

SUBSTITUTE SENATE BILL 5520

State of Washington 56th Legislature 1999 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Costa, McCaslin, Kohl-Welles, Winsley and McAuliffe)

Read first time 03/03/99.

1 AN ACT Relating to a juvenile offender community sanction
2 sentencing alternative; amending RCW 13.40.0357 and 13.40.077;
3 reenacting and amending RCW 13.40.160; adding new sections to chapter
4 13.40 RCW; and prescribing penalties.

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

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

DESCRIPTION AND OFFENSE CATEGORY

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

Arson and Malicious Mischief

14			
15	A	Arson 1 (9A.48.020)	B+
16	B	Arson 2 (9A.48.030)	C
17	C	Reckless Burning 1 (9A.48.040)	D
18	D	Reckless Burning 2 (9A.48.050)	E

1	B	Malicious Mischief 1 (9A.48.070)	C
2	C	Malicious Mischief 2 (9A.48.080)	D
3	D	Malicious Mischief 3 (<\$50 is	
4		E class) (9A.48.090)	E
5	E	Tampering with Fire Alarm	
6		Apparatus (9.40.100)	E
7	A	Possession of Incendiary Device	
8		(9.40.120)	B+
9		Assault and Other Crimes	
10		Involving Physical Harm	
11	A	Assault 1 (9A.36.011)	B+
12	B+	Assault 2 (9A.36.021)	C+
13	C+	Assault 3 (9A.36.031)	D+
14	D+	Assault 4 (9A.36.041)	E
15	B+	Drive-By Shooting	
16		(9A.36.045)	C+
17	D+	Reckless Endangerment	
18		(9A.36.050)	E
19	C+	Promoting Suicide Attempt	
20		(9A.36.060)	D+
21	D+	Coercion (9A.36.070)	E
22	C+	Custodial Assault (9A.36.100)	D+
23		Burglary and Trespass	
24	B+	Burglary 1 (9A.52.020)	C+
25	B	Residential Burglary	
26		(9A.52.025)	C
27	B	Burglary 2 (9A.52.030)	C
28	D	Burglary Tools (Possession of)	
29		(9A.52.060)	E
30	D	Criminal Trespass 1 (9A.52.070)	E
31	E	Criminal Trespass 2 (9A.52.080)	E
32	C	Vehicle Prowling 1 (9A.52.095)	D
33	D	Vehicle Prowling 2 (9A.52.100)	E
34		Drugs	
35	E	Possession/Consumption of Alcohol	
36		(66.44.270)	E

1	C	Illegally Obtaining Legend Drug	
2		(69.41.020)	D
3	C+	Sale, Delivery, Possession of Legend	
4		Drug with Intent to Sell	
5		(69.41.030)	D+
6	E	Possession of Legend Drug	
7		(69.41.030)	E
8	B+	Violation of Uniform Controlled	
9		Substances Act - Narcotic,	
10		Methamphetamine, or Flunitrazepam	
11		Sale (69.50.401(a)(1) (i) or (ii))	B+
12	C	Violation of Uniform Controlled	
13		Substances Act - Nonnarcotic Sale	
14		(69.50.401(a)(1)(iii))	C
15	E	Possession of Marihuana <40 grams	
16		(69.50.401(e))	E
17	C	Fraudulently Obtaining Controlled	
18		Substance (69.50.403)	C
19	C+	Sale of Controlled Substance	
20		for Profit (69.50.410)	C+
21	E	Unlawful Inhalation (9.47A.020)	E
22	B	Violation of Uniform Controlled	
23		Substances Act - Narcotic,	
24		Methamphetamine, or Flunitrazepam	
25		Counterfeit Substances	
26		(69.50.401(b)(1) (i) or (ii))	B
27	C	Violation of Uniform Controlled	
28		Substances Act - Nonnarcotic	
29		Counterfeit Substances	
30		(69.50.401(b)(1) (iii), (iv), (v))	C
31	C	Violation of Uniform Controlled	
32		Substances Act - Possession of a	
33		Controlled Substance	
34		(69.50.401(d))	C
35	C	Violation of Uniform Controlled	
36		Substances Act - Possession of a	
37		Controlled Substance	
38		(69.50.401(c))	C

