that period during which the
28 offender is subject to the conditions of community custody and/or
29 postrelease supervision, which begins either upon completion of the
30 term of confinement (postrelease supervision) or at such time as the
31 offender is transferred to community custody in lieu of earned early
32 release. Community placement may consist of entirely community
33 custody, entirely postrelease supervision, or a combination of the two.

34 (6) "Community service" means compulsory service, without
35 compensation, performed for the benefit of the community by the
36 offender.

37 (7) "Community supervision" means a period of time during which a
38 convicted offender is subject to crime-related prohibitions and other

1 sentence conditions imposed by a court pursuant to this chapter or RCW
2 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
3 may include crime-related prohibitions and other conditions imposed
4 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
5 for out-of-state supervision of parolees and probationers, RCW
6 9.95.270, community supervision is the functional equivalent of
7 probation and should be considered the same as probation by other
8 states.

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

11 (9) "Conviction" means an adjudication of guilt pursuant to Titles
12 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
13 acceptance of a plea of guilty.

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

28 (11) "Crime-related prohibition" means an order of a court
29 prohibiting conduct that directly relates to the circumstances of the
30 crime for which the offender has been convicted, and shall not be
31 construed to mean orders directing an offender affirmatively to
32 participate in rehabilitative programs or to otherwise perform
33 affirmative conduct.

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

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

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

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

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

21 (16) "Determinate sentence" means a sentence that states with
22 exactitude the number of actual years, months, or days of total
23 confinement, of partial confinement, of community supervision, the
24 number of actual hours or days of community service work, or dollars or
25 terms of a legal financial obligation. The fact that an offender
26 through "earned early release" can reduce the actual period of
27 confinement shall not affect the classification of the sentence as a
28 determinate sentence.

29 (17) "Disposable earnings" means that part of the earnings of an
30 individual remaining after the deduction from those earnings of any
31 amount required by law to be withheld. For the purposes of this
32 definition, "earnings" means compensation paid or payable for personal
33 services, whether denominated as wages, salary, commission, bonuses, or
34 otherwise, and, notwithstanding any other provision of law making the
35 payments exempt from garnishment, attachment, or other process to
36 satisfy a court-ordered legal financial obligation, specifically
37 includes periodic payments pursuant to pension or retirement programs,
38 or insurance policies of any type, but does not include payments made

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
2 or Title 74 RCW.

3 (18) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of
5 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
6 controlled substance (RCW 69.50.403);

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

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

13 (19) "Escape" means:

14 (a) Escape in the first degree (RCW 9A.76.110), escape in the
15 second degree (RCW 9A.76.120), willful failure to return from furlough
16 (RCW 72.66.060), willful failure to return from work release (RCW
17 72.65.070), or willful failure to be available for supervision by the
18 department while in community custody (RCW 72.09.310); or

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

22 (20) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
24 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
25 and-run injury-accident (RCW 46.52.020(4)); 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 a felony
28 traffic offense under (a) of this subsection.

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

31 (22)(a) "First-time offender" means any person who is convicted of
32 a felony (i) not classified as a violent offense or a sex offense under
33 this chapter, or (ii) that is not the manufacture, delivery, or
34 possession with intent to manufacture or deliver a controlled substance
35 classified in schedule I or II that is a narcotic drug, nor the
36 manufacture, delivery, or possession with intent to deliver
37 methamphetamine, its salts, isomers, and salts of its isomers as
38 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
39 controlled substance or counterfeit substance classified in schedule I,

1 RCW 69.50.204, except leaves and flowering tops of marihuana, and
2 except as provided in (b) of this subsection, who previously has never
3 been convicted of a felony in this state, federal court, or another
4 state, and who has never participated in a program of deferred
5 prosecution for a felony offense.

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

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

13 (a) Any felony defined under any law as a class A felony or
14 criminal solicitation of or criminal conspiracy to commit a class A
15 felony;

16 (b) Assault in the second degree;

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

18 (d) Child molestation in the second degree;

19 (e) Controlled substance homicide;

20 (f) Extortion in the first degree;

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

22 (h) Indecent liberties;

23 (i) Kidnapping in the second degree;

24 (j) Leading organized crime;

25 (k) Manslaughter in the first degree;

26 (l) Manslaughter in the second degree;

27 (m) Promoting prostitution in the first degree;

28 (n) Rape in the third degree;

29 (o) Robbery in the second degree;

30 (p) Sexual exploitation;

31 (q) Vehicular assault;

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

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

38 (t) Any other felony with a deadly weapon verdict under RCW
39 9.94A.125;

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

6 (24) "Nonviolent offense" means an offense which is not a violent
7 offense.

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

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

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

24 (a) Has been convicted in this state of any felony considered a
25 most serious offense; and

26 (b) Has, before the commission of the offense under (a) of this
27 subsection, been convicted as an offender on at least two separate
28 occasions, whether in this state or elsewhere, of felonies that under
29 the laws of this state would be considered most serious offenses and
30 would be included in the offender score under RCW 9.94A.360; provided
31 that of the two or more previous convictions, at least one conviction
32 must have occurred before the commission of any of the other most
33 serious offenses for which the offender was previously convicted.

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

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

1 (30) "Serious traffic offense" means:

2 (a) Driving while under the influence of intoxicating liquor or any
3 drug (RCW 46.61.502), actual physical control while under the influence
4 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
5 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
6 or

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

10 (31) "Serious violent offense" is a subcategory of violent offense
11 and means:

12 (a) Murder in the first degree, homicide by abuse, murder in the
13 second degree, assault in the first degree, kidnapping in the first
14 degree, or rape in the first degree, assault of a child in the first
15 degree, or an attempt, criminal solicitation, or criminal conspiracy to
16 commit one of these felonies; or

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

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

22 (33) "Sex offense" means:

23 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
24 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
25 criminal attempt, criminal solicitation, or criminal conspiracy to
26 commit such crimes;

27 (b) A felony with a finding of sexual motivation under RCW
28 9.94A.127 or 13.40.135; or

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

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

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

1 (36) "Transition training" means written and verbal instructions
2 and assistance provided by the department to the offender during the
3 two weeks prior to the offender's successful completion of the work
4 ethic camp program. The transition training shall include instructions
5 in the offender's requirements and obligations during the offender's
6 period of community custody.

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

10 (38) "Violent offense" means:

11 (a) Any of the following felonies, as now existing or hereafter
12 amended: Any felony defined under any law as a class A felony or an
13 attempt to commit a class A felony, criminal solicitation of or
14 criminal conspiracy to commit a class A felony, manslaughter in the
15 first degree, manslaughter in the second degree, indecent liberties if
16 committed by forcible compulsion, kidnapping in the second degree,
17 arson in the second degree, assault in the second degree, assault of a
18 child in the second degree, extortion in the first degree, robbery in
19 the second degree, vehicular assault, and vehicular homicide, when
20 proximately caused by the driving of any vehicle by any person while
21 under the influence of intoxicating liquor or any drug as defined by
22 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

29 (39) "Work crew" means a program of partial confinement consisting
30 of civic improvement tasks for the benefit of the community of not less
31 than thirty-five hours per week that complies with RCW 9.94A.135. The
32 civic improvement tasks shall have minimal negative impact on existing
33 private industries or the labor force in the county where the service
34 or labor is performed. The civic improvement tasks shall not affect
35 employment opportunities for people with developmental disabilities
36 contracted through sheltered workshops as defined in RCW 82.04.385.
37 Only those offenders sentenced to a facility operated or utilized under
38 contract by a county or the state are eligible to participate on a work

1 crew. Offenders sentenced for a sex offense as defined in subsection
2 (33) of this section are not eligible for the work crew program.

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

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

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

17 **Sec. 3.** RCW 9.94A.040 and 1995 c 269 s 303 are each amended to
18 read as follows:

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

21 (2) The legislature finds that the commission, having accomplished
22 its original statutory directive to implement this chapter, and having
23 expertise in sentencing practice and policies, shall~~((, following a~~
24 ~~public hearing or hearings))~~:

25 ~~((Devise a series of recommended standard sentence ranges for~~
26 ~~all felony offenses and a system for determining which range of~~
27 ~~punishment applies to each offender based on the extent and nature of~~
28 ~~the offender's criminal history, if any;~~

29 ~~(b) Devise recommended prosecuting standards in respect to charging~~
30 ~~of offenses and plea agreements; and~~

31 ~~(c) Devise recommended standards to govern whether sentences are to~~
32 ~~be served consecutively or concurrently.~~

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

36 ~~(4) In devising the standard sentence ranges of total and partial~~
37 ~~confinement under this section, the commission is subject to the~~
38 ~~following limitations:~~

1 ~~(a) If the maximum term in the range is one year or less, the~~
2 ~~minimum term in the range shall be no less than one third of the~~
3 ~~maximum term in the range, except that if the maximum term in the range~~
4 ~~is ninety days or less, the minimum term may be less than one third of~~
5 ~~the maximum;~~

6 ~~(b) If the maximum term in the range is greater than one year, the~~
7 ~~minimum term in the range shall be no less than seventy five percent of~~
8 ~~the maximum term in the range; and~~

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

11 ~~(5) In carrying out its duties under subsection (2) of this~~
12 ~~section, the commission shall give consideration to the existing~~
13 ~~guidelines adopted by the association of superior court judges and the~~
14 ~~Washington association of prosecuting attorneys and the experience~~
15 ~~gained through use of those guidelines. The commission shall emphasize~~
16 ~~confinement for the violent offender and alternatives to total~~
17 ~~confinement for the nonviolent offender.~~

18 ~~(6) This commission shall conduct a study to determine the capacity~~
19 ~~of correctional facilities and programs which are or will be available.~~
20 ~~While the commission need not consider such capacity in arriving at its~~
21 ~~recommendations, the commission shall project whether the~~
22 ~~implementation of its recommendations would result in exceeding such~~
23 ~~capacity. If the commission finds that this result would probably~~
24 ~~occur, then the commission shall prepare an additional list of standard~~
25 ~~sentences which shall be consistent with such capacity.~~

26 ~~(7) The commission may)) Evaluate state sentencing policy, to~~
27 ~~include whether the sentencing ranges and standards are consistent with~~
28 ~~and further:~~

29 ~~(i) The purposes of this chapter as defined in RCW 9.94A.010; and~~
30 ~~(ii) The intent of the legislature to emphasize confinement for the~~
31 ~~violent offender and alternatives to confinement for the nonviolent~~
32 ~~offender.~~

33 ~~The commission shall provide the governor and the legislature with~~
34 ~~its evaluation and recommendations under this subsection not later than~~
35 ~~December 1, 1996, and every two years thereafter;~~

36 ~~(b) Recommend to the legislature revisions or modifications to the~~
37 ~~standard sentence ranges, state sentencing policy, and other standards.~~
38 ~~If implementation of the revisions or modifications would result in~~
39 ~~exceeding the capacity of correctional facilities, then the commission~~

1 shall accompany its recommendation with an additional list of standard
2 sentence ranges which are consistent with correction capacity~~((-))~~i
3 ~~((8) The commission shall))~~ (c) Study the existing criminal code
4 and from time to time make recommendations to the legislature for
5 modification((-))i
6 ~~((9) The commission may (a))~~ (d)(i) Serve as a clearinghouse and
7 information center for the collection, preparation, analysis, and
8 dissemination of information on state and local adult and juvenile
9 sentencing practices; ((b)) (ii) develop and maintain a computerized
10 adult and juvenile sentencing information system by individual superior
11 court judge consisting of offender, offense, history, and sentence
12 information entered from judgment and sentence forms for all adult
13 felons; and ((e)) (iii) conduct ongoing research regarding adult and
14 juvenile sentencing guidelines, use of total confinement and
15 alternatives to total confinement, plea bargaining, and other matters
16 relating to the improvement of the adult criminal justice system((-))
17 and the juvenile justice system;
18 ~~((10) The staff and executive officer of the commission may~~
19 ~~provide staffing and services to the juvenile disposition standards~~
20 ~~commission, if authorized by RCW 13.40.025 and 13.40.027. The~~
21 ~~commission may conduct joint meetings with the juvenile disposition~~
22 ~~standards commission.~~
23 ~~(11) The commission shall))~~ (e) Assume the powers and duties of the
24 juvenile disposition standards commission after June 30, ((1997.))
25 1996;
26 ~~((12))~~ (f) Not later than December 1, 1997, and at least every
27 two years thereafter, based on available information, report to the
28 governor and the legislature on:
29 (i) Racial disproportionality in juvenile and adult sentencing;
30 (ii) The capacity of state and local juvenile and adult facilities
31 and resources; and
32 (iii) Recidivism information on adult and juvenile offenders.
33 (3) Each of the commission's recommended standard sentence ranges
34 shall include one or more of the following: Total confinement, partial
35 confinement, community supervision, community service, and a fine.
36 (4) The standard sentence ranges of total and partial confinement
37 under this chapter are subject to the following limitations:
38 (a) If the maximum term in the range is one year or less, the
39 minimum term in the range shall be no less than one-third of the

1 maximum term in the range, except that if the maximum term in the range
2 is ninety days or less, the minimum term may be less than one-third of
3 the maximum;

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

7 (c) The maximum term of confinement in a range may not exceed the
8 statutory maximum for the crime as provided in RCW 9A.20.021.

