

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

4 ADOPTED AS AMENDED 2/29/96

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (18) "Drug offense" means:

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

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

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

13 (19) "Escape" means:

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

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

22 (20) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
24 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
25 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

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

16 (b) Assault in the second degree;

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

18 (d) Child molestation in the second degree;

19 (e) Controlled substance homicide;

20 (f) Extortion in the first degree;

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

22 (h) Indecent liberties;

23 (i) Kidnapping in the second degree;

24 (j) Leading organized crime;

25 (k) Manslaughter in the first degree;

26 (l) Manslaughter in the second degree;

27 (m) Promoting prostitution in the first degree;

28 (n) Rape in the third degree;

29 (o) Robbery in the second degree;

30 (p) Sexual exploitation;

31 (q) Vehicular assault;

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

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

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

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

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

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

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

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

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

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

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

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

1 (30) "Serious traffic offense" means:

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

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

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

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

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

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

22 (33) "Sex offense" means:

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

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

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

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

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

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

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

10 (38) "Violent offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (e) Two prosecuting attorneys;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 The power to defer or suspend the imposition or execution of  
6 sentence is hereby abolished in respect to sentences prescribed for  
7 felonies committed after June 30, 1984, except for offenders sentenced  
8 under RCW 9.94A.120(~~((7)(a))~~)(8)(a), the special sexual offender  
9 sentencing alternative, or offenders sentenced under section 26 of this  
10 act, whose sentence may be suspended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11       (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

35       (2) Aggravating Circumstances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 NEW SECTION. Sec. 8. A new section is added to chapter 9A.44 RCW  
16 to read as follows:

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

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

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

25 (1) A person is guilty of child molestation in the fourth degree  
26 when the person has, or knowingly causes another person under the age  
27 of eighteen to have, sexual contact with another who is at least  
28 sixteen years old but less than eighteen years old and not married to  
29 the perpetrator and the perpetrator is at least ten years older than  
30 the victim.

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

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

34 In a prosecution under sections 8 or 9 of this act, it is an  
35 affirmative defense that the defendant must prove by a preponderance of

1 the evidence, that the defendant did not know that the minor was  
2 sixteen or seventeen years of age.

3 **Sec. 11.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15 are  
4 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

21 (ii) The statute of limitations applicable to adult prosecution for  
22 the offense, traffic infraction, civil infraction, or violation has  
23 expired; or

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

1 administration of the juvenile detention facility in RCW 13.04.035 and  
2 13.20.060; or

3 (iv) The alleged offense is a traffic or civil infraction, a  
4 violation of compulsory school attendance provisions under chapter  
5 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has  
6 assumed concurrent jurisdiction over those offenses as provided in  
7 section 12 of this act; or

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

20 If the juvenile challenges the state's determination of the  
21 juvenile's criminal history, the state may establish the offender's  
22 criminal history by a preponderance of the evidence. If the criminal  
23 history consists of adjudications entered upon a plea of guilty, the  
24 state shall not bear a burden of establishing the knowing and  
25 voluntariness of the plea;

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

28 (g) Relating to termination of a diversion agreement under RCW  
29 13.40.080, including a proceeding in which the divertee has attained  
30 eighteen years of age;

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

37 (i) Relating to petitions to compel disclosure of information filed  
38 by the department of social and health services pursuant to RCW  
39 74.13.042.

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

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

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

14 NEW SECTION. Sec. 12. A new section is added to chapter 13.04 RCW  
15 to read as follows:

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

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

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

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

36 (c) The county legislative authority of the county has authorized  
37 creation of concurrent jurisdiction between the court of limited  
38 jurisdiction and the juvenile court; and

1 (d) The court of limited jurisdiction has an agreement with  
2 officials responsible for administering the county juvenile detention  
3 facility pursuant to RCW 13.04.035 and 13.20.060 that the court may  
4 order juveniles into the detention facility for an offense in cases in  
5 which the court finds that a disposition without confinement would be  
6 a manifest injustice.

7 (2) The juvenile court shall retain jurisdiction over the offense  
8 if the juvenile is charged with another offense arising out of the same  
9 incident and the juvenile court has jurisdiction over the other  
10 offense.

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

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

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

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

20 **Sec. 13.** 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) Promote equitable treatment of juveniles and their families  
6 without regard to race, ethnicity, gender, creed, or religion;
- 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. 14.** RCW 13.40.020 and 1995 c 395 s 2 and 1995 c 134 s 1 are  
23 each reenacted and amended to read as follows:

24 For the purposes of this chapter:

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

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

28 (b) Manslaughter in the first degree; or

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

36 (2) "Community service" means compulsory service, without  
37 compensation, performed for the benefit of the community by the  
38 offender as punishment for committing an offense. Community service

1 may be performed through public or private organizations or through  
2 work crews;

3 (3) "Community supervision" means an order of disposition by the  
4 court of an adjudicated youth not committed to the department or an  
5 order granting a deferred adjudication pursuant to RCW 13.40.125. A  
6 community supervision order for a single offense may be for a period of  
7 up to two years for a sex offense as defined by RCW 9.94A.030 and up to  
8 one year for other offenses. As a mandatory condition of any term of  
9 community supervision, the court shall order the juvenile to refrain  
10 from committing new offenses. As a mandatory condition of community  
11 supervision, the court shall order the juvenile to comply with the  
12 mandatory school attendance provisions of chapter 28A.225 RCW and to  
13 inform the school of the existence of this requirement. Community  
14 supervision is an individualized program comprised of one or more of  
15 the following:

16 (a) Community-based sanctions;

17 (b) Community-based rehabilitation;

18 (c) Monitoring and reporting requirements;

19 (d) Posting of a probation bond (~~((imposed pursuant to RCW~~  
20 ~~13.40.0357))~~ as provided in RCW 13.40.054;

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

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

24 (b) Community service not to exceed one hundred fifty hours of  
25 service;

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

34 (6) "Monitoring and reporting requirements" means one or more of  
35 the following: Curfews; requirements to remain at home, school, work,  
36 or court-ordered treatment programs during specified hours;  
37 restrictions from leaving or entering specified geographical areas;  
38 requirements to report to the probation officer as directed and to  
39 remain under the probation officer's supervision; and other conditions

1 or limitations as the court may require which may not include  
2 confinement;

3 (7) "Confinement" means physical custody by the department of  
4 social and health services in a facility operated by or pursuant to a  
5 contract with the state, or physical custody in a detention facility  
6 operated by or pursuant to a contract with any county. The county may  
7 operate or contract with vendors to operate county detention  
8 facilities. The department may operate or contract to operate  
9 detention facilities for juveniles committed to the department.  
10 Pretrial confinement or confinement of less than thirty-one days  
11 imposed as part of a disposition or modification order may be served  
12 consecutively or intermittently, in the discretion of the court;

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

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

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

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

27 (10) "Department" means the department of social and health  
28 services;

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

35 (12) "Diversion unit" means any probation counselor who enters into  
36 a diversion agreement with an alleged youthful offender, or any other  
37 person, community accountability board, or other entity except a law  
38 enforcement official or entity, with whom the juvenile court  
39 administrator has contracted to arrange and supervise such agreements

1 pursuant to RCW 13.40.080, or any person, community accountability  
2 board, or other entity specially funded by the legislature to arrange  
3 and supervise diversion agreements in accordance with the requirements  
4 of this chapter. For purposes of this subsection, "community  
5 accountability board" means a board comprised of members of the local  
6 community in which the juvenile offender resides. The superior court  
7 shall appoint the members. The boards shall consist of at least three  
8 and not more than seven members. If possible, the board should include  
9 a variety of representatives from the community, such as a law  
10 enforcement officer, teacher or school administrator, high school  
11 student, parent, and business owner, and should represent the cultural  
12 diversity of the local community;

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

15 (14) "Juvenile," "youth," and "child" mean any individual who is  
16 under the chronological age of eighteen years and who has not been  
17 previously transferred to adult court pursuant to RCW 13.40.110 or who  
18 is otherwise under adult criminal court jurisdiction pursuant to RCW  
19 13.04.030;

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

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

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

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

34 (a) Four misdemeanors;

35 (b) Two misdemeanors and one gross misdemeanor;

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

37 (d) Three gross misdemeanors.

