

2 2SSB 5520 - S AMD - 221  
3 By Senator Costa

4  
5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 13.40.0357 and 1998 c 290 s 5 are each amended to  
8 read as follows:

9 **DESCRIPTION AND OFFENSE CATEGORY**

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

15 **Arson and Malicious Mischief**

16	A	Arson 1 (9A.48.020)	B+
17	B	Arson 2 (9A.48.030)	C
18	C	Reckless Burning 1 (9A.48.040)	D
19	D	Reckless Burning 2 (9A.48.050)	E
20	B	Malicious Mischief 1 (9A.48.070)	C
21	C	Malicious Mischief 2 (9A.48.080)	D
22	D	Malicious Mischief 3 (<\$50 is	
23		E class) (9A.48.090)	E
24	E	Tampering with Fire Alarm	
25		Apparatus (9.40.100)	E
26	A	Possession of Incendiary Device	
27		(9.40.120)	B+

28 **Assault and Other Crimes**

29 **Involving Physical Harm**

30	A	Assault 1 (9A.36.011)	B+
31	B+	Assault 2 (9A.36.021)	C+
32	C+	Assault 3 (9A.36.031)	D+
33	D+	Assault 4 (9A.36.041)	E

1	B+	Drive-By Shooting	
2		(9A.36.045)	C+
3	D+	Reckless Endangerment	
4		(9A.36.050)	E
5	C+	Promoting Suicide Attempt	
6		(9A.36.060)	D+
7	D+	Coercion (9A.36.070)	E
8	C+	Custodial Assault (9A.36.100)	D+
9		<b>Burglary and Trespass</b>	
10	B+	Burglary 1 (9A.52.020)	C+
11	B	Residential Burglary	
12		(9A.52.025)	C
13	B	Burglary 2 (9A.52.030)	C
14	D	Burglary Tools (Possession of)	
15		(9A.52.060)	E
16	D	Criminal Trespass 1 (9A.52.070)	E
17	E	Criminal Trespass 2 (9A.52.080)	E
18	C	Vehicle Prowling 1 (9A.52.095)	D
19	D	Vehicle Prowling 2 (9A.52.100)	E
20		<b>Drugs</b>	
21	E	Possession/Consumption of Alcohol	
22		(66.44.270)	E
23	C	Illegally Obtaining Legend Drug	
24		(69.41.020)	D
25	C+	Sale, Delivery, Possession of Legend	
26		Drug with Intent to Sell	
27		(69.41.030)	D+
28	E	Possession of Legend Drug	
29		(69.41.030)	E
30	B+	Violation of Uniform Controlled	
31		Substances Act - Narcotic,	
32		Methamphetamine, or Flunitrazepam	
33		Sale (69.50.401(a)(1) (i) or (ii))	B+
34	C	Violation of Uniform Controlled	
35		Substances Act - Nonnarcotic Sale	
36		(69.50.401(a)(1)(iii))	C
37	E	Possession of Marihuana <40 grams	
38		(69.50.401(e))	E

1	C	Fraudulently Obtaining Controlled	
2		Substance (69.50.403)	C
3	C+	Sale of Controlled Substance	
4		for Profit (69.50.410)	C+
5	E	Unlawful Inhalation (9.47A.020)	E
6	B	Violation of Uniform Controlled	
7		Substances Act - Narcotic,	
8		Methamphetamine, or Flunitrazepam	
9		Counterfeit Substances	
10		(69.50.401(b)(1) (i) or (ii))	B
11	C	Violation of Uniform Controlled	
12		Substances Act - Nonnarcotic	
13		Counterfeit Substances	
14		(69.50.401(b)(1) (iii), (iv), (v))	C
15	C	Violation of Uniform Controlled	
16		Substances Act - Possession of a	
17		Controlled Substance	
18		(69.50.401(d))	C
19	C	Violation of Uniform Controlled	
20		Substances Act - Possession of a	
21		Controlled Substance	
22		(69.50.401(c))	C
23		<b>Firearms and Weapons</b>	
24	B	Theft of Firearm (9A.56.300)	C
25	B	Possession of Stolen Firearm	
26		(9A.56.310)	C
27	E	Carrying Loaded Pistol Without	
28		Permit (9.41.050)	E
29	C	Possession of Firearms by Minor (<18)	
30		(9.41.040(1)(b)(iii))	C
31	D+	Possession of Dangerous Weapon	
32		(9.41.250)	E
33	D	Intimidating Another Person by use	
34		of Weapon (9.41.270)	E
35		<b>Homicide</b>	
36	A+	Murder 1 (9A.32.030)	A
37	A+	Murder 2 (9A.32.050)	B+
38	B+	Manslaughter 1 (9A.32.060)	C+

