
HOUSE BILL 1138

State of Washington 55th Legislature 1997 Regular Session

By Representative Appelwick; by request of Governor Lowry

Read first time 01/15/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to juveniles; amending RCW 5.60.060, 9.94A.130,
2 13.40.010, 13.40.070, 13.40.265, 13.40.0354, 13.40.0357, 13.40.045,
3 13.40.050, 13.40.060, 13.40.077, 13.40.080, 13.40.110, 13.40.120,
4 13.40.130, 13.40.160, 13.40.193, 13.40.210, and 13.40.220; reenacting
5 and amending RCW 9.94A.360, 13.04.030, and 13.40.020; adding new
6 sections to chapter 13.40 RCW; creating a new section; repealing RCW
7 13.40.025 and 13.40.030; prescribing penalties; providing an effective
8 date; and declaring an emergency.

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

10 **Sec. 1.** RCW 5.60.060 and 1996 c 156 s 1 are each amended to read
11 as follows:

12 (1) A husband shall not be examined for or against his wife,
13 without the consent of the wife, nor a wife for or against her husband
14 without the consent of the husband; nor can either during marriage or
15 afterward, be without the consent of the other, examined as to any
16 communication made by one to the other during marriage. But this
17 exception shall not apply to a civil action or proceeding by one
18 against the other, nor to a criminal action or proceeding for a crime
19 committed by one against the other, nor to a criminal action or

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

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

13 (3) A parent shall not be examined without his or her consent as to
14 a communication made by that parent's minor child to the child's
15 attorney after the filing of juvenile offender or adult criminal
16 charges, if the parent was present at the time of the communication.
17 This privilege does not extend to communications made prior to filing
18 of charges.

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

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

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

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

1 (~~(5)~~) (6) A public officer shall not be examined as a witness as
2 to communications made to him or her in official confidence, when the
3 public interest would suffer by the disclosure.

4 (~~(6)~~) (7)(a) A peer support group counselor shall not, without
5 consent of the law enforcement officer making the communication, be
6 compelled to testify about any communication made to the counselor by
7 the officer while receiving counseling. The counselor must be
8 designated as such by the sheriff, police chief, or chief of the
9 Washington state patrol, prior to the incident that results in
10 counseling. The privilege only applies when the communication was made
11 to the counselor while acting in his or her capacity as a peer support
12 group counselor. The privilege does not apply if the counselor was an
13 initial responding officer, a witness, or a party to the incident which
14 prompted the delivery of peer support group counseling services to the
15 law enforcement officer.

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

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

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

28 (~~(7)~~) (8) A sexual assault advocate may not, without the consent
29 of the victim, be examined as to any communication made by the victim
30 to the sexual assault advocate.

31 (a) For purposes of this section, "sexual assault advocate" means
32 the employee or volunteer from a rape crisis center, victim assistance
33 unit, program, or association, that provides information, medical or
34 legal advocacy, counseling, or support to victims of sexual assault,
35 who is designated by the victim to accompany the victim to the hospital
36 or other health care facility and to proceedings concerning the alleged
37 assault, including police and prosecution interviews and court
38 proceedings.

1 (b) A sexual assault advocate may disclose a confidential
2 communication without the consent of the victim if failure to disclose
3 is likely to result in a clear, imminent risk of serious physical
4 injury or death of the victim or another person. Any sexual assault
5 advocate participating in good faith in the disclosing of records and
6 communications under this section shall have immunity from any
7 liability, civil, criminal, or otherwise, that might result from the
8 action. In any proceeding, civil or criminal, arising out of a
9 disclosure under this section, the good faith of the sexual assault
10 advocate who disclosed the confidential communication shall be
11 presumed.

12 **Sec. 2.** RCW 9.94A.130 and 1984 c 209 s 7 are each amended to read
13 as follows:

14 The power to defer or suspend the imposition or execution of
15 sentence is hereby abolished in respect to sentences prescribed for
16 felonies committed after June 30, 1984, except for offenders sentenced
17 under RCW 9.94A.120(~~((7)(a))~~)(8)(a), the special sexual offender
18 sentencing alternative, or offenders sentenced under section 27 of this
19 act, whose sentence may be suspended.

20 **Sec. 3.** RCW 9.94A.360 and 1995 c 316 s 1 and 1995 c 101 s 1 are
21 each reenacted and amended to read as follows:

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

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

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

31 (2) Except as provided in subsection (4) of this section, class A
32 and sex prior felony convictions shall always be included in the
33 offender score. Class B prior felony convictions other than sex
34 offenses shall not be included in the offender score, if since the last
35 date of release from confinement (including full-time residential
36 treatment) pursuant to a felony conviction, if any, or entry of
37 judgment and sentence, the offender had spent ten consecutive years in

1 the community without committing any crime that subsequently results in
2 a conviction. Class C prior felony convictions other than sex offenses
3 shall not be included in the offender score if, since the last date of
4 release from confinement (including full-time residential treatment)
5 pursuant to a felony conviction, if any, or entry of judgment and
6 sentence, the offender had spent five consecutive years in the
7 community without committing any crime that subsequently results in a
8 conviction. Serious traffic convictions shall not be included in the
9 offender score if, since the last date of release from confinement
10 (including full-time residential treatment) pursuant to a felony
11 conviction, if any, or entry of judgment and sentence, the offender
12 spent five years in the community without committing any crime that
13 subsequently results in a conviction. This subsection applies to both
14 adult and juvenile prior convictions.

15 (3) Out-of-state convictions for offenses shall be classified
16 according to the comparable offense definitions and sentences provided
17 by Washington law. Federal convictions for offenses shall be
18 classified according to the comparable offense definitions and
19 sentences provided by Washington law. If there is no clearly
20 comparable offense under Washington law or the offense is one that is
21 usually considered subject to exclusive federal jurisdiction, the
22 offense shall be scored as a class C felony equivalent if it was a
23 felony under the relevant federal statute.

24 (4) Always include juvenile convictions for sex offenses and
25 serious violent offenses. Include other class A juvenile felonies only
26 if the offender was 15 or older at the time the juvenile offense was
27 committed. Include other class B and C juvenile felony convictions
28 only if the offender was 15 or older at the time the juvenile offense
29 was committed and the offender was less than 23 at the time the offense
30 for which he or she is being sentenced was committed.

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

34 (6)(a) In the case of multiple prior convictions, for the purpose
35 of computing the offender score, count all convictions separately,
36 except:

37 (i) Prior adult offenses which were found, under RCW
38 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
39 counted as one offense, the offense that yields the highest offender

1 score. The current sentencing court shall determine with respect to
2 other prior adult offenses for which sentences were served concurrently
3 whether those offenses shall be counted as one offense or as separate
4 offenses using the "same criminal conduct" analysis found in RCW
5 9.94A.400(1)(a), and if the court finds that they shall be counted as
6 one offense, then the offense that yields the highest offender score
7 shall be used. The current sentencing court may presume that such
8 other prior adult offenses were not the same criminal conduct from
9 sentences imposed on separate dates, or in separate counties or
10 jurisdictions, or in separate complaints, indictments, or informations;

11 (ii) Juvenile prior convictions entered or sentenced on the same
12 date shall count as one offense, the offense that yields the highest
13 offender score, except for juvenile prior convictions for violent
14 offenses with separate victims, which shall count as separate offenses;
15 and

16 (iii) In the case of multiple prior convictions for offenses
17 committed before July 1, 1986, for the purpose of computing the
18 offender score, count all adult convictions served concurrently as one
19 offense, and count all juvenile convictions entered on the same date as
20 one offense. Use the conviction for the offense that yields the
21 highest offender score.

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

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

31 (8) If the present conviction is for a nonviolent offense and not
32 covered by subsection (12) or (13) of this section, count one point for
33 each adult prior felony conviction and one point for each juvenile
34 prior violent felony conviction and « point for each juvenile prior
35 nonviolent felony conviction.

36 (9) If the present conviction is for a violent offense and not
37 covered in subsection (10), (11), (12), or (13) of this section, count
38 two points for each prior adult and juvenile violent felony conviction,

1 one point for each prior adult nonviolent felony conviction, and «
2 point for each prior juvenile nonviolent felony conviction.