1		Firearms and Weapons	
2	B	Theft of Firearm (9A.56.300)	C
3	B	Possession of Stolen Firearm	
4		(9A.56.310)	C
5	E	Carrying Loaded Pistol Without	
6		Permit (9.41.050)	E
7	C	Possession of Firearms by Minor (<18)	
8		(9.41.040(1)(b)(iii))	C
9	D+	Possession of Dangerous Weapon	
10		(9.41.250)	E
11	D	Intimidating Another Person by use	
12		of Weapon (9.41.270)	E
13		Homicide	
14	A+	Murder 1 (9A.32.030)	A
15	A+	Murder 2 (9A.32.050)	B+
16	B+	Manslaughter 1 (9A.32.060)	C+
17	C+	Manslaughter 2 (9A.32.070)	D+
18	B+	Vehicular Homicide (46.61.520)	C+
19		Kidnapping	
20	A	Kidnap 1 (9A.40.020)	B+
21	B+	Kidnap 2 (9A.40.030)	C+
22	C+	Unlawful Imprisonment	
23		(9A.40.040)	D+
24		Obstructing Governmental Operation	
25	D	Obstructing a Law Enforcement	
26		Officer (9A.76.020)	E
27	E	Resisting Arrest (9A.76.040)	E
28	B	Introducing Contraband 1	
29		(9A.76.140)	C
30	C	Introducing Contraband 2	
31		(9A.76.150)	D
32	E	Introducing Contraband 3	
33		(9A.76.160)	E
34	B+	Intimidating a Public Servant	
35		(9A.76.180)	C+
36	B+	Intimidating a Witness	
37		(9A.72.110)	C+

1		Public Disturbance	
2	C+	Riot with Weapon (9A.84.010)	D+
3	D+	Riot Without Weapon	
4		(9A.84.010)	E
5	E	Failure to Disperse (9A.84.020)	E
6	E	Disorderly Conduct (9A.84.030)	E
7		Sex Crimes	
8	A	Rape 1 (9A.44.040)	B+
9	A-	Rape 2 (9A.44.050)	B+
10	C+	Rape 3 (9A.44.060)	D+
11	A-	Rape of a Child 1 (9A.44.073)	B+
12	B+	Rape of a Child 2 (9A.44.076)	C+
13	B	Incest 1 (9A.64.020(1))	C
14	C	Incest 2 (9A.64.020(2))	D
15	D+	Indecent Exposure	
16		(Victim <14) (9A.88.010)	E
17	E	Indecent Exposure	
18		(Victim 14 or over) (9A.88.010)	E
19	B+	Promoting Prostitution 1	
20		(9A.88.070)	C+
21	C+	Promoting Prostitution 2	
22		(9A.88.080)	D+
23	E	O & A (Prostitution) (9A.88.030)	E
24	B+	Indecent Liberties (9A.44.100)	C+
25	A-	Child Molestation 1 (9A.44.083)	B+
26	B	Child Molestation 2 (9A.44.086)	C+
27		Theft, Robbery, Extortion, and Forgery	
28	B	Theft 1 (9A.56.030)	C
29	C	Theft 2 (9A.56.040)	D
30	D	Theft 3 (9A.56.050)	E
31	B	Theft of Livestock (9A.56.080)	C
32	C	Forgery (9A.60.020)	D
33	A	Robbery 1 (9A.56.200)	B+
34	B+	Robbery 2 (9A.56.210)	C+
35	B+	Extortion 1 (9A.56.120)	C+
36	C+	Extortion 2 (9A.56.130)	D+
37	B	Possession of Stolen Property 1	
38		(9A.56.150)	C