38 For purposes of this definition, current violations shall be  
39 counted as misdemeanors;

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

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

7 (21) "Restitution" means financial reimbursement by the offender to  
8 the victim, and shall be limited to easily ascertainable damages for  
9 injury to or loss of property, actual expenses incurred for medical  
10 treatment for physical injury to persons, lost wages resulting from  
11 physical injury, and costs of the victim's counseling reasonably  
12 related to the offense if the offense is a sex offense. Restitution  
13 shall not include reimbursement for damages for mental anguish, pain  
14 and suffering, or other intangible losses. Nothing in this chapter  
15 shall limit or replace civil remedies or defenses available to the  
16 victim or offender;

17 (22) "Secretary" means the secretary of the department of social  
18 and health services. "Assistant secretary" means the assistant  
19 secretary for juvenile rehabilitation for the department;

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

24 (24) "Sex offense" means an offense defined as a sex offense in RCW  
25 9.94A.030;

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

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

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

35 (28) "Violent offense" means a violent offense as defined in RCW  
36 9.94A.030;

37 (29) "Probation bond" means a bond, posted with sufficient security  
38 by a surety justified and approved by the court, to secure the  
39 offender's appearance at required court proceedings and compliance with

1 court-ordered community supervision or conditions of release ordered  
2 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of  
3 cash or posting of other collateral in lieu of a bond if approved by  
4 the court;

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

9 **Sec. 15.** RCW 13.40.025 and 1995 c 269 s 302 are each amended to  
10 read as follows:

11 (1) There is established a juvenile disposition standards  
12 commission to propose disposition standards to the legislature in  
13 accordance with RCW 13.40.030 and perform the other responsibilities  
14 set forth in this chapter.

15 (2) The commission shall be composed of the secretary or the  
16 secretary's designee and the following nine members appointed by the  
17 governor, subject to confirmation by the senate: (a) A superior court  
18 judge; (b) a prosecuting attorney or deputy prosecuting attorney; (c)  
19 a law enforcement officer; (d) an administrator of juvenile court  
20 services; (e) a public defender actively practicing in juvenile court;  
21 (f) a county legislative official or county executive; and (g) three  
22 other persons who have demonstrated significant interest in the  
23 adjudication and disposition of juvenile offenders. In making the  
24 appointments, the governor shall seek the recommendations of the  
25 association of superior court judges in respect to the member who is a  
26 superior court judge; of Washington prosecutors in respect to the  
27 prosecuting attorney or deputy prosecuting attorney member; of the  
28 Washington association of sheriffs and police chiefs in respect to the  
29 member who is a law enforcement officer; of juvenile court  
30 administrators in respect to the member who is a juvenile court  
31 administrator; and of the state bar association in respect to the  
32 public defender member; and of the Washington association of counties  
33 in respect to the member who is either a county legislative official or  
34 county executive.

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

37 (4) The secretary shall serve on the commission during the  
38 secretary's tenure as secretary of the department. The term of the

1 remaining members of the commission shall be three years. The initial  
2 terms shall be determined by lot conducted at the commission's first  
3 meeting as follows: (a) Four members shall serve a two-year term; and  
4 (b) four members shall serve a three-year term. In the event of a  
5 vacancy, the appointing authority shall designate a new member to  
6 complete the remainder of the unexpired term.

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

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

13 **Sec. 16.** RCW 13.40.027 and 1993 c 415 s 9 are each amended to read  
14 as follows:

15 (1) It is the responsibility of the sentencing guidelines  
16 commission to: (a)(i) Evaluate the effectiveness of existing  
17 disposition standards and related statutes in implementing policies set  
18 forth in RCW 13.40.010 generally, (ii) specifically review the  
19 guidelines relating to the confinement of minor and first offenders as  
20 well as the use of diversion, and (iii) review the application of  
21 current and proposed juvenile sentencing standards and guidelines for  
22 potential adverse impacts on the sentencing outcomes of racial and  
23 ethnic minority youth; (b) solicit the comments and suggestions of the  
24 juvenile justice community concerning disposition standards; and (c)  
25 make recommendations to the legislature regarding revisions or  
26 modifications of the disposition standards in accordance with RCW  
27 13.40.030. The evaluations shall be submitted to the legislature on  
28 December 1 of each even-numbered year ~~((thereafter))~~.

29 (2) It is the responsibility of the department to: (a) Provide the  
30 commission with available data concerning the implementation of the  
31 disposition standards and related statutes and their effect on the  
32 performance of the department's responsibilities relating to juvenile  
33 offenders; and (b) ~~((at the request of the commission, provide~~  
34 ~~technical and administrative assistance to the commission in the~~  
35 ~~performance of its responsibilities; and (c))~~ provide the commission  
36 and legislature with recommendations for modification of the  
37 disposition standards. The office of the administrator for the courts

1 shall provide the commission with available data on diversion and  
2 dispositions of juvenile offenders under chapter 13.40 RCW.

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

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

27 ~~(b) The secretary shall submit guidelines pertaining to the nature~~  
28 ~~of the security to be imposed on youth placed in his or her custody~~  
29 ~~based on the age, offense(s), and criminal history of the juvenile~~  
30 ~~offender. Such guidelines shall be submitted to the legislature for~~  
31 ~~its review no later than November 1st of each year. At the same time~~  
32 ~~the secretary shall submit a report on security at juvenile facilities~~  
33 ~~during the preceding year. The report shall include the number of~~  
34 ~~escapes from each juvenile facility, the most serious offense for which~~  
35 ~~each escapee had been confined, the number and nature of offenses found~~  
36 ~~to have been committed by juveniles while on escape status, the number~~  
37 ~~of authorized leaves granted, the number of failures to comply with~~  
38 ~~leave requirements, the number and nature of offenses committed while~~

1 on leave, and the number and nature of offenses committed by juveniles  
2 while in the community on minimum security status; to the extent this  
3 information is available to the secretary. The department shall  
4 include security status definitions in the security guidelines it  
5 submits to the legislature pursuant to this section.))

6 (2) ((In developing recommendations for the permissible ranges of  
7 confinement under this section the commission shall be subject to the  
8 following limitations:

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

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

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

The commission's recommendations for new disposition standards shall result in a simplified disposition system. In setting the new standards, the commission shall focus on the need to protect public safety by emphasizing punishment, deterrence, and confinement for violent and repeat offenders. The seriousness of the offense shall be the most important factor in determining the length of confinement, while the offender's age and criminal history shall count as contributing factors. The commission shall consider whether juveniles prosecuted under the juvenile justice system for committing violent, sex, or repeated property offenses should be automatically prosecuted as adults when their term of confinement under the adult sentencing system is longer than their term of confinement under the juvenile system. The commission shall consider the option of allowing the prosecutor to determine in which system the juvenile should be prosecuted based on the anticipated length of confinement in both systems if the court imposes an exceptional sentence for manifest injustice above the standard range as requested by the prosecutor. The commission shall increase judicial flexibility and discretion by broadening standard ranges of confinement. The commission shall provide for the use of basic training camp programs. Alternatives to total confinement shall be considered for nonviolent offenders. The commission must also study the feasibility of creating a disposition option allowing a court to order minor/first or middle offenders into

1 inpatient substance abuse treatment. To determine the feasibility of  
2 that option, the commission must review the number of existing beds and  
3 funding available through private, county, state, or federal resources,  
4 criteria for eligibility for funding, competing avenues of access to  
5 those beds, the current system's method of prioritizing the needs for  
6 limited bed space, the average length of stay in inpatient treatment,  
7 the costs of that treatment, and the cost effectiveness of inpatient  
8 treatment compared to outpatient treatment.

9 In setting new standards, the commission must also recommend  
10 disposition and institutional options for serious or chronic offenders  
11 between the ages of fifteen and twenty-five who currently must either  
12 be released from juvenile court jurisdiction at age twenty-one or who  
13 are prosecuted as adults because the juvenile system is inadequate to  
14 address the seriousness of their crimes, their rehabilitation needs, or  
15 public safety. One option must include development of a youthful  
16 offender disposition option that combines adult criminal sentencing  
17 guidelines and juvenile disposition standards and addresses: (a)  
18 Whether youthful offenders would be under jurisdiction of the  
19 department of corrections or the department of social and health  
20 services; (b) whether current age restrictions on juvenile court  
21 jurisdiction would be modified; and (c) whether the department of  
22 social and health services or the department of corrections would  
23 provide institutional and community correctional services. The option  
24 must also recommend an implementation timeline and plan, identify  
25 funding and capital construction or improvement options to provide  
26 separate facilities for youthful offenders, and identify short and  
27 long-term fiscal impacts.

28 In developing the new standards, the commission must review  
29 disposition options in other states and consult with interested parties  
30 including superior court judges, prosecutors, defense attorneys,  
31 juvenile court administrators, victims advocates, the department of  
32 corrections and the department of social and health services, and  
33 members of the legislature.

34 NEW SECTION. Sec. 18. A new section is added to chapter 13.40 RCW  
35 to read as follows:

36 The secretary shall submit a report on security at juvenile  
37 facilities during the preceding year. The report shall include the  
38 number of escapes from each juvenile facility, the most serious offense

1 for which each escapee had been confined, the number and nature of  
 2 offenses found to have been committed by juveniles while on escape  
 3 status, the number of authorized leaves granted, the number of failures  
 4 to comply with leave requirements, the number and nature of offenses  
 5 committed while on leave, and the number and nature of offenses  
 6 committed by juveniles while in the community on minimum security  
 7 status; to the extent this information is available to the secretary.  
 8 The department shall include security status definitions in the report  
 9 it submits to the legislature pursuant to this section. The report  
 10 shall be submitted no later than December 15th of each year.