1	C+	Manslaughter 2 (9A.32.070)	D+
2	B+	Vehicular Homicide (46.61.520)	C+
3		<b>Kidnapping</b>	
4	A	Kidnap 1 (9A.40.020)	B+
5	B+	Kidnap 2 (9A.40.030)	C+
6	C+	Unlawful Imprisonment	
7		(9A.40.040)	D+
8		<b>Obstructing Governmental Operation</b>	
9	D	Obstructing a Law Enforcement	
10		Officer (9A.76.020)	E
11	E	Resisting Arrest (9A.76.040)	E
12	B	Introducing Contraband 1	
13		(9A.76.140)	C
14	C	Introducing Contraband 2	
15		(9A.76.150)	D
16	E	Introducing Contraband 3	
17		(9A.76.160)	E
18	B+	Intimidating a Public Servant	
19		(9A.76.180)	C+
20	B+	Intimidating a Witness	
21		(9A.72.110)	C+
22		<b>Public Disturbance</b>	
23	C+	Riot with Weapon (9A.84.010)	D+
24	D+	Riot Without Weapon	
25		(9A.84.010)	E
26	E	Failure to Disperse (9A.84.020)	E
27	E	Disorderly Conduct (9A.84.030)	E
28		<b>Sex Crimes</b>	
29	A	Rape 1 (9A.44.040)	B+
30	A-	Rape 2 (9A.44.050)	B+
31	C+	Rape 3 (9A.44.060)	D+
32	A-	Rape of a Child 1 (9A.44.073)	B+
33	B+	Rape of a Child 2 (9A.44.076)	C+
34	B	Incest 1 (9A.64.020(1))	C
35	C	Incest 2 (9A.64.020(2))	D
36	D+	Indecent Exposure	
37		(Victim <14) (9A.88.010)	E

1	E	Indecent Exposure	
2		(Victim 14 or over) (9A.88.010)	E
3	B+	Promoting Prostitution 1	
4		(9A.88.070)	C+
5	C+	Promoting Prostitution 2	
6		(9A.88.080)	D+
7	E	O & A (Prostitution) (9A.88.030)	E
8	B+	Indecent Liberties (9A.44.100)	C+
9	A-	Child Molestation 1 (9A.44.083)	B+
10	B	Child Molestation 2 (9A.44.086)	C+
11		<b>Theft, Robbery, Extortion, and Forgery</b>	
12	B	Theft 1 (9A.56.030)	C
13	C	Theft 2 (9A.56.040)	D
14	D	Theft 3 (9A.56.050)	E
15	B	Theft of Livestock (9A.56.080)	C
16	C	Forgery (9A.60.020)	D
17	A	Robbery 1 (9A.56.200)	B+
18	B+	Robbery 2 (9A.56.210)	C+
19	B+	Extortion 1 (9A.56.120)	C+
20	C+	Extortion 2 (9A.56.130)	D+
21	B	Possession of Stolen Property 1	
22		(9A.56.150)	C
23	C	Possession of Stolen Property 2	
24		(9A.56.160)	D
25	D	Possession of Stolen Property 3	
26		(9A.56.170)	E
27	C	Taking Motor Vehicle Without	
28		Owner's Permission (9A.56.070)	D
29		<b>Motor Vehicle Related Crimes</b>	
30	E	Driving Without a License	
31		(46.20.005)	E
32	C	Hit and Run - Injury	
33		(46.52.020(4))	D
34	D	Hit and Run-Attended	
35		(46.52.020(5))	E
36	E	Hit and Run-Unattended	
37		(46.52.010)	E
38	C	Vehicular Assault (46.61.522)	D