9 (5) The commission shall exercise its duties under this section in
10 conformity with chapter 34.05 RCW.

11 **Sec. 4.** RCW 9.94A.060 and 1993 c 11 s 1 are each amended to read
12 as follows:

13 (1) The commission consists of (~~sixteen~~) twenty voting members,
14 one of whom the governor shall designate as chairperson. With the
15 exception of ex officio voting members, the voting members of the
16 commission shall be appointed by the governor, subject to confirmation
17 by the senate.

18 (2) The voting membership consists of the following:

19 (a) The head of the state agency having general responsibility for
20 adult correction programs, as an ex officio member;

21 (b) The director of financial management or designee, as an ex
22 officio member;

23 (c) Until (~~June 30, 1998, the chair of~~) the indeterminate
24 sentence review board ceases to exist pursuant to RCW 9.95.0011, the
25 chair of the board, as an ex officio member;

26 (d) The (~~chair of the clemency and pardons board~~) head of the
27 state agency, or the agency head's designee, having responsibility for
28 juvenile corrections programs, as an ex officio member;

29 (e) Two prosecuting attorneys;

30 (f) Two attorneys with particular expertise in defense work;

31 (g) Four persons who are superior court judges;

32 (h) One person who is the chief law enforcement officer of a county
33 or city;

34 (i) (~~Three~~) Four members of the public who are not (~~and have~~
35 ~~never been~~) prosecutors, defense attorneys, judges, or law enforcement
36 officers, one of whom is a crime victim or a crime victims' advocate;

37 (j) One person who is an elected official of a county government,
38 other than a prosecuting attorney or sheriff;

1 (k) One person who is an elected official of a city government;

2 (l) One person who is an administrator of juvenile court services.

3 In making the appointments, the governor shall endeavor to assure
4 that the commission membership includes adequate representation and
5 expertise relating to both the adult criminal justice system and the
6 juvenile justice system. In making the appointments, the governor
7 shall seek the recommendations of Washington prosecutors in respect to
8 the prosecuting attorney members, of the Washington state bar
9 association in respect to the defense attorney members, of the
10 association of superior court judges in respect to the members who are
11 judges, ((and)) of the Washington association of sheriffs and police
12 chiefs in respect to the member who is a law enforcement officer, of
13 the Washington state association of counties in respect to the member
14 who is a county official, of the association of Washington cities in
15 respect to the member who is a city official, of the office of crime
16 victims advocacy and other organizations of crime victims in respect to
17 the member who is a crime victim or crime victims' advocate, and of the
18 Washington association of juvenile court administrators in respect to
19 the member who is an administrator of juvenile court services.

20 (3)(a) All voting members of the commission, except ex officio
21 voting members, shall serve terms of three years and until their
22 successors are appointed and confirmed. ~~((However, the governor shall~~
23 ~~stagger the terms by appointing four of the initial members for terms~~
24 ~~of one year, four for terms of two years, and four for terms of three~~
25 ~~years.))~~

26 (b) The governor shall stagger the terms of the members appointed
27 under subsection (2)(j) and (k) of this section by appointing one of
28 them for a term of one year, one for a term of two years, and one for
29 a term of three years.

30 (4) The speaker of the house of representatives and the president
31 of the senate may each appoint two nonvoting members to the commission,
32 one from each of the two largest caucuses in each house. The members
33 so appointed shall serve two-year terms, or until they cease to be
34 members of the house from which they were appointed, whichever occurs
35 first.

36 (5) The members of the commission shall be reimbursed for travel
37 expenses as provided in RCW 43.03.050 and 43.03.060. Legislative
38 members shall be reimbursed by their respective houses as provided

1 under RCW 44.04.120, as now existing or hereafter amended. Members
2 shall be compensated in accordance with RCW 43.03.250.

3 **Sec. 5.** RCW 9.94A.130 and 1984 c 209 s 7 are each amended to read
4 as follows:

5 The power to defer or suspend the imposition or execution of
6 sentence is hereby abolished in respect to sentences prescribed for
7 felonies committed after June 30, 1984, except for offenders sentenced
8 under RCW 9.94A.120(~~((7)(a))~~)(8)(a), the special sexual offender
9 sentencing alternative, or offenders sentenced under section 23 of this
10 act, whose sentence may be suspended.

11 **Sec. 6.** RCW 9.94A.360 and 1995 c 316 s 1 and 1995 c 101 s 1 are
12 each reenacted and amended to read as follows:

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

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

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

22 (2) Except as provided in subsection (4) of this section, class A
23 and sex prior felony convictions shall always be included in the
24 offender score. Class B prior felony convictions other than sex
25 offenses shall not be included in the offender score, if since the last
26 date of release from confinement (including full-time residential
27 treatment) pursuant to a felony conviction, if any, or entry of
28 judgment and sentence, the offender had spent ten consecutive years in
29 the community without committing any crime that subsequently results in
30 a conviction. Class C prior felony convictions other than sex offenses
31 shall not be included in the offender score if, since the last date of
32 release from confinement (including full-time residential treatment)
33 pursuant to a felony conviction, if any, or entry of judgment and
34 sentence, the offender had spent five consecutive years in the
35 community without committing any crime that subsequently results in a
36 conviction. Serious traffic convictions shall not be included in the
37 offender score if, since the last date of release from confinement

1 (including full-time residential treatment) pursuant to a felony
2 conviction, if any, or entry of judgment and sentence, the offender
3 spent five years in the community without committing any crime that
4 subsequently results in a conviction. This subsection applies to both
5 adult and juvenile prior convictions.

6 (3) Out-of-state convictions for offenses shall be classified
7 according to the comparable offense definitions and sentences provided
8 by Washington law. Federal convictions for offenses shall be
9 classified according to the comparable offense definitions and
10 sentences provided by Washington law. If there is no clearly
11 comparable offense under Washington law or the offense is one that is
12 usually considered subject to exclusive federal jurisdiction, the
13 offense shall be scored as a class C felony equivalent if it was a
14 felony under the relevant federal statute.

15 (4) Always include juvenile convictions for sex offenses and
16 serious violent offenses. Include other class A juvenile felonies only
17 if the offender was 15 or older at the time the juvenile offense was
18 committed. Include other class B and C juvenile felony convictions
19 only if the offender was 15 or older at the time the juvenile offense
20 was committed and the offender was less than 23 at the time the offense
21 for which he or she is being sentenced was committed.

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

25 (6)(a) In the case of multiple prior convictions, for the purpose
26 of computing the offender score, count all convictions separately,
27 except:

28 (i) Prior adult offenses which were found, under RCW
29 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
30 counted as one offense, the offense that yields the highest offender
31 score. The current sentencing court shall determine with respect to
32 other prior adult offenses for which sentences were served concurrently
33 whether those offenses shall be counted as one offense or as separate
34 offenses using the "same criminal conduct" analysis found in RCW
35 9.94A.400(1)(a), and if the court finds that they shall be counted as
36 one offense, then the offense that yields the highest offender score
37 shall be used. The current sentencing court may presume that such
38 other prior adult offenses were not the same criminal conduct from

1 sentences imposed on separate dates, or in separate counties or
2 jurisdictions, or in separate complaints, indictments, or informations;

3 (ii) Juvenile prior convictions entered or sentenced on the same
4 date shall count as one offense, the offense that yields the highest
5 offender score, except for juvenile prior convictions for violent
6 offenses with separate victims, which shall count as separate offenses;
7 and

8 (iii) In the case of multiple prior convictions for offenses
9 committed before July 1, 1986, for the purpose of computing the
10 offender score, count all adult convictions served concurrently as one
11 offense, and count all juvenile convictions entered on the same date as
12 one offense. Use the conviction for the offense that yields the
13 highest offender score.

14 (b) As used in this subsection (6), "served concurrently" means
15 that: (i) The latter sentence was imposed with specific reference to
16 the former; (ii) the concurrent relationship of the sentences was
17 judicially imposed; and (iii) the concurrent timing of the sentences
18 was not the result of a probation or parole revocation on the former
19 offense.

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

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

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

33 (10) If the present conviction is for Murder 1 or 2, Assault 1,
34 Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count
35 three points for prior adult and juvenile convictions for crimes in
36 these categories, two points for each prior adult and juvenile violent
37 conviction (not already counted), one point for each prior adult
38 nonviolent felony conviction, and 1/2 point for each prior juvenile
39 nonviolent felony conviction.

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

6 (12) If the present conviction is for a felony traffic offense
7 count two points for each adult or juvenile prior conviction for
8 Vehicular Homicide or Vehicular Assault; for each felony offense or
9 serious traffic offense, count one point for each adult and 1/2 point
10 for each juvenile prior conviction.

11 (13) If the present conviction is for a drug offense count three
12 points for each adult prior felony drug offense conviction and two
13 points for each juvenile drug offense. All other adult and juvenile
14 felonies are scored as in subsection (9) of this section if the current
15 drug offense is violent, or as in subsection (8) of this section if the
16 current drug offense is nonviolent.

17 (14) If the present conviction is for Willful Failure to Return
18 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
19 Release, RCW 72.65.070, or Escape from Community Custody, RCW
20 72.09.310, count only prior escape convictions in the offender score.
21 Count adult prior escape convictions as one point and juvenile prior
22 escape convictions as 1/2 point.

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

26 (16) If the present conviction is for Burglary 2 or residential
27 burglary, count priors as in subsection (8) of this section; however,
28 count two points for each adult and juvenile prior Burglary 1
29 conviction, two points for each adult prior Burglary 2 or residential
30 burglary conviction, and one point for each juvenile prior Burglary 2
31 or residential burglary conviction.

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

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

1 **Sec. 7.** RCW 9.94A.390 and 1995 c 316 s 2 are each amended to read
2 as follows:

3 If the sentencing court finds that an exceptional sentence outside
4 the standard range should be imposed in accordance with RCW
5 9.94A.120(2), the sentence is subject to review only as provided for in
6 RCW 9.94A.210(4).

7 The following are illustrative factors which the court may consider
8 in the exercise of its discretion to impose an exceptional sentence.
9 The following are illustrative only and are not intended to be
10 exclusive reasons for exceptional sentences.

11 (1) Mitigating Circumstances

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

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

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

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

22 (e) The defendant's capacity to appreciate the wrongfulness of his
23 or her conduct or to conform his or her conduct to the requirements of
24 the law, was significantly impaired (voluntary use of drugs or alcohol
25 is excluded).

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

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

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

35 (2) Aggravating Circumstances

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

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

4 (c) The current offense was a major economic offense or series of
5 offenses, so identified by a consideration of any of the following
6 factors:

7 (i) The current offense involved multiple victims or multiple
8 incidents per victim;

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

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

13 (iv) The defendant used his or her position of trust, confidence,
14 or fiduciary responsibility to facilitate the commission of the current
15 offense.

16 (d) The current offense was a major violation of the Uniform
17 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
18 trafficking in controlled substances, which was more onerous than the
19 typical offense of its statutory definition: The presence of ANY of
20 the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

38 (e) The current offense included a finding of sexual motivation
39 pursuant to RCW 9.94A.127.

1 (f) The offense was part of an ongoing pattern of sexual abuse of
2 the same victim under the age of eighteen years manifested by multiple
3 incidents over a prolonged period of time.

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

7 (h) The defendant's prior unscored misdemeanor or prior unscored
8 foreign criminal history results in a presumptive sentence that is
9 clearly too lenient in light of the purpose of this chapter as
10 expressed in RCW 9.94A.010.

11 (i) The presumptive sentence is clearly too lenient in light of the
12 purposes of this chapter as expressed in RCW 9.94A.010 considering the
13 defendant's prior unscored juvenile misdemeanor or felony
14 adjudications.

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

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

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

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

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

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

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

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

33 (ii) The statute of limitations applicable to adult prosecution for
34 the offense, traffic infraction, civil infraction, or violation has
35 expired; or

36 (iii) The alleged offense or infraction is a traffic, fish,
37 boating, or game offense or traffic or civil infraction committed by a
38 juvenile sixteen years of age or older and would, if committed by an

1 adult, be tried or heard in a court of limited jurisdiction, in which
2 instance the appropriate court of limited jurisdiction shall have
3 jurisdiction over the alleged offense or infraction: PROVIDED, That if
4 such an alleged offense or infraction and an alleged offense or
5 infraction subject to juvenile court jurisdiction arise out of the same
6 event or incident, the juvenile court may have jurisdiction of both
7 matters: PROVIDED FURTHER, That the jurisdiction under this subsection
8 does not constitute "transfer" or a "decline" for purposes of RCW
9 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That
10 courts of limited jurisdiction which confine juveniles for an alleged
11 offense or infraction may place juveniles in juvenile detention
12 facilities under an agreement with the officials responsible for the
13 administration of the juvenile detention facility in RCW 13.04.035 and
14 13.20.060; or

15 (iv) The alleged offense is a traffic or civil infraction, a
16 violation of compulsory school attendance provisions under chapter
17 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
18 assumed concurrent jurisdiction over those offenses as provided in
19 section 9 of this act; or

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

32 If the juvenile challenges the state's determination of the
33 juvenile's criminal history, the state may establish the offender's
34 criminal history by a preponderance of the evidence. If the criminal
35 history consists of adjudications entered upon a plea of guilty, the
36 state shall not bear a burden of establishing the knowing and
37 voluntariness of the plea;

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

1 (g) Relating to termination of a diversion agreement under RCW
2 13.40.080, including a proceeding in which the divertee has attained
3 eighteen years of age;

4 (h) Relating to court validation of a voluntary consent to an out-
5 of-home placement under chapter 13.34 RCW, by the parent or Indian
6 custodian of an Indian child, except if the parent or Indian custodian
7 and child are residents of or domiciled within the boundaries of a
8 federally recognized Indian reservation over which the tribe exercises
9 exclusive jurisdiction; and

10 (i) Relating to petitions to compel disclosure of information filed
11 by the department of social and health services pursuant to RCW
12 74.13.042.