11 **Sec. 19.** RCW 13.40.0357 and 1995 c 395 s 3 are each amended to  
 12 read as follows:

13 SCHEDULE A

14 DESCRIPTION AND OFFENSE CATEGORY

15			JUVENILE
16	JUVENILE		DISPOSITION
17	DISPOSITION		CATEGORY FOR ATTEMPT,
18	OFFENSE		BAILJUMP, CONSPIRACY,
19	CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
20	.....		

21 **Arson and Malicious Mischief**

22	A	Arson 1 (9A.48.020)	B+
23	B	Arson 2 (9A.48.030)	C
24	C	Reckless Burning 1 (9A.48.040)	D
25	D	Reckless Burning 2 (9A.48.050)	E
26	B	Malicious Mischief 1 (9A.48.070)	C
27	C	Malicious Mischief 2 (9A.48.080)	D
28	D	Malicious Mischief 3 (<\$50 is	
29		E class) (9A.48.090)	E
30	E	Tampering with Fire Alarm	
31		Apparatus (9.40.100)	E
32	A	Possession of Incendiary Device	
33		(9.40.120)	B+

34 **Assault and Other Crimes**

35 **Involving Physical Harm**

36	A	Assault 1 (9A.36.011)	B+
37	B+	Assault 2 (9A.36.021)	C+

1	C+	Assault 3 (9A.36.031)	D+
2	D+	Assault 4 (9A.36.041)	E
3	<u>B+</u>	<u>Reckless Endangerment 1 (9A.36.045)</u>	<u>C+</u>
4	D+	Reckless Endangerment	
5		(9A.36.050)	E
6	C+	Promoting Suicide Attempt	
7		(9A.36.060)	D+
8	D+	Coercion (9A.36.070)	E
9	C+	Custodial Assault (9A.36.100)	D+
10		<b>Burglary and Trespass</b>	
11	B+	Burglary 1 (9A.52.020)	C+
12	<u>B</u>	<u>Residential Burglary (9A.52.025)</u>	<u>C</u>
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	D	Vehicle Prowling (9A.52.100)	E
19		<b>Drugs</b>	
20	E	Possession/Consumption of Alcohol	
21		(66.44.270)	E
22	C	Illegally Obtaining Legend Drug	
23		(69.41.020)	D
24	C+	Sale, Delivery, Possession of Legend	
25		Drug with Intent to Sell	
26		(69.41.030)	D+
27	E	Possession of Legend Drug	
28		(69.41.030)	E
29	B+	Violation of Uniform Controlled	
30		Substances Act - Narcotic Sale	
31		(69.50.401(a)(1)(i))	B+
32	C	Violation of Uniform Controlled	
33		Substances Act - Nonnarcotic Sale	
34		(69.50.401(a)(1)(ii))	C
35	E	Possession of Marihuana <40 grams	
36		(69.50.401(e))	E
37	C	Fraudulently Obtaining Controlled	
38		Substance (69.50.403)	C

1	C+	Sale of Controlled Substance	
2		for Profit (69.50.410)	C+
3	E	Unlawful Inhalation (9.47A.020)	E
4	B	Violation of Uniform Controlled	
5		Substances Act - Narcotic	
6		Counterfeit Substances	
7		(69.50.401(b)(1)(i))	B
8	C	Violation of Uniform Controlled	
9		Substances Act - Nonnarcotic	
10		Counterfeit Substances	
11		(69.50.401(b)(1) (ii), (iii), (iv))	C
12	C	Violation of Uniform Controlled	
13		Substances Act - Possession of a	
14		Controlled Substance	
15		(69.50.401(d))	C
16	C	Violation of Uniform Controlled	
17		Substances Act - Possession of a	
18		Controlled Substance	
19		(69.50.401(c))	C
20		<b>Firearms and Weapons</b>	
21	E	Carrying Loaded Pistol Without	
22		Permit (9.41.050)	E
23	C	Possession of Firearms by	
24		Minor (<18) (9.41.040(1)( <del>e</del> )(b)(iv))	C
25	D+	Possession of Dangerous Weapon	
26		(9.41.250)	E
27	D	Intimidating Another Person by use	
28		of Weapon (9.41.270)	E
29		<b>Homicide</b>	
30	A+	Murder 1 (9A.32.030)	A
31	A+	Murder 2 (9A.32.050)	B+
32	B+	Manslaughter 1 (9A.32.060)	C+
33	C+	Manslaughter 2 (9A.32.070)	D+
34	B+	Vehicular Homicide (46.61.520)	C+
35		<b>Kidnapping</b>	
36	A	Kidnap 1 (9A.40.020)	B+
37	B+	Kidnap 2 (9A.40.030)	C+

1	C+	Unlawful Imprisonment	
2		(9A.40.040)	D+
3		<b>Obstructing Governmental Operation</b>	
4	E	Obstructing a Law Enforcement Officer	
5		(9A.76.020)	E
6	E	Resisting Arrest (9A.76.040)	E
7	B	Introducing Contraband 1	
8		(9A.76.140)	C
9	C	Introducing Contraband 2	
10		(9A.76.150)	D
11	E	Introducing Contraband 3	
12		(9A.76.160)	E
13	B+	Intimidating a Public Servant	
14		(9A.76.180)	C+
15	B+	Intimidating a Witness	
16		(9A.72.110)	C+
17		<b>Public Disturbance</b>	
18	C+	Riot with Weapon (9A.84.010)	D+
19	D+	Riot Without Weapon	
20		(9A.84.010)	E
21	E	Failure to Disperse (9A.84.020)	E
22	E	Disorderly Conduct (9A.84.030)	E
23		<b>Sex Crimes</b>	
24	A	Rape 1 (9A.44.040)	B+
25	A-	Rape 2 (9A.44.050)	B+
26	C+	Rape 3 (9A.44.060)	D+
27	A-	Rape of a Child 1 (9A.44.073)	B+
28	B	Rape of a Child 2 (9A.44.076)	C+
29	B	Incest 1 (9A.64.020(1))	C
30	C	Incest 2 (9A.64.020(2))	D
31	D+	Indecent Exposure	
32		(Victim <14) (9A.88.010)	E
33	E	Indecent Exposure	
34		(Victim 14 or over) (9A.88.010)	E
35	B+	Promoting Prostitution 1	
36		(9A.88.070)	C+

1	C+	Promoting Prostitution 2	
2		(9A.88.080)	D+
3	E	O & A (Prostitution) (9A.88.030)	E
4	B+	Indecent Liberties (9A.44.100)	C+
5	B+	Child Molestation 1 (9A.44.083)	C+
6	C+	Child Molestation 2 (9A.44.086)	C
7	<u>C</u>	<u>Failure to Register</u>	
8		<u>(For Class A Felony) (9A.44.130)</u>	<u>D</u>
9	<u>D</u>	<u>Failure to Register</u>	
10		<u>(For Class B Felony or Less)</u>	
11		<u>(9A.44.130)</u>	<u>E</u>
12		<b>Theft, Robbery, Extortion, and Forgery</b>	
13	B	Theft 1 (9A.56.030)	C
14	C	Theft 2 (9A.56.040)	D
15	D	Theft 3 (9A.56.050)	E
16	<u>B</u>	<u>Theft of a Firearm (9A.56.300)</u>	<u>C</u>
17	B	Theft of Livestock (9A.56.080)	C
18	C	Forgery (9A.60.020)	D
19	A	Robbery 1 (9A.56.200)	B+
20	B+	Robbery 2 (9A.56.210)	C+
21	B+	Extortion 1 (9A.56.120)	C+
22	C+	Extortion 2 (9A.56.130)	D+
23	B	Possession of Stolen Property 1	
24		(9A.56.150)	C
25	C	Possession of Stolen Property 2	
26		(9A.56.160)	D
27	D	Possession of Stolen Property 3	
28		(9A.56.170)	E
29	C	Taking Motor Vehicle Without	
30		Owner's Permission (9A.56.070)	D
31		<b>Motor Vehicle Related Crimes</b>	
32	E	Driving Without a License	
33		(46.20.021)	E
34	C	Hit and Run - Injury	
35		(46.52.020(4))	D
36	D	Hit and Run-Attended	
37		(46.52.020(5))	E