1	C	Attempting to Elude Pursuing	
2		Police Vehicle (46.61.024)	D
3	E	Reckless Driving (46.61.500)	E
4	D	Driving While Under the Influence	
5		(46.61.502 and 46.61.504)	E
6		<b>Other</b>	
7	B	Bomb Threat (9.61.160)	C
8	C	Escape 1 (9A.76.110)	C
9	C	Escape 2 (9A.76.120)	C
10	D	Escape 3 (9A.76.130)	E
11	E	Obscene, Harassing, Etc.,	
12		Phone Calls (9.61.230)	E
13	A	Other Offense Equivalent to an	
14		Adult Class A Felony	B+
15	B	Other Offense Equivalent to an	
16		Adult Class B Felony	C
17	C	Other Offense Equivalent to an	
18		Adult Class C Felony	D
19	D	Other Offense Equivalent to an	
20		Adult Gross Misdemeanor	E
21	E	Other Offense Equivalent to an	
22		Adult Misdemeanor	E
23	V	Violation of Order of Restitution,	
24		Community Supervision, or	
25		Confinement (13.40.200)	V

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

28 1st escape or attempted escape during 12-month period - 4 weeks  
29 confinement

30 2nd escape or attempted escape during 12-month period - 8 weeks  
31 confinement

32 3rd and subsequent escape or attempted escape during 12-month  
33 period - 12 weeks confinement

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

**JUVENILE SENTENCING STANDARDS**

- 1
- 2 This schedule must be used for juvenile offenders. The court may
- 3 select sentencing option A, B, ~~((or))~~ C, or D.

**OPTION A**  
**JUVENILE OFFENDER SENTENCING GRID**  
**STANDARD RANGE**

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Current Offense Category		0	1	2	3	4 or more
A+		180 WEEKS TO AGE 21 YEARS				
A		103 WEEKS TO 129 WEEKS				
A-		15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
	B	LOCAL SANCTIONS (LS)	15-36 WEEKS	52-65 WEEKS		
	C+	LS	15-36 WEEKS			
	C	LS	Local Sanctions: 0 to 30 Days	15-36 WEEKS		
	D+	LS	0 to 12 Months Community Supervision	0 to 150 Hours Community Service		
	D	LS	\$0 to \$500 Fine			
	E	LS				
		0	1	2	3	4 or more

36 NOTE: References in the grid to days or weeks mean periods of  
37 confinement.

38 (1) The vertical axis of the grid is the current offense category.  
39 The current offense category is determined by the offense of  
40 adjudication.

41 (2) The horizontal axis of the grid is the number of prior  
42 adjudications included in the juvenile's criminal history. Each prior  
43 felony adjudication shall count as one point. Each prior violation,



1 misdemeanor, and gross misdemeanor adjudication shall count as 1/4  
2 point. Fractional points shall be rounded down.

3 (3) The standard range disposition for each offense is determined  
4 by the intersection of the column defined by the prior adjudications  
5 and the row defined by the current offense category.

6 (4) RCW 13.40.180 applies if the offender is being sentenced for  
7 more than one offense.

8 (5) A current offense that is a violation is equivalent to an  
9 offense category of E. However, a disposition for a violation shall  
10 not include confinement.

11 **OR**

12 **OPTION B**

13 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

14 If the juvenile offender is subject to a standard range  
15 disposition of local sanctions or 15 to 36 weeks of confinement and has  
16 not committed an A- or B+ offense, the court may impose a disposition  
17 under RCW 13.40.160(~~(+5)~~) (4) and 13.40.165.

18 **OR**

19 **OPTION C**

20 **MANIFEST INJUSTICE**

21 If the court determines that a disposition under option A or B would  
22 effectuate a manifest injustice, the court shall impose a disposition  
23 outside the standard range under RCW 13.40.160(2).