3 (10) If the present conviction is for Murder 1 or 2, Assault 1,
4 Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count
5 three points for prior adult and juvenile convictions for crimes in
6 these categories, two points for each prior adult and juvenile violent
7 conviction (not already counted), one point for each prior adult
8 nonviolent felony conviction, and « point for each prior juvenile
9 nonviolent felony conviction.

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

15 (12) If the present conviction is for a felony traffic offense
16 count two points for each adult or juvenile prior conviction for
17 Vehicular Homicide or Vehicular Assault; for each felony offense or
18 serious traffic offense, count one point for each adult and « point for
19 each juvenile prior conviction.

20 (13) If the present conviction is for a drug offense count three
21 points for each adult prior felony drug offense conviction and two
22 points for each juvenile drug offense. All other adult and juvenile
23 felonies are scored as in subsection (9) of this section if the current
24 drug offense is violent, or as in subsection (8) of this section if the
25 current drug offense is nonviolent.

26 (14) If the present conviction is for Willful Failure to Return
27 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
28 Release, RCW 72.65.070, or Escape from Community Custody, RCW
29 72.09.310, count only prior escape convictions in the offender score.
30 Count adult prior escape convictions as one point and juvenile prior
31 escape convictions as « point.

32 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
33 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
34 juvenile prior convictions as « point.

35 (16) If the present conviction is for Burglary 2 or residential
36 burglary, count priors as in subsection (8) of this section; however,
37 count two points for each adult and juvenile prior Burglary 1
38 conviction, two points for each adult prior Burglary 2 or residential

1 burglary conviction, and one point for each juvenile prior Burglary 2
2 or residential burglary conviction.

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

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

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

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

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

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

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

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

22 (e) Relating to juveniles alleged or found to have committed
23 offenses, traffic infractions, or violations as provided in RCW
24 13.40.020 through 13.40.230, unless:

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

27 (ii) The statute of limitations applicable to adult prosecution for
28 the offense, traffic infraction, or violation has expired; or

29 (iii) The alleged offense or infraction is a traffic, fish,
30 boating, or game offense or traffic infraction committed by a juvenile
31 sixteen years of age or older and would, if committed by an adult, be
32 tried or heard in a court of limited jurisdiction, in which instance
33 the appropriate court of limited jurisdiction shall have jurisdiction
34 over the alleged offense or infraction: PROVIDED, That if such an
35 alleged offense or infraction and an alleged offense or infraction
36 subject to juvenile court jurisdiction arise out of the same event or
37 incident, the juvenile court may have jurisdiction of both matters:
38 PROVIDED FURTHER, That the jurisdiction under this subsection does not

1 constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1)
2 or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited
3 jurisdiction which confine juveniles for an alleged offense or
4 infraction may place juveniles in juvenile detention facilities under
5 an agreement with the officials responsible for the administration of
6 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

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

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

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

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

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

36 (i) Relating to petitions to compel disclosure of information filed
37 by the department of social and health services pursuant to RCW
38 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) of this section, who is detained
7 pending trial, may be detained in a county detention facility as
8 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 described in this section, if such parent, guardian, or
11 custodian was served with a summons, shall be subject to the
12 jurisdiction of the court for purposes of enforcing required attendance
13 at juvenile court hearings.

14 **Sec. 5.** RCW 13.40.010 and 1992 c 205 s 101 are each amended to
15 read as follows:

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

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

27 (a) Protect the citizenry from criminal behavior;

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

30 (c) Make the juvenile offender accountable for his or her criminal
31 behavior;

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

34 (e) Provide due process for juveniles alleged to have committed an
35 offense;

36 (f) Promote equitable treatment of juveniles and their families
37 without regard to race, ethnicity, gender, creed, or religion;

1 (g) Provide necessary treatment, supervision, and custody for
2 juvenile offenders;

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

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

6 ~~((i))~~ (j) Develop effective standards and goals for the
7 operation, funding, and evaluation of all components of the juvenile
8 justice system and related services at the state and local levels;
9 ~~((and~~

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

14 (l) Provide for the active participation of the parents, guardian,
15 or custodian of the juvenile in the juvenile justice process.

16 **Sec. 6.** RCW 13.40.020 and 1995 c 395 s 2 and 1995 c 134 s 1 are
17 each reenacted and amended to read as follows:

18 For the purposes of this chapter:

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

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

22 (b) Manslaughter in the first degree; or

23 (c) Assault in the second degree, extortion in the first degree,
24 child molestation in the second degree, kidnapping in the second
25 degree, robbery in the second degree, residential burglary, or burglary
26 in the second degree, where such offenses include the infliction of
27 bodily harm upon another or where during the commission of or immediate
28 withdrawal from such an offense the perpetrator is armed with a deadly
29 weapon;

30 (2) "Community service" means compulsory service, without
31 compensation, performed for the benefit of the community by the
32 offender as punishment for committing an offense. Community service
33 may be performed through public or private organizations or through
34 work crews;

35 (3) "Community supervision" means an order of disposition by the
36 court of an adjudicated youth not committed to the department or an
37 order granting a deferred adjudication pursuant to RCW 13.40.125. A
38 community supervision order for a single offense may be for a period of

1 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
2 one year for other offenses. As a mandatory condition of any term of
3 community supervision, the court shall order the juvenile to refrain
4 from committing new offenses. As a mandatory condition of community
5 supervision, the court shall order the juvenile to comply with the
6 mandatory school attendance provisions of chapter 28A.225 RCW and to
7 inform the school of the existence of this requirement. Community
8 supervision is an individualized program comprised of one or more of
9 the following:

- 10 (a) Community-based sanctions;
- 11 (b) Community-based rehabilitation;
- 12 (c) Monitoring and reporting requirements;
- 13 (d) Posting of a probation bond (~~((imposed pursuant to RCW~~
14 ~~13.40.0357))~~ as provided in RCW 13.40.054;

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

- 17 (a) A fine, not to exceed one hundred dollars;
- 18 (b) Community service not to exceed one hundred fifty hours of
19 service;

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

28 (6) "Monitoring and reporting requirements" means one or more of
29 the following: Curfews; requirements to remain at home, school, work,
30 or court-ordered treatment programs during specified hours;
31 restrictions from leaving or entering specified geographical areas;
32 requirements to report to the probation officer as directed and to
33 remain under the probation officer's supervision; and other conditions
34 or limitations as the court may require which may not include
35 confinement;

36 (7) "Confinement" means physical custody by the department of
37 social and health services in a facility operated by or pursuant to a
38 contract with the state, or physical custody in a detention facility
39 operated by or pursuant to a contract with any county. The county may

1 operate or contract with vendors to operate county detention
2 facilities. The department may operate or contract to operate
3 detention facilities for juveniles committed to the department.
4 Pretrial confinement or confinement of less than thirty-one days
5 imposed as part of a disposition or modification order may be served
6 consecutively or intermittently, in the discretion of the court;

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

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

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

15 (b) The criminal complaint was diverted by a prosecutor pursuant to
16 the provisions of this chapter on agreement of the respondent and after
17 an advisement to the respondent that the criminal complaint would be
18 considered as part of the respondent's criminal history. A
19 successfully completed deferred adjudication shall not be considered
20 part of the respondent's criminal history;

21 (10) "Department" means the department of social and health
22 services;

23 (11) "Detention facility" means a county facility, paid for by the
24 county, for the physical confinement of a juvenile alleged to have
25 committed an offense or an adjudicated offender subject to a
26 disposition or modification order. "Detention facility" includes
27 county group homes, inpatient substance abuse programs, juvenile basic
28 training camps, and electronic monitoring;

29 (12) "Diversion unit" means any probation counselor who enters into
30 a diversion agreement with an alleged youthful offender, or any other
31 person, community accountability board, or other entity except a law
32 enforcement official or entity, with whom the juvenile court
33 administrator has contracted to arrange and supervise such agreements
34 pursuant to RCW 13.40.080, or any person, community accountability
35 board, or other entity specially funded by the legislature to arrange
36 and supervise diversion agreements in accordance with the requirements
37 of this chapter. For purposes of this subsection, "community
38 accountability board" means a board comprised of members of the local
39 community in which the juvenile offender resides. The superior court

1 shall appoint the members. The boards shall consist of at least three
2 and not more than seven members. If possible, the board should include
3 a variety of representatives from the community, such as a law
4 enforcement officer, teacher or school administrator, high school
5 student, parent, and business owner, and should represent the cultural
6 diversity of the local community;