1	E	Hit and Run-Unattended	
2		(46.52.010)	E
3	C	Vehicular Assault (46.61.522)	D
4	C	Attempting to Elude Pursuing	
5		Police Vehicle (46.61.024)	D
6	E	Reckless Driving (46.61.500)	E
7	D	Driving While Under the Influence	
8		(46.61.502 and 46.61.504)	E
9	D	Vehicle Prowling (9A.52.100)	E
10	C	Taking Motor Vehicle Without	
11		Owner's Permission (9A.56.070)	D
12		<b>Other</b>	
13	B	Bomb Threat (9.61.160)	C
14	C	Escape 1 (9A.76.110)	C
15	C	Escape 2 (9A.76.120)	C
16	D	Escape 3 (9A.76.130)	E
17	C	<u>Stalking (Repeat) (9A.46.110)</u>	D
18	D	<u>Stalking (1st Time) (9A.46.110)</u>	E
19	E	Obscene, Harassing, Etc.,	
20		Phone Calls (9.61.230)	E
21	A	Other Offense Equivalent to an	
22		Adult Class A Felony	B+
23	B	Other Offense Equivalent to an	
24		Adult Class B Felony	C
25	C	Other Offense Equivalent to an	
26		Adult Class C Felony	D
27	D	Other Offense Equivalent to an	
28		Adult Gross Misdemeanor	E
29	E	Other Offense Equivalent to an	
30		Adult Misdemeanor	E
31	V	Violation of Order of Restitution,	
32		Community Supervision, or	
33		Confinement, (13.40.200) -	V

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

36 1st escape or attempted escape during 12-month period - 4 weeks  
37 confinement

1 2nd escape or attempted escape during 12-month period - 8 weeks  
 2 confinement  
 3 3rd and subsequent escape or attempted escape during 12-month  
 4 period - 12 weeks confinement

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

7 SCHEDULE B

8 PRIOR OFFENSE INCREASE FACTOR

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

11 TIME SPAN

12 OFFENSE	0-12	13-24	25 Months
13 CATEGORY	Months	Months	or More
14 .....			
15 A+	.9	.9	.9
16 A	.9	.8	.6
17 A-	.9	.8	.5
18 B+	.9	.7	.4
19 B	.9	.6	.3
20 C+	.6	.3	.2
21 C	.5	.2	.2
22 D+	.3	.2	.1
23 D	.2	.1	.1
24 E	.1	.1	.1

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

29 SCHEDULE C

30 CURRENT OFFENSE POINTS

31 For use with all CURRENT OFFENSES occurring on or after July 1,  
 32 1989.

1

AGE

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

15

JUVENILE SENTENCING STANDARDS

16

SCHEDULE D-1

17 This schedule may only be used for minor/first offenders. After the  
 18 determination is made that a youth is a minor/first offender, the court  
 19 has the discretion to select sentencing option A((~~7~~)) or B(~~(7 or C)~~).

20

MINOR/FIRST OFFENDER

21

OPTION A

22

STANDARD RANGE

23

Community

24

Community

Service

25

Points

Supervision

Hours

Fine

26

27	<del>((1-9</del>	<del>0-3 months</del>	<del>and/or 0-8</del>	<del>and/or 0-\$10</del>
28	<del>10-19</del>	<del>0-3 months</del>	<del>and/or 0-8</del>	<del>and/or 0-\$10</del>
29	<del>20-29</del>	<del>0-3 months</del>	<del>and/or 0-16</del>	<del>and/or 0-\$10</del>
30	<del>30-39</del>	<del>0-3 months</del>	<del>and/or 8-24</del>	<del>and/or 0-\$25</del>
31	<del>40-49</del>	<del>3-6 months</del>	<del>and/or 16-32</del>	<del>and/or 0-\$25</del>
32	<del>50-59</del>	<del>3-6 months</del>	<del>and/or 24-40</del>	<del>and/or 0-\$25</del>
33	<del>60-69</del>	<del>6-9 months</del>	<del>and/or 32-48</del>	<del>and/or 0-\$50</del>
34	<del>70-79</del>	<del>6-9 months</del>	<del>and/or 40-56</del>	<del>and/or 0-\$50</del>
35	<del>80-89</del>	<del>9-12 months</del>	<del>and/or 48-64</del>	<del>and/or 10-\$100</del>
36	<del>90-109</del>	<del>9-12 months</del>	<del>and/or 56-72</del>	<del>and/or 10-\$100))</del>



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

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

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 confinement is used.

29 All A+ offenses 180-224 weeks

30 OR

31 OPTION B

32 STATUTORY OPTION

33 OFFENDERS WITH 110 POINTS OR MORE

34 ~~((0-12 Months Community Supervision~~  
 35 ~~0-150 Hours Community Service~~  
 36 ~~0-100 Fine~~

1 ~~Posting of a Probation Bond))~~

2 If the offender has (~~less than~~) 110 points or more, the court may  
3 impose (~~a determinate disposition of community supervision and/or up~~  
4 ~~to 30 days confinement; in which case, if confinement has been imposed,~~  
5 ~~the court shall state either aggravating or mitigating factors as set~~  
6 ~~forth in RCW 13.40.150)) an option B disposition as provided in RCW  
7 13.40.160(4)(b).~~

8 (~~If the middle offender has 110 points or more, the court may~~  
9 ~~impose a disposition under option A and may suspend the disposition on~~  
10 ~~the condition that the offender serve up to thirty days of confinement~~  
11 ~~and follow all conditions of community supervision. If the offender~~  
12 ~~fails to comply with the terms of community supervision, the court may~~  
13 ~~impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended~~  
14 ~~disposition and order execution of the disposition. If the court~~  
15 ~~imposes confinement for offenders with 110 points or more, the court~~  
16 ~~shall state either aggravating or mitigating factors set forth in RCW~~  
17 ~~13.40.150.))~~

18 OR

19 OPTION C

20 MANIFEST INJUSTICE

21 ALL MIDDLE OFFENDERS

22 If the court determines that a disposition under A or B would  
23 effectuate a manifest injustice, the court shall sentence the juvenile  
24 to a maximum term and the provisions of (~~RCW 13.40.030(2)~~) section 34  
25 of this act shall be used to determine the range.

26 JUVENILE SENTENCING STANDARDS

27 SCHEDULE D-3

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

1 SERIOUS OFFENDER

2 OPTION A

3 STANDARD RANGE

4	Points	Institution Time
5	0-129	8-12 weeks
6	130-149	13-16 weeks
7	150-199	21-28 weeks
8	200-249	30-40 weeks
9	250-299	52-65 weeks
10	300-374	80-100 weeks
11	375+	103-129 weeks
12	All A+	
13	Offenses	180-224 weeks

14 OR

15 OPTION B

16 MANIFEST INJUSTICE

17 A disposition outside the standard range shall be determined and shall  
18 be comprised of confinement or community supervision including posting  
19 a probation bond or a combination thereof. When a judge finds a  
20 manifest injustice and imposes a sentence of confinement exceeding 30  
21 days, the court shall sentence the juvenile to a maximum term, and the  
22 provisions of ((RCW 13.40.030(2))) section 34 of this act shall be used  
23 to determine the range.

24 **Sec. 20.** RCW 13.40.045 and 1994 sp.s. c 7 s 518 are each amended  
25 to read as follows:

26 The secretary, assistant secretary, or the secretary's designee  
27 shall issue arrest warrants for juveniles who escape from department  
28 residential custody or abscond from parole supervision or fail to meet  
29 conditions of parole. These arrest warrants shall authorize any law  
30 enforcement, probation and parole, or peace officer of this state, or  
31 any other state where the juvenile is located, to arrest the juvenile  
32 and to place the juvenile in physical custody pending the juvenile's  
33 return to confinement in a state juvenile rehabilitation facility.

34 **Sec. 21.** RCW 13.40.050 and 1995 c 395 s 5 are each amended to read  
35 as follows:

1 (1) When a juvenile taken into custody is held in detention:  
2 (a) An information, a community supervision modification or  
3 termination of diversion petition, or a parole modification petition  
4 shall be filed within seventy-two hours, Saturdays, Sundays, and  
5 holidays excluded, or the juvenile shall be released; and  
6 (b) A detention hearing, a community supervision modification or  
7 termination of diversion petition, or a parole modification petition  
8 shall be held within seventy-two hours, Saturdays, Sundays, and  
9 holidays excluded, from the time of filing the information or petition,  
10 to determine whether continued detention is necessary under RCW  
11 13.40.040.

12 (2) Notice of the detention hearing, stating the time, place, and  
13 purpose of the hearing, (~~and~~) stating the right to counsel, and  
14 requiring attendance, shall be given to the parent, guardian, or  
15 custodian if such person can be found and shall also be given to the  
16 juvenile if over twelve years of age.

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

20 (4) The court shall, based upon the allegations in the information,  
21 determine whether the case is properly before it or whether the case  
22 should be treated as a diversion case under RCW 13.40.080. If the case  
23 is not properly before the court the juvenile shall be ordered  
24 released.

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

30 (6) If detention is not necessary under RCW 13.40.040, (~~as now or~~  
31 ~~hereafter amended,~~) the court shall impose the most appropriate of the  
32 following conditions or, if necessary, any combination of the following  
33 conditions:

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

36 (b) Place restrictions on the travel of the juvenile during the  
37 period of release;

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

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

3 (e) Require that the juvenile return to detention during specified  
4 hours; or

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

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

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

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

16 (1) All actions under this chapter shall be commenced and tried in  
17 the county where any element of the offense was committed except as  
18 otherwise specially provided by statute. In cases in which diversion  
19 is provided by statute, venue is in the county in which the juvenile  
20 resides or in the county in which any element of the offense was  
21 committed.

