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**HOUSE BILL 2970**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives McCabe and Appleton

AN ACT Relating to voyeurism; amending RCW 9A.44.115, 9.94A.515, and 13.40.070; and prescribing penalties.

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

**Sec.**  RCW 9A.44.115 and 2003 c 213 s 1 are each amended to read as follows:

(1) As used in this section:

(a) "Intimate areas" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view;

(b) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person;

(c) "Place where he or she would have a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or

(ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

(d) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;

(e) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2)(a) A person commits the crime of voyeurism in the first degree if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

((~~(a)~~)) (i) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or

((~~(b)~~)) (ii) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

((~~(3)~~)) (b) Voyeurism in the first degree is a class C felony.

(3)(a) A person commits the crime of voyeurism in the second degree if he or she knowingly views, photographs, or films:

(i) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or

(ii) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(b) Voyeurism in the second degree is a gross misdemeanor.

(4) This section does not apply to viewing, photographing, or filming by personnel of the department of corrections or of a local jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the department of corrections or the local jail or correctional facility.

(5) It shall be a defense to the crime of voyeurism that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(6) If a person is convicted of a violation of this section, the court may order the destruction of any photograph, motion picture film, digital image, videotape, or any other recording of an image that was made by the person in violation of this section.

**Sec.**  RCW 9.94A.515 and 2015 c 261 s 11 are each amended to read as follows:

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|  | TABLE 2 |  |
|  | CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL |  |
| XVI | Aggravated Murder 1 (RCW 10.95.020) |  |
| XV | Homicide by abuse (RCW 9A.32.055) |  |
|  | Malicious explosion 1 (RCW 70.74.280(1)) |  |
|  | Murder 1 (RCW 9A.32.030) |  |
| XIV | Murder 2 (RCW 9A.32.050) |  |
|  | Trafficking 1 (RCW 9A.40.100(1)) |  |
| XIII | Malicious explosion 2 (RCW 70.74.280(2)) |  |
|  | Malicious placement of an explosive 1 (RCW 70.74.270(1)) |  |
| XII | Assault 1 (RCW 9A.36.011) |  |
|  | Assault of a Child 1 (RCW 9A.36.120) |  |
|  | Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) |  |
|  | Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101) |  |
|  | Rape 1 (RCW 9A.44.040) |  |
|  | Rape of a Child 1 (RCW 9A.44.073) |  |
|  | Trafficking 2 (RCW 9A.40.100(3)) |  |
| XI | Manslaughter 1 (RCW 9A.32.060) |  |
|  | Rape 2 (RCW 9A.44.050) |  |
|  | Rape of a Child 2 (RCW 9A.44.076) |  |
|  | Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520) |  |
| X | Child Molestation 1 (RCW 9A.44.083) |  |
|  | Criminal Mistreatment 1 (RCW 9A.42.020) |  |
|  | Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) |  |
|  | Kidnapping 1 (RCW 9A.40.020) |  |
|  | Leading Organized Crime (RCW 9A.82.060(1)(a)) |  |
|  | Malicious explosion 3 (RCW 70.74.280(3)) |  |
|  | Sexually Violent Predator Escape (RCW 9A.76.115) |  |
| IX | Abandonment of Dependent Person 1 (RCW 9A.42.060) |  |
|  | Assault of a Child 2 (RCW 9A.36.130) |  |
|  | Explosive devices prohibited (RCW 70.74.180) |  |
|  | Hit and Run—Death (RCW 46.52.020(4)(a)) |  |
|  | Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050) |  |
|  | Inciting Criminal Profiteering (RCW 9A.82.060(1)(b)) |  |
