

SECOND SUBSTITUTE SENATE BILL 5491

State of Washington 54th Legislature 1995 Regular Session

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

Read first time 03/06/95.

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

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

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

SCHEDULE A

DESCRIPTION AND OFFENSE CATEGORY

11	JUVENILE	JUVENILE DISPOSITION
12	DISPOSITION	CATEGORY FOR ATTEMPT,
13	OFFENSE	BAILJUMP, CONSPIRACY,
14	CATEGORY DESCRIPTION (RCW CITATION)	OR SOLICITATION
15	

Arson and Malicious Mischief

17	A	Arson 1 (9A.48.020)	B+
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1	B	Arson 2 (9A.48.030)	C
2	C	Reckless Burning 1 (9A.48.040)	D
3	D	Reckless Burning 2 (9A.48.050)	E
4	B	Malicious Mischief 1 (9A.48.070)	C
5	C	Malicious Mischief 2 (9A.48.080)	D
6	D	Malicious Mischief 3 (<\$50 is	
7		E class) (9A.48.090)	E
8	E	Tampering with Fire Alarm	
9		Apparatus (9.40.100)	E
10	A	Possession of Incendiary Device	
11		(9.40.120)	B+
12		Assault and Other Crimes	
13		Involving Physical Harm	
14	A	Assault 1 (9A.36.011)	B+
15	B+	Assault 2 (9A.36.021)	C+
16	C+	Assault 3 (9A.36.031)	D+
17	D+	Assault 4 (9A.36.041)	E
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	B	Burglary 2 (9A.52.030)	C
27	D	Burglary Tools (Possession of)	
28		(9A.52.060)	E
29	D	Criminal Trespass 1 (9A.52.070)	E
30	E	Criminal Trespass 2 (9A.52.080)	E
31	D	Vehicle Prowling (9A.52.100)	E
32		Drugs	
33	E	Possession/Consumption of Alcohol	
34		(66.44.270)	E
35	C	Illegally Obtaining Legend Drug	
36		(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))	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 Public Servant	
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)</u>	<u>D</u>
23	<u>D</u>	<u>Failure to Register</u>	
24		<u>(For Class B Felony or Less)</u>	<u>E</u>
25		Theft, Robbery, Extortion, and Forgery	
26	B	Theft 1 (9A.56.030)	C
27	C	Theft 2 (9A.56.040)	D
28	D	Theft 3 (9A.56.050)	E
29	B	Theft of Livestock (9A.56.080)	C
30	C	Forgery (9A.60.020)	D
31	A	Robbery 1 (9A.56.200)	B+
32	B+	Robbery 2 (9A.56.210)	C+
33	B+	Extortion 1 (9A.56.120)	C+
34	C+	Extortion 2 (9A.56.130)	D+
35	B	Possession of Stolen Property 1	
36		(9A.56.150)	C
37	C	Possession of Stolen Property 2	
38		(9A.56.160)	D

1	D	Possession of Stolen Property 3	
2		(9A.56.170)	E
3	C	Taking Motor Vehicle Without	
4		Owner's Permission (9A.56.070)	D
5		Motor Vehicle Related Crimes	
6	E	Driving Without a License	
7		(46.20.021)	E
8	C	Hit and Run - Injury	
9		(46.52.020(4))	D
10	D	Hit and Run-Attended	
11		(46.52.020(5))	E
12	E	Hit and Run-Unattended	
13		(46.52.010)	E
14	C	Vehicular Assault (46.61.522)	D
15	C	Attempting to Elude Pursuing	
16		Police Vehicle (46.61.024)	D
17	E	Reckless Driving (46.61.500)	E
18	D	Driving While Under the Influence	
19		(46.61.515)	E
20	D	Vehicle Prowling (9A.52.100)	E
21	C	Taking Motor Vehicle Without	
22		Owner's Permission (9A.56.070)	D
23		Other	
24	B	Bomb Threat (9.61.160)	C
25	C	Escape 1((3))_ (9A.76.110)	C
26	C	Escape 2((3))_ (9A.76.120)	C
27	D	Escape 3 (9A.76.130)	E
28	C	Failure to Appear in Court	
29		(10.19.130)	D
30	<u>C</u>	<u>Stalking (Repeat)</u>	<u>D</u>
31	<u>D</u>	<u>Stalking (1st Time)</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 (13.40.200)((3))	V