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

9 (14) "Juvenile," "youth," and "child" mean any individual who is
10 under the chronological age of eighteen years and who has not been
11 previously transferred to adult court pursuant to RCW 13.40.110 or who
12 is otherwise under adult court jurisdiction;

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

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

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

23 (18) "Minor or first offender" means a person:

24 (a) Whose current offense(s) and criminal history fall entirely
25 within one of the following categories:

26 ~~((a))~~ (i) Four misdemeanors;

27 ~~((b))~~ (ii) Two misdemeanors and one gross misdemeanor;

28 ~~((c))~~ (iii) One misdemeanor and two gross misdemeanors; ~~((and))~~

29 or

30 ~~((d))~~ (iv) Three gross misdemeanors; and

31 (b) Whose current offense or offenses and criminal history include
32 no more than one of the following offenses:

33 (i) Assault 4 (RCW 9A.36.041);

34 (ii) Coercion (RCW 9A.36.070);

35 (iii) Attempted rape 3 (RCW 9A.44.060);

36 (iv) Attempted rape of a child 3 (RCW 9A.44.079);

37 (v) Attempted sexual misconduct (RCW 9A.44.096);

38 (vi) Resisting arrest (RCW 9A.76.040, 9A.76.200);

39 (vii) Harassment (RCW 9A.46.020);

- 1 (viii) Obscene/harassing telephone call (RCW 9.61.230);
- 2 (ix) Discharge of a dangerous weapon (RCW 9.41.230);
- 3 (x) Carrying a weapon on school premises (RCW 9.41.280);
- 4 (xi) Possession of a concealed pistol (RCW 9.41.050);
- 5 (xii) Possession of a firearm by a person under age twenty-one (RCW
- 6 9.41.240);
- 7 (xiii) Carry/display a dangerous weapon (RCW 9.41.270); or
- 8 (xiv) Obstructing a public servant (RCW 9A.76.020).

9 For purposes of this definition, current violations shall be
10 counted as misdemeanors;

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

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

17 (21) "Restitution" means financial reimbursement by the offender to
18 the victim, and shall be limited to easily ascertainable damages for
19 injury to or loss of property, actual expenses incurred for medical
20 treatment for physical injury to persons, lost wages resulting from
21 physical injury, and costs of the victim's counseling reasonably
22 related to the offense if the offense is a sex offense. Restitution
23 shall not include reimbursement for damages for mental anguish, pain
24 and suffering, or other intangible losses. Nothing in this chapter
25 shall limit or replace civil remedies or defenses available to the
26 victim or offender;

27 (22) "Secretary" means the secretary of the department of social
28 and health services. "Assistant secretary" means the assistant
29 secretary for juvenile rehabilitation for the department;

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

34 (24) "Sex offense" means an offense defined as a sex offense in RCW
35 9.94A.030;

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

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

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

7 (28) "Violent offense" means a violent offense as defined in RCW
8 9.94A.030;

9 (29) "Probation bond" means a bond, posted with sufficient security
10 by a surety justified and approved by the court, to secure the
11 offender's appearance at required court proceedings and compliance with
12 court-ordered community supervision or conditions of release ordered
13 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
14 cash or posting of other collateral in lieu of a bond if approved by
15 the court;

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

20 **Sec. 7.** RCW 13.40.070 and 1994 sp.s. c 7 s 543 are each amended to
21 read as follows:

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

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

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

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

34 (3) If the requirements of subsections (1)(a) and (b) of this
35 section are met, the prosecutor shall either file an information in
36 juvenile court or divert the case, as set forth in subsections (5),
37 (6), and (7) of this section. If the prosecutor finds that the
38 requirements of subsection (1)(a) and (b) of this section are not met,

1 the prosecutor shall maintain a record, for one year, of such decision
2 and the reasons therefor. In lieu of filing an information or
3 diverting an offense a prosecutor may file a motion to modify community
4 supervision where such offense constitutes a violation of community
5 supervision.

6 (4) An information shall be a plain, concise, and definite written
7 statement of the essential facts constituting the offense charged. It
8 shall be signed by the prosecuting attorney and conform to chapter
9 10.37 RCW.

10 (5) Where a case is legally sufficient, the prosecutor shall file
11 an information with the juvenile court if:

12 (a) An alleged offender is accused of a class A felony, a class B
13 felony, an attempt to commit a class B felony, a class C felony listed
14 in RCW 9.94A.440(2) as a crime against persons or listed in RCW
15 9A.46.060 as a crime of harassment, a class C felony that is a
16 violation of RCW 9.41.080 or 9.41.040(1)(~~(e)~~) (b)(iii), or any other
17 offense listed in RCW 13.40.020(1) (b) or (c); or

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

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

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

25 (e) An alleged offender has two or more diversion contracts on the
26 alleged offender's criminal history; or

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

29 (6) Where a case is legally sufficient the prosecutor shall divert
30 the case if the alleged offense is a misdemeanor or gross misdemeanor
31 or violation and the alleged offense is the offender's first offense or
32 violation. If the alleged offender is charged with a related offense
33 that must or may be filed under subsections (5) and (7) of this
34 section, a case under this subsection may also be filed.

35 (7) Where a case is legally sufficient and falls into neither
36 subsection (5) nor (6) of this section, it may be filed or diverted.
37 In deciding whether to file or divert an offense under this section the
38 prosecutor shall be guided only by the length, seriousness, and recency

1 of the alleged offender's criminal history and the circumstances
2 surrounding the commission of the alleged offense.

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

11 (9) The responsibilities of the prosecutor under subsections (1)
12 through (8) of this section may be performed by a juvenile court
13 probation counselor for any complaint referred to the court alleging
14 the commission of an offense which would not be a felony if committed
15 by an adult, if the prosecutor has given sufficient written notice to
16 the juvenile court that the prosecutor will not review such complaints.

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

22 **Sec. 8.** RCW 13.40.265 and 1994 sp.s. c 7 s 435 are each amended to
23 read as follows:

24 (1)(a) If a juvenile thirteen years of age or older is found by
25 juvenile court to have committed an offense while armed with a firearm
26 or an offense that is a violation of RCW 9.41.040(1)((+e)) (b)(iii) or
27 chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the
28 department of licensing within twenty-four hours after entry of the
29 judgment.

30 (b) Except as otherwise provided in (c) of this subsection, upon
31 petition of a juvenile who has been found by the court to have
32 committed an offense that is a violation of chapter 66.44, 69.41,
33 69.50, or 69.52 RCW, the court may at any time the court deems
34 appropriate notify the department of licensing that the juvenile's
35 driving privileges should be reinstated.

36 (c) If the offense is the juvenile's first violation of chapter
37 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the
38 court for reinstatement of the juvenile's privilege to drive revoked

1 pursuant to RCW 46.20.265 until ninety days after the date the juvenile
2 turns sixteen or ninety days after the judgment was entered, whichever
3 is later. If the offense is the juvenile's second or subsequent
4 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile
5 may not petition the court for reinstatement of the juvenile's
6 privilege to drive revoked pursuant to RCW 46.20.265 until the date the
7 juvenile turns seventeen or one year after the date judgment was
8 entered, whichever is later.

9 (2)(a) If a juvenile enters into a diversion agreement with a
10 diversion unit pursuant to RCW 13.40.080 concerning an offense that is
11 a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion
12 unit shall notify the department of licensing within twenty-four hours
13 after the diversion agreement is signed.

14 (b) If a diversion unit has notified the department pursuant to (a)
15 of this subsection, the diversion unit shall notify the department of
16 licensing when the juvenile has completed the agreement.

17 **Sec. 9.** RCW 13.40.0354 and 1994 sp.s. c 7 s 521 are each amended
18 to read as follows:

19 The total current offense points for use in the standards range
20 matrix of schedule(~~s D-1, D-2, and D-3~~) D are computed as follows:

21 (1) The disposition offense category is determined by the offense
22 of conviction. Offenses are divided into ten levels of seriousness,
23 ranging from low (seriousness level E) to high (seriousness level A+),
24 see schedule A, RCW 13.40.0357.