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

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

21 (4) A parent, guardian, or custodian who has custody of any
22 juvenile under juvenile court jurisdiction is subject to the
23 jurisdiction of the juvenile court for purposes of enforcing required
24 attendance at juvenile court hearings if the parent, guardian, or
25 custodian is served with a summons.

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

28 (1) Any county with a population of at least two hundred thousand
29 but less than two hundred twenty thousand that has a city with a
30 population of at least fifty-nine thousand may authorize a pilot
31 project to allow courts of limited jurisdiction within the county to
32 exercise concurrent jurisdiction with the juvenile court under certain
33 circumstances. District and municipal courts of limited jurisdiction
34 at the local option of the county or any city or town located within
35 the county may exercise concurrent original jurisdiction with the
36 juvenile court over traffic or civil infractions, violations of
37 compulsory school attendance provisions under chapter 28A.225 RCW, and

1 misdemeanors when those offenses are allegedly committed by juveniles
2 and:

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

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

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

11 (c) The county legislative authority of the county has authorized
12 creation of concurrent jurisdiction between the court of limited
13 jurisdiction and the juvenile court; and

14 (d) The court of limited jurisdiction has an agreement with
15 officials responsible for administering the county juvenile detention
16 facility pursuant to RCW 13.04.035 and 13.20.060 that the court may
17 order juveniles into the detention facility for an offense in cases in
18 which the court finds that a disposition without confinement would be
19 a manifest injustice.

20 (2) The juvenile court shall retain jurisdiction over the offense
21 if the juvenile is charged with another offense arising out of the same
22 incident and the juvenile court has jurisdiction over the other
23 offense.

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

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

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

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

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

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

37 (2) It is the intent of the legislature that a system capable of
38 having primary responsibility for, being accountable for, and

1 responding to the needs of youthful offenders, as defined by this
2 chapter, be established. It is the further intent of the legislature
3 that youth, in turn, be held accountable for their offenses and that
4 ~~((both))~~ communities, families, and the juvenile courts carry out their
5 functions consistent with this intent. To effectuate these policies,
6 the legislature declares the following to be equally important purposes
7 of this chapter:

8 (a) Protect the citizenry from criminal behavior;

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

11 (c) Make the juvenile offender accountable for his or her criminal
12 behavior;

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

15 (e) Provide due process for juveniles alleged to have committed an
16 offense;

17 (f) Promote equitable treatment of juveniles and their families
18 without regard to race, ethnicity, gender, creed, or religion;

19 (g) Provide necessary treatment, supervision, and custody for
20 juvenile offenders;

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

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

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

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

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

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

36 For the purposes of this chapter:

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

1 (a) A class A felony, or an attempt to commit a class A felony;
2 (b) Manslaughter in the first degree; or
3 (c) Assault in the second degree, extortion in the first degree,
4 child molestation in the second degree, kidnapping in the second
5 degree, robbery in the second degree, residential burglary, or burglary
6 in the second degree, where such offenses include the infliction of
7 bodily harm upon another or where during the commission of or immediate
8 withdrawal from such an offense the perpetrator is armed with a deadly
9 weapon;

10 (2) "Community service" means compulsory service, without
11 compensation, performed for the benefit of the community by the
12 offender as punishment for committing an offense. Community service
13 may be performed through public or private organizations or through
14 work crews;

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

28 (a) Community-based sanctions;
29 (b) Community-based rehabilitation;
30 (c) Monitoring and reporting requirements;
31 (d) Posting of a probation bond (~~((imposed pursuant to RCW~~
32 ~~13.40.0357))~~ as provided in RCW 13.40.054;

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

35 (a) A fine, not to exceed one hundred dollars;
36 (b) Community service not to exceed one hundred fifty hours of
37 service;

38 (5) "Community-based rehabilitation" means one or more of the
39 following: Attendance of information classes; counseling, outpatient

1 substance abuse treatment programs, outpatient mental health programs,
2 anger management classes, education or outpatient treatment programs to
3 prevent animal cruelty, or other services; or attendance at school or
4 other educational programs appropriate for the juvenile as determined
5 by the school district. Placement in community-based rehabilitation
6 programs is subject to available funds;

7 (6) "Monitoring and reporting requirements" means one or more of
8 the following: Curfews; requirements to remain at home, school, work,
9 or court-ordered treatment programs during specified hours;
10 restrictions from leaving or entering specified geographical areas;
11 requirements to report to the probation officer as directed and to
12 remain under the probation officer's supervision; and other conditions
13 or limitations as the court may require which may not include
14 confinement;

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

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

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

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

33 (b) The criminal complaint was diverted by a prosecutor pursuant to
34 the provisions of this chapter on agreement of the respondent and after
35 an advisement to the respondent that the criminal complaint would be
36 considered as part of the respondent's criminal history. A
37 successfully completed deferred adjudication shall not be considered
38 part of the respondent's criminal history;

1 (10) "Department" means the department of social and health
2 services;

3 (11) "Detention facility" means a county facility, paid for by the
4 county, for the physical confinement of a juvenile alleged to have
5 committed an offense or an adjudicated offender subject to a
6 disposition or modification order. "Detention facility" includes
7 county group homes, inpatient substance abuse programs, juvenile basic
8 training camps, and electronic monitoring;

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

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

28 (14) "Juvenile," "youth," and "child" mean any individual who is
29 under the chronological age of eighteen years and who has not been
30 previously transferred to adult court pursuant to RCW 13.40.110 or who
31 is otherwise under adult criminal court jurisdiction pursuant to RCW
32 13.04.030;

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

37 (16) "Manifest injustice" means a disposition that would (~~either~~)
38 impose an excessive penalty on the juvenile (~~or~~), and would impose a
39 serious, and clear danger to society in light of the purposes of this

1 chapter, or would fail to support the juvenile's need for sex offender
2 treatment;

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

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

8 (a) Four misdemeanors;

9 (b) Two misdemeanors and one gross misdemeanor;

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

11 (d) Three gross misdemeanors.

12 For purposes of this definition, current violations shall be
13 counted as misdemeanors;

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

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

20 (21) "Restitution" means financial reimbursement by the offender to
21 the victim, and shall be limited to easily ascertainable damages for
22 injury to or loss of property, actual expenses incurred for medical
23 treatment for physical injury to persons, lost wages resulting from
24 physical injury, and costs of the victim's counseling reasonably
25 related to the offense if the offense is a sex offense. Restitution
26 shall not include reimbursement for damages for mental anguish, pain
27 and suffering, or other intangible losses. Nothing in this chapter
28 shall limit or replace civil remedies or defenses available to the
29 victim or offender;

30 (22) "Secretary" means the secretary of the department of social
31 and health services. "Assistant secretary" means the assistant
32 secretary for juvenile rehabilitation for the department;

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

37 (24) "Sex offense" means an offense defined as a sex offense in RCW
38 9.94A.030;

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

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

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

10 (28) "Violent offense" means a violent offense as defined in RCW
11 9.94A.030;

12 (29) "Probation bond" means a bond, posted with sufficient security
13 by a surety justified and approved by the court, to secure the
14 offender's appearance at required court proceedings and compliance with
15 court-ordered community supervision or conditions of release ordered
16 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
17 cash or posting of other collateral in lieu of a bond if approved by
18 the court;

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

23 **Sec. 12.** RCW 13.40.025 and 1995 c 269 s 302 are each amended to
24 read as follows:

25 (1) There is established a juvenile disposition standards
26 commission to propose disposition standards to the legislature in
27 accordance with RCW 13.40.030 and perform the other responsibilities
28 set forth in this chapter.

29 (2) The commission shall be composed of the secretary or the
30 secretary's designee and the following nine members appointed by the
31 governor, subject to confirmation by the senate: (a) A superior court
32 judge; (b) a prosecuting attorney or deputy prosecuting attorney; (c)
33 a law enforcement officer; (d) an administrator of juvenile court
34 services; (e) a public defender actively practicing in juvenile court;
35 (f) a county legislative official or county executive; and (g) three
36 other persons who have demonstrated significant interest in the
37 adjudication and disposition of juvenile offenders. In making the
38 appointments, the governor shall seek the recommendations of the

1 association of superior court judges in respect to the member who is a
2 superior court judge; of Washington prosecutors in respect to the
3 prosecuting attorney or deputy prosecuting attorney member; of the
4 Washington association of sheriffs and police chiefs in respect to the
5 member who is a law enforcement officer; of juvenile court
6 administrators in respect to the member who is a juvenile court
7 administrator; and of the state bar association in respect to the
8 public defender member; and of the Washington association of counties
9 in respect to the member who is either a county legislative official or
10 county executive.

11 (3) The secretary or the secretary's designee shall serve as
12 chairman of the commission.

13 (4) The secretary shall serve on the commission during the
14 secretary's tenure as secretary of the department. The term of the
15 remaining members of the commission shall be three years. The initial
16 terms shall be determined by lot conducted at the commission's first
17 meeting as follows: (a) Four members shall serve a two-year term; and
18 (b) four members shall serve a three-year term. In the event of a
19 vacancy, the appointing authority shall designate a new member to
20 complete the remainder of the unexpired term.

21 (5) Commission members shall be reimbursed for travel expenses as
22 provided in RCW 43.03.050 and 43.03.060. Members shall be compensated
23 in accordance with RCW 43.03.240.

24 (6) The commission shall cease to exist on June 30, (~~1997~~) 1996,
25 and its powers and duties shall be transferred to the sentencing
26 guidelines commission established under RCW 9.94A.040.

27 **Sec. 13.** RCW 13.40.027 and 1993 c 415 s 9 are each amended to read
28 as follows:

29 (1) It is the responsibility of the sentencing guidelines
30 commission to: (a)(i) Evaluate the effectiveness of existing
31 disposition standards and related statutes in implementing policies set
32 forth in RCW 13.40.010 generally, (ii) specifically review the
33 guidelines relating to the confinement of minor and first offenders as
34 well as the use of diversion, and (iii) review the application of
35 current and proposed juvenile sentencing standards and guidelines for
36 potential adverse impacts on the sentencing outcomes of racial and
37 ethnic minority youth; (b) solicit the comments and suggestions of the
38 juvenile justice community concerning disposition standards; and (c)

1 make recommendations to the legislature regarding revisions or
2 modifications of the disposition standards in accordance with RCW
3 13.40.030. The evaluations shall be submitted to the legislature on
4 December 1 of each even-numbered year (~~thereafter~~).

5 (2) It is the responsibility of the department to: (a) Provide the
6 commission with available data concerning the implementation of the
7 disposition standards and related statutes and their effect on the
8 performance of the department's responsibilities relating to juvenile
9 offenders; and (b) (~~at the request of the commission, provide~~
10 ~~technical and administrative assistance to the commission in the~~
11 ~~performance of its responsibilities; and (c)~~) provide the commission
12 and legislature with recommendations for modification of the
13 disposition standards. The office of the administrator for the courts
14 shall provide the commission with available data on diversion and
15 dispositions of juvenile offenders under chapter 13.40 RCW.

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

18 (1)(~~(a)~~) The (~~juvenile disposition standards~~) sentencing
19 guidelines commission shall recommend to the legislature no later than
20 (~~November 1st of each year~~) July 1, 1997, disposition standards for
21 all offenses. The standards shall establish, in accordance with the
22 purposes of this chapter, ranges which may include terms of confinement
23 and/or community supervision established on the basis of a youth's age,
24 the instant offense, and the history and seriousness of previous
25 offenses, but in no case may the period of confinement and supervision
26 exceed that to which an adult may be subjected for the same offense(s).
27 Standards recommended for offenders listed in RCW 13.40.020(1) shall
28 include a range of confinement which may not be less than thirty days.
29 No standard range may include a period of confinement which includes
30 both more than thirty, and thirty or less, days. Disposition standards
31 recommended by the commission shall provide that in all cases where a
32 youth is sentenced to a term of confinement in excess of thirty days
33 the department may impose an additional period of parole (~~not to~~
34 ~~exceed eighteen months~~). Standards of confinement which may be
35 proposed may relate only to the length of the proposed terms and not to
36 the nature of the security to be imposed. (~~In developing recommended~~
37 ~~disposition standards, the commission shall consider the capacity of~~

1 the state juvenile facilities and the projected impact of the proposed
2 standards on that capacity.