1	C	Possession of Stolen Property 2	
2		(9A.56.160)	D
3	D	Possession of Stolen Property 3	
4		(9A.56.170)	E
5	C	Taking Motor Vehicle Without	
6		Owner's Permission (9A.56.070)	D
7		Motor Vehicle Related Crimes	
8	E	Driving Without a License	
9		(46.20.005)	E
10	C	Hit and Run - Injury	
11		(46.52.020(4))	D
12	D	Hit and Run-Attended	
13		(46.52.020(5))	E
14	E	Hit and Run-Unattended	
15		(46.52.010)	E
16	C	Vehicular Assault (46.61.522)	D
17	C	Attempting to Elude Pursuing	
18		Police Vehicle (46.61.024)	D
19	E	Reckless Driving (46.61.500)	E
20	D	Driving While Under the Influence	
21		(46.61.502 and 46.61.504)	E
22		Other	
23	B	Bomb Threat (9.61.160)	C
24	C	Escape 1 (9A.76.110)	C
25	C	Escape 2 (9A.76.120)	C
26	D	Escape 3 (9A.76.130)	E
27	E	Obscene, Harassing, Etc.,	
28		Phone Calls (9.61.230)	E
29	A	Other Offense Equivalent to an	
30		Adult Class A Felony	B+
31	B	Other Offense Equivalent to an	
32		Adult Class B Felony	C
33	C	Other Offense Equivalent to an	
34		Adult Class C Felony	D
35	D	Other Offense Equivalent to an	
36		Adult Gross Misdemeanor	E
37	E	Other Offense Equivalent to an	
38		Adult Misdemeanor	E

1 V Violation of Order of Restitution,
2 Community Supervision, or
3 Confinement (13.40.200) V

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

6 1st escape or attempted escape during 12-month period - 4 weeks
7 confinement

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

10 3rd and subsequent escape or attempted escape during 12-month
11 period - 12 weeks confinement

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

14 **JUVENILE SENTENCING STANDARDS**

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

OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE

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

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

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

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

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

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

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

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

11 **OR**

12 **OPTION B**

13 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

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

18 **OR**

19 **OPTION C**

20 **MANIFEST INJUSTICE**

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

24 **OR**

25 **OPTION D**

26 **COMMUNITY SANCTION DISPOSITION ALTERNATIVE**

27 If the juvenile offender has not been previously committed to a
28 state institution, but is presently subject to a standard range
29 disposition of confinement in a state institution and has not committed
30 a sex offense, a serious violent offense as defined in RCW 9.94A.030,
31 or other violent category A felony as defined in this section, the
32 court may impose a disposition under RCW 13.40.160(5) and section 4 of
33 this act.

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

3 RECOMMENDED PROSECUTING STANDARDS
4 FOR CHARGING AND PLEA DISPOSITIONS

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

10 Evidentiary sufficiency.

11 (1) Decision not to prosecute.

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

19 GUIDELINES/COMMENTARY:

20 Examples

21 The following are examples of reasons not to prosecute which could
22 satisfy the standard.

23 (a) Contrary to Legislative Intent - It may be proper to decline
24 to charge where the application of criminal sanctions would be clearly
25 contrary to the intent of the legislature in enacting the particular
26 statute.

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

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

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

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

34 (iv) The statute has not been recently reconsidered by the
35 legislature.

36 This reason is not to be construed as the basis for declining
37 cases because the law in question is unpopular or because it is
38 difficult to enforce.

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

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

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

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

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

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

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

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

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

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

23 (f) High Disproportionate Cost of Prosecution - It may be proper
24 to decline to charge where the cost of locating or transporting, or the
25 burden on, prosecution witnesses is highly disproportionate to the
26 importance of prosecuting the offense in question. The reason should
27 be limited to minor cases and should not be relied upon in serious
28 cases.

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

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

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

4 (i) Assault cases where the victim has suffered little or no
5 injury;

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

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

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

13 Notification

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

16 (2) Decision to prosecute.

17 STANDARD:

18 Crimes against persons will be filed if sufficient admissible
19 evidence exists, which, when considered with the most plausible,
20 reasonably foreseeable defense that could be raised under the evidence,
21 would justify conviction by a reasonable and objective fact-finder.
22 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
23 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
24 9A.64.020 the prosecutor should avoid prefiling agreements or
25 diversions intended to place the accused in a program of treatment or
26 counseling, so that treatment, if determined to be beneficial, can be
27 proved under RCW 13.40.160(~~(4)~~) (3).

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

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

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

37 (3) Selection of Charges/Degree of Charge

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

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

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

7 (b) The prosecutor should not overcharge to obtain a guilty plea.
8 Overcharging includes:

9 (i) Charging a higher degree;

10 (ii) Charging additional counts.