|  | Malicious placement of an explosive 2 (RCW 70.74.270(2)) |  |
|  | Robbery 1 (RCW 9A.56.200) |  |
|  | Sexual Exploitation (RCW 9.68A.040) |  |
| VIII | Arson 1 (RCW 9A.48.020) |  |
|  | Commercial Sexual Abuse of a Minor (RCW 9.68A.100) |  |
|  | Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050) |  |
|  | Manslaughter 2 (RCW 9A.32.070) |  |
|  | Promoting Prostitution 1 (RCW 9A.88.070) |  |
|  | Theft of Ammonia (RCW 69.55.010) |  |
|  | Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520) |  |
| VII | Burglary 1 (RCW 9A.52.020) |  |
|  | Child Molestation 2 (RCW 9A.44.086) |  |
|  | Civil Disorder Training (RCW 9A.48.120) |  |
|  | Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1)) |  |
|  | Drive-by Shooting (RCW 9A.36.045) |  |
|  | Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050) |  |
|  | Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c)) |  |
|  | Introducing Contraband 1 (RCW 9A.76.140) |  |
|  | Malicious placement of an explosive 3 (RCW 70.74.270(3)) |  |
|  | Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675) |  |
|  | Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1)) |  |
|  | Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)) |  |
|  | Use of a Machine Gun in Commission of a Felony (RCW 9.41.225) |  |
|  | Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520) |  |
| VI | Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a)) |  |
|  | Bribery (RCW 9A.68.010) |  |
|  | Incest 1 (RCW 9A.64.020(1)) |  |
|  | Intimidating a Judge (RCW 9A.72.160) |  |
|  | Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130) |  |
|  | Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b)) |  |
|  | Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1)) |  |
|  | Rape of a Child 3 (RCW 9A.44.079) |  |
|  | Theft of a Firearm (RCW 9A.56.300) |  |
|  | Unlawful Storage of Ammonia (RCW 69.55.020) |  |
| V | Abandonment of Dependent Person 2 (RCW 9A.42.070) |  |
|  | Advancing money or property for extortionate extension of credit (RCW 9A.82.030) |  |
|  | Bail Jumping with class A Felony (RCW 9A.76.170(3)(b)) |  |
|  | Child Molestation 3 (RCW 9A.44.089) |  |
|  | Criminal Mistreatment 2 (RCW 9A.42.030) |  |
|  | Custodial Sexual Misconduct 1 (RCW 9A.44.160) |  |
|  | Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2)) |  |
|  | Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145) |  |
|  | Driving While Under the Influence (RCW 46.61.502(6)) |  |
|  | Extortion 1 (RCW 9A.56.120) |  |
|  | Extortionate Extension of Credit (RCW 9A.82.020) |  |
|  | Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040) |  |
|  | Incest 2 (RCW 9A.64.020(2)) |  |
|  | Kidnapping 2 (RCW 9A.40.030) |  |
|  | Perjury 1 (RCW 9A.72.020) |  |
|  | Persistent prison misbehavior (RCW 9.94.070) |  |
|  | Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6)) |  |
|  | Possession of a Stolen Firearm (RCW 9A.56.310) |  |
|  | Rape 3 (RCW 9A.44.060) |  |
|  | Rendering Criminal Assistance 1 (RCW 9A.76.070) |  |
|  | Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2)) |  |
|  | Sexual Misconduct with a Minor 1 (RCW 9A.44.093) |  |
|  | Sexually Violating Human Remains (RCW 9A.44.105) |  |
|  | Stalking (RCW 9A.46.110) |  |
|  | Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070) |  |
| IV | Arson 2 (RCW 9A.48.030) |  |
|  | Assault 2 (RCW 9A.36.021) |  |
|  | Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h)) |  |
|  | Assault by Watercraft (RCW 79A.60.060) |  |
|  | Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100) |  |
|  | Cheating 1 (RCW 9.46.1961) |  |
|  | Commercial Bribery (RCW 9A.68.060) |  |
|  | Counterfeiting (RCW 9.16.035(4)) |  |
|  | Endangerment with a Controlled Substance (RCW 9A.42.100) |  |
|  | Escape 1 (RCW 9A.76.110) |  |
|  | Hit and Run—Injury (RCW 46.52.020(4)(b)) |  |
|  | Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3)) |  |
|  | Identity Theft 1 (RCW 9.35.020(2)) |  |
|  | Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010) |  |