25 (2) The prior offense increase factor is summarized in schedule B,
26 RCW 13.40.0357. The increase factor is determined for each prior
27 offense by using (~~the time span and~~) the offense category in the
28 prior offense increase factor grid. (~~Time span is computed from the~~
29 ~~date of the prior offense to the date of the current offense.~~) The
30 total increase factor is determined by totalling the increase factors
31 for each prior offense and adding a constant factor of 1.0. Diversion
32 offenses prior to age twelve do not count as criminal history.

33 (3) The current offense points are summarized in schedule C, RCW
34 13.40.0357. The current offense points are determined for each current
35 offense by locating the juvenile's age on the horizontal axis and using
36 the offense category on the vertical axis. The juvenile's age is
37 determined as of the time of the current offense and is rounded down to
38 the nearest whole number.

1 (4) The total current offense points are determined for each
 2 current offense by multiplying the total increase factor by the current
 3 offense points. The total current offense points are rounded down to
 4 the nearest whole number.

5 (5) All current offense points calculated in schedule(~~s D-1, D-2,~~
 6 ~~and D-3~~) D shall be increased by a factor of five percent if the
 7 offense is committed by a juvenile who is in a program of parole under
 8 this chapter.

9 **Sec. 10.** RCW 13.40.0357 and 1996 c 205 s 6 are each amended to
 10 read as follows:

11 **SCHEDULE A**

12 **DESCRIPTION AND OFFENSE CATEGORY**

13	JUVENILE		JUVENILE DISPOSITION
14	DISPOSITION		CATEGORY FOR ATTEMPT,
15	OFFENSE		BAILJUMP, CONSPIRACY,
16	CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
17		

18 **Arson and Malicious Mischief**

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

31 **Assault and Other Crimes**

32 **Involving Physical Harm**

33	A	Assault 1 (9A.36.011)	B+
34	B+	Assault 2 (9A.36.021)	C+
35	C+	Assault 3 (9A.36.031)	D+
36	D+	Assault 4 (9A.36.041)	E

1	B+	<u>Reckless Endangerment 1</u>	
2		<u>(9A.36.045)</u>	<u>C+</u>
3	D+	Reckless Endangerment 2	
4		(9A.36.050)	E
5	C+	Promoting Suicide Attempt	
6		(9A.36.060)	D+
7	D+	Coercion (9A.36.070)	E
8	C+	Custodial Assault (9A.36.100)	D+
9		Burglary and Trespass	
10	B+	Burglary 1 (9A.52.020)	C+
11	B	<u>Residential Burglary (9A.52.025)</u>	<u>C</u>
12	B	Burglary 2 (9A.52.030)	C
13	D	Burglary Tools (Possession of)	
14		(9A.52.060)	E
15	D	Criminal Trespass 1 (9A.52.070)	E
16	E	Criminal Trespass 2 (9A.52.080)	E
17	D	Vehicle Prowling (9A.52.100)	E
18		Drugs	
19	E	Possession/Consumption of Alcohol	
20		(66.44.270)	E
21	C	Illegally Obtaining Legend Drug	
22		(69.41.020)	D
23	C+	Sale, Delivery, Possession of Legend	
24		Drug with Intent to Sell	
25		(69.41.030)	D+
26	E	Possession of Legend Drug	
27		(69.41.030)	E
28	B+	Violation of Uniform Controlled	
29		Substances Act - Narcotic or	
30		Methamphetamine Sale	
31		(69.50.401(a)(1)(i) or (ii))	B+
32	C	Violation of Uniform Controlled	
33		Substances Act - Nonnarcotic Sale	
34		(69.50.401(a)(1)(iii))	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 or	
6		Methamphetamine	
7		Counterfeit Substances	
8		(69.50.401(b)(1)(i) or (ii))	B
9	C	Violation of Uniform Controlled	
10		Substances Act - Nonnarcotic	
11		Counterfeit Substances	
12		(69.50.401(b)(1) (iii), (iv),	
13		(v))	C
14	C	Violation of Uniform Controlled	
15		Substances Act - Possession of a	
16		Controlled Substance	
17		(69.50.401(d))	C
18	C	Violation of Uniform Controlled	
19		Substances Act - Possession of a	
20		Controlled Substance	
21		(69.50.401(c))	C
22		Firearms and Weapons	
23	E	Carrying Loaded Pistol Without	
24		Permit (9.41.050)	E
25	C	Possession of Firearms by	
26		Minor (<18) (9.41.040(1) (b)((iv))(iii))	C
27	D+	Possession of Dangerous Weapon	
28		(9.41.250)	E
29	D	Intimidating Another Person by use	
30		of Weapon (9.41.270)	E
31	<u>B</u>	<u>Possession of a Stolen Firearm</u>	
32		<u>(9A.56.310)</u>	<u>C</u>
33	<u>B</u>	<u>Unlawful Possession of a Firearm 1</u>	
34		<u>(9.41.040(1)(a))</u>	<u>C</u>
35	<u>C</u>	<u>Unlawful Possession of a Firearm 2</u>	
36		<u>(9.41.040(1)(b))</u>	<u>D</u>
37		Homicide	
38	A+	Murder 1 (9A.32.030)	A

1	A+	Murder 2 (9A.32.050)	B+
2	B+	Manslaughter 1 (9A.32.060)	C+
3	C+	Manslaughter 2 (9A.32.070)	D+
4	B+	Vehicular Homicide (46.61.520)	C+
5		Kidnapping	
6	A	Kidnap 1 (9A.40.020)	B+
7	B+	Kidnap 2 (9A.40.030)	C+
8	C+	Unlawful Imprisonment	
9		(9A.40.040)	D+
10		Obstructing Governmental Operation	
11	(E)	Obstructing a	
12	<u>D</u>	Law Enforcement Officer	
13		(9A.76.020)	E
14	E	Resisting Arrest (9A.76.040)	E
15	B	Introducing Contraband 1	
16		(9A.76.140)	C
17	C	Introducing Contraband 2	
18		(9A.76.150)	D
19	E	Introducing Contraband 3	
20		(9A.76.160)	E
21	B+	Intimidating a Public Servant	
22		(9A.76.180)	C+
23	B+	Intimidating a Witness	
24		(9A.72.110)	C+
25		Public Disturbance	
26	C+	Riot with Weapon (9A.84.010)	D+
27	D+	Riot Without Weapon	
28		(9A.84.010)	E
29	E	Failure to Disperse (9A.84.020)	E
30	E	Disorderly Conduct (9A.84.030)	E
31		Sex Crimes	
32	A	Rape 1 (9A.44.040)	B+
33	A-	Rape 2 (9A.44.050)	B+
34	C+	Rape 3 (9A.44.060)	D+
35	A-	Rape of a Child 1_ (9A.44.073)	B+
36	(B)	Rape of a Child 2 (9A.44.076)	C+
37	<u>B+</u>		

1	B	Incest 1 (9A.64.020(1))	C
2	C	Incest 2 (9A.64.020(2))	D
3	D+	Indecent Exposure	
4		(Victim <14) (9A.88.010)	E
5	E	Indecent Exposure	
6		(Victim 14 or over) (9A.88.010)	E
7	B+	Promoting Prostitution 1	
8		(9A.88.070)	C+
9	C+	Promoting Prostitution 2	
10		(9A.88.080)	D+
11	E	O & A (Prostitution) (9A.88.030)	E
12	B+	Indecent Liberties (9A.44.100)	C+
13	(B+)	Child Molestation 1 ² (9A.44.083)	((C+))
14	<u>A-</u>		<u>B+</u>
15	((C+))	Child Molestation 2 (9A.44.086)	C
16	<u>B</u>		
17	<u>C</u>	<u>Failure to Register</u>	
18		<u>(For Class A Felony)</u>	
19		<u>(9A.44.130(7))</u>	<u>D</u>
20	<u>D</u>	<u>Failure to Register</u>	
21		<u>(For Class B Felony or Less)</u>	
22		<u>(9A.44.130(7))</u>	<u>E</u>
23		Theft, Robbery, Extortion, and Forgery	
24	B	Theft 1 (9A.56.030)	C
25	C	Theft 2 (9A.56.040)	D
26	D	Theft 3 (9A.56.050)	E
27	<u>B</u>	<u>Theft of a Firearm (9A.56.300)</u>	<u>C</u>
28	B	Theft of Livestock (9A.56.080)	C
29	C	Forgery (9A.60.020)	D
30	A	Robbery 1 (9A.56.200)	B+
31	B+	Robbery 2 (9A.56.210)	C+
32	B+	Extortion 1 (9A.56.120)	C+
33	C+	Extortion 2 (9A.56.130)	D+
34	B	Possession of Stolen Property 1	
35		(9A.56.150)	C
36	C	Possession of Stolen Property 2	
37		(9A.56.160)	D