10 ¹Rape of a Child 1 requires a mandatory minimum sentence of 52-65 weeks
11 confinement

12 ²Child Molestation 1 requires a mandatory minimum sentence of 21-28
13 weeks confinement

14 ¶ 1\ _Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C
15 offenses and the standard range is established as follows:

16 1st escape or attempted escape during 12-month period - 4 weeks
17 confinement

18 2nd escape or attempted escape during 12-month period - 8 weeks
19 confinement

20 3rd and subsequent escape or attempted escape during 12-month
21 period - 12 weeks confinement

22 ¶ 1\ _If the court finds that a respondent has violated terms of an
23 order, it may impose a penalty of up to 30 days of confinement.

24 **SCHEDULE B**

25 **PRIOR OFFENSE INCREASE FACTOR**

26 For use with all CURRENT OFFENSES occurring on or after July 1,
27 1989.

28 **TIME SPAN**

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

1	C+	.6	.3	.2
2	C	.5	.2	.2
3	D+	.3	.2	.1
4	D	.2	.1	.1
5	E	.1	.1	.1

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

10 **SCHEDULE C**
11 **CURRENT OFFENSE POINTS**

12 For use with all CURRENT OFFENSES occurring on or after July 1,
13 1989.

14 **AGE**

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

28 **JUVENILE SENTENCING STANDARDS**
29 **SCHEDULE D-1**

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

33 **MINOR/FIRST OFFENDER**

34 **OPTION A**
35 **STANDARD RANGE**

36 Community
37 Community Service

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

~~((OR~~

~~OPTION B~~

~~STATUTORY OPTION~~

~~0-12 Months Community Supervision~~

~~0-150 Hours Community Service~~

~~0-100 Fine~~

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

~~OR~~

~~OPTION ((C) B~~

~~MANIFEST INJUSTICE~~

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

1
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	Community Supervision	Community 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>
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

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

29 Middle offenders with more than 110 points do not have to be committed.
30 They may be assigned community supervision under option B.

31 All A+ offenses 180-224 weeks

32 OR

34 OPTION B

35 STATUTORY OPTION

- 36 0-12 Months Community Supervision
- 37 0-150 Hours Community Service
- 38 0-100 Fine

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

5 **OR**

6
7 **OPTION C**
8 **MANIFEST INJUSTICE**

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

13 **JUVENILE SENTENCING STANDARDS**
14 **SCHEDULE D-3**

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

18 **SERIOUS OFFENDER**
19 **OPTION A**
20 **STANDARD RANGE**

	Points	Institution Time
22	
23	0-129	8-12 weeks
24	130-149	13-16 weeks
25	150-199	21-28 weeks
26	200-249	30-40 weeks
27	250-299	52-65 weeks
28	300-374	80-100 weeks
29	375+	103-129 weeks
30	All A+ Offenses	180-224 weeks

31 **OR**

32

1 recognizance pending further hearing unless the court finds detention
2 is necessary under RCW 13.40.040 as now or hereafter amended.

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

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

9 (b) Place restrictions on the travel of the juvenile during the
10 period of release;

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

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

15 (e) Require that the juvenile return to detention during specified
16 hours.

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 person notified as provided in this section fails
22 without reasonable cause to appear, the person may be found in contempt
23 of court, pursuant to chapter 7.21 RCW.

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

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

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

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

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

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

9 (6) If the respondent is found guilty the court may immediately
10 proceed to disposition or may continue the case for a dispositional
11 hearing. Notice of the time and place of the continued hearing may be
12 given in open court. If notice is not given in open court to a party,
13 the party and the parent, guardian, or custodian shall be notified by
14 mail of the time and place of the continued hearings. The notice shall
15 command the parent, guardian, or custodian to attend the hearing.