|  | Influencing Outcome of Sporting Event (RCW 9A.82.070) |  |
|  | Malicious Harassment (RCW 9A.36.080) |  |
|  | Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2)) |  |
|  | Residential Burglary (RCW 9A.52.025) |  |
|  | Robbery 2 (RCW 9A.56.210) |  |
|  | Theft of Livestock 1 (RCW 9A.56.080) |  |
|  | Threats to Bomb (RCW 9.61.160) |  |
|  | Trafficking in Stolen Property 1 (RCW 9A.82.050) |  |
|  | Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b)) |  |
|  | Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3)) |  |
|  | Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3)) |  |
|  | Unlawful transaction of insurance business (RCW 48.15.023(3)) |  |
|  | Unlicensed practice as an insurance professional (RCW 48.17.063(2)) |  |
|  | Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2)) |  |
|  | Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3)) |  |
|  | Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522) |  |
|  | Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1)) |  |
|  | Willful Failure to Return from Furlough (RCW 72.66.060) |  |
| III | Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3)) |  |
|  | Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h)) |  |
|  | Assault of a Child 3 (RCW 9A.36.140) |  |
|  | Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c)) |  |
|  | Burglary 2 (RCW 9A.52.030) |  |
|  | Communication with a Minor for Immoral Purposes (RCW 9.68A.090) |  |
|  | Criminal Gang Intimidation (RCW 9A.46.120) |  |
|  | Custodial Assault (RCW 9A.36.100) |  |
|  | Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3)) |  |
|  | Escape 2 (RCW 9A.76.120) |  |
|  | Extortion 2 (RCW 9A.56.130) |  |
|  | Harassment (RCW 9A.46.020) |  |
|  | Intimidating a Public Servant (RCW 9A.76.180) |  |
|  | Introducing Contraband 2 (RCW 9A.76.150) |  |
|  | Malicious Injury to Railroad Property (RCW 81.60.070) |  |
|  | Mortgage Fraud (RCW 19.144.080) |  |
|  | Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674) |  |
|  | Organized Retail Theft 1 (RCW 9A.56.350(2)) |  |
|  | Perjury 2 (RCW 9A.72.030) |  |
|  | Possession of Incendiary Device (RCW 9.40.120) |  |
|  | Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190) |  |
|  | Promoting Prostitution 2 (RCW 9A.88.080) |  |
|  | Retail Theft with Special Circumstances 1 (RCW 9A.56.360(2)) |  |
|  | Securities Act violation (RCW 21.20.400) |  |
|  | Tampering with a Witness (RCW 9A.72.120) |  |
|  | Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2)) |  |
|  | Theft of Livestock 2 (RCW 9A.56.083) |  |
|  | Theft with the Intent to Resell 1 (RCW 9A.56.340(2)) |  |
|  | Trafficking in Stolen Property 2 (RCW 9A.82.055) |  |
|  | Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b)) |  |
|  | Unlawful Imprisonment (RCW 9A.40.040) |  |
|  | Unlawful Misbranding of Food Fish or Shellfish 1 (RCW 69.04.938(3)) |  |
|  | Unlawful possession of firearm in the second degree (RCW 9.41.040(2)) |  |
|  | Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b)) |  |
|  | Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b)) |  |
|  | Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4)) |  |
|  | Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522) |  |
|  | Willful Failure to Return from Work Release (RCW 72.65.070) |  |
| II | Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b)) |  |
|  | Computer Trespass 1 (RCW 9A.52.110) |  |
|  | Counterfeiting (RCW 9.16.035(3)) |  |
|  | Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3)) |  |
|  | Escape from Community Custody (RCW 72.09.310) |  |
|  | Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010, and RCW 9A.44.132) |  |
|  | Health Care False Claims (RCW 48.80.030) |  |
|  | Identity Theft 2 (RCW 9.35.020(3)) |  |
|  | Improperly Obtaining Financial Information (RCW 9.35.010) |  |
|  | Malicious Mischief 1 (RCW 9A.48.070) |  |
|  | Organized Retail Theft 2 (RCW 9A.56.350(3)) |  |