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

17 (4) Police Investigation

18 A prosecuting attorney is dependent upon law enforcement agencies
19 to conduct the necessary factual investigation which must precede the
20 decision to prosecute. The prosecuting attorney shall ensure that a
21 thorough factual investigation has been conducted before a decision to
22 prosecute is made. In ordinary circumstances the investigation should
23 include the following:

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

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

27 (c) The obtaining, in accordance with constitutional requirements,
28 of the suspect's version of the events.

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

32 (5) Exceptions

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

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

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

38 (c) The arrest of the suspect is necessary to complete the
39 investigation of the crime.

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

6 (6) Investigation Techniques

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

9 (a) Polygraph testing;

10 (b) Hypnosis;

11 (c) Electronic surveillance;

12 (d) Use of informants.

13 (7) Prefiling Discussions with Defendant

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

17 (8) Plea dispositions:

18 STANDARD

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

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

28 (i) Evidentiary problems which make conviction of the original
29 charges doubtful;

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

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

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

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

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

1 (vii) The nature and seriousness of the offense or offenses
2 charged;

3 (viii) The probable effect of witnesses.

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

9 (9) Disposition recommendations:

10 STANDARD

11 The prosecutor may reach an agreement regarding disposition
12 recommendations.

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

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

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

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

24 (b) When the court sentences an offender to a standard range as
25 provided in RCW 13.40.0357 option A that includes a term of confinement
26 exceeding thirty days, commitment shall be to the department for the
27 standard range of confinement, except as provided in subsections (2),
28 (~~(+4)~~) (3), and (5) of this section.

29 (2) If the court concludes, and enters reasons for its conclusion,
30 that disposition within the standard range would effectuate a manifest
31 injustice the court shall impose a disposition outside the standard
32 range, as indicated in option C of RCW 13.40.0357. The court's finding
33 of manifest injustice shall be supported by clear and convincing
34 evidence.

35 A disposition outside the standard range shall be determinate and
36 shall be comprised of confinement or community supervision, or a
37 combination thereof. When a judge finds a manifest injustice and
38 imposes a sentence of confinement exceeding thirty days, the court

1 shall sentence the juvenile to a maximum term, and the provisions of
2 RCW 13.40.030(2) shall be used to determine the range. A disposition
3 outside the standard range is appealable under RCW 13.40.230 by the
4 state or the respondent. A disposition within the standard range is
5 not appealable under RCW 13.40.230.

6 ~~(3) ((Where a respondent is found to have committed an offense for
7 which the respondent declined to enter into a diversion agreement, the
8 court shall impose a term of community supervision limited to the
9 conditions allowed in a diversion agreement as provided in RCW
10 13.40.080(2)).~~

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

17 The report of the examination shall include at a minimum the
18 following: The respondent's version of the facts and the official
19 version of the facts, the respondent's offense history, an assessment
20 of problems in addition to alleged deviant behaviors, the respondent's
21 social, educational, and employment situation, and other evaluation
22 measures used. The report shall set forth the sources of the
23 evaluator's information.

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

28 (a)(i) Frequency and type of contact between the offender and
29 therapist;

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

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

35 (iv) Anticipated length of treatment; and

36 (v) Recommended crime-related prohibitions.

37 The court on its own motion may order, or on a motion by the state
38 shall order, a second examination regarding the offender's amenability
39 to treatment. The evaluator shall be selected by the party making the

1 motion. The defendant shall pay the cost of any second examination
2 ordered unless the court finds the defendant to be indigent in which
3 case the state shall pay the cost.

4 After receipt of reports of the examination, the court shall then
5 consider whether the offender and the community will benefit from use
6 of this special sex offender disposition alternative and consider the
7 victim's opinion whether the offender should receive a treatment
8 disposition under this section. If the court determines that this
9 special sex offender disposition alternative is appropriate, then the
10 court shall impose a determinate disposition within the standard range
11 for the offense, or if the court concludes, and enters reasons for its
12 conclusions, that such disposition would cause a manifest injustice,
13 the court shall impose a disposition under option C, and the court may
14 suspend the execution of the disposition and place the offender on
15 community supervision for at least two years. As a condition of the
16 suspended disposition, the court may impose the conditions of community
17 supervision and other conditions, including up to thirty days of
18 confinement and requirements that the offender do any one or more of
19 the following:

20 (b)(i) Devote time to a specific education, employment, or
21 occupation;