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

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

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

1       **Sec. 23.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended  
2 to 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. The diversion contract must specify the full amount of  
18 restitution due even if the juvenile does not have the means or  
19 potential to pay the full amount;

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

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

1 (e) Requirements to remain during specified hours at home, school,  
2 or work, and restrictions on leaving or entering specified geographical  
3 areas.

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

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

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

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

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

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

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

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

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

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

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

39 (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. 24.** RCW 13.40.110 and 1990 c 3 s 303 are each amended to read  
21 as follows:

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

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

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

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

37 (2) The court after a decline hearing may order the case  
38 transferred for adult criminal prosecution upon a finding that the

1 declination would be in the best interest of the juvenile or the  
2 public. The court shall consider the relevant reports, facts,  
3 opinions, and arguments presented by the parties and their counsel.

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

8 (4) If the court finds that declination of jurisdiction is  
9 appropriate it may, in lieu of transferring the respondent for adult  
10 criminal prosecution, classify the offender as a youthful offender and  
11 retain the offender in juvenile court. The court may classify an  
12 offender as a youthful offender only if he or she is under fifteen  
13 years of age and the standard range that the offender could receive if  
14 remanded for adult criminal prosecution exceeds incarceration past the  
15 age of twenty-one.

16 NEW SECTION. Sec. 25. A new section is added to chapter 13.40 RCW  
17 to read as follows:

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

22 NEW SECTION. Sec. 26. A new section is added to chapter 13.40 RCW  
23 to read as follows:

24 (1) At a disposition hearing, the court shall impose both an adult  
25 and a juvenile sentence on a person classified as a youthful offender  
26 under RCW 13.40.110(4). The adult sentence shall be determined  
27 according to the sentencing reform act, chapter 9.94A RCW. The adult  
28 sentence shall be suspended conditioned upon the youthful offender's  
29 compliance with the conditions and terms of the juvenile sentence. The  
30 juvenile sentence shall be confinement with the department until age  
31 twenty-one.

32 (2) The court may, on application by the department, remand the  
33 youthful offender to the department of corrections to begin serving the  
34 offender's adult sentence if, at any time while the offender is serving  
35 the offender's juvenile sentence, the offender: Refuses to  
36 meaningfully participate in rehabilitative programs made available to  
37 the offender by the department; reoffends; or constitutes a serious

1 threat to the physical safety of others. The offender may also be  
2 remanded to the department of corrections to begin serving the  
3 offender's adult sentence if the department petitions and the court  
4 finds that the offender is not likely to benefit from the services the  
5 department has to offer.

6 (3) Unless previously remanded to the department of corrections to  
7 begin serving the offender's adult sentence, the youthful offender  
8 shall, no sooner than three months before the offender's twenty-first  
9 birthday, appear before the sentencing court to determine compliance  
10 with the juvenile sentence.

11 (4) After the hearing the court shall remand the youthful offender  
12 to the department of corrections to begin serving the offender's adult  
13 sentence unless the sentencing court finds by a preponderance of  
14 evidence that the offender:

15 (a) Has meaningfully participated in the rehabilitative programs  
16 made available by the department;

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

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

20 If the court makes these findings by a preponderance of evidence,  
21 then it shall release the youthful offender from the suspended adult  
22 sentence.

23 (5) When the juvenile is released from the suspended adult sentence  
24 the court shall, as a condition of that release, order the offender to  
25 serve twenty-four months of community placement to be supervised by the  
26 department of corrections. The court shall order conditions of  
27 community placement as provided for in RCW 9.94A.120(8). All  
28 provisions of chapter 9.94A RCW dealing with community placement shall  
29 be applicable to these offenders.

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

33 NEW SECTION. **Sec. 27.** A new section is added to chapter 13.40 RCW  
34 to read as follows:

35 If at any time a person classified as a youthful offender under RCW  
36 13.40.110(4) is remanded to begin serving an adult sentence, the  
37 youthful offender shall be given credit for all incarceration time  
38 served on the juvenile sentence.

1       **Sec. 28.** RCW 13.40.120 and 1981 c 299 s 9 are each amended to read  
2 as follows:

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

9       **Sec. 29.** RCW 13.40.125 and 1995 c 395 s 6 are each amended to read  
10 as follows:

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

19       (2) Any juvenile granted a deferral of ~~((adjudication))~~ disposition  
20 under this section shall be placed under community supervision. The  
21 court may impose any conditions of supervision that it deems  
22 appropriate including posting a probation bond. Payment of  
23 restitution, as provided in RCW 13.40.190 shall also be a condition of  
24 community supervision under this section.

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

28       (4) If the juvenile fails to comply with the terms of supervision,  
29 the court shall enter an order of ~~((adjudication and proceed to))~~  
30 disposition. The juvenile's lack of compliance shall be determined by  
31 the judge upon written motion by the prosecutor or the juvenile's  
32 juvenile court community supervision counselor. A parent who signed  
33 for a probation bond or deposited cash may notify the counselor if the  
34 juvenile fails to comply with the bond or conditions of supervision.  
35 The counselor shall notify the court and surety. A surety shall notify  
36 the court of the juvenile's failure to comply with the probation bond.  
37 The state shall bear the burden to prove by a preponderance of the

1 evidence that the juvenile has failed to comply with the terms of  
2 community supervision.

3 (5) If the juvenile agrees to a deferral of ((adjudication))  
4 disposition, the juvenile shall waive all rights:

5 (a) To a speedy trial and disposition;

6 (b) To call and confront witnesses; and

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

9 (6) A juvenile is not eligible for a deferred ((adjudication))  
10 disposition if:

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

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

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

14 or

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

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

18 (1) The respondent shall be advised of the allegations in the  
19 information and shall be required to plead guilty or not guilty to the  
20 allegation(s). The state or the respondent may make preliminary  
21 motions up to the time of the plea.

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

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

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

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

37 (6) If the respondent is found guilty the court may immediately  
38 proceed to disposition or may continue the case for a dispositional

1 hearing. Notice of the time and place of the continued hearing may be  
2 given in open court. If notice is not given in open court to a party,  
3 the party and the parent, guardian, or custodian who has custody of the  
4 juvenile shall be notified by mail of the time and place of the  
5 continued hearing.

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

9 (8) The disposition hearing shall be held within fourteen days  
10 after the adjudicatory hearing or plea of guilty unless good cause is  
11 shown for further delay, or within twenty-one days if the juvenile is  
12 not held in a detention facility, unless good cause is shown for  
13 further delay.

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

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

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

21 RECOMMENDED PROSECUTING STANDARDS  
22 FOR CHARGING AND PLEA DISPOSITIONS

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

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

29 STANDARD: A prosecuting attorney may decline to prosecute, even  
30 though technically sufficient evidence to prosecute exists, in  
31 situations where prosecution would serve no public purpose, would  
32 defeat the underlying purpose of the law in question, or would result  
33 in decreased respect for the law. The decision not to prosecute or  
34 divert shall not be influenced by the race, gender, religion, or creed  
35 of the suspect.

36 GUIDELINES/COMMENTARY:

37 Examples

1       The following are examples of reasons not to prosecute which could  
2 satisfy the standard.

3       (a) Contrary to Legislative Intent - It may be proper to decline to  
4 charge where the application of criminal sanctions would be clearly  
5 contrary to the intent of the legislature in enacting the particular  
6 statute.

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

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

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

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

14       (iv) The statute has not been recently reconsidered by the  
15 legislature.

16       This reason is not to be construed as the basis for declining cases  
17 because the law in question is unpopular or because it is difficult to  
18 enforce.

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

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

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

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

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

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

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

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

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

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

3 (f) High Disproportionate Cost of Prosecution - It may be proper to  
4 decline to charge where the cost of locating or transporting, or the  
5 burden on, prosecution witnesses is highly disproportionate to the  
6 importance of prosecuting the offense in question. The reason should  
7 be limited to minor cases and should not be relied upon in serious  
8 cases.

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

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

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

22 (i) Assault cases where the victim has suffered little or no  
23 injury;

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

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

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

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

31 Notification

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

34 (2) Decision to prosecute.

35 STANDARD:

36 Crimes against persons will be filed if sufficient admissible  
37 evidence exists, which, when considered with the most plausible,  
38 reasonably foreseeable defense that could be raised under the evidence,  
39 would justify conviction by a reasonable and objective fact-finder.

1 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
2 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
3 9A.64.020 the prosecutor should avoid pre-filing agreements or  
4 diversions intended to place the accused in a program of treatment or  
5 counseling, so that treatment, if determined to be beneficial, can be  
6 proved pursuant to RCW 13.40.160(5).

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

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

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

#### 16 Selection of Charges/Degree of Charge

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

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

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

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

24 Overcharging includes:

25 (a) Charging a higher degree;

26 (b) Charging additional counts.