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

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

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

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

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

31 (1) A husband shall not be examined for or against his wife,
32 without the consent of the wife, nor a wife for or against her husband
33 without the consent of the husband; nor can either during marriage or
34 afterward, be without the consent of the other, examined as to any
35 communication made by one to the other during marriage. But this
36 exception shall not apply to a civil action or proceeding by one
37 against the other, nor to a criminal action or proceeding for a crime
38 committed by one against the other, nor to a criminal action or

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

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

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

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

23 (~~(4)~~) (5) Subject to the limitations under RCW 70.96A.140 or
24 71.05.250, a physician or surgeon or osteopathic physician or surgeon
25 shall not, without the consent of his or her patient, be examined in a
26 civil action as to any information acquired in attending such patient,
27 which was necessary to enable him or her to prescribe or act for the
28 patient, except as follows:

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

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

37 (~~(5)~~) (6) A public officer shall not be examined as a witness as
38 to communications made to him or her in official confidence, when the
39 public interest would suffer by the disclosure.

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

3 (1) A diversion agreement shall be a contract between a juvenile
4 accused of an offense and a diversionary unit whereby the juvenile
5 agrees to fulfill certain conditions in lieu of prosecution. Such
6 agreements may be entered into only after the prosecutor, or probation
7 counselor pursuant to this chapter, has determined that probable cause
8 exists to believe that a crime has been committed and that the juvenile
9 committed it. Such agreements shall be entered into as expeditiously
10 as possible.

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

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

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

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

31 (d) A fine, not to exceed one hundred dollars. In determining the
32 amount of the fine, the diversion unit shall consider only the
33 juvenile's financial resources and whether the juvenile has the means
34 to pay the fine. The diversion unit shall not consider the financial
35 resources of the juvenile's parents, guardian, or custodian in
36 determining the fine to be imposed; ~~((and))~~

37 (e) Requirements to remain during specified hours at home, school,
38 or work, and restrictions on leaving or entering specified geographical
39 areas; and

1 (f) Participation in adult mentoring programs and community
2 monitoring programs.

3 (3) In assessing periods of community service to be performed and
4 restitution to be paid by a juvenile who has entered into a diversion
5 agreement, the court officer to whom this task is assigned shall
6 consult with the juvenile's custodial parent or parents or guardian and
7 victims who have contacted the diversionary unit and, to the extent
8 possible, involve members of the community. Such members of the
9 community shall meet with the juvenile and advise the court officer as
10 to the terms of the diversion agreement and shall supervise the
11 juvenile in carrying out its terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) The fact that a charge or charges were made;
- 2 (b) The fact that a diversion agreement was entered into;
- 3 (c) The juvenile's obligations under such agreement;
- 4 (d) Whether the alleged offender performed his or her obligations
- 5 under such agreement; and
- 6 (e) The facts of the alleged offense.

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

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

1 (14) A diversion unit may supervise the fulfillment of a diversion
2 agreement entered into before the juvenile's eighteenth birthday and
3 which includes a period extending beyond the divertee's eighteenth
4 birthday.

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

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

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

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

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

33 (a) Protect the citizenry from criminal behavior;

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

36 (c) Make the juvenile offender accountable for his or her criminal
37 behavior;

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

3 (e) Provide due process for juveniles alleged to have committed an
4 offense;

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

7 (g) Provide necessary treatment, supervision, and custody for
8 juvenile offenders;

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

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

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

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

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

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

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

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

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

36 (2) The commission shall be composed of the secretary or the
37 secretary's designee, the director of financial management or the

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

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

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

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

38 (6) The juvenile disposition standards commission shall ~~((meet at~~
39 ~~least once every three months))~~ cease to exist on June 30, 1997, and

1 its powers and duties shall be transferred to the sentencing guidelines
2 commission established under RCW 9.94A.040.

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

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

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

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

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

33 (1)(~~(a)~~) The juvenile disposition standards commission shall
34 recommend to the legislature no later than (~~November 1st of each~~
35 ~~year~~) December 1, 1995, disposition standards for all offenses. The
36 standards shall establish, in accordance with the purposes of this
37 chapter, ranges which may include terms of confinement and/or community

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

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

36 (2) In developing recommended disposition standards, the commission
37 shall emphasize confinement for violent and repeat offenders. The
38 commission shall also ensure increased judicial flexibility and
39 discretion, and emphasize alternatives to total confinement for

1 nonviolent, chemically dependent, or mentally ill offenders. The
2 commission's recommended disposition standards shall result in a
3 simplified sentencing system.