24 **OR**

25 **OPTION D**

26 **COMMUNITY SANCTION DISPOSITION ALTERNATIVE**

27 The court may impose a disposition under RCW 13.40.160(5) and  
28 section 4 of this act if the juvenile offender:

29 (1) Is subject to a standard range disposition of confinement in  
30 a state institution;

31 (2) Has not been previously convicted of a felony; and

32 (3) Is not charged with:

33 (a) A sex offense;

34 (b) A serious violent offense as defined in RCW 9.94A.030;

35 (c) A class A felony; or

1        (d) Where the following offenses include the infliction of bodily  
2 harm upon another or where, during the commission of or immediate  
3 withdrawal from, the following offenses the perpetrator is armed with  
4 a deadly weapon:

- 5        (i) Assault in the second degree;
- 6        (ii) Extortion in the first degree;
- 7        (iii) Kidnapping in the second degree;
- 8        (iv) Robbery in the second degree;
- 9        (v) Residential burglary; or
- 10       (vi) Burglary in the second degree.

11       **Sec. 2.** RCW 13.40.077 and 1997 c 338 s 18 are each amended to  
12 read as follows:

13                                RECOMMENDED PROSECUTING STANDARDS  
14                                FOR CHARGING AND PLEA DISPOSITIONS

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

20        Evidentiary sufficiency.

21        (1) Decision not to prosecute.

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

29        GUIDELINES/COMMENTARY:

30        Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (iii) Where doing so would not jeopardize the safety of society.  
21 Care should be taken to insure that the victim's request is freely  
22 made and is not the product of threats or pressure by the accused.

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

25 Notification

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

28 (2) Decision to prosecute.

29 STANDARD:

30 Crimes against persons will be filed if sufficient admissible  
31 evidence exists, which, when considered with the most plausible,  
32 reasonably foreseeable defense that could be raised under the evidence,  
33 would justify conviction by a reasonable and objective fact-finder.  
34 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
35 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
36 9A.64.020 the prosecutor should avoid prefiling agreements or  
37 diversions intended to place the accused in a program of treatment or  
38 counseling, so that treatment, if determined to be beneficial, can be  
39 proved under RCW 13.40.160(~~(+4)~~) (3).

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

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

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

10 (3) Selection of Charges/Degree of Charge

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

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

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

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

18 Overcharging includes:

19 (i) Charging a higher degree;

20 (ii) Charging additional counts.

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

27 (4) Police Investigation

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

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

36 (b) The completion of necessary laboratory tests; and

37 (c) The obtaining, in accordance with constitutional requirements,  
38 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 (5) Exceptions

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

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

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

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

12 In the event that the exception to 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 (6) Investigation Techniques

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

20 (a) Polygraph testing;

21 (b) Hypnosis;

22 (c) Electronic surveillance;

23 (d) Use of informants.

24 (7) 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 (8) Plea dispositions:

29 STANDARD

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

1 (i) Evidentiary problems which make conviction of the original  
2 charges doubtful;

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

6 (iii) A request by the victim when it is not the result of  
7 pressure from the respondent;

8 (iv) The discovery of facts which mitigate the seriousness of the  
9 respondent's conduct;

10 (v) The correction of errors in the initial charging decision;

11 (vi) The respondent's history with respect to criminal activity;

12 (vii) The nature and seriousness of the offense or offenses  
13 charged;

14 (viii) The probable effect of witnesses.

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

20 (9) Disposition recommendations:

21 STANDARD

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

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

26 **Sec. 3.** RCW 13.40.160 and 1997 c 338 s 25 and 1997 c 265 s 1 are  
27 each reenacted and amended to read as follows:

28 (1) The standard range disposition for a juvenile adjudicated of  
29 an offense is determined according to RCW 13.40.0357.