27 This standard is intended to direct prosecutors to charge those  
28 crimes which demonstrate the nature and seriousness of a respondent's  
29 criminal conduct, but to decline to charge crimes which are not  
30 necessary to such an indication. Crimes which do not merge as a matter  
31 of law, but which arise from the same course of conduct, do not all  
32 have to be charged.

33 The selection of charges and/or the degree of the charge shall not  
34 be influenced by the race, gender, religion, or creed of the  
35 respondent.

#### 36 GUIDELINES/COMMENTARY:

##### 37 Police Investigation

38 A prosecuting attorney is dependent upon law enforcement agencies  
39 to conduct the necessary factual investigation which must precede the

1 decision to prosecute. The prosecuting attorney shall ensure that a  
2 thorough factual investigation has been conducted before a decision to  
3 prosecute is made. In ordinary circumstances the investigation should  
4 include the following:

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

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

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

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

### 13 Exceptions

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

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

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

19 (3) The arrest of the suspect is necessary to complete the  
20 investigation of the crime.

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

### 26 Investigation Techniques

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

29 (1) Polygraph testing;

30 (2) Hypnosis;

31 (3) Electronic surveillance;

32 (4) Use of informants.

### 33 Prefiling Discussions with Defendant

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

### 37 PLEA DISPOSITIONS:

38 Standard

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

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

9 (a) Evidentiary problems which make conviction of the original  
10 charges doubtful;

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

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

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

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

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

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

21 (h) The probable effect of witnesses.

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

27 DISPOSITION RECOMMENDATIONS:

28 Standard

29 The prosecutor may reach an agreement regarding disposition  
30 recommendations.

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

33 **Sec. 32.** RCW 13.40.150 and 1995 c 268 s 5 are each amended to read  
34 as follows:

35 (1) In disposition hearings all relevant and material evidence,  
36 including oral and written reports, may be received by the court and  
37 may be relied upon to the extent of its probative value, even though  
38 such evidence may not be admissible in a hearing on the information.

1 The youth or the youth's counsel and the prosecuting attorney shall be  
2 afforded an opportunity to examine and controvert written reports so  
3 received and to cross-examine individuals making reports when such  
4 individuals are reasonably available, but sources of confidential  
5 information need not be disclosed. The prosecutor and counsel for the  
6 juvenile may submit recommendations for disposition.

7 (2) For purposes of disposition:

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

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

11 (c) In no event may a disposition for a violation include  
12 confinement.

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

16 (a) Consider the facts supporting the allegations of criminal  
17 conduct by the respondent;

18 (b) Consider information and arguments offered by parties and their  
19 counsel;

20 (c) Consider any predisposition reports;

21 (d) Consult with the respondent's parent, guardian, or custodian on  
22 the appropriateness of dispositional options under consideration and  
23 afford the respondent and the respondent's parent, guardian, or  
24 custodian an opportunity to speak in the respondent's behalf;

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

27 (f) Determine the amount of restitution owing to the victim, if  
28 any;

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

31 (h) Consider whether or not any of the following mitigating factors  
32 exist:

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

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

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

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

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

6 (i) Consider whether or not any of the following aggravating  
7 factors exist:

8 (i) In the commission of the offense, or in flight therefrom, the  
9 respondent inflicted or attempted to inflict serious bodily injury to  
10 another;

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

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

14 (iv) The respondent has a recent criminal history or has failed to  
15 comply with conditions of a recent dispositional order or diversion  
16 agreement;

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

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

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

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

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

30 (a) The sex of the respondent;

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

32 (c) The creed or religion of the respondent or the respondent's  
33 family;

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

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

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

4 **Sec. 33.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to read  
5 as follows:

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

11 If the court concludes, and enters reasons for its conclusion, that  
12 disposition within the standard range would effectuate a manifest  
13 injustice the court shall impose a disposition outside the standard  
14 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The  
15 court's finding of manifest injustice shall be supported by clear and  
16 convincing evidence.

17 A disposition outside the standard range shall be determinate and  
18 shall be comprised of confinement or community supervision, or a  
19 combination thereof. When a judge finds a manifest injustice and  
20 imposes a sentence of confinement exceeding thirty days, the court  
21 shall sentence the juvenile to a maximum term, and the provisions of  
22 (~~RCW 13.40.030(2)~~) section 34 of this act shall be used to determine  
23 the range. A disposition outside the standard range is appealable  
24 under RCW 13.40.230 by the state or the respondent. A disposition  
25 within the standard range is not appealable under RCW 13.40.230.

26 (2) Where the respondent is found to be a minor or first offender,  
27 the court shall order that the respondent serve a term of community  
28 supervision as indicated in option A (~~or option B~~) of schedule D-1,  
29 RCW 13.40.0357 except as provided in subsections (5) and (6) of this  
30 section. A minor/first offender receiving an option A disposition may  
31 also be required to serve 0-10 days in confinement. The court may  
32 suspend the confinement on the condition that the offender comply with  
33 the terms of community supervision. If the court determines that a  
34 disposition of community supervision would effectuate a manifest  
35 injustice the court may impose another disposition under option (~~C~~)  
36 (B) of schedule D-1, RCW 13.40.0357. Except as provided in subsection  
37 (5) of this section, a disposition other than a community supervision  
38 may be imposed only after the court enters reasons upon which it bases

1 its conclusions that imposition of community supervision would  
2 effectuate a manifest injustice. When a judge finds a manifest  
3 injustice and imposes a sentence of confinement exceeding thirty days,  
4 the court shall sentence the juvenile to a maximum term, and the  
5 provisions of ~~((RCW 13.40.030(2)))~~ section 34 of this act shall be used  
6 to determine the range. The court's finding of manifest injustice  
7 shall be supported by clear and convincing evidence.

8 Except for disposition of community supervision or a disposition  
9 imposed pursuant to subsection (5) of this section, a disposition may  
10 be appealed as provided in RCW 13.40.230 by the state or the  
11 respondent. A disposition of community supervision or a disposition  
12 imposed pursuant to subsection (5) of this section may not be appealed  
13 under RCW 13.40.230.

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

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

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

26 ~~((If the middle offender has less than 110 points, the court  
27 shall impose a determinate disposition of community supervision and/or  
28 up to thirty days confinement, as indicated in option B of schedule D-  
29 2, RCW 13.40.0357 in which case, if confinement has been imposed, the  
30 court shall state either aggravating or mitigating factors as set forth  
31 in RCW 13.40.150.))~~ (i) If the middle offender has 110 points or more,  
32 the court may impose a disposition under option A and may suspend the  
33 disposition and impose a determinate disposition of community  
34 supervision for a period of up to one year or the maximum term allowed  
35 by the standard range whichever is longer, on the condition that the  
36 offender serve up to thirty days of confinement and follow all  
37 conditions of community supervision. If confinement has been imposed,  
38 the court shall state either aggravating or mitigating factors as set  
39 forth in RCW 13.40.150. If the offender violates any condition of the

1 disposition including conditions of a probation bond, the court may  
2 impose sanctions pursuant to RCW 13.40.200 or may revoke the suspension  
3 and order execution of the disposition. The court shall give credit  
4 for any confinement time previously served if that confinement was for  
5 the offense for which the suspension is being revoked; or

6 (ii) If the respondent is a middle offender with 110 points or more  
7 the court may impose the special disposition option under section 35 of  
8 this act.

9 (c) Only if the court concludes, and enters reasons for its  
10 conclusions, that disposition as provided in subsection (4)(a) or (b)  
11 of this section would effectuate a manifest injustice, the court shall  
12 sentence the juvenile to a maximum term, and the provisions of ((RCW  
13 13.40.030(2))) section 34 of this act shall be used to determine the  
14 range. The court's finding of manifest injustice shall be supported by  
15 clear and convincing evidence.

16 (d) A disposition pursuant to subsection (4)(c) of this section is  
17 appealable under RCW 13.40.230 by the state or the respondent. A  
18 disposition pursuant to subsection (4) (a) or (b) of this section is  
19 not appealable under RCW 13.40.230.

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

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

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

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

37 ~~((a))~~(i) Frequency and type of contact between the offender and  
38 therapist;

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

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

6 (iv) Anticipated length of treatment; and

7 (v) Recommended crime-related prohibitions.

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

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

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

29 (b) As a condition of the suspended disposition, the court may  
30 impose the conditions of community supervision and other conditions,  
31 including up to thirty days of confinement and requirements that the  
32 offender do any one or more of the following:

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

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

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

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

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

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

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

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

17 (viii) Comply with the conditions of any court-ordered probation  
18 bond.

19 The sex offender treatment provider shall submit quarterly reports  
20 on the respondent's progress in treatment to the court and the parties.  
21 The reports shall reference the treatment plan and include at a minimum  
22 the following: Dates of attendance, respondent's compliance with  
23 requirements, treatment activities, the respondent's relative progress  
24 in treatment, and any other material specified by the court at the time  
25 of the disposition.