|  | Possession of Stolen Property 1 (RCW 9A.56.150) |  |
|  | Possession of a Stolen Vehicle (RCW 9A.56.068) |  |
|  | Retail Theft with Special Circumstances 2 (RCW 9A.56.360(3)) |  |
|  | Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (RCW 19.290.100) |  |
|  | Theft 1 (RCW 9A.56.030) |  |
|  | Theft of a Motor Vehicle (RCW 9A.56.065) |  |
|  | Theft of Rental, Leased, ((~~or~~)) Lease-purchased, or Loaned Property (valued at ((~~one~~)) five thousand ((~~five hundred~~)) dollars or more) (RCW 9A.56.096(5)(a)) |  |
|  | Theft with the Intent to Resell 2 (RCW 9A.56.340(3)) |  |
|  | Trafficking in Insurance Claims (RCW 48.30A.015) |  |
|  | Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a)) |  |
|  | Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2)) |  |
|  | Unlawful Practice of Law (RCW 2.48.180) |  |
|  | Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b)) |  |
|  | Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a)) |  |
|  | Unlicensed Practice of a Profession or Business (RCW 18.130.190(7)) |  |
|  | Voyeurism 1 (RCW 9A.44.115) |  |
| I | Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024) |  |
|  | False Verification for Welfare (RCW 74.08.055) |  |
|  | Forgery (RCW 9A.60.020) |  |
|  | Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060) |  |
|  | Malicious Mischief 2 (RCW 9A.48.080) |  |
|  | Mineral Trespass (RCW 78.44.330) |  |
|  | Possession of Stolen Property 2 (RCW 9A.56.160) |  |
|  | Reckless Burning 1 (RCW 9A.48.040) |  |
|  | Spotlighting Big Game 1 (RCW 77.15.450(3)(b)) |  |
|  | Suspension of Department Privileges 1 (RCW 77.15.670(3)(b)) |  |
|  | Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075) |  |
|  | Theft 2 (RCW 9A.56.040) |  |
|  | Theft of Rental, Leased, ((~~or~~)) Lease-purchased, or Loaned Property (valued at ((~~two~~)) seven hundred fifty dollars or more but less than ((~~one~~)) five thousand ((~~five hundred~~)) dollars) (RCW 9A.56.096(5)(b)) |  |
|  | Transaction of insurance business beyond the scope of licensure (RCW 48.17.063) |  |
|  | Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b)) |  |
|  | Unlawful Issuance of Checks or Drafts (RCW 9A.56.060) |  |
|  | Unlawful Possession of Fictitious Identification (RCW 9A.56.320) |  |
|  | Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320) |  |
|  | Unlawful Possession of Payment Instruments (RCW 9A.56.320) |  |
|  | Unlawful Possession of a Personal Identification Device (RCW 9A.56.320) |  |
|  | Unlawful Production of Payment Instruments (RCW 9A.56.320) |  |
|  | Unlawful Releasing, Planting, Possessing, or Placing Deleterious Exotic Wildlife (RCW 77.15.250(2)(b)) |  |
|  | Unlawful Trafficking in Food Stamps (RCW 9.91.142) |  |
|  | Unlawful Use of Food Stamps (RCW 9.91.144) |  |
|  | Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b)) |  |
|  | Unlawful Use of Prohibited Aquatic Animal Species (RCW 77.15.253(3)) |  |
|  | Vehicle Prowl 1 (RCW 9A.52.095) |  |
|  | Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b)) |  |

**Sec.**  RCW 13.40.070 and 2013 c 179 s 3 are each amended to read as follows:

(1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (8) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)((~~(iii)~~)) (iv); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has three or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with:

(a) Either prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case; or

(b) Voyeurism in the second degree and the alleged offense is the offender's first offense or violation, the prosecutor shall divert the case unless the juvenile has prior adjudications or diversions.

(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(9) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(10) The responsibilities of the prosecutor under subsections (1) through (9) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(11) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims.

**--- END ---**