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

7 (a) Where 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 (b) Where 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;
13 (~~and~~)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (6) This commission shall conduct a study to determine the capacity
36 of correctional facilities and programs which are or will be available.
37 While the commission need not consider such capacity in arriving at its
38 recommendations, the commission shall project whether the
39 implementation of its recommendations would result in exceeding such

1 capacity. If the commission finds that this result would probably
2 occur, then the commission shall prepare an additional list of standard
3 sentences which shall be consistent with such capacity.

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

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

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

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

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

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

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

33 The commission shall be administered by an executive director, who
34 shall be appointed by, and serve at the pleasure of, the governor. The
35 (~~commission shall~~) executive director may appoint a research staff of
36 sufficient size and with sufficient resources to accomplish its duties.
37 The commission may request from the office of financial management, the
38 (~~board of prison terms and paroles~~) indeterminate sentence review

1 board, administrator for the courts, the department of corrections, and
2 the department of social and health services such data, information,
3 and data processing assistance as it may need to accomplish its duties,
4 and such services shall be provided without cost to the commission.
5 The commission shall adopt its own bylaws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) Availability of appropriate treatment;

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

35 (d) Anticipated length of treatment; and

36 (e) Recommended crime-related prohibitions.

37 (4) The court on its own motion may order, or on a motion by the
38 state shall order, a second examination regarding the offender's

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

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

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

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

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

1 progress in treatment, and any other material specified by the court at
2 the time of the disposition.

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

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

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

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

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

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

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

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

37 (3) The case and copies of all legal and social documents
38 pertaining thereto may in the discretion of the court be transferred to

1 the county in which the juvenile resides for supervision and
2 enforcement of the disposition order. The court of the receiving
3 county has jurisdiction to modify and enforce the disposition order.

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

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

10 RECOMMENDED PROSECUTING STANDARDS
11 FOR CHARGING AND PLEA DISPOSITIONS

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

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

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

25 GUIDELINES/COMMENTARY:

26 Examples

27 The following are examples of reasons not to prosecute which could
28 satisfy the standard.

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

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

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

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

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

3 (iv) The statute has not been recently reconsidered by the
4 legislature.

5 This reason is not to be construed as the basis for declining cases
6 because the law in question is unpopular or because it is difficult to
7 enforce.

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

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

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

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

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

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

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

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

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

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

30 (f) High Disproportionate Cost of Prosecution - It may be proper to
31 decline to charge where the cost of locating or transporting, or the
32 burden on, prosecution witnesses is highly disproportionate to the
33 importance of prosecuting the offense in question. The reason should
34 be limited to minor cases and should not be relied upon in serious
35 cases.

36 (g) Improper Motives of Complainant - It may be proper to decline
37 charges because the motives of the complainant are improper and
38 prosecution would serve no public purpose, would defeat the underlying

1 purpose of the law in question, or would result in decreased respect
2 for the law.

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

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

11 (i) Assault cases where the victim has suffered little or no
12 injury;

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

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

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

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

20 Notification

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

23 (2) Decision to prosecute.

24 STANDARD:

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

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

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

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

5 Selection of Charges/Degree of Charge

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

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

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

12 (2) The prosecutor should not overcharge to obtain a guilty plea.
13 Overcharging includes:

14 (a) Charging a higher degree;

15 (b) Charging additional counts.

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

22 The selection of charges and/or the degree of the charge shall not
23 be influenced by the race, gender, religion, or creed of the
24 respondent.

25 GUIDELINES/COMMENTARY:

26 Police Investigation

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

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

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

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

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

4 Exceptions

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

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

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

10 (3) The arrest of the suspect is necessary to complete the
11 investigation of the crime.

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

17 Investigation Techniques

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

20 (1) Polygraph testing;

21 (2) Hypnosis;

22 (3) Electronic surveillance;

23 (4) Use of informants.

24 Prefiling Discussions with Defendant

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

28 PLEA DISPOSITIONS:

29 Standard

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

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

38 (a) Evidentiary problems which make conviction of the original
39 charges doubtful;

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

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

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

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

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

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

11 (h) The probable effect of witnesses.

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

17 DISPOSITION RECOMMENDATIONS:

18 Standard

19 The prosecutor may reach an agreement regarding disposition
20 recommendations.

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

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

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

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

--- END ---