1	D	Possession of Stolen Property 3	
2		(9A.56.170)	E
3	C	Taking Motor Vehicle Without	
4		Owner's Permission (9A.56.070)	D
5		Motor Vehicle Related Crimes	
6	E	Driving Without a License	
7		(46.20.021)	E
8	C	Hit and Run - Injury	
9		(46.52.020(4))	D
10	D	Hit and Run-Attended	
11		(46.52.020(5))	E
12	E	Hit and Run-Unattended	
13		(46.52.010)	E
14	C	Vehicular Assault (46.61.522)	D
15	C	Attempting to Elude Pursuing	
16		Police Vehicle (46.61.024)	D
17	E	Reckless Driving (46.61.500)	E
18	D	Driving While Under the Influence	
19		(46.61.502 and 46.61.504)	E
20	D	Vehicle Prowling (9A.52.100)	E
21	C	Taking Motor Vehicle Without	
22		Owner's Permission (9A.56.070)	D
23		Other	
24	<u>C</u>	<u>Animal Cruelty (16.52.205)</u>	<u>D</u>
25	B	Bomb Threat (9.61.160)	C
26	C	Escape ⁽¹⁾ (9A.76.110)	C
27	C	Escape ⁽²⁾ (9A.76.120)	C
28	D	Escape 3 (9A.76.130)	E
29	<u>D</u>	<u>Stalking (9A.46.110)</u>	<u>E</u>
30	<u>C</u>	<u>Stalking (Repeat) (9A.46.110)</u>	<u>D</u>
31	<u>D</u>	<u>Harassment (9A.46.020)</u>	<u>E</u>
32	<u>C</u>	<u>Harassment (Repeat) (9A.46.020)</u>	<u>D</u>
33	E	Obscene, Harassing, Etc.,	
34		Phone Calls (9.61.230)	E
35	A	Other Offense Equivalent to an	
36		Adult Class A Felony	B+
37	B	Other Offense Equivalent to an	
38		Adult Class B Felony	C

1	C	Other Offense Equivalent to an	
2		Adult Class C Felony	D
3	D	Other Offense Equivalent to an	
4		Adult Gross Misdemeanor	E
5	E	Other Offense Equivalent to an	
6		Adult Misdemeanor	E
7	V	Violation of Order of Restitution,	
8		Community Supervision, or	
9		Confinement (13.40.200) - \	V
10	V	<u>Violation of Special Sex Offender</u>	
11		<u>Disposition Alternative Conditions</u>	
12		<u>(13.40.160)</u>	V

13 ¹Rape of a Child 1 requires a mandatory minimum sentence of 52-65 weeks
14 confinement

15 ²Child Molestation 1 requires a mandatory minimum sentence of 21-28
16 weeks confinement

17 ~~(13)~~ Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
18 and the standard range is established as follows:

19 1st escape or attempted escape during 12-month period - 4 weeks
20 confinement

21 2nd escape or attempted escape during 12-month period - 8 weeks
22 confinement

23 3rd and subsequent escape or attempted escape during 12-month
24 period - 12 weeks confinement

25 ~~(2)~~ If the court finds that a respondent has violated terms of an order,
26 it may impose a penalty of up to 30 days of confinement.

27 **SCHEDULE B**

28 **PRIOR OFFENSE INCREASE FACTOR**

29 For use with all CURRENT OFFENSES occurring on or after July 1,
30 ~~(1989)~~ 1997.

((~~TIME SPAN~~

OFFENSE — 0-12 — 13-24 — 25 Months
CATEGORY — Months — Months — or More

.....

A+	.9	.9	.9
A	.9	.8	.6
A-	.9	.8	.5
B+	.9	.7	.4
B	.9	.6	.3
C+	.6	.3	.2
C	.5	.2	.2
D+	.3	.2	.1
D	.2	.1	.1
E	.1	.1	.1))

OFFENSE INCREASE
CATEGORY FACTOR

<u>A+</u>	<u>.9</u>
<u>A or A-</u>	<u>.8</u>
<u>B+ or B</u>	<u>.6</u>
<u>C+ or C</u>	<u>.3</u>
<u>D+ or D</u>	<u>.2</u>
<u>E</u>	<u>.1</u>

23 Prior history - Any offense in which a diversion agreement or counsel
24 and release form was signed, or any offense which has been adjudicated
25 by court to be correct prior to the commission of the current
26 offense(s). Diversion offenses committed prior to age twelve do not
27 count as criminal history.

28 **SCHEDULE C**
29 **CURRENT OFFENSE POINTS**

30 For use with all CURRENT OFFENSES occurring on or after July 1,
31 ((1989)) 1997.

32 ((**AGE**

33 OFFENSE — 12 &
34 CATEGORY Under — 13 — 14 — 15 — 16 — 17

35

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

13 **OR**

14 **OPTION B**
 15 **STATUTORY OPTION**

- 16 ~~0-12 Months Community Supervision~~
- 17 ~~0-150 Hours Community Service~~
- 18 ~~0-100 Fine~~
- 19 ~~Posting of a Probation Bond~~
- 20 ~~A term of community supervision with a maximum of 150 hours, \$100.00~~
- 21 ~~fine, and 12 months supervision.~~

22 **OR**

23 **OPTION C**
 24 **MANIFEST INJUSTICE**

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

30 **JUVENILE SENTENCING STANDARDS**
 31 **SCHEDULE D-2**

32 ~~This schedule may only be used for middle offenders. After the~~
 33 ~~determination is made that a youth is a middle offender, the court has~~
 34 ~~the discretion to select sentencing option A, B, or C.~~

MIDDLE OFFENDER

OPTION A

STANDARD RANGE

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Points	Community		Fine	Confinement	
	Supervision	Service Hours		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	
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	

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

27 All A+ offenses 180-224 weeks

OR

OPTION B

STATUTORY OPTION

- 31 0-12 Months Community Supervision
- 32 0-150 Hours Community Service
- 33 0-100 Fine
- 34 Posting of a Probation Bond

35 If the offender has less than 110 points, the court may impose a
36 determinate disposition of community supervision and/or up to 30 days
37 confinement; in which case, if confinement has been imposed, the court

1 shall state either aggravating or mitigating factors as set forth in
2 RCW 13.40.150.

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

13 OR

14 **OPTION C**
15 **MANIFEST INJUSTICE**

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

20 **JUVENILE SENTENCING STANDARDS**
21 **SCHEDULE D-3**

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

25 **SERIOUS OFFENDER**
26 **OPTION A**
27 **STANDARD RANGE**

28 Points ————— Institution Time

0-129	8-12 weeks
130-149	13-16 weeks
150-199	21-28 weeks
200-249	30-40 weeks
250-299	52-65 weeks
300-374	80-100 weeks

1 375+ ————— 103-129 weeks
 2 All A+ Offenses ————— 180-224 weeks

3 OR

4 **OPTION B**

5 **MANIFEST INJUSTICE**

6 ~~A disposition outside the standard range shall be determined and shall~~
 7 ~~be comprised of confinement or community supervision including posting~~
 8 ~~a probation bond or a combination thereof. When a judge finds a~~
 9 ~~manifest injustice and imposes a sentence of confinement exceeding 30~~
 10 ~~days, the court shall sentence the juvenile to a maximum term, and the~~
 11 ~~provisions of RCW 13.40.030(2) shall be used to determine the range.))~~

<u>OFFENDER CATEGORY</u>	<u>DISPOSITION</u>
.....	
<u>Divertees</u>	<u>Diversion</u>
.....	
<u>Minor/First</u>	<u>Community Supervision</u>
	<u>0-12 Months Community Supervision</u>
	<u>0-\$100 Fine</u>
	<u>0-150 Hours Community Service</u>
.....	
<u>Any Middle Offender</u>	<u>Community Supervision/Detention</u>
<u>(Including those</u>	<u>0-12 Months Community Supervision</u>
<u>with 110 or more</u>	<u>0-\$100 Fine</u>
<u>points)</u>	<u>0-150 Hours Community Service</u>
	<u>0-30 Days Confinement</u>
.....	
<u>Middle Offenders</u>	<u>JRA State Confinement</u>
<u>With 110 or More Points</u>	<u>Confinement</u>
<u>and</u>	<u>Points (Weeks)</u>
<u>Serious Offenders</u>	<u>0-129 8-12</u>
	<u>130-149 13-16</u>
	<u>150-199 21-28</u>
	<u>200-249 30-40</u>
	<u>250-299 52-65</u>
	<u>300-374 80-100</u>

1 (b) A detention hearing, a community supervision modification or
2 termination of diversion petition, or a parole modification petition
3 shall be held within seventy-two hours, Saturdays, Sundays, and
4 holidays excluded, from the time of filing the information or petition,
5 to determine whether continued detention is necessary under RCW
6 13.40.040.