30 (a) When the court sentences an offender to a local sanction as  
31 provided in RCW 13.40.0357 option A, the court shall impose a  
32 determinate disposition within the standard ranges, except as provided  
33 in subsections (2), (~~(+4)~~) (3), and (5) of this section. The  
34 disposition may be comprised of one or more local sanctions.

35 (b) When the court sentences an offender to a standard range as  
36 provided in RCW 13.40.0357 option A that includes a term of confinement  
37 exceeding thirty days, commitment shall be to the department for the

1 standard range of confinement, except as provided in subsections (2),  
2 ~~((+4))~~ (3), and (5) of this section.

3 (2) If the court concludes, and enters reasons for its conclusion,  
4 that disposition within the standard range would effectuate a manifest  
5 injustice the court shall impose a disposition outside the standard  
6 range, as indicated in option C of RCW 13.40.0357. The court's finding  
7 of manifest injustice shall be supported by clear and convincing  
8 evidence.

9 A disposition outside the standard range shall be determinate and  
10 shall be comprised of confinement or community supervision, or a  
11 combination thereof. When a judge finds a manifest injustice and  
12 imposes a sentence of confinement exceeding thirty days, the court  
13 shall sentence the juvenile to a maximum term, and the provisions of  
14 RCW 13.40.030(2) shall be used to determine the range. A disposition  
15 outside the standard range is appealable under RCW 13.40.230 by the  
16 state or the respondent. A disposition within the standard range is  
17 not appealable under RCW 13.40.230.

18 ~~(3) ((Where a respondent is found to have committed an offense for  
19 which the respondent declined to enter into a diversion agreement, the  
20 court shall impose a term of community supervision limited to the  
21 conditions allowed in a diversion agreement as provided in RCW  
22 13.40.080(2)).~~

23 ~~(4))~~ When a juvenile offender is found to have committed a sex  
24 offense, other than a sex offense that is also a serious violent  
25 offense as defined by RCW 9.94A.030, and has no history of a prior sex  
26 offense, the court, on its own motion or the motion of the state or the  
27 respondent, may order an examination to determine whether the  
28 respondent is amenable to treatment.

29 The report of the examination shall include at a minimum the  
30 following: The respondent's version of the facts and the official  
31 version of the facts, the respondent's offense history, an assessment  
32 of problems in addition to alleged deviant behaviors, the respondent's  
33 social, educational, and employment situation, and other evaluation  
34 measures used. The report shall set forth the sources of the  
35 evaluator's information.

36 The examiner shall assess and report regarding the respondent's  
37 amenability to treatment and relative risk to the community. A  
38 proposed treatment plan shall be provided and shall include, at a  
39 minimum:



1 (a)(i) Frequency and type of contact between the offender and  
2 therapist;

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

5 (iii) Monitoring plans, including any requirements regarding  
6 living conditions, lifestyle requirements, and monitoring by family  
7 members, legal guardians, or others;

8 (iv) Anticipated length of treatment; and

9 (v) Recommended crime-related prohibitions.

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

16 After receipt of reports of the examination, the court shall then  
17 consider whether the offender and the community will benefit from use  
18 of this special sex offender disposition alternative and consider the  
19 victim's opinion whether the offender should receive a treatment  
20 disposition under this section. If the court determines that this  
21 special sex offender disposition alternative is appropriate, then the  
22 court shall impose a determinate disposition within the standard range  
23 for the offense, or if the court concludes, and enters reasons for its  
24 conclusions, that such disposition would cause a manifest injustice,  
25 the court shall impose a disposition under option C, and the court may  
26 suspend the execution of the disposition and place the offender on  
27 community supervision for at least two years. As a condition of the  
28 suspended disposition, the court may impose the conditions of community  
29 supervision and other conditions, including up to thirty days of  
30 confinement and requirements that the offender do any one or more of  
31 the following:

32 (b)(i) Devote time to a specific education, employment, or  
33 occupation;

34 (ii) Undergo available outpatient sex offender treatment for up to  
35 two years, or inpatient sex offender treatment not to exceed the  
36 standard range of confinement for that offense. A community mental  
37 health center may not be used for such treatment unless it has an  
38 appropriate program designed for sex offender treatment. The  
39 respondent shall not change sex offender treatment providers or