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

20 (2) ((In developing recommendations for the permissible ranges of
21 confinement under this section the commission shall be subject to the
22 following limitations:

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

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

29 (c) Where the maximum term in the range is more than one year, the
30 minimum term in the range may be no less than eighty percent of the
31 maximum term in the range.)) The commission's recommendations for new
32 disposition standards shall result in a simplified disposition system.
33 In setting the new standards, the commission shall focus on the need to
34 protect public safety by emphasizing punishment, deterrence, and
35 confinement for violent and repeat offenders. The seriousness of the
36 offense shall be the most important factor in determining the length of
37 confinement, while the offender's age and criminal history shall count
38 as contributing factors. The commission shall consider whether
39 juveniles prosecuted under the juvenile justice system for committing

1 violent, sex, or repeated property offenses should be automatically
2 prosecuted as adults when their term of confinement under the adult
3 sentencing system is longer than their term of confinement under the
4 juvenile system. The commission shall consider the option of allowing
5 the prosecutor to determine in which system the juvenile should be
6 prosecuted based on the anticipated length of confinement in both
7 systems if the court imposes an exceptional sentence for manifest
8 injustice above the standard range as requested by the prosecutor. The
9 commission shall increase judicial flexibility and discretion by
10 broadening standard ranges of confinement. The commission shall
11 provide for the use of basic training camp programs. Alternatives to
12 total confinement shall be considered for nonviolent offenders. The
13 commission must also study the feasibility of creating a disposition
14 option allowing a court to order minor/first or middle offenders into
15 inpatient substance abuse treatment. To determine the feasibility of
16 that option, the commission must review the number of existing beds and
17 funding available through private, county, state, or federal resources,
18 criteria for eligibility for funding, competing avenues of access to
19 those beds, the current system's method of prioritizing the needs for
20 limited bed space, the average length of stay in inpatient treatment,
21 the costs of that treatment, and the cost effectiveness of inpatient
22 treatment compared to outpatient treatment.

23 In setting new standards, the commission must also recommend
24 disposition and institutional options for serious or chronic offenders
25 between the ages of fifteen and twenty-five who currently must either
26 be released from juvenile court jurisdiction at age twenty-one or who
27 are prosecuted as adults because the juvenile system is inadequate to
28 address the seriousness of their crimes, their rehabilitation needs, or
29 public safety. One option must include development of a youthful
30 offender disposition option that combines adult criminal sentencing
31 guidelines and juvenile disposition standards and addresses: (a)
32 Whether youthful offenders would be under jurisdiction of the
33 department of corrections or the department of social and health
34 services; (b) whether current age restrictions on juvenile court
35 jurisdiction would be modified; and (c) whether the department of
36 social and health services or the department of corrections would
37 provide institutional and community correctional services. The option
38 must also recommend an implementation timeline and plan, identify
39 funding and capital construction or improvement options to provide

1 separate facilities for youthful offenders, and identify short and
2 long-term fiscal impacts.

3 In developing the new standards, the commission must review
4 disposition options in other states and consult with interested parties
5 including superior court judges, prosecutors, defense attorneys,
6 juvenile court administrators, victims advocates, the department of
7 corrections and the department of social and health services, and
8 members of the legislature.

9 NEW SECTION. Sec. 15. A new section is added to chapter 13.40 RCW
10 to read as follows:

11 The secretary shall submit a report on security at juvenile
12 facilities during the preceding year. The report shall include the
13 number of escapes from each juvenile facility, the most serious offense
14 for which each escapee had been confined, the number and nature of
15 offenses found to have been committed by juveniles while on escape
16 status, the number of authorized leaves granted, the number of failures
17 to comply with leave requirements, the number and nature of offenses
18 committed while on leave, and the number and nature of offenses
19 committed by juveniles while in the community on minimum security
20 status; to the extent this information is available to the secretary.
21 The department shall include security status definitions in the report
22 it submits to the legislature pursuant to this section. The report
23 shall be submitted no later than December 15th of each year.

24 **Sec. 16.** RCW 13.40.0357 and 1995 c 395 s 3 are each amended to
25 read as follows:

SCHEDULE A		
DESCRIPTION AND OFFENSE CATEGORY		
JUVENILE		JUVENILE
DISPOSITION		DISPOSITION
DISPOSITION		CATEGORY FOR ATTEMPT,
OFFENSE		BAILJUMP, CONSPIRACY,
CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
.....	
	Arson and Malicious Mischief	
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C

1	C	Reckless Burning 1 (9A.48.040)	D
2	D	Reckless Burning 2 (9A.48.050)	E
3	B	Malicious Mischief 1 (9A.48.070)	C
4	C	Malicious Mischief 2 (9A.48.080)	D
5	D	Malicious Mischief 3 (<\$50 is	
6		E class) (9A.48.090)	E
7	E	Tampering with Fire Alarm	
8		Apparatus (9.40.100)	E
9	A	Possession of Incendiary Device	
10		(9.40.120)	B+
11		Assault and Other Crimes	
12		Involving Physical Harm	
13	A	Assault 1 (9A.36.011)	B+
14	B+	Assault 2 (9A.36.021)	C+
15	C+	Assault 3 (9A.36.031)	D+
16	D+	Assault 4 (9A.36.041)	E
17	<u>B+</u>	<u>Reckless Endangerment 1 (9A.36.045)</u>	<u>C+</u>
18	D+	Reckless Endangerment	
19		(9A.36.050)	E
20	C+	Promoting Suicide Attempt	
21		(9A.36.060)	D+
22	D+	Coercion (9A.36.070)	E
23	C+	Custodial Assault (9A.36.100)	D+
24		Burglary and Trespass	
25	B+	Burglary 1 (9A.52.020)	C+
26	<u>B</u>	<u>Residential Burglary (9A.52.025)</u>	<u>C</u>
27	B	Burglary 2 (9A.52.030)	C
28	D	Burglary Tools (Possession of)	
29		(9A.52.060)	E
30	D	Criminal Trespass 1 (9A.52.070)	E
31	E	Criminal Trespass 2 (9A.52.080)	E
32	D	Vehicle Prowling (9A.52.100)	E
33		Drugs	
34	E	Possession/Consumption of Alcohol	
35		(66.44.270)	E
36	C	Illegally Obtaining Legend Drug	
37		(69.41.020)	D

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

1	C	Possession of Firearms by	
2		Minor (<18) (9.41.040(1)((e))(b)(iv))	C
3	D+	Possession of Dangerous Weapon	
4		(9.41.250)	E
5	D	Intimidating Another Person by use	
6		of Weapon (9.41.270)	E
7		Homicide	
8	A+	Murder 1 (9A.32.030)	A
9	A+	Murder 2 (9A.32.050)	B+
10	B+	Manslaughter 1 (9A.32.060)	C+
11	C+	Manslaughter 2 (9A.32.070)	D+
12	B+	Vehicular Homicide (46.61.520)	C+
13		Kidnapping	
14	A	Kidnap 1 (9A.40.020)	B+
15	B+	Kidnap 2 (9A.40.030)	C+
16	C+	Unlawful Imprisonment	
17		(9A.40.040)	D+
18		Obstructing Governmental Operation	
19	E	Obstructing a Law Enforcement Officer	
20		(9A.76.020)	E
21	E	Resisting Arrest (9A.76.040)	E
22	B	Introducing Contraband 1	
23		(9A.76.140)	C
24	C	Introducing Contraband 2	
25		(9A.76.150)	D
26	E	Introducing Contraband 3	
27		(9A.76.160)	E
28	B+	Intimidating a Public Servant	
29		(9A.76.180)	C+
30	B+	Intimidating a Witness	
31		(9A.72.110)	C+
32		Public Disturbance	
33	C+	Riot with Weapon (9A.84.010)	D+
34	D+	Riot Without Weapon	
35		(9A.84.010)	E
36	E	Failure to Disperse (9A.84.020)	E
37	E	Disorderly Conduct (9A.84.030)	E

1		Sex Crimes	
2	A	Rape 1 (9A.44.040)	B+
3	A-	Rape 2 (9A.44.050)	B+
4	C+	Rape 3 (9A.44.060)	D+
5	A-	Rape of a Child 1 (9A.44.073)	B+
6	B	Rape of a Child 2 (9A.44.076)	C+
7	B	Incest 1 (9A.64.020(1))	C
8	C	Incest 2 (9A.64.020(2))	D
9	D+	Indecent Exposure	
10		(Victim <14) (9A.88.010)	E
11	E	Indecent Exposure	
12		(Victim 14 or over) (9A.88.010)	E
13	B+	Promoting Prostitution 1	
14		(9A.88.070)	C+
15	C+	Promoting Prostitution 2	
16		(9A.88.080)	D+
17	E	O & A (Prostitution) (9A.88.030)	E
18	B+	Indecent Liberties (9A.44.100)	C+
19	B+	Child Molestation 1 (9A.44.083)	C+
20	C+	Child Molestation 2 (9A.44.086)	C
21	<u>C</u>	<u>Failure to Register</u>	
22		<u>(For Class A Felony) (9A.44.130)</u>	<u>D</u>
23	<u>D</u>	<u>Failure to Register</u>	
24		<u>(For Class B Felony or Less)</u>	
25		<u>(9A.44.130)</u>	<u>E</u>
26		Theft, Robbery, Extortion, and Forgery	
27	B	Theft 1 (9A.56.030)	C
28	C	Theft 2 (9A.56.040)	D
29	D	Theft 3 (9A.56.050)	E
30	<u>B</u>	<u>Theft of a Firearm (9A.56.300)</u>	<u>C</u>
31	B	Theft of Livestock (9A.56.080)	C
32	C	Forgery (9A.60.020)	D
33	A	Robbery 1 (9A.56.200)	B+
34	B+	Robbery 2 (9A.56.210)	C+
35	B+	Extortion 1 (9A.56.120)	C+
36	C+	Extortion 2 (9A.56.130)	D+
37	B	Possession of Stolen Property 1	
38		(9A.56.150)	C

1	C	Possession of Stolen Property 2	
2		(9A.56.160)	D
3	D	Possession of Stolen Property 3	
4		(9A.56.170)	E
5	C	Taking Motor Vehicle Without	
6		Owner's Permission (9A.56.070)	D
7		Motor Vehicle Related Crimes	
8	E	Driving Without a License	
9		(46.20.021)	E
10	C	Hit and Run - Injury	
11		(46.52.020(4))	D
12	D	Hit and Run-Attended	
13		(46.52.020(5))	E
14	E	Hit and Run-Unattended	
15		(46.52.010)	E
16	C	Vehicular Assault (46.61.522)	D
17	C	Attempting to Elude Pursuing	
18		Police Vehicle (46.61.024)	D
19	E	Reckless Driving (46.61.500)	E
20	D	Driving While Under the Influence	
21		(46.61.502 and 46.61.504)	E
22	D	Vehicle Prowling (9A.52.100)	E
23	C	Taking Motor Vehicle Without	
24		Owner's Permission (9A.56.070)	D
25		Other	
26	B	Bomb Threat (9.61.160)	C
27	C	Escape 1 (9A.76.110)	C
28	C	Escape 2 (9A.76.120)	C
29	D	Escape 3 (9A.76.130)	E
30	<u>C</u>	<u>Stalking (Repeat) (9A.46.110)</u>	<u>D</u>
31	<u>D</u>	<u>Stalking (1st Time) (9A.46.110)</u>	<u>E</u>
32	E	Obscene, Harassing, Etc.,	
33		Phone Calls (9.61.230)	E
34	A	Other Offense Equivalent to an	
35		Adult Class A Felony	B+
36	B	Other Offense Equivalent to an	
37		Adult Class B Felony	C

1	C	Other Offense Equivalent to an	
2		Adult Class C Felony	D
3	D	Other Offense Equivalent to an	
4		Adult Gross Misdemeanor	E
5	E	Other Offense Equivalent to an	
6		Adult Misdemeanor	E
7	V	Violation of Order of Restitution,	
8		Community Supervision, or	
9		Confinement, (2)13.40.200) -	V

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

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

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

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

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

20 SCHEDULE B

21 PRIOR OFFENSE INCREASE FACTOR

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

24 TIME SPAN

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

1	D	.2	.1	.1
2	E	.1	.1	.1

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

7 SCHEDULE C

8 CURRENT OFFENSE POINTS

9 For use with all CURRENT OFFENSES occurring on or after July 1,
10 1989.

11 AGE

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

25 JUVENILE SENTENCING STANDARDS

26 SCHEDULE D-1

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

30 MINOR/FIRST OFFENDER

31 OPTION A

32 STANDARD RANGE

1		Community		
2		Community	Service	
3	Points	Supervision	Hours	Fine
4			
5	((1-9	0-3 months	and/or 0-8	and/or 0-\$10
6	10-19	0-3 months	and/or 0-8	and/or 0-\$10
7	20-29	0-3 months	and/or 0-16	and/or 0-\$10
8	30-39	0-3 months	and/or 8-24	and/or 0-\$25
9	40-49	3-6 months	and/or 16-32	and/or 0-\$25
10	50-59	3-6 months	and/or 24-40	and/or 0-\$25
11	60-69	6-9 months	and/or 32-48	and/or 0-\$50
12	70-79	6-9 months	and/or 40-56	and/or 0-\$50
13	80-89	9-12 months	and/or 48-64	and/or 10-\$100
14	90-109	9-12 months	and/or 56-72	and/or 10-\$100))
15	<u>1-109</u>	<u>0-12 months</u>	<u>and/or 0-150</u>	<u>and/or 0-\$100</u>

16 ((OR
17 OPTION B
18 STATUTORY OPTION

19 ~~0-12 Months Community Supervision~~
20 ~~0-150 Hours Community Service~~
21 ~~0-100 Fine))~~
22 Posting of a Probation Bond
23 ((A term of community supervision with a maximum of 150 hours, \$100.00
24 fine, and 12 months supervision.))