7 (2) Notice of the detention hearing, stating the time, place, and
8 purpose of the hearing, (~~and~~) stating the right to counsel, and
9 commanding them to appear, shall be given to the parent, guardian, or
10 custodian if such person can be found and shall also be given to the
11 juvenile if over twelve years of age. The parent, guardian, or
12 custodian must attend the detention hearing.

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

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

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

26 (6) If detention is not necessary under RCW 13.40.040, (~~as now or~~
27 ~~hereafter amended,~~) the court shall impose the most appropriate of the
28 following conditions or, if necessary, any combination of the following
29 conditions:

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

32 (b) Place restrictions on the travel of the juvenile during the
33 period of release;

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

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

38 (e) Require that the juvenile return to detention during specified
39 hours; or

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

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

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

10 **Sec. 13.** RCW 13.40.060 and 1989 c 71 s 1 are each amended to read
11 as follows:

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

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

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

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

35 **Sec. 14.** RCW 13.40.077 and 1996 c 9 s 1 are each amended to read
36 as follows:

37 RECOMMENDED PROSECUTING STANDARDS

FOR CHARGING AND PLEA DISPOSITIONS

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

Evidentiary sufficiency.

(1) Decision not to prosecute.

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

GUIDELINES/COMMENTARY:

Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) Assault cases where the victim has suffered little or no
2 injury;

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

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

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

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

10 Notification

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

13 (2) Decision to prosecute.

14 STANDARD:

15 Crimes against persons will be filed if sufficient admissible
16 evidence exists, which, when considered with the most plausible,
17 reasonably foreseeable defense that could be raised under the evidence,
18 would justify conviction by a reasonable and objective fact-finder.
19 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
20 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
21 9A.64.020 the prosecutor should avoid pre-filing agreements or
22 diversions intended to place the accused in a program of treatment or
23 counseling, so that treatment, if determined to be beneficial, can be
24 proved under RCW 13.40.160(5).

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

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

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

34 (3) Selection of Charges/Degree of Charge

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

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

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

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

3 Overcharging includes:

4 (i) Charging a higher degree;

5 (ii) Charging additional counts.

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

12 (4) Police Investigation

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

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

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

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

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

27 (5) Exceptions

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

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

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

33 (c) The arrest of the suspect is necessary to complete the
34 investigation of the crime.

35 In the event that the exception that [to] the standard is applied,
36 the prosecuting attorney shall obtain a commitment from the law
37 enforcement agency involved to complete the investigation in a timely
38 manner. If the subsequent investigation does not produce sufficient

1 evidence to meet the normal charging standard, the complaint should be
2 dismissed.

3 (6) Investigation Techniques

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

- 6 (a) Polygraph testing;
- 7 (b) Hypnosis;
- 8 (c) Electronic surveillance;
- 9 (d) Use of informants.

10 (7) Prefiling Discussions with Defendant

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

14 (8) Plea dispositions:

15 STANDARD

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

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

24 (i) Evidentiary problems which make conviction of the original
25 charges doubtful;

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

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

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

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

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

35 (vii) The nature and seriousness of the offense or offenses
36 charged;

37 (viii) The probable effect of witnesses.

38 (c) No plea agreement shall be influenced by the race, gender,
39 religion, or creed of the respondent. This includes but is not limited

1 to the prosecutor's decision to utilize such disposition alternatives
2 as (~~("Option B,"~~) the Special Sex Offender Disposition Alternative,
3 the Chemical Dependent Disposition Alternative, and manifest injustice.

4 (9) Disposition recommendations:

5 STANDARD

6 The prosecutor may reach an agreement regarding disposition
7 recommendations.

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

10 **Sec. 15.** RCW 13.40.080 and 1996 c 124 s 1 are each amended to read
11 as follows:

12 (1) A diversion agreement shall be a contract between a juvenile
13 accused of an offense and a diversionary unit whereby the juvenile
14 agrees to fulfill certain conditions in lieu of prosecution. Such
15 agreements may be entered into only after the prosecutor, or probation
16 counselor pursuant to this chapter, has determined that probable cause
17 exists to believe that a crime has been committed and that the juvenile
18 committed it. Such agreements shall be entered into as expeditiously
19 as possible.

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

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

24 (b) Restitution limited to the amount of actual loss incurred by
25 the victim;

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

1 (d) A fine, not to exceed one hundred dollars. In determining the
2 amount of the fine, the diversion unit shall consider only the
3 juvenile's financial resources and whether the juvenile has the means
4 to pay the fine. The diversion unit shall not consider the financial
5 resources of the juvenile's parents, guardian, or custodian in
6 determining the fine to be imposed; ((and))

7 (e) Requirements to remain during specified hours at home, school,
8 or work, and restrictions on leaving or entering specified geographical
9 areas; and

10 (f) Participation in adult mentoring programs and community
11 monitoring programs.

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

21 (4)(a) A diversion agreement may not exceed a period of six months
22 and may include a period extending beyond the eighteenth birthday of
23 the divertee.

24 (b) If additional time is necessary for the juvenile to complete
25 restitution to the victim, the time period limitations of this
26 subsection may be extended by an additional six months.

27 (c) If the juvenile has not paid the full amount of restitution by
28 the end of the additional six-month period, then the juvenile shall be
29 referred to the juvenile court for entry of an order establishing the
30 amount of restitution still owed to the victim. In this order, the
31 court shall also determine the terms and conditions of the restitution,
32 including a payment plan extending up to ten years if the court
33 determines that the juvenile does not have the means to make full
34 restitution over a shorter period. For the purposes of this subsection
35 (4)(c), the juvenile shall remain under the court's jurisdiction for a
36 maximum term of ten years after the juvenile's eighteenth birthday.
37 The court may not require the juvenile to pay full or partial
38 restitution if the juvenile reasonably satisfies the court that he or
39 she does not have the means to make full or partial restitution and

1 could not reasonably acquire the means to pay the restitution over a
2 ten-year period. The county clerk shall make disbursements to victims
3 named in the order. The restitution to victims named in the order
4 shall be paid prior to any payment for other penalties or monetary
5 assessments. A juvenile under obligation to pay restitution may
6 petition the court for modification of the restitution order.

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

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

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

16 (b) Violation of the terms of the agreement shall be the only
17 grounds for termination;

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

20 (i) Written notice of alleged violations of the conditions of the
21 diversion program; and

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

23 (d) The hearing shall be conducted by the juvenile court and shall
24 include:

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

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

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

29 (iv) Demonstration by evidence that the divertee has substantially
30 violated the terms of his or her diversion agreement((~~-~~));

31 (e) The prosecutor may file an information on the offense for which
32 the divertee was diverted:

33 (i) In juvenile court if the divertee is under eighteen years of
34 age; or

35 (ii) In superior court or the appropriate court of limited
36 jurisdiction if the divertee is eighteen years of age or older.

37 (7) The diversion unit shall, subject to available funds, be
38 responsible for providing interpreters when juveniles need interpreters

1 to effectively communicate during diversion unit hearings or
2 negotiations.

3 (8) The diversion unit shall be responsible for advising a divertee
4 of his or her rights as provided in this chapter.