22 (ii) Undergo available outpatient sex offender treatment for up to
23 two years, or inpatient sex offender treatment not to exceed the
24 standard range of confinement for that offense. A community mental
25 health center may not be used for such treatment unless it has an
26 appropriate program designed for sex offender treatment. The
27 respondent shall not change sex offender treatment providers or
28 treatment conditions without first notifying the prosecutor, the
29 probation counselor, and the court, and shall not change providers
30 without court approval after a hearing if the prosecutor or probation
31 counselor object to the change;

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

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

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

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

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

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

7 (ix) The court shall order that the offender may not attend the
8 public or approved private elementary, middle, or high school attended
9 by the victim or the victim's siblings. The parents or legal guardians
10 of the offender are responsible for transportation or other costs
11 associated with the offender's change of school that would otherwise be
12 paid by the school district. The court shall send notice of the
13 disposition and restriction on attending the same school as the victim
14 or victim's siblings to the public or approved private school the
15 juvenile will attend, if known, or if unknown, to the approved private
16 schools and the public school district board of directors of the
17 district in which the juvenile resides or intends to reside. This
18 notice must be sent at the earliest possible date but not later than
19 ten calendar days after entry of the disposition.

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

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

29 Except as provided in this subsection (~~((4))~~) (3), after July 1,
30 1991, examinations and treatment ordered pursuant to this subsection
31 shall only be conducted by sex offender treatment providers certified
32 by the department of health pursuant to chapter 18.155 RCW. A sex
33 offender therapist who examines or treats a juvenile sex offender
34 pursuant to this subsection does not have to be certified by the
35 department of health pursuant to chapter 18.155 RCW if the court finds
36 that: (A) The offender has already moved to another state or plans to
37 move to another state for reasons other than circumventing the
38 certification requirements; (B) no certified providers are available
39 for treatment within a reasonable geographical distance of the

1 offender's home; and (C) the evaluation and treatment plan comply with
2 this subsection (~~((4))~~) (3) and the rules adopted by the department of
3 health.

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

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

19 A disposition entered under this subsection (~~((4))~~) (3) is not
20 appealable under RCW 13.40.230.

21 (~~((5))~~) (4) If the juvenile offender is subject to a standard
22 range disposition of local sanctions or 15 to 36 weeks of confinement
23 and has not committed an A- or B+ offense, the court may impose the
24 disposition alternative under RCW 13.40.165.

25 (5) If the juvenile offender has not been previously committed to
26 a state institution, but is presently subject to a standard range
27 disposition of confinement to a state institution and has not committed
28 a sex offense, a serious violent offense as defined in RCW 9.94A.030,
29 or other violent category A felony as defined in RCW 13.40.0357, the
30 court may impose a community sanction disposition alternative under
31 section 4 of this act.

32 (6) RCW 13.40.193 shall govern the disposition of any juvenile
33 adjudicated of possessing a firearm in violation of RCW
34 9.41.040(1)(b)(iii) or any crime in which a special finding is entered
35 that the juvenile was armed with a firearm.

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

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

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

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 13.40 RCW
8 to read as follows:

9 (1) When a juvenile offender is subject to a standard range
10 disposition of confinement to a state institution and has not been
11 previously committed to a state institution, the court, on its own
12 motion or on the motion of the state or the respondent may order a
13 community sanction disposition alternative in lieu of confinement in a
14 state institution if the offender has not committed a sex offense, a
15 serious violent offense as defined in RCW 9.94A.030, or other violent
16 category A felony as defined in RCW 13.40.0357.

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

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

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

3 (5) If the offender violates any conditions of the community
4 sanction disposition, the court may impose sanctions under RCW
5 13.40.200, or may revoke the suspended disposition and order execution
6 of the standard range disposition.

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

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

14 The juvenile rehabilitation administration, in consultation with
15 the Washington association of juvenile courts administrators, shall
16 develop a methodology for distributing to the counties for the purpose
17 of providing financial assistance in meeting the processes and services
18 required by chapter 13.32A RCW, and RCW 28A.225.030 and 28A.225.035
19 from the savings realized by the use of the community sanction
20 disposition alternative authorized under RCW 13.40.160(5) and section
21 4 of this act based on each county's use of that alternative.

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