25 OR
26 OPTION ((C)) B
27 MANIFEST INJUSTICE

28 When a term of community supervision would effectuate a manifest
29 injustice, another disposition may be imposed. When a judge imposes a
30 sentence of confinement exceeding 30 days, the court shall sentence the
31 juvenile to a maximum term and the provisions of ((RCW 13.40.030(2)))
32 section 31 of this act shall be used to determine the range.

JUVENILE SENTENCING STANDARDS

SCHEDULE D-2

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

MIDDLE OFFENDER

OPTION A

STANDARD RANGE

Community

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

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

1 For all determinate dispositions of up to 30 days confinement for
2 middle offenders with fewer than 110 points, the court shall state its
3 reasons in writing why confinement is used.

4 All A+ offenses 180-224 weeks

5 OR

6 OPTION B

7 STATUTORY OPTION

8 OFFENDERS WITH 110 POINTS OR MORE

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

13 If the offender has (~~less than~~) 110 points or more, the court may
14 impose (~~a determinate disposition of community supervision and/or up~~
15 ~~to 30 days confinement; in which case, if confinement has been imposed,~~
16 ~~the court shall state either aggravating or mitigating factors as set~~
17 ~~forth in RCW 13.40.150~~) an option B disposition as provided in RCW
18 13.40.160(4)(b).

19 (~~If the middle offender has 110 points or more, the court may~~
20 ~~impose a disposition under option A and may suspend the disposition on~~
21 ~~the condition that the offender serve up to thirty days of confinement~~
22 ~~and follow all conditions of community supervision. If the offender~~
23 ~~fails to comply with the terms of community supervision, the court may~~
24 ~~impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended~~
25 ~~disposition and order execution of the disposition. If the court~~
26 ~~imposes confinement for offenders with 110 points or more, the court~~
27 ~~shall state either aggravating or mitigating factors set forth in RCW~~
28 ~~13.40.150.~~))

29 OR

30 OPTION C

31 MANIFEST INJUSTICE

32 ALL MIDDLE OFFENDERS

33 If the court determines that a disposition under A or B would
34 effectuate a manifest injustice, the court shall sentence the juvenile

1 to a maximum term and the provisions of ((RCW 13.40.030(2))) section 31
2 of this act shall be used to determine the range.

3 JUVENILE SENTENCING STANDARDS
4 SCHEDULE D-3

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

8 SERIOUS OFFENDER

9 OPTION A

10 STANDARD RANGE

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

21 OR

22 OPTION B

23 MANIFEST INJUSTICE

24 A disposition outside the standard range shall be determined and shall
25 be comprised of confinement or community supervision including posting
26 a probation bond or a combination thereof. When a judge finds a
27 manifest injustice and imposes a sentence of confinement exceeding 30
28 days, the court shall sentence the juvenile to a maximum term, and the
29 provisions of ((RCW 13.40.030(2))) section 31 of this act shall be used
30 to determine the range.

31 **Sec. 17.** RCW 13.40.045 and 1994 sp.s. c 7 s 518 are each amended
32 to read as follows:

33 The secretary, assistant secretary, or the secretary's designee
34 shall issue arrest warrants for juveniles who escape from department

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

7 **Sec. 18.** RCW 13.40.050 and 1995 c 395 s 5 are each amended to read
8 as follows:

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

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

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

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

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

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

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

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

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

7 (b) Place restrictions on the travel of the juvenile during the
8 period of release;

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

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

13 (e) Require that the juvenile return to detention during specified
14 hours; or

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

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

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

24 **Sec. 19.** RCW 13.40.060 and 1989 c 71 s 1 are each amended to read
25 as follows:

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

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

1 of the receiving county as of the date of the transfer of the juvenile
2 to such county, unless the counties otherwise agree.

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

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

12 **Sec. 20.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended
13 to read as follows:

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

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

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

26 (b) Restitution limited to the amount of actual loss incurred by
27 the victim, and to an amount the juvenile has the means or potential
28 means to pay. The diversion contract must specify the full amount of
29 restitution due even if the juvenile does not have the means or
30 potential to pay the full amount;

31 (c) Attendance at (~~up to ten hours of~~) counseling and/or (~~up to~~
32 ~~twenty hours of~~) educational or informational sessions at a community
33 agency for a specified period of time as determined by the diversion
34 unit. The educational or informational sessions may include sessions
35 relating to respect for self, others, and authority; victim awareness;
36 accountability; self-worth; responsibility; work ethics; good
37 citizenship; and life skills. For purposes of this section, "community
38 agency" may also mean a community-based nonprofit organization, if

1 approved by the diversion unit. The state shall not be liable for
2 costs resulting from the diversionary unit exercising the option to
3 permit diversion agreements to mandate attendance at (~~up to ten hours~~
4 ~~of~~) counseling and/or (~~up to twenty hours of~~) educational or
5 informational sessions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (e) The facts of the alleged offense.

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

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

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

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

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

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

30 **Sec. 21.** RCW 13.40.110 and 1990 c 3 s 303 are each amended to read
31 as follows:

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

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

4 (b) The respondent is seventeen years of age and the information
5 alleges assault in the second degree, extortion in the first degree,
6 indecent liberties, child molestation in the second degree, kidnapping
7 in the second degree, or robbery in the second degree; or

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

10 (2) The court after a decline hearing may order the case
11 transferred for adult criminal prosecution upon a finding that the
12 declination would be in the best interest of the juvenile or the
13 public. The court shall consider the relevant reports, facts,
14 opinions, and arguments presented by the parties and their counsel.

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

19 (4) If the court finds that declination of jurisdiction is
20 appropriate it may, in lieu of transferring the respondent for adult
21 criminal prosecution, classify the offender as a youthful offender and
22 retain the offender in juvenile court. The court may classify an
23 offender as a youthful offender only if he or she is under fifteen
24 years of age and the standard range that the offender could receive if
25 remanded for adult criminal prosecution exceeds incarceration past the
26 age of twenty-one.

27 NEW SECTION. Sec. 22. A new section is added to chapter 13.40 RCW
28 to read as follows:

29 At an adjudicatory hearing, a person classified as a youthful
30 offender under RCW 13.40.110(4) is entitled to all the rights that by
31 court rule, statute, and the state and federal constitutions are
32 guaranteed to an offender who is similarly charged in adult court.

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

35 (1) At a disposition hearing, the court shall impose both an adult
36 and a juvenile sentence on a person classified as a youthful offender
37 under RCW 13.40.110(4). The adult sentence shall be determined

1 according to the sentencing reform act, chapter 9.94A RCW. The adult
2 sentence shall be suspended conditioned upon the youthful offender's
3 compliance with the conditions and terms of the juvenile sentence. The
4 juvenile sentence shall be confinement with the department until age
5 twenty-one.

6 (2) The court may, on application by the department, remand the
7 youthful offender to the department of corrections to begin serving the
8 offender's adult sentence if, at any time while the offender is serving
9 the offender's juvenile sentence, the offender: Refuses to
10 meaningfully participate in rehabilitative programs made available to
11 the offender by the department; reoffends; or constitutes a serious
12 threat to the physical safety of others. The offender may also be
13 remanded to the department of corrections to begin serving the
14 offender's adult sentence if the department petitions and the court
15 finds that the offender is not likely to benefit from the services the
16 department has to offer.

17 (3) Unless previously remanded to the department of corrections to
18 begin serving the offender's adult sentence, the youthful offender
19 shall, no sooner than three months before the offender's twenty-first
20 birthday, appear before the sentencing court to determine compliance
21 with the juvenile sentence.

22 (4) After the hearing the court shall remand the youthful offender
23 to the department of corrections to begin serving the offender's adult
24 sentence unless the sentencing court finds by a preponderance of
25 evidence that the offender:

26 (a) Has meaningfully participated in the rehabilitative programs
27 made available by the department;

28 (b) Is not likely to reoffend upon release; and

29 (c) Does not pose a serious threat to the physical safety of
30 others.

31 If the court makes these findings by a preponderance of evidence,
32 then it shall release the youthful offender from the suspended adult
33 sentence.

34 (5) When the juvenile is released from the suspended adult sentence
35 the court shall, as a condition of that release, order the offender to
36 serve twenty-four months of community placement to be supervised by the
37 department of corrections. The court shall order conditions of
38 community placement as provided for in RCW 9.94A.120(8). All

1 provisions of chapter 9.94A RCW dealing with community placement shall
2 be applicable to these offenders.

3 (6) Only the youthful offender's adult sentence shall be considered
4 when determining under chapter 9.94A RCW an appropriate sentence for
5 future adult offenses.

6 NEW SECTION. **Sec. 24.** A new section is added to chapter 13.40 RCW
7 to read as follows:

8 If at any time a person classified as a youthful offender under RCW
9 13.40.110(4) is remanded to begin serving an adult sentence, the
10 youthful offender shall be given credit for all incarceration time
11 served on the juvenile sentence.

12 **Sec. 25.** RCW 13.40.120 and 1981 c 299 s 9 are each amended to read
13 as follows:

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

20 **Sec. 26.** RCW 13.40.125 and 1995 c 395 s 6 are each amended to read
21 as follows:

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

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

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

4 (4) If the juvenile fails to comply with the terms of supervision,
5 the court shall enter an order of ((~~adjudication and proceed to~~))
6 disposition. The juvenile's lack of compliance shall be determined by
7 the judge upon written motion by the prosecutor or the juvenile's
8 juvenile court community supervision counselor. A parent who signed
9 for a probation bond or deposited cash may notify the counselor if the
10 juvenile fails to comply with the bond or conditions of supervision.
11 The counselor shall notify the court and surety. A surety shall notify
12 the court of the juvenile's failure to comply with the probation bond.
13 The state shall bear the burden to prove by a preponderance of the
14 evidence that the juvenile has failed to comply with the terms of
15 community supervision.

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

18 (a) To a speedy trial and disposition;

19 (b) To call and confront witnesses; and

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

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

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

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

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

27 or

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

29 **Sec. 27.** RCW 13.40.130 and 1981 c 299 s 10 are each amended to
30 read as follows:

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

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

1 custody of any juvenile described in the charging document of the date,
2 time, and place of the dispositional or adjudicatory hearing, and
3 require attendance.

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

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

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

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

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

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

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

29 (10) 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 NEW SECTION. Sec. 28. A new section is added to chapter 13.40 RCW
33 to read as follows:

34 RECOMMENDED PROSECUTING STANDARDS
35 FOR CHARGING AND PLEA DISPOSITIONS

36 INTRODUCTION: These standards are intended solely for the guidance
37 of prosecutors in the state of Washington. They are not intended to,
38 do not, and may not be relied upon to create a right or benefit,

1 substantive or procedural, enforceable at law by a party in litigation
2 with the state.

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

4 STANDARD: A prosecuting attorney may decline to prosecute, even
5 though technically sufficient evidence to prosecute exists, in
6 situations where prosecution would serve no public purpose, would
7 defeat the underlying purpose of the law in question, or would result
8 in decreased respect for the law. The decision not to prosecute or
9 divert shall not be influenced by the race, gender, religion, or creed
10 of the suspect.

11 GUIDELINES/COMMENTARY:

12 Examples

13 The following are examples of reasons not to prosecute which could
14 satisfy the standard.

15 (a) Contrary to Legislative Intent - It may be proper to decline to
16 charge where the application of criminal sanctions would be clearly
17 contrary to the intent of the legislature in enacting the particular
18 statute.

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

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

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

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

26 (iv) The statute has not been recently reconsidered by the
27 legislature.

28 This reason is not to be construed as the basis for declining cases
29 because the law in question is unpopular or because it is difficult to
30 enforce.

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

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

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

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

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

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

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

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

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

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

15 (f) High Disproportionate Cost of Prosecution - It may be proper to
16 decline to charge where the cost of locating or transporting, or the
17 burden on, prosecution witnesses is highly disproportionate to the
18 importance of prosecuting the offense in question. The reason should
19 be limited to minor cases and should not be relied upon in serious
20 cases.

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

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

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

34 (i) Assault cases where the victim has suffered little or no
35 injury;

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

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

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

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

5 Notification

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

8 (2) Decision to prosecute.

9 STANDARD:

10 Crimes against persons will be filed if sufficient admissible
11 evidence exists, which, when considered with the most plausible,
12 reasonably foreseeable defense that could be raised under the evidence,
13 would justify conviction by a reasonable and objective fact-finder.
14 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
15 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
16 9A.64.020 the prosecutor should avoid prefiling agreements or
17 diversions intended to place the accused in a program of treatment or
18 counseling, so that treatment, if determined to be beneficial, can be
19 proved pursuant to RCW 13.40.160(5).