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

7 (10) The right to counsel shall inure prior to the initial
8 interview for purposes of advising the juvenile as to whether he or she
9 desires to participate in the diversion process or to appear in the
10 juvenile court. The juvenile may be represented by counsel at any
11 critical stage of the diversion process, including intake interviews
12 and termination hearings. The juvenile shall be fully advised at the
13 intake of his or her right to an attorney and of the relevant services
14 an attorney can provide. For the purpose of this section, intake
15 interviews mean all interviews regarding the diversion agreement
16 process.

17 The juvenile shall be advised that a diversion agreement shall
18 constitute a part of the juvenile's criminal history as defined by RCW
19 13.40.020(9). A signed acknowledgment of such advisement shall be
20 obtained from the juvenile, and the document shall be maintained by the
21 diversionary unit together with the diversion agreement, and a copy of
22 both documents shall be delivered to the prosecutor if requested by the
23 prosecutor. The supreme court shall promulgate rules setting forth the
24 content of such advisement in simple language.

25 (11) When a juvenile enters into a diversion agreement, the
26 juvenile court may receive only the following information for
27 dispositional purposes:

- 28 (a) The fact that a charge or charges were made;
- 29 (b) The fact that a diversion agreement was entered into;
- 30 (c) The juvenile's obligations under such agreement;
- 31 (d) Whether the alleged offender performed his or her obligations
32 under such agreement; and
- 33 (e) The facts of the alleged offense.

34 (12) A diversionary unit may refuse to enter into a diversion
35 agreement with a juvenile. When a diversionary unit refuses to enter
36 a diversion agreement with a juvenile, it shall immediately refer such
37 juvenile to the court for action and shall forward to the court the
38 criminal complaint and a detailed statement of its reasons for refusing
39 to enter into a diversion agreement. The diversionary unit shall also

1 immediately refer the case to the prosecuting attorney for action if
2 such juvenile violates the terms of the diversion agreement.

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

27 (14) A diversion unit may supervise the fulfillment of a diversion
28 agreement entered into before the juvenile's eighteenth birthday and
29 which includes a period extending beyond the diverttee's eighteenth
30 birthday.

31 (15) If a fine required by a diversion agreement cannot reasonably
32 be paid due to a change of circumstance, the diversion agreement may be
33 modified at the request of the diverttee and with the concurrence of the
34 diversion unit to convert an unpaid fine into community service. The
35 modification of the diversion agreement shall be in writing and signed
36 by the diverttee and the diversion unit. The number of hours of
37 community service in lieu of a monetary penalty shall be converted at
38 the rate of the prevailing state minimum wage per hour.

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

8 **Sec. 16.** RCW 13.40.110 and 1990 c 3 s 303 are each amended to read
9 as follows:

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

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

19 (b) The respondent is seventeen years of age and the information
20 alleges assault in the second degree, extortion in the first degree,
21 indecent liberties, child molestation in the second degree, kidnapping
22 in the second degree, or robbery in the second degree; or

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

25 (2) The court after a decline hearing may order the case
26 transferred for adult criminal prosecution upon a finding that the
27 declination would be in the best interest of the juvenile or the
28 public. The court shall consider the relevant reports, facts,
29 opinions, and arguments presented by the parties and their counsel.

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

34 (4) If the court finds that declination of jurisdiction is
35 appropriate it may, in lieu of transferring the respondent for adult
36 criminal prosecution, classify the offender as a youthful offender and
37 retain the offender in juvenile court. The court may classify an
38 offender as a youthful offender only if the standard range that the

1 offender could receive if remanded for adult criminal prosecution
2 exceeds incarceration past the age of twenty-one.

3 **Sec. 17.** RCW 13.40.120 and 1981 c 299 s 9 are each amended to read
4 as follows:

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

11 **Sec. 18.** RCW 13.40.130 and 1981 c 299 s 10 are each amended to
12 read as follows:

13 (1) The respondent shall be advised of the allegations in the
14 information and shall be required to plead guilty or not guilty to the
15 allegation(s). The state or the respondent may make preliminary
16 motions up to the time of the plea.

17 (2) If the respondent pleads guilty, the court may proceed with
18 disposition or may continue the case for a dispositional hearing. If
19 the respondent denies guilt, an adjudicatory hearing date shall be set.
20 The court shall notify the parent, guardian, or custodian who has
21 custody of any juvenile described in the charging document of the date,
22 time, and place of the dispositional or adjudicatory hearing, and the
23 parent, guardian, or custodian must attend.

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

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

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

32 (6) If the respondent is found guilty the court may immediately
33 proceed to disposition or may continue the case for a dispositional
34 hearing. Notice of the time and place of the continued hearing may be
35 given in open court. If notice is not given in open court to a party,
36 the party and the parent, guardian, or custodian who has custody of the
37 juvenile shall be notified by mail of the time and place of the

1 continued hearings. The notice shall command the parent, guardian, or
2 custodian to attend the hearing.

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

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

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

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

16 **Sec. 19.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to read
17 as follows:

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

23 If the court concludes, and enters reasons for its conclusion, that
24 disposition within the standard range would effectuate a manifest
25 injustice the court shall impose a disposition outside the standard
26 range, as indicated in (~~option B of~~) schedule (~~D-3~~) D, RCW
27 13.40.0357. The court's finding of manifest injustice shall be
28 supported by clear and convincing evidence.

29 A disposition outside the standard range shall be determinate and
30 shall be comprised of confinement or community supervision, or a
31 combination thereof. When a judge finds a manifest injustice and
32 imposes a sentence of confinement exceeding thirty days, the court
33 shall sentence the juvenile to a maximum term, and the provisions of
34 (~~RCW 13.40.030(2)~~) section 25 of this act shall be used to determine
35 the range. A disposition outside the standard range is appealable
36 under RCW 13.40.230 by the state or the respondent. A disposition
37 within the standard range is not appealable under RCW 13.40.230.

1 (2) Where the respondent is found to be a minor or first offender,
2 the court shall order that the respondent serve a term of community
3 supervision as indicated in (~~option A or option B of~~) schedule (~~D-~~
4 ~~1~~) D, RCW 13.40.0357 except as provided in subsections (5) and (6) of
5 this section. If the court determines that a disposition of community
6 supervision would effectuate a manifest injustice the court may impose
7 another disposition under (~~option C of~~) schedule (~~D-1~~) D, RCW
8 13.40.0357. Except as provided in subsection (5) of this section, a
9 disposition other than a community supervision may be imposed only
10 after the court enters reasons upon which it bases its conclusions that
11 imposition of community supervision would effectuate a manifest
12 injustice. When a judge finds a manifest injustice and imposes a
13 sentence of confinement exceeding thirty days, the court shall sentence
14 the juvenile to a maximum term, and the provisions of (~~RCW~~
15 ~~13.40.030(2)~~) section 25 of this act shall be used to determine the
16 range. The court's finding of manifest injustice shall be supported by
17 clear and convincing evidence.

18 Except for disposition of community supervision or a disposition
19 imposed pursuant to subsection (5) of this section, a disposition may
20 be appealed as provided in RCW 13.40.230 by the state or the
21 respondent. A disposition of community supervision or a disposition
22 imposed pursuant to subsection (5) of this section may not be appealed
23 under RCW 13.40.230.

24 (3) Where a respondent is found to have committed an offense for
25 which the respondent declined to enter into a diversion agreement, the
26 court shall impose a term of community supervision limited to the
27 conditions allowed in a diversion agreement as provided in RCW
28 13.40.080(2).

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

30 (a) The court shall impose a determinate disposition within the
31 standard range(s) for such offense, as indicated in (~~option A of~~)
32 schedule (~~D-2~~) D, RCW 13.40.0357 except as provided in subsections
33 (5) and (6) of this section and section 24 of this act. If the
34 standard range includes a term of confinement exceeding thirty days,
35 commitment shall be to the department for the standard range of
36 confinement; or

37 (b) If the middle offender has less than 110 points, the court
38 shall impose a determinate disposition of community supervision and/or
39 up to thirty days confinement, as indicated in (~~option B of~~) schedule

1 ((D-2)) D, RCW 13.40.0357 ((in which case, if confinement has been
2 imposed, the court shall state either aggravating or mitigating factors
3 as set forth in RCW 13.40.150)). If the middle offender has 110 points
4 or more, the court may impose a disposition under ((option A)) schedule
5 D and may suspend the disposition on the condition that the offender
6 serve up to thirty days of confinement and follow all conditions of
7 community supervision. If confinement has been imposed, the court
8 shall state either aggravating or mitigating factors as set forth in
9 RCW 13.40.150. If the offender violates any condition of the
10 disposition including conditions of a probation bond, the court may
11 impose sanctions pursuant to RCW 13.40.200 or may revoke the suspension
12 and order execution of the disposition. The court shall give credit
13 for any confinement time previously served if that confinement was for
14 the offense for which the suspension is being revoked.