1 treatment conditions without first notifying the prosecutor, the  
2 probation counselor, and the court, and shall not change providers  
3 without court approval after a hearing if the prosecutor or probation  
4 counselor object to the change;

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

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

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

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

14 (vii) Make restitution to the victim for the cost of any  
15 counseling reasonably related to the offense;

16 (viii) Comply with the conditions of any court-ordered probation  
17 bond; or

18 (ix) The court shall order that the offender may not attend the  
19 public or approved private elementary, middle, or high school attended  
20 by the victim or the victim's siblings. The parents or legal guardians  
21 of the offender are responsible for transportation or other costs  
22 associated with the offender's change of school that would otherwise be  
23 paid by the school district. The court shall send notice of the  
24 disposition and restriction on attending the same school as the victim  
25 or victim's siblings to the public or approved private school the  
26 juvenile will attend, if known, or if unknown, to the approved private  
27 schools and the public school district board of directors of the  
28 district in which the juvenile resides or intends to reside. This  
29 notice must be sent at the earliest possible date but not later than  
30 ten calendar days after entry of the disposition.

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

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

1 Except as provided in this subsection (~~((+4))~~) (3), after July 1,  
2 1991, examinations and treatment ordered pursuant to this subsection  
3 shall only be conducted by sex offender treatment providers certified  
4 by the department of health pursuant to chapter 18.155 RCW. A sex  
5 offender therapist who examines or treats a juvenile sex offender  
6 pursuant to this subsection does not have to be certified by the  
7 department of health pursuant to chapter 18.155 RCW if the court finds  
8 that: (A) The offender has already moved to another state or plans to  
9 move to another state for reasons other than circumventing the  
10 certification requirements; (B) no certified providers are available  
11 for treatment within a reasonable geographical distance of the  
12 offender's home; and (C) the evaluation and treatment plan comply with  
13 this subsection (~~((+4))~~) (3) and the rules adopted by the department of  
14 health.

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

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

30 A disposition entered under this subsection (~~((+4))~~) (3) is not  
31 appealable under RCW 13.40.230.

32 (~~((+5))~~) (4) If the juvenile offender is subject to a standard  
33 range disposition of local sanctions or 15 to 36 weeks of confinement  
34 and has not committed an A- or B+ offense, the court may impose the  
35 disposition alternative under RCW 13.40.165.

36 (5) The court may impose a community sanction disposition  
37 alternative under section 4 of this act if the juvenile offender:

38 (a) Is subject to a standard range disposition of confinement in  
39 a state institution;

1        (b) Has not been previously convicted of a felony; and  
2        (c) Is not charged with:  
3        (i) A sex offense;  
4        (ii) A serious violent offense as defined in RCW 9.94A.030;  
5        (iii) A class A felony; or  
6        (iv) Where the following offenses include the infliction of bodily  
7 harm upon another or where, during the commission of or immediate  
8 withdrawal from, the following offenses the perpetrator is armed with  
9 a deadly weapon:

- 10        (A) Assault in the second degree;  
11        (B) Extortion in the first degree;  
12        (C) Kidnapping in the second degree;  
13        (D) Robbery in the second degree;  
14        (E) Residential burglary; or  
15        (F) burglary in the second degree.

16        (6) RCW 13.40.193 shall govern the disposition of any juvenile  
17 adjudicated of possessing a firearm in violation of RCW  
18 9.41.040(1)(b)(iii) or any crime in which a special finding is entered  
19 that the juvenile was armed with a firearm.

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

24        (8) Except as provided under subsection (3), (4), or (5) of this  
25 section or RCW 13.40.127, the court shall not suspend or defer the  
26 imposition or the execution of the disposition.