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

28 Except as provided in this subsection (5), after July 1, 1991,  
29 examinations and treatment ordered pursuant to this subsection shall  
30 only be conducted by sex offender treatment providers certified by the  
31 department of health pursuant to chapter 18.155 RCW. A sex offender  
32 therapist who examines or treats a juvenile sex offender pursuant to  
33 this subsection does not have to be certified by the department of  
34 health pursuant to chapter 18.155 RCW if the court finds that: (A) The  
35 offender has already moved to another state or plans to move to another  
36 state for reasons other than circumventing the certification  
37 requirements; (B) no certified providers are available for treatment  
38 within a reasonable geographical distance of the offender's home; and

1 (C) the evaluation and treatment plan comply with this subsection (5)  
2 and the rules adopted by the department of health.

3 If the offender violates any condition of the disposition or the  
4 court finds that the respondent is failing to make satisfactory  
5 progress in treatment, the court may revoke the suspension and order  
6 execution of the disposition or the court may impose a penalty of up to  
7 thirty days' confinement for violating conditions of the disposition.  
8 The court may order both execution of the disposition and up to thirty  
9 days' confinement for the violation of the conditions of the  
10 disposition. The court shall give credit for any confinement time  
11 previously served if that confinement was for the offense for which the  
12 suspension is being revoked.

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

18 (6) RCW 13.40.193 shall govern the disposition of any juvenile  
19 adjudicated of possessing a firearm in violation of RCW  
20 9.41.040(1)((+e+))(b)(iv) or any crime in which a special finding is  
21 entered that the juvenile was armed with a firearm.

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

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

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

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

34 When the court finds a manifest injustice, imposes a sentence of  
35 confinement exceeding thirty days, and sets the maximum term, the  
36 department shall determine the range subject to the following  
37 limitations:

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

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

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

10 NEW SECTION. **Sec. 35.** A new section is added to chapter 13.40 RCW  
11 to read as follows:

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

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

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

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

32 (b) Availability of appropriate treatment;

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

36 (d) Anticipated length of treatment;

37 (e) Recommended crime-related prohibitions; and

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

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

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

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

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

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

36 If the offender violates any condition of the disposition or the  
37 court finds that the respondent is failing to make satisfactory  
38 progress in treatment, the court may revoke the suspension and order  
39 execution of the sentence. The court shall give credit for any

1 confinement time previously served if that confinement was for the  
2 offense for which the suspension is being revoked.

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

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

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

13 **Sec. 36.** RCW 13.40.190 and 1995 c 33 s 5 are each amended to read  
14 as follows:

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

1 the restitution over a ten-year period. In cases where an offender has  
2 been committed to the department for a period of confinement exceeding  
3 fifteen weeks, restitution may be waived. In all cases, the court must  
4 indicate the full amount of restitution due, and the amount, if any,  
5 the respondent is required to pay.

6 (2) Regardless of the provisions of subsection (1) of this section,  
7 the court shall order restitution in all cases where the victim is  
8 entitled to benefits under the crime victims' compensation act, chapter  
9 7.68 RCW. If the court does not order restitution and the victim of  
10 the crime has been determined to be entitled to benefits under the  
11 crime victims' compensation act, the department of labor and  
12 industries, as administrator of the crime victims' compensation  
13 program, may petition the court within one year of entry of the  
14 disposition order for entry of a restitution order. Upon receipt of a  
15 petition from the department of labor and industries, the court shall  
16 hold a restitution hearing and shall enter a restitution order.

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

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

23 **Sec. 37.** RCW 13.40.210 and 1994 sp.s. c 77 s 527 are each amended  
24 to read as follows:

25 ~~(1) ((The secretary shall, except in the case of a juvenile~~  
26 ~~committed by a court to a term of confinement in a state institution~~  
27 ~~outside the appropriate standard range for the offense(s) for which the~~  
28 ~~juvenile was found to be guilty established pursuant to RCW 13.40.030,~~  
29 ~~set a release or discharge date for each juvenile committed to its~~  
30 ~~custody. The release or discharge date shall be within the prescribed~~  
31 ~~range to which a juvenile has been committed except as provided in RCW~~  
32 ~~13.40.320 concerning offenders the department determines are eligible~~  
33 ~~for the juvenile offender basic training camp program. Such dates~~  
34 ~~shall be determined prior to the expiration of sixty percent of a~~  
35 ~~juvenile's minimum term of confinement included within the prescribed~~  
36 ~~range to which the juvenile has been committed.)) (a) When a juvenile~~  
37 is committed to a term of confinement in a state institution, the  
38 secretary shall review the sentencing court's finding of the

1 rehabilitative goals to be achieved by the juvenile during the term of  
2 confinement. The department shall provide rehabilitative resources,  
3 including but not limited to education, vocational training, substance  
4 abuse treatment, and counseling, to permit the juvenile to achieve  
5 these rehabilitative goals.

6 (b) After expiration of no more than sixty percent of the  
7 juvenile's commitment range, the department shall provide a report  
8 containing an evaluation of the juvenile's behavior and performance  
9 during commitment. This report shall specifically describe the  
10 juvenile's progress toward achieving the designated rehabilitative  
11 goals.

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

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

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

26 (f) After the court determines a release date, the court shall  
27 notify the secretary by mail, and the secretary shall release any  
28 juvenile committed to the custody of the department within four  
29 calendar days prior to the juvenile's release date or on the release  
30 date set under this chapter. Days spent in the custody of the  
31 department shall be tolled by any period of time during which a  
32 juvenile has absented himself or herself from the department's  
33 supervision without the prior approval of the secretary or the  
34 secretary's designee.

35 (2) The secretary shall monitor the average daily population of the  
36 state's juvenile residential facilities. When the secretary concludes  
37 that in-residence population of residential facilities exceeds one  
38 hundred five percent of the rated bed capacity specified in statute, or  
39 in absence of such specification, as specified by the department in

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

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

1 geographical boundaries (~~and notify the department of any change in~~  
2 ~~his or her address~~); (g) submit to electronic monitoring; (h) refrain  
3 from using illegal drugs and alcohol, and submit to random urinalysis  
4 when requested by the assigned parole officer; and (i) refrain from  
5 contact with specific individuals or a specified class of individuals.

6 After termination of the parole period, the juvenile shall be  
7 discharged from the department's supervision.

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

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

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

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

4 **Sec. 38.** RCW 13.50.010 and 1994 sp.s. c 7 s 541 are each amended  
5 to read as follows:

6 (1) For purposes of this chapter:

7 (a) "Juvenile justice or care agency" means any of the following:  
8 Police, diversion units, court, prosecuting attorney, defense attorney,  
9 detention center, attorney general, the department of social and health  
10 services and its contracting agencies, schools; and, in addition,  
11 persons or public or private agencies having children committed to  
12 their custody;

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

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

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

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

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

27 (a) The agency may never knowingly record inaccurate information.  
28 Any information in records maintained by the department of social and  
29 health services relating to a petition filed pursuant to chapter 13.34  
30 RCW that is found by the court, upon proof presented, to be false or  
31 inaccurate shall be corrected or expunged from such records by the  
32 agency;

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

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

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

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

13 (6) A juvenile, or his or her parents, or any person who has  
14 reasonable cause to believe information concerning that person is  
15 included in the records of a juvenile justice or care agency may make  
16 a motion to the court challenging the accuracy of any information  
17 concerning the moving party in the record or challenging the continued  
18 possession of the record by the agency. If the court grants the  
19 motion, it shall order the record or information to be corrected or  
20 destroyed.

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

25 (8) The court may permit inspection of records by, or release of  
26 information to, any clinic, hospital, or agency which has the subject  
27 person under care or treatment. The court may also permit inspection  
28 by or release to individuals or agencies, including juvenile justice  
29 advisory committees of county law and justice councils, engaged in  
30 legitimate research for educational, scientific, or public purposes.  
31 The court may also permit inspection of, or release of information  
32 from, records which have been sealed pursuant to RCW 13.50.050(11).  
33 The court shall release to the sentencing guidelines commission records  
34 needed for its research and data-gathering functions under RCW  
35 9.94A.040, 13.40.027, 13.40.030, and other statutes. Access to records  
36 or information for research purposes shall be permitted only if the  
37 anonymity of all persons mentioned in the records or information will  
38 be preserved. Each person granted permission to inspect juvenile  
39 justice or care agency records for research purposes shall present a

1 notarized statement to the court stating that the names of juveniles  
2 and parents will remain confidential.

3 (9) Juvenile detention facilities shall release records to the  
4 juvenile disposition standards commission under RCW 13.40.025 upon  
5 request. The commission shall not disclose the names of any juveniles  
6 or parents mentioned in the records without the named individual's  
7 written permission.

8 **Sec. 39.** RCW 13.50.050 and 1992 c 188 s 7 are each amended to read  
9 as follows:

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

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

15 (3) All records other than the official juvenile court file are  
16 confidential and may be released only as provided in this section, RCW  
17 13.50.010, 13.40.215, and 4.24.550.