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

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

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

29 Selection of Charges/Degree of Charge

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

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

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

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

37 Overcharging includes:

38 (a) Charging a higher degree;

39 (b) Charging additional counts.

1 This standard is intended to direct prosecutors to charge those
2 crimes which demonstrate the nature and seriousness of a respondent's
3 criminal conduct, but to decline to charge crimes which are not
4 necessary to such an indication. Crimes which do not merge as a matter
5 of law, but which arise from the same course of conduct, do not all
6 have to be charged.

7 The selection of charges and/or the degree of the charge shall not
8 be influenced by the race, gender, religion, or creed of the
9 respondent.

10 GUIDELINES/COMMENTARY:

11 Police Investigation

12 A prosecuting attorney is dependent upon law enforcement agencies
13 to conduct the necessary factual investigation which must precede the
14 decision to prosecute. The prosecuting attorney shall ensure that a
15 thorough factual investigation has been conducted before a decision to
16 prosecute is made. In ordinary circumstances the investigation should
17 include the following:

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

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

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

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

26 Exceptions

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

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

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

32 (3) The arrest of the suspect is necessary to complete the
33 investigation of the crime.

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

39 Investigation Techniques

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

- 3 (1) Polygraph testing;
- 4 (2) Hypnosis;
- 5 (3) Electronic surveillance;
- 6 (4) Use of informants.

7 Prefiling Discussions with Defendant

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

11 PLEA DISPOSITIONS:

12 Standard

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

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

21 (a) Evidentiary problems which make conviction of the original
22 charges doubtful;

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

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

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

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

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

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

33 (h) The probable effect of witnesses.

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

39 DISPOSITION RECOMMENDATIONS:

1 Standard

2 The prosecutor may reach an agreement regarding disposition
3 recommendations.

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

6 **Sec. 29.** RCW 13.40.150 and 1995 c 268 s 5 are each amended to read
7 as follows:

8 (1) In disposition hearings all relevant and material evidence,
9 including oral and written reports, may be received by the court and
10 may be relied upon to the extent of its probative value, even though
11 such evidence may not be admissible in a hearing on the information.
12 The youth or the youth's counsel and the prosecuting attorney shall be
13 afforded an opportunity to examine and controvert written reports so
14 received and to cross-examine individuals making reports when such
15 individuals are reasonably available, but sources of confidential
16 information need not be disclosed. The prosecutor and counsel for the
17 juvenile may submit recommendations for disposition.

18 (2) For purposes of disposition:

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

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

22 (c) In no event may a disposition for a violation include
23 confinement.

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

27 (a) Consider the facts supporting the allegations of criminal
28 conduct by the respondent;

29 (b) Consider information and arguments offered by parties and their
30 counsel;

31 (c) Consider any predisposition reports;

32 (d) Consult with the respondent's parent, guardian, or custodian on
33 the appropriateness of dispositional options under consideration and
34 afford the respondent and the respondent's parent, guardian, or
35 custodian an opportunity to speak in the respondent's behalf;

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

1 (f) Determine the amount of restitution owing to the victim, if
2 any;

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

5 (h) Consider whether or not any of the following mitigating factors
6 exist:

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

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

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

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

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

19 (i) Consider whether or not any of the following aggravating
20 factors exist:

21 (i) In the commission of the offense, or in flight therefrom, the
22 respondent inflicted or attempted to inflict serious bodily injury to
23 another;

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

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

27 (iv) The respondent has a recent criminal history or has failed to
28 comply with conditions of a recent dispositional order or diversion
29 agreement;

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

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

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

37 (viii) The respondent is a sex offender eligible for the special
38 sex offender disposition alternative under RCW 13.40.160(5) and the

1 court finds that a longer disposition is necessary to provide an
2 incentive to comply with the terms of the disposition.

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

5 (a) The sex of the respondent;

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

7 (c) The creed or religion of the respondent or the respondent's
8 family;

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

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

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

16 **Sec. 30.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to read
17 as follows:

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

23 If the court concludes, and enters reasons for its conclusion, that
24 disposition within the standard range would effectuate a manifest
25 injustice the court shall impose a disposition outside the standard
26 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
27 court's finding of manifest injustice shall be supported by clear and
28 convincing evidence.

29 A disposition outside the standard range shall be determinate and
30 shall be comprised of confinement or community supervision, or a
31 combination thereof. When a judge finds a manifest injustice and
32 imposes a sentence of confinement exceeding thirty days, the court
33 shall sentence the juvenile to a maximum term, and the provisions of
34 (~~RCW 13.40.030(2)~~) section 31 of this act shall be used to determine
35 the range. A disposition outside the standard range is appealable
36 under RCW 13.40.230 by the state or the respondent. A disposition
37 within the standard range is not appealable under RCW 13.40.230.

1 (2) Where the respondent is found to be a minor or first offender,
2 the court shall order that the respondent serve a term of community
3 supervision as indicated in option A (~~(or option B)~~) of schedule D-1,
4 RCW 13.40.0357 except as provided in subsections (5) and (6) of this
5 section. If the court determines that a disposition of community
6 supervision would effectuate a manifest injustice the court may impose
7 another disposition under option (~~(C)~~) (B) of schedule D-1, RCW
8 13.40.0357. Except as provided in subsection (5) of this section, a
9 disposition other than a community supervision may be imposed only
10 after the court enters reasons upon which it bases its conclusions that
11 imposition of community supervision would effectuate a manifest
12 injustice. When a judge finds a manifest injustice and imposes a
13 sentence of confinement exceeding thirty days, the court shall sentence
14 the juvenile to a maximum term, and the provisions of (~~RCW~~
15 ~~13.40.030(2)~~) section 31 of this act shall be used to determine the
16 range. The court's finding of manifest injustice shall be supported by
17 clear and convincing evidence.

18 Except for disposition of community supervision or a disposition
19 imposed pursuant to subsection (5) of this section, a disposition may
20 be appealed as provided in RCW 13.40.230 by the state or the
21 respondent. A disposition of community supervision or a disposition
22 imposed pursuant to subsection (5) of this section may not be appealed
23 under RCW 13.40.230.

24 (3) Where a respondent is found to have committed an offense for
25 which the respondent declined to enter into a diversion agreement, the
26 court shall impose a term of community supervision limited to the
27 conditions allowed in a diversion agreement as provided in RCW
28 13.40.080(2).

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

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

36 (b) (~~If the middle offender has less than 110 points, the court~~
37 ~~shall impose a determinate disposition of community supervision and/or~~
38 ~~up to thirty days confinement, as indicated in option B of schedule D-~~
39 ~~2, RCW 13.40.0357 in which case, if confinement has been imposed, the~~

1 ~~court shall state either aggravating or mitigating factors as set forth~~
2 ~~in RCW 13.40.150.~~) (i) If the middle offender has 110 points or more,
3 the court may impose a disposition under option A and may suspend the
4 disposition and impose a determinate disposition of community
5 supervision for a period of up to one year or the maximum term allowed
6 by the standard range whichever is longer, on the condition that the
7 offender serve up to thirty days of confinement and follow all
8 conditions of community supervision. If confinement has been imposed,
9 the court shall state either aggravating or mitigating factors as set
10 forth in RCW 13.40.150. If the offender violates any condition of the
11 disposition including conditions of a probation bond, the court may
12 impose sanctions pursuant to RCW 13.40.200 or may revoke the suspension
13 and order execution of the disposition. The court shall give credit
14 for any confinement time previously served if that confinement was for
15 the offense for which the suspension is being revoked; or

16 (ii) If the respondent is a middle offender with 110 points or more
17 the court may impose the special disposition option under section 32 of
18 this act.

19 (c) Only if the court concludes, and enters reasons for its
20 conclusions, that disposition as provided in subsection (4)(a) or (b)
21 of this section would effectuate a manifest injustice, the court shall
22 sentence the juvenile to a maximum term, and the provisions of ((RCW
23 13.40.030(2))) section 31 of this act shall be used to determine the
24 range. The court's finding of manifest injustice shall be supported by
25 clear and convincing evidence.

26 (d) A disposition pursuant to subsection (4)(c) of this section is
27 appealable under RCW 13.40.230 by the state or the respondent. A
28 disposition pursuant to subsection (4) (a) or (b) of this section is
29 not appealable under RCW 13.40.230.

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

36 The report of the examination shall include at a minimum the
37 following: The respondent's version of the facts and the official
38 version of the facts, the respondent's offense history, an assessment
39 of problems in addition to alleged deviant behaviors, the respondent's

1 social, educational, and employment situation, and other evaluation
2 measures used. The report shall set forth the sources of the
3 evaluator's information.

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

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

8 ((~~a~~))(i) Frequency and type of contact between the offender and
9 therapist;

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

12 (iii) Monitoring plans, including any requirements regarding living
13 conditions, lifestyle requirements, and monitoring by family members,
14 legal guardians, or others;

15 (iv) Anticipated length of treatment; and

16 (v) Recommended crime-related prohibitions.

17 The court on its own motion may order, or on a motion by the state
18 shall order, a second examination regarding the offender's amenability
19 to treatment. The evaluator shall be selected by the party making the
20 motion. The defendant shall pay the cost of any second examination
21 ordered unless the court finds the defendant to be indigent in which
22 case the state shall pay the cost.

23 After receipt of reports of the examination, the court shall then
24 consider whether the offender and the community will benefit from use
25 of this special sex offender disposition alternative and consider the
26 victim's opinion whether the offender should receive a treatment
27 disposition under this section. If the court determines that this
28 special sex offender disposition alternative is appropriate, then the
29 court shall impose a determinate disposition within the standard range
30 for the offense, (~~and~~) or if the court concludes, and enters reasons
31 for its conclusion, that such disposition would effectuate a manifest
32 injustice, the court shall impose a disposition pursuant to option B of
33 schedule D-1, option C of schedule D-2, or option B of schedule D-3 as
34 appropriate.

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

38 (b) As a condition of the suspended disposition, the court may
39 impose the conditions of community supervision and other conditions,

1 including up to thirty days of confinement and requirements that the
2 offender do any one or more of the following:

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

5 (ii) Undergo available outpatient sex offender treatment for up to
6 two years, or inpatient sex offender treatment not to exceed the
7 standard range of confinement for that offense. A community mental
8 health center may not be used for such treatment unless it has an
9 appropriate program designed for sex offender treatment. The
10 respondent shall not change sex offender treatment providers or
11 treatment conditions without first notifying the prosecutor, the
12 probation counselor, and the court, and shall not change providers
13 without court approval after a hearing if the prosecutor or probation
14 counselor object to the change;

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

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

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

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

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

26 (viii) Comply with the conditions of any court-ordered probation
27 bond.

28 The sex offender treatment provider shall submit quarterly reports
29 on the respondent's progress in treatment to the court and the parties.
30 The reports shall reference the treatment plan and include at a minimum
31 the following: Dates of attendance, respondent's compliance with
32 requirements, treatment activities, the respondent's relative progress
33 in treatment, and any other material specified by the court at the time
34 of the disposition.

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

37 Except as provided in this subsection (5), after July 1, 1991,
38 examinations and treatment ordered pursuant to this subsection shall
39 only be conducted by sex offender treatment providers certified by the

1 department of health pursuant to chapter 18.155 RCW. A sex offender
2 therapist who examines or treats a juvenile sex offender pursuant to
3 this subsection does not have to be certified by the department of
4 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
5 offender has already moved to another state or plans to move to another
6 state for reasons other than circumventing the certification
7 requirements; (B) no certified providers are available for treatment
8 within a reasonable geographical distance of the offender's home; and
9 (C) the evaluation and treatment plan comply with this subsection (5)
10 and the rules adopted by the department of health.

11 If the offender violates any condition of the disposition or the
12 court finds that the respondent is failing to make satisfactory
13 progress in treatment, the court may revoke the suspension and order
14 execution of the disposition or the court may impose a penalty of up to
15 thirty days' confinement for violating conditions of the disposition.
16 The court may order both execution of the disposition and up to thirty
17 days' confinement for the violation of the conditions of the
18 disposition. The court shall give credit for any confinement time
19 previously served if that confinement was for the offense for which the
20 suspension is being revoked.

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

26 (6) RCW 13.40.193 shall govern the disposition of any juvenile
27 adjudicated of possessing a firearm in violation of RCW
28 9.41.040(1)((+e))(b)(iv) or any crime in which a special finding is
29 entered that the juvenile was armed with a firearm.

30 (7) Whenever a juvenile offender is entitled to credit for time
31 spent in detention prior to a dispositional order, the dispositional
32 order shall specifically state the number of days of credit for time
33 served.

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

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

1 NEW SECTION. **Sec. 31.** A new section is added to chapter 13.40 RCW
2 to read as follows:

3 When the court finds a manifest injustice, imposes a sentence of
4 confinement exceeding thirty days, and sets the maximum term, the
5 department shall determine the range subject to the following
6 limitations:

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

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

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

16 NEW SECTION. **Sec. 32.** A new section is added to chapter 13.40 RCW
17 to read as follows:

18 (1) When a middle offender with one hundred ten points or more is
19 found to have committed an offense that is not a violent or sex
20 offense, the court, on its own motion or the motion of the state or the
21 respondent if the evidence shows that the offender may be chemically
22 dependent, may order an examination by a chemical dependency counselor
23 from a chemical dependency treatment facility approved under chapter
24 70.96A RCW to determine if the youth is chemically dependent and
25 amenable to treatment.