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

30        NEW SECTION. Sec. 4. A new section is added to chapter 13.40 RCW  
31 to read as follows:

32        (1) The court, on its own motion or on the motion of the state or  
33 the respondent may order a community sanction disposition alternative  
34 in lieu of confinement for a juvenile who:

35        (a) Is subject to a standard range disposition of confinement in  
36 a state institution;

37        (b) Has not been previously convicted of a felony; and

38        (c) The juvenile is not charged with:

1 (i) A sex offense;  
2 (ii) A serious violent offense as defined in RCW 9.94A.030;  
3 (iii) A class A felony; or  
4 (iv) Where the following offenses include the infliction of bodily  
5 harm upon another or where, during the commission of or immediate  
6 withdrawal from, the following offenses the perpetrator is armed with  
7 a deadly weapon:

- 8 (A) Assault in the second degree;
- 9 (B) Extortion in the first degree;
- 10 (C) Kidnapping in the second degree;
- 11 (D) Robbery in the second degree;
- 12 (E) Residential burglary; or
- 13 (F) Burglary in the second degree.

14 (2) In determining whether to order a community sanction  
15 disposition, the court shall assess the risk to the public safety and  
16 the probability of the offender's rehabilitation in the community. If  
17 a victim wishes to voice his or her opinion regarding the  
18 appropriateness of a community sanction disposition, the court shall  
19 hear and give great weight to the testimony of any victim who expresses  
20 the opinion. The court may not impose the community sanction  
21 disposition alternative unless a finding of mitigating or aggravating  
22 circumstances under RCW 13.40.150 is entered. If the court determines  
23 that a community sanction disposition alternative is appropriate, the  
24 court shall impose the standard range for the offense, suspend  
25 execution of the disposition, and place the offender on community  
26 supervision for a term not to exceed twelve months.

27 (3) As a condition of the suspended disposition, the court shall  
28 impose conditions of community sanctions including 0 to 30 days of  
29 confinement, up to one hundred fifty hours of community service, and  
30 the payment of legal financial obligations and restitution. The court  
31 may also require the offender to participate in research-based  
32 rehabilitation programming in the community including school,  
33 employment, vocational programs, or outpatient mental health or  
34 substance abuse treatment.

35 (4) At the time of the disposition, the court may set review  
36 hearings as the court deems appropriate.

37 (5) If the offender violates any conditions of the community  
38 sanction disposition, the court may impose sanctions under RCW

1 13.40.200, or may revoke the suspended disposition and order execution  
2 of the standard range disposition.

3 (6) If the court revokes the suspended sentence, the court shall  
4 give credit for any confinement time previously served. Whenever a  
5 juvenile offender is entitled to credit for time spent in detention,  
6 the dispositional order must specifically state the number of days of  
7 credit for time served.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 13.40 RCW  
9 to read as follows:

10 The juvenile rehabilitation administration, in consultation with  
11 the Washington association of juvenile courts administrators, shall  
12 develop a methodology for distributing to the counties for the purpose  
13 of providing financial assistance in meeting the processes and services  
14 required by chapter 13.32A RCW, and RCW 28A.225.030 and 28A.225.035  
15 from the savings realized by the use of the community sanction  
16 disposition alternative authorized under RCW 13.40.160(5) and section  
17 4 of this act based on each county's use of that alternative. The  
18 implementation of the distribution established in this section is  
19 subject to appropriation by the legislature. Funding distributed under  
20 this section must be credited to any liability the state has under  
21 chapter 43.135 RCW for any claims resulting from county costs in  
22 implementing amendments to chapter 13.32A RCW and RCW 28A.225.030 and  
23 28A.225.035 enacted during fiscal years 1995 through 1998.

24 NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act apply to  
25 crimes committed on or after July 1, 1999.

26 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 July 1, 1999."

30 **2SSB 5520** - S AMD - 221

31 By Senator Costa

32

33 In line 2 of the title, after "alternative;" strike the remainder  
34 of the title and insert "amending RCW 13.40.0357 and 13.40.077;

1 reenacting and amending RCW 13.40.160; adding new sections to chapter  
2 13.40 RCW; creating a new section; prescribing penalties; providing an  
3 effective date; and declaring an emergency."

--- END ---