18 (4) Except as otherwise provided in this section and RCW 13.50.010,  
19 records retained or produced by any juvenile justice or care agency may  
20 be released to other participants in the juvenile justice or care  
21 system only when an investigation or case involving the juvenile in  
22 question is being pursued by the other participant or when that other  
23 participant is assigned the responsibility for supervising the  
24 juvenile.

25 (5) Except as provided in RCW 4.24.550, information not in an  
26 official juvenile court file concerning a juvenile or a juvenile's  
27 family may be released to the public only when that information could  
28 not reasonably be expected to identify the juvenile or the juvenile's  
29 family.

30 (6) Notwithstanding any other provision of this chapter, the  
31 release, to the juvenile or his or her attorney, of law enforcement and  
32 prosecuting attorneys' records pertaining to investigation, diversion,  
33 and prosecution of juvenile offenses shall be governed by the rules of  
34 discovery and other rules of law applicable in adult criminal  
35 investigations and prosecutions.

36 (7) The juvenile court and the prosecutor may set up and maintain  
37 a central record-keeping system which may receive information on all  
38 alleged juvenile offenders against whom a complaint has been filed

1 pursuant to RCW 13.40.070 whether or not their cases are currently  
2 pending before the court. The central record-keeping system may be  
3 computerized. If a complaint has been referred to a diversion unit,  
4 the diversion unit shall promptly report to the juvenile court or the  
5 prosecuting attorney when the juvenile has agreed to diversion. An  
6 offense shall not be reported as criminal history in any central  
7 record-keeping system without notification by the diversion unit of the  
8 date on which the offender agreed to diversion.

9 (8) Upon request of the victim of a crime or the victim's immediate  
10 family, the identity of an alleged or proven juvenile offender alleged  
11 or found to have committed a crime against the victim and the identity  
12 of the alleged or proven juvenile offender's parent, guardian, or  
13 custodian and the circumstance of the alleged or proven crime shall be  
14 released to the victim of the crime or the victim's immediate family.

15 (9) Subject to the rules of discovery applicable in adult criminal  
16 prosecutions, the juvenile offense records of an adult criminal  
17 defendant or witness in an adult criminal proceeding shall be released  
18 upon request to prosecution and defense counsel after a charge has  
19 actually been filed. The juvenile offense records of any adult  
20 convicted of a crime and placed under the supervision of the adult  
21 corrections system shall be released upon request to the adult  
22 corrections system.

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

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

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

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

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

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

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

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

22 (15) Any adjudication of a juvenile offense or a crime subsequent  
23 to sealing has the effect of nullifying the sealing order. Any  
24 conviction for any adult felony subsequent to the sealing has the  
25 effect of nullifying the sealing order for the purposes of chapter  
26 9.94A RCW for any juvenile adjudication of guilt for a class A offense,  
27 a violent offense, or a sex offense as defined in RCW 9.94A.030.

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

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

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

- 1 (b) The person has not subsequently been convicted of a felony;  
2 (c) No proceeding is pending against that person seeking the  
3 conviction of a criminal offense; and  
4 (d) The person has never been found guilty of a serious offense.

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

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

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

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

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

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

32 (a) Records may be routinely destroyed only when the person the  
33 subject of the information or complaint has attained twenty-three years  
34 of age or older, or is eighteen years of age or older and his or her  
35 criminal history consists entirely of one diversion agreement and two  
36 years have passed since completion of the agreement.

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

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

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

21 NEW SECTION. **Sec. 40.** A new section is added to chapter 28A.225  
22 RCW to read as follows:

23 References to juvenile court in this chapter mean, in addition to  
24 the juvenile court of the superior court, courts of limited  
25 jurisdiction that have acquired jurisdiction pursuant to RCW  
26 13.04.030(1)(e)(iv) or section 12 of this act over juveniles who  
27 violate the provisions of this chapter. If a court of limited  
28 jurisdiction has jurisdiction over juveniles who violate this chapter,  
29 that court also has jurisdiction over parents charged with violations  
30 of this chapter.

31 **Sec. 41.** RCW 35.20.030 and 1993 c 83 s 3 are each amended to read  
32 as follows:

33 The municipal court shall have jurisdiction to try violations of  
34 all city ordinances and all other actions brought to enforce or recover  
35 license penalties or forfeitures declared or given by any such  
36 ordinances. It is empowered to forfeit cash bail or bail bonds and  
37 issue execution thereon, to hear and determine all causes, civil or

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

17 **Sec. 42.** RCW 72.09.300 and 1994 sp.s. c 7 s 542 are each amended  
18 to read as follows:

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

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

33 (3) The local law and justice council shall develop a local law and  
34 justice plan for the county. The council shall design the elements and  
35 scope of the plan, subject to final approval by the county legislative  
36 authority. The general intent of the plan shall include seeking means  
37 to maximize local resources including personnel and facilities, reduce  
38 duplication of services, and share resources between local and state

1 government in order to accomplish local efficiencies without  
2 diminishing effectiveness. The plan shall also include a section on  
3 jail management. This section may include the following elements:

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

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

7 (c) A description of current jail resources;

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

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

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

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

17 (h) A proposed plan to collect, synthesize, and disseminate  
18 technical information concerning local criminal justice activities,  
19 facilities, and procedures;

20 (i) A description of existing and potential services for offenders  
21 including employment services, substance abuse treatment, mental health  
22 services, and housing referral services.

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

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

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

33 (7) The secretary may adopt rules for the submittal, review, and  
34 approval of all requests for assistance made to the department. The  
35 secretary may also appoint an advisory committee of local and state  
36 government officials to recommend policies and procedures relating to  
37 the state and local correctional systems and to assist the department  
38 in providing technical assistance to local governments. The committee  
39 shall include representatives of the county sheriffs, the police

1 chiefs, the county prosecuting attorneys, the county and city  
2 legislative authorities, and the jail administrators. The secretary  
3 may contract with other state and local agencies and provide funding in  
4 order to provide the assistance requested by counties.

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

10 (9) The council shall establish an advisory committee on juvenile  
11 justice proportionality. The council shall appoint the county juvenile  
12 court administrator and at least five citizens as advisory committee  
13 members. The citizen advisory committee members shall be  
14 representative of the county's ethnic and geographic diversity. The  
15 advisory committee members shall serve two-year terms and may be  
16 reappointed. The duties of the advisory committee include:

17 (a) Monitoring and reporting to the (~~juvenile disposition~~  
18 ~~standards~~) sentencing guidelines commission on the proportionality,  
19 effectiveness, and cultural relevance of:

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

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

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

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

30 NEW SECTION. Sec. 43. Sections 2, 5 through 12, 14, 19, 23  
31 through 27, 32, 33, 35, 36, 40, and 41 of this act apply only to  
32 offenses committed on or after the effective date of this section.

33 NEW SECTION. Sec. 44. (1) Sections 16 and 17 of this act shall  
34 take effect June 30, 1996.

35 (2) Sections 1 through 3, 5 through 15, and 18 through 43 of this  
36 act shall take effect July 1, 1996.

1 (3) Section 4 of this act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect immediately.

5 **Sec. 45.** 1995 c 269 s 3603 (uncodified) is amended to read as  
6 follows:

7 Section 301 of this act shall take effect June 30, (~~1997~~) 1996.

8 NEW SECTION. **Sec. 46.** Sections 12, 40, and 41 of this act shall  
9 expire June 30, 1998.

10 NEW SECTION. **Sec. 47.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 48.** If specific funding for the purposes of  
15 section 37 of this act, referencing section 37 of this act by bill and  
16 section number, is not provided by June 30, 1996, in the omnibus  
17 appropriations act, section 37 of this act shall be null and void."

18 **E2SHB 2219** - S COMM AMD  
19 By Committee on Ways & Means

20 ADOPTED AS AMENDED 2/29/96

21 On page 1, line 1 of the title, after "offenders;" strike the  
22 remainder of the title and insert "amending RCW 5.60.060, 9.94A.040,  
23 9.94A.060, 9.94A.130, 9.94A.390, 13.40.010, 13.40.025, 13.40.027,  
24 13.40.030, 13.40.0357, 13.40.045, 13.40.050, 13.40.060, 13.40.080,  
25 13.40.110, 13.40.120, 13.40.125, 13.40.130, 13.40.150, 13.40.160,  
26 13.40.190, 13.40.210, 13.50.010, 13.50.050, 35.20.030, and 72.09.300;  
27 amending 1995 c 269 s 3603 (uncodified); reenacting and amending RCW  
28 9.94A.030, 9.94A.360, 13.04.030, and 13.40.020; adding new sections to  
29 chapter 9A.44 RCW; adding a new section to chapter 13.04 RCW; adding  
30 new sections to chapter 13.40 RCW; adding a new section to chapter  
31 28A.225 RCW; creating new sections; prescribing penalties; providing

1 effective dates; providing an expiration date; and declaring an  
2 emergency."

--- END ---