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

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

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

38 (b) Availability of appropriate treatment;

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

4 (d) Anticipated length of treatment;

5 (e) Recommended crime-related prohibitions; and

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

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

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

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

33 (6) The drug/alcohol treatment provider shall submit monthly
34 reports on the respondent's progress in treatment to the court and the
35 parties. The reports shall reference the treatment plan and include at
36 a minimum the following: Dates of attendance, respondent's compliance
37 with requirements, treatment activities, the respondent's relative
38 progress in treatment, and any other material specified by the court at
39 the time of the disposition.

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

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

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

12 (8) Whenever a juvenile offender is entitled to credit for time
13 spent in detention prior to a dispositional order, the dispositional
14 order shall specifically state the number of days of credit for time
15 served.

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

19 **Sec. 33.** RCW 13.40.190 and 1995 c 33 s 5 are each amended to read
20 as follows:

21 (1) In its dispositional order, the court shall require the
22 respondent to make restitution to any persons who have suffered loss or
23 damage as a result of the offense committed by the respondent. In
24 addition, restitution may be ordered for loss or damage if the offender
25 pleads guilty to a lesser offense or fewer offenses and agrees with the
26 prosecutor's recommendation that the offender be required to pay
27 restitution to a victim of an offense or offenses (~~which, pursuant~~
28 ~~to~~) that, under a plea agreement, are not prosecuted. The payment of
29 restitution shall be in addition to any punishment (~~which~~) that is
30 imposed (~~pursuant to~~) under the other provisions of this chapter.
31 The court may determine the amount, terms, and conditions of the
32 restitution including a payment plan extending up to ten years if the
33 court determines that the respondent does not have the means to make
34 full restitution over a shorter period. Restitution may include the
35 costs of counseling reasonably related to the offense. If the
36 respondent participated in the crime with another person or other
37 persons, all (~~such~~) the participants (~~shall be~~) are jointly and
38 severally responsible for the payment of restitution. For the purposes

1 of this section, the respondent shall remain under the court's
2 jurisdiction for a maximum term of ten years after the respondent's
3 eighteenth birthday. The court may not require the respondent to pay
4 full or partial restitution if the respondent reasonably satisfies the
5 court that he or she does not have the means to make full or partial
6 restitution and could not reasonably acquire the means to pay ((such))
7 the restitution over a ten-year period. In cases where an offender has
8 been committed to the department for a period of confinement exceeding
9 fifteen weeks, restitution may be waived. In all cases, the court must
10 indicate the full amount of restitution due, and the amount, if any,
11 the respondent is required to pay.

12 (2) Regardless of the provisions of subsection (1) of this section,
13 the court shall order restitution in all cases where the victim is
14 entitled to benefits under the crime victims' compensation act, chapter
15 7.68 RCW. If the court does not order restitution and the victim of
16 the crime has been determined to be entitled to benefits under the
17 crime victims' compensation act, the department of labor and
18 industries, as administrator of the crime victims' compensation
19 program, may petition the court within one year of entry of the
20 disposition order for entry of a restitution order. Upon receipt of a
21 petition from the department of labor and industries, the court shall
22 hold a restitution hearing and shall enter a restitution order.

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

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

29 **Sec. 34.** RCW 13.40.210 and 1994 sp.s. c 77 s 527 are each amended
30 to read as follows:

31 ~~(1) ((The secretary shall, except in the case of a juvenile~~
32 ~~committed by a court to a term of confinement in a state institution~~
33 ~~outside the appropriate standard range for the offense(s) for which the~~
34 ~~juvenile was found to be guilty established pursuant to RCW 13.40.030,~~
35 ~~set a release or discharge date for each juvenile committed to its~~
36 ~~custody. The release or discharge date shall be within the prescribed~~
37 ~~range to which a juvenile has been committed except as provided in RCW~~
38 ~~13.40.320 concerning offenders the department determines are eligible~~

1 ~~for the juvenile offender basic training camp program. Such dates~~
2 ~~shall be determined prior to the expiration of sixty percent of a~~
3 ~~juvenile's minimum term of confinement included within the prescribed~~
4 ~~range to which the juvenile has been committed.)) (a) When a juvenile~~
5 is committed to a term of confinement in a state institution, the
6 secretary shall review the sentencing court's finding of the
7 rehabilitative goals to be achieved by the juvenile during the term of
8 confinement. The department shall provide rehabilitative resources,
9 including but not limited to education, vocational training, substance
10 abuse treatment, and counseling, to permit the juvenile to achieve
11 these rehabilitative goals.

12 (b) After expiration of no more than sixty percent of the
13 juvenile's commitment range, the department shall provide a report
14 containing an evaluation of the juvenile's behavior and performance
15 during commitment. This report shall specifically describe the
16 juvenile's progress toward achieving the designated rehabilitative
17 goals.

18 (c) The department shall provide this report to the committing
19 court. The court, after considering the department's report, shall
20 determine a release or discharge date for the juvenile, which date
21 shall fall on or before expiration of the original term of commitment.
22 If a substantial change in the juvenile's behavior occurs after the
23 setting of the release or discharge date, the department may submit an
24 updated report to the committing court. The committing court may
25 change the release or discharge date based upon the updated report.
26 Nothing in this subsection requires the court to hold a hearing in
27 setting the release or discharge date.

28 (d) Nothing in this section entitles a juvenile to release prior to
29 the expiration of the term of confinement imposed by the court.

30 (e) The department shall establish by rule standards of good
31 behavior, good performance, and progress toward rehabilitative goals.

32 (f) After the court determines a release date, the court shall
33 notify the secretary by mail, and the secretary shall release any
34 juvenile committed to the custody of the department within four
35 calendar days prior to the juvenile's release date or on the release
36 date set under this chapter. Days spent in the custody of the
37 department shall be tolled by any period of time during which a
38 juvenile has absented himself or herself from the department's

1 supervision without the prior approval of the secretary or the
2 secretary's designee.

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

23 (3) Following the juvenile's release under subsection (1) of this
24 section, the secretary may require the juvenile to comply with a
25 program of parole to be administered by the department in his or her
26 community which shall last no longer than eighteen months, except that
27 in the case of a juvenile sentenced for rape in the first or second
28 degree, rape of a child in the first or second degree, child
29 molestation in the first degree, or indecent liberties with forcible
30 compulsion, the period of parole shall be twenty-four months and, in
31 the discretion of the secretary, may be up to thirty-six months when
32 the secretary believes that an additional period of parole is necessary
33 and appropriate in the interests of public safety or to meet the
34 ongoing needs of the juvenile. A parole program is mandatory for
35 offenders released under subsection (2) of this section. The secretary
36 shall, for the period of parole, facilitate the juvenile's
37 reintegration into his or her community and to further this goal shall
38 require the juvenile to refrain from possessing a firearm or using a
39 deadly weapon and refrain from committing new offenses and may require

1 the juvenile to: (a) Undergo available medical ~~((or))~~, psychiatric
2 ~~((treatment))~~, drug and alcohol, mental health, and other offense-
3 related treatment services; (b) report as directed to a parole officer
4 and/or designee; (c) pursue a course of study ~~((or))~~, vocational
5 training, or employment; ~~((and))~~ (d) notify the parole officer of the
6 current address where he or she resides; (e) be present at a particular
7 address during specified hours; (f) remain within prescribed
8 geographical boundaries ~~((and notify the department of any change in~~
9 ~~his or her address))~~; (g) submit to electronic monitoring; (h) refrain
10 from using illegal drugs and alcohol, and submit to random urinalysis
11 when requested by the assigned parole officer; and (i) refrain from
12 contact with specific individuals or a specified class of individuals.
13 After termination of the parole period, the juvenile shall be
14 discharged from the department's supervision.

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

37 (b) If the department finds that any juvenile in a program of
38 parole has possessed a firearm or used a deadly weapon during the
39 program of parole, the department shall modify the parole under (a) of

1 this subsection and confine the juvenile for at least thirty days.
2 Confinement shall be in a facility operated by or pursuant to a
3 contract with the state or any county.

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

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

11 **Sec. 35.** RCW 13.50.010 and 1994 sp.s. c 7 s 541 are each amended
12 to read as follows:

13 (1) For purposes of this chapter:

14 (a) "Juvenile justice or care agency" means any of the following:
15 Police, diversion units, court, prosecuting attorney, defense attorney,
16 detention center, attorney general, the department of social and health
17 services and its contracting agencies, schools; and, in addition,
18 persons or public or private agencies having children committed to
19 their custody;

20 (b) "Official juvenile court file" means the legal file of the
21 juvenile court containing the petition or information, motions,
22 memorandums, briefs, findings of the court, and court orders;

23 (c) "Social file" means the juvenile court file containing the
24 records and reports of the probation counselor;

25 (d) "Records" means the official juvenile court file, the social
26 file, and records of any other juvenile justice or care agency in the
27 case.

28 (2) Each petition or information filed with the court may include
29 only one juvenile and each petition or information shall be filed under
30 a separate docket number. The social file shall be filed separately
31 from the official juvenile court file.

32 (3) It is the duty of any juvenile justice or care agency to
33 maintain accurate records. To this end:

34 (a) The agency may never knowingly record inaccurate information.
35 Any information in records maintained by the department of social and
36 health services relating to a petition filed pursuant to chapter 13.34
37 RCW that is found by the court, upon proof presented, to be false or

1 inaccurate shall be corrected or expunged from such records by the
2 agency;

3 (b) An agency shall take reasonable steps to assure the security of
4 its records and prevent tampering with them; and

5 (c) An agency shall make reasonable efforts to insure the
6 completeness of its records, including action taken by other agencies
7 with respect to matters in its files.

8 (4) Each juvenile justice or care agency shall implement procedures
9 consistent with the provisions of this chapter to facilitate inquiries
10 concerning records.

11 (5) Any person who has reasonable cause to believe information
12 concerning that person is included in the records of a juvenile justice
13 or care agency and who has been denied access to those records by the
14 agency may make a motion to the court for an order authorizing that
15 person to inspect the juvenile justice or care agency record concerning
16 that person. The court shall grant the motion to examine records
17 unless it finds that in the interests of justice or in the best
18 interests of the juvenile the records or parts of them should remain
19 confidential.

20 (6) A juvenile, or his or her parents, or any person who has
21 reasonable cause to believe information concerning that person is
22 included in the records of a juvenile justice or care agency may make
23 a motion to the court challenging the accuracy of any information
24 concerning the moving party in the record or challenging the continued
25 possession of the record by the agency. If the court grants the
26 motion, it shall order the record or information to be corrected or
27 destroyed.

28 (7) The person making a motion under subsection (5) or (6) of this
29 section shall give reasonable notice of the motion to all parties to
30 the original action and to any agency whose records will be affected by
31 the motion.

32 (8) The court may permit inspection of records by, or release of
33 information to, any clinic, hospital, or agency which has the subject
34 person under care or treatment. The court may also permit inspection
35 by or release to individuals or agencies, including juvenile justice
36 advisory committees of county law and justice councils, engaged in
37 legitimate research for educational, scientific, or public purposes.
38 The court may also permit inspection of, or release of information
39 from, records which have been sealed pursuant to RCW 13.50.050(11).

1 The court shall release to the sentencing guidelines commission records
2 needed for its research and data-gathering functions under RCW
3 9.94A.040, 13.40.027, 13.40.030, and other statutes. Access to records
4 or information for research purposes shall be permitted only if the
5 anonymity of all persons mentioned in the records or information will
6 be preserved. Each person granted permission to inspect juvenile
7 justice or care agency records for research purposes shall present a
8 notarized statement to the court stating that the names of juveniles
9 and parents will remain confidential.

10 (9) Juvenile detention facilities shall release records to the
11 juvenile disposition standards commission under RCW 13.40.025 upon
12 request. The commission shall not disclose the names of any juveniles
13 or parents mentioned in the records without the named individual's
14 written permission.

15 **Sec. 36.** RCW 13.50.050 and 1992 c 188 s 7 are each amended to read
16 as follows:

17 (1) This section governs records relating to the commission of
18 juvenile offenses, including records relating to diversions.

19 (2) The official juvenile court file of any alleged or proven
20 juvenile offender shall be open to public inspection, unless sealed
21 pursuant to subsection (11) of this section.

22 (3) All records other than the official juvenile court file are
23 confidential and may be released only as provided in this section, RCW
24 13.50.010, 13.40.215, and 4.24.550.

25 (4) Except as otherwise provided in this section and RCW 13.50.010,
26 records retained or produced by any juvenile justice or care agency may
27 be released to other participants in the juvenile justice or care
28 system only when an investigation or case involving the juvenile in
29 question is being pursued by the other participant or when that other
30 participant is assigned the responsibility for supervising the
31 juvenile.

32 (5) Except as provided in RCW 4.24.550, information not in an
33 official juvenile court file concerning a juvenile or a juvenile's
34 family may be released to the public only when that information could
35 not reasonably be expected to identify the juvenile or the juvenile's
36 family.

37 (6) Notwithstanding any other provision of this chapter, the
38 release, to the juvenile or his or her attorney, of law enforcement and

1 prosecuting attorneys' records pertaining to investigation, diversion,
2 and prosecution of juvenile offenses shall be governed by the rules of
3 discovery and other rules of law applicable in adult criminal
4 investigations and prosecutions.

5 (7) The juvenile court and the prosecutor may set up and maintain
6 a central record-keeping system which may receive information on all
7 alleged juvenile offenders against whom a complaint has been filed
8 pursuant to RCW 13.40.070 whether or not their cases are currently
9 pending before the court. The central record-keeping system may be
10 computerized. If a complaint has been referred to a diversion unit,
11 the diversion unit shall promptly report to the juvenile court or the
12 prosecuting attorney when the juvenile has agreed to diversion. An
13 offense shall not be reported as criminal history in any central
14 record-keeping system without notification by the diversion unit of the
15 date on which the offender agreed to diversion.

16 (8) Upon request of the victim of a crime or the victim's immediate
17 family, the identity of an alleged or proven juvenile offender alleged
18 or found to have committed a crime against the victim and the identity
19 of the alleged or proven juvenile offender's parent, guardian, or
20 custodian and the circumstance of the alleged or proven crime shall be
21 released to the victim of the crime or the victim's immediate family.

22 (9) Subject to the rules of discovery applicable in adult criminal
23 prosecutions, the juvenile offense records of an adult criminal
24 defendant or witness in an adult criminal proceeding shall be released
25 upon request to prosecution and defense counsel after a charge has
26 actually been filed. The juvenile offense records of any adult
27 convicted of a crime and placed under the supervision of the adult
28 corrections system shall be released upon request to the adult
29 corrections system.

30 (10) In any case in which an information has been filed pursuant to
31 RCW 13.40.100 or a complaint has been filed with the prosecutor and
32 referred for diversion pursuant to RCW 13.40.070, the person the
33 subject of the information or complaint may file a motion with the
34 court to have the court vacate its order and findings, if any, and,
35 subject to subsection (24) of this section, order the sealing of the
36 official juvenile court file, the social file, and records of the court
37 and of any other agency in the case.

38 (11) The court shall grant the motion to seal records made pursuant
39 to subsection (10) of this section if it finds that:

1 (a) Two years have elapsed from the later of: (i) Final discharge
2 of the person from the supervision of any agency charged with
3 supervising juvenile offenders; or (ii) from the entry of a court order
4 relating to the commission of a juvenile offense or a criminal offense;

5 (b) No proceeding is pending against the moving party seeking the
6 conviction of a juvenile offense or a criminal offense; and

7 (c) No proceeding is pending seeking the formation of a diversion
8 agreement with that person.

9 (12) The person making a motion pursuant to subsection (10) of this
10 section shall give reasonable notice of the motion to the prosecution
11 and to any person or agency whose files are sought to be sealed.

12 (13) If the court grants the motion to seal made pursuant to
13 subsection (10) of this section, it shall, subject to subsection (24)
14 of this section, order sealed the official juvenile court file, the
15 social file, and other records relating to the case as are named in the
16 order. Thereafter, the proceedings in the case shall be treated as if
17 they never occurred, and the subject of the records may reply
18 accordingly to any inquiry about the events, records of which are
19 sealed. Any agency shall reply to any inquiry concerning confidential
20 or sealed records that records are confidential, and no information can
21 be given about the existence or nonexistence of records concerning an
22 individual.

23 (14) Inspection of the files and records included in the order to
24 seal may thereafter be permitted only by order of the court upon motion
25 made by the person who is the subject of the information or complaint,
26 except as otherwise provided in RCW 13.50.010(8) and subsection (24) of
27 this section.

28 (15) Any adjudication of a juvenile offense or a crime subsequent
29 to sealing has the effect of nullifying the sealing order. Any
30 conviction for any adult felony subsequent to the sealing has the
31 effect of nullifying the sealing order for the purposes of chapter
32 9.94A RCW for any juvenile adjudication of guilt for a class A offense,
33 a violent offense, or a sex offense as defined in RCW 9.94A.030.

34 (16) In any case in which an information has been filed pursuant to
35 RCW 13.40.100 or a complaint has been filed with the prosecutor and
36 referred for diversion pursuant to RCW 13.40.070, the person who is the
37 subject of the information or complaint may file a motion with the
38 court to have the court vacate its order and findings, if any, and,
39 subject to subsection (24) of this section, order the destruction of

1 the official juvenile court file, the social file, and records of the
2 court and of any other agency in the case.

3 (17) The court may grant the motion to destroy records made
4 pursuant to subsection (16) of this section if it finds:

5 (a) The person making the motion is at least twenty-three years of
6 age;

7 (b) The person has not subsequently been convicted of a felony;

8 (c) No proceeding is pending against that person seeking the
9 conviction of a criminal offense; and

10 (d) The person has never been found guilty of a serious offense.

11 (18) A person eighteen years of age or older whose criminal history
12 consists of only one referral for diversion may request that the court
13 order the records in that case destroyed. The request shall be
14 granted, subject to subsection (24) of this section, if the court finds
15 that two years have elapsed since completion of the diversion
16 agreement.

17 (19) If the court grants the motion to destroy records made
18 pursuant to subsection (16) or (18) of this section, it shall, subject
19 to subsection (24) of this section, order the official juvenile court
20 file, the social file, and any other records named in the order to be
21 destroyed.

22 (20) The person making the motion pursuant to subsection (16) or
23 (18) of this section shall give reasonable notice of the motion to the
24 prosecuting attorney and to any agency whose records are sought to be
25 destroyed.

26 (21) Any juvenile to whom the provisions of this section may apply
27 shall be given written notice of his or her rights under this section
28 at the time of his or her disposition hearing or during the diversion
29 process.

30 (22) Nothing in this section may be construed to prevent a crime
31 victim or a member of the victim's family from divulging the identity
32 of the alleged or proven juvenile offender or his or her family when
33 necessary in a civil proceeding.

34 (23) Any juvenile justice or care agency may, subject to the
35 limitations in subsection (24) of this section and subparagraphs (a)
36 and (b) of this subsection, develop procedures for the routine
37 destruction of records relating to juvenile offenses and diversions.

38 (a) Records may be routinely destroyed only when the person the
39 subject of the information or complaint has attained twenty-three years

1 of age or older, or is eighteen years of age or older and his or her
2 criminal history consists entirely of one diversion agreement and two
3 years have passed since completion of the agreement.

4 (b) The court may not routinely destroy the official juvenile court
5 file or recordings or transcripts of any proceedings.

6 (24) No identifying information held by the Washington state patrol
7 in accordance with chapter 43.43 RCW is subject to destruction or
8 sealing under this section. For the purposes of this subsection,
9 identifying information includes photographs, fingerprints, palmprints,
10 soleprints, toeprints and any other data that identifies a person by
11 physical characteristics, name, birthdate or address, but does not
12 include information regarding criminal activity, arrest, charging,
13 diversion, conviction or other information about a person's treatment
14 by the criminal justice system or about the person's behavior.

15 (25) Information identifying child victims under age eighteen who
16 are victims of sexual assaults by juvenile offenders is confidential
17 and not subject to release to the press or public without the
18 permission of the child victim or the child's legal guardian.
19 Identifying information includes the child victim's name, addresses,
20 location, photographs, and in cases in which the child victim is a
21 relative of the alleged perpetrator, identification of the relationship
22 between the child and the alleged perpetrator. Information identifying
23 a child victim of sexual assault may be released to law enforcement,
24 prosecutors, judges, defense attorneys, or private or governmental
25 agencies that provide services to the child victim of sexual assault.

26 NEW SECTION. **Sec. 37.** A new section is added to chapter 28A.225
27 RCW to read as follows:

28 References to juvenile court in this chapter mean, in addition to
29 the juvenile court of the superior court, courts of limited
30 jurisdiction that have acquired jurisdiction pursuant to RCW
31 13.04.030(1)(e)(iv) or section 9 of this act over juveniles who violate
32 the provisions of this chapter. If a court of limited jurisdiction has
33 jurisdiction over juveniles who violate this chapter, that court also
34 has jurisdiction over parents charged with violations of this chapter.

35 **Sec. 38.** RCW 35.20.030 and 1993 c 83 s 3 are each amended to read
36 as follows:

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

22 **Sec. 39.** RCW 72.09.300 and 1994 sp.s. c 7 s 542 are each amended
23 to read as follows:

24 (1) Every county legislative authority shall by resolution or
25 ordinance establish a local law and justice council. The county
26 legislative authority shall determine the size and composition of the
27 council, which shall include the county sheriff and a representative of
28 the municipal police departments within the county, the county
29 prosecutor and a representative of the municipal prosecutors within the
30 county, a representative of the city legislative authorities within the
31 county, a representative of the county's superior, juvenile, district,
32 and municipal courts, the county jail administrator, the county clerk,
33 the county risk manager, and the secretary of corrections. Officials
34 designated may appoint representatives.

35 (2) A combination of counties may establish a local law and justice
36 council by intergovernmental agreement. The agreement shall comply
37 with the requirements of this section.

1 (3) The local law and justice council shall develop a local law and
2 justice plan for the county. The council shall design the elements and
3 scope of the plan, subject to final approval by the county legislative
4 authority. The general intent of the plan shall include seeking means
5 to maximize local resources including personnel and facilities, reduce
6 duplication of services, and share resources between local and state
7 government in order to accomplish local efficiencies without
8 diminishing effectiveness. The plan shall also include a section on
9 jail management. This section may include the following elements:

10 (a) A description of current jail conditions, including whether the
11 jail is overcrowded;

12 (b) A description of potential alternatives to incarceration;

13 (c) A description of current jail resources;

14 (d) A description of the jail population as it presently exists and
15 how it is projected to change in the future;

16 (e) A description of projected future resource requirements;

17 (f) A proposed action plan, which shall include recommendations to
18 maximize resources, maximize the use of intermediate sanctions,
19 minimize overcrowding, avoid duplication of services, and effectively
20 manage the jail and the offender population;

21 (g) A list of proposed advisory jail standards and methods to
22 effect periodic quality assurance inspections of the jail;

23 (h) A proposed plan to collect, synthesize, and disseminate
24 technical information concerning local criminal justice activities,
25 facilities, and procedures;

26 (i) A description of existing and potential services for offenders
27 including employment services, substance abuse treatment, mental health
28 services, and housing referral services.

29 (4) The council may propose other elements of the plan, which shall
30 be subject to review and approval by the county legislative authority,
31 prior to their inclusion into the plan.

32 (5) The county legislative authority may request technical
33 assistance in developing or implementing the plan from other units or
34 agencies of state or local government, which shall include the
35 department, the office of financial management, and the Washington
36 association of sheriffs and police chiefs.

37 (6) Upon receiving a request for assistance from a county, the
38 department may provide the requested assistance.

1 (7) The secretary may adopt rules for the submittal, review, and
2 approval of all requests for assistance made to the department. The
3 secretary may also appoint an advisory committee of local and state
4 government officials to recommend policies and procedures relating to
5 the state and local correctional systems and to assist the department
6 in providing technical assistance to local governments. The committee
7 shall include representatives of the county sheriffs, the police
8 chiefs, the county prosecuting attorneys, the county and city
9 legislative authorities, and the jail administrators. The secretary
10 may contract with other state and local agencies and provide funding in
11 order to provide the assistance requested by counties.

12 (8) The department shall establish a base level of state
13 correctional services, which shall be determined and distributed in a
14 consistent manner state-wide. The department's contributions to any
15 local government, approved pursuant to this section, shall not operate
16 to reduce this base level of services.

17 (9) The council shall establish an advisory committee on juvenile
18 justice proportionality. The council shall appoint the county juvenile
19 court administrator and at least five citizens as advisory committee
20 members. The citizen advisory committee members shall be
21 representative of the county's ethnic and geographic diversity. The
22 advisory committee members shall serve two-year terms and may be
23 reappointed. The duties of the advisory committee include:

24 (a) Monitoring and reporting to the ((juvenile disposition
25 standards)) sentencing guidelines commission on the proportionality,
26 effectiveness, and cultural relevance of:

27 (i) The rehabilitative services offered by county and state
28 institutions to juvenile offenders; and

29 (ii) The rehabilitative services offered in conjunction with
30 diversions, deferred dispositions, community supervision, and parole;

31 (b) Reviewing citizen complaints regarding bias or
32 disproportionality in that county's juvenile justice system;

33 (c) By September 1 of each year, beginning with 1995, submit to the
34 ((juvenile disposition standards)) sentencing guidelines commission a
35 report summarizing the advisory committee's findings under (a) and (b)
36 of this subsection.

1 13.40.190, 13.40.210, 13.50.010, 13.50.050, 35.20.030, and 72.09.300;
2 amending 1995 c 269 s 3603 (uncodified); reenacting and amending RCW
3 9.94A.030, 9.94A.360, 13.04.030, and 13.40.020; adding a new section to
4 chapter 13.04 RCW; adding new sections to chapter 13.40 RCW; adding a
5 new section to chapter 28A.225 RCW; creating new sections; prescribing
6 penalties; providing effective dates; providing an expiration date; and
7 declaring an emergency."

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