15 (c) Only if the court concludes, and enters reasons for its
16 conclusions, that disposition as provided in subsection (4)(a) or (b)
17 of this section would effectuate a manifest injustice, the court shall
18 sentence the juvenile to a maximum term, and the provisions of ((RCW
19 13.40.030(2))) section 25 of this act shall be used to determine the
20 range. The court's finding of manifest injustice shall be supported by
21 clear and convincing evidence.

22 (d) A disposition pursuant to subsection (4)(c) of this section is
23 appealable under RCW 13.40.230 by the state or the respondent. A
24 disposition pursuant to subsection (4)(a) or (b) of this section is not
25 appealable under RCW 13.40.230.

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

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

1 The examiner shall assess and report regarding the respondent's
2 amenability to treatment and relative risk to the community. A
3 proposed treatment plan shall be provided and shall include, at a
4 minimum:

5 (a)(i) Frequency and type of contact between the offender and
6 therapist;

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

9 (iii) Monitoring plans, including any requirements regarding living
10 conditions, lifestyle requirements, and monitoring by family members,
11 legal guardians, or others;

12 (iv) Anticipated length of treatment; and

13 (v) Recommended crime-related prohibitions.

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

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

35 (b)(i) Devote time to a specific education, employment, or
36 occupation;

37 (ii) Undergo available outpatient sex offender treatment for up to
38 two years, or inpatient sex offender treatment not to exceed the
39 standard range of confinement for that offense. A community mental

1 health center may not be used for such treatment unless it has an
2 appropriate program designed for sex offender treatment. The
3 respondent shall not change sex offender treatment providers or
4 treatment conditions without first notifying the prosecutor, the
5 probation counselor, and the court, and shall not change providers
6 without court approval after a hearing if the prosecutor or probation
7 counselor object to the change;

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

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

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

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

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

19 (viii) Comply with the conditions of any court-ordered probation
20 bond.

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

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

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

1 within a reasonable geographical distance of the offender's home; and
2 (C) the evaluation and treatment plan comply with this subsection (5)
3 and the rules adopted by the department of 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 (6) RCW 13.40.193 shall govern the disposition of any juvenile
20 adjudicated of possessing a firearm in violation of RCW
21 9.41.040(1)((+e+))(b)(iii) or any crime in which a special finding is
22 entered that the juvenile was armed with a firearm.

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

27 (8) Except as provided for in subsection (4)(b) or (5) of this
28 section or section 24 of this act or RCW 13.40.125, the court shall not
29 suspend or defer the imposition or the execution of the disposition.

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

33 **Sec. 20.** RCW 13.40.193 and 1994 sp.s. c 7 s 525 are each amended
34 to read as follows:

35 (1) If a respondent is found to have been in possession of a
36 firearm in violation of RCW 9.41.040(1)((+e+)) (b)(iii), the court
37 shall impose a determinate disposition of ten days of confinement and
38 up to twelve months of community supervision. If the offender's

1 standard range of disposition for the offense as indicated in RCW
2 13.40.0357 is more than thirty days of confinement, the court shall
3 commit the offender to the department for the standard range
4 disposition. The offender shall not be released until the offender has
5 served a minimum of ten days in confinement.

6 (2) If the court finds that the respondent or an accomplice was
7 armed with a firearm, the court shall determine the standard range
8 disposition for the offense pursuant to RCW 13.40.160. ~~((Ninety days
9 of confinement shall be added to the entire standard range disposition
10 of confinement))~~ If the offender or an accomplice was armed with a
11 firearm when the offender committed ~~((: (a) Any violent offense; or (b)
12 escape in the first degree; burglary in the second degree; theft of
13 livestock in the first or second degree; or any felony drug offense.
14 If the offender or an accomplice was armed with a firearm and the
15 offender is being adjudicated for an anticipatory felony offense under
16 chapter 9A.28 RCW to commit one of the offenses listed in this
17 subsection, ninety days shall be added to the entire standard range
18 disposition of confinement))~~ any felony other than possession of a
19 machine gun, possession of a stolen firearm, reckless endangerment in
20 the first degree, theft of a firearm, unlawful possession of a firearm
21 in the first and second degree, or use of a machine gun in a felony,
22 the following periods of total confinement shall be added to the
23 sentence: For a class A felony, six months; for a class B felony, four
24 months; and for a class C felony, two months. The ((ninety days))
25 additional time shall be imposed regardless of the offense's juvenile
26 disposition offense category as designated in RCW 13.40.0357. ((The
27 department shall not release the offender until the offender has served
28 a minimum of ninety days in confinement, unless the juvenile is
29 committed to and successfully completes the juvenile offender basic
30 training camp disposition option.)) The court may suspend the
31 additional period of total confinement under this subsection only with
32 regard to middle offenders as provided in RCW 13.40.160 (4)(b) or (5)
33 or section 24 of this act or minor/first offenders.

34 (3) ~~((Option B of schedule D-2, RCW 13.40.0357, shall not be
35 available for middle offenders who receive a disposition under this
36 section.))~~ When a disposition under this section would effectuate a
37 manifest injustice, the court may impose another disposition. When a
38 judge finds a manifest injustice and imposes a disposition of
39 confinement exceeding thirty days, the court shall commit the juvenile

1 to a maximum term, and the provisions of (~~RCW 13.40.030(2)~~) section
2 25 of this act shall be used to determine the range. When a judge
3 finds a manifest injustice and imposes a disposition of confinement
4 less than thirty days, the disposition shall be comprised of
5 confinement or community supervision or both.

6 (4) Any term of confinement ordered pursuant to this section
7 (~~may~~) shall run (~~concurrently~~) consecutively to any term of
8 confinement imposed in the same disposition for the same or other
9 offenses.

10 **Sec. 21.** RCW 13.40.210 and 1994 sp.s. c 7 s 527 are each amended
11 to read as follows:

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

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

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

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

1 urinalysis when requested by the assigned parole officer; (i) refrain
2 from contact with specific individuals or a specified group of
3 individuals; (j) meet other conditions determined by the parole officer
4 to further enhance the juvenile's reintegration into the community; (k)
5 pay any court-ordered fines or restitution; and (l) perform community
6 service. Community service for the purpose of this section means
7 compulsory service, without compensation, performed for the benefit of
8 the community by the offender. Community service may be performed
9 through public or private organizations or through work crews. After
10 termination of the parole period, the juvenile shall be discharged from
11 the department's supervision.

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

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

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

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

8 **Sec. 22.** RCW 13.40.220 and 1995 c 300 s 1 are each amended to read
9 as follows:

10 (1) Whenever legal custody of a child is vested in someone other
11 than his or her parents, under this chapter, and not vested in the
12 department of social and health services, after due notice to the
13 parents or other persons legally obligated to care for and support the
14 child, and after a hearing, the court may order and decree that the
15 parent or other legally obligated person shall pay in such a manner as
16 the court may direct a reasonable sum representing in whole or in part
17 the costs of support, treatment, and confinement of the child after the
18 decree is entered.

19 (2) If the parent or other legally obligated person willfully fails
20 or refuses to pay such sum, the court may proceed against such person
21 for contempt.

22 (3) Whenever legal custody of a child is vested in the department
23 under this chapter or a child is being supervised on parole by the
24 department under RCW 13.40.210, the parents or other persons legally
25 obligated to care for and support the child shall be liable for the
26 costs of support, treatment, ~~((and))~~ confinement, and parole
27 supervision of the child, in accordance with the department's
28 reimbursement of cost schedule. The department shall adopt a
29 reimbursement of cost schedule based on the costs of providing such
30 services, and shall determine an obligation based on the responsible
31 parents' or other legally obligated person's ability to pay. The
32 department is authorized to adopt additional rules as appropriate to
33 enforce this section.

34 (4) To enforce subsection (3) of this section, the department shall
35 serve on the parents or other person legally obligated to care for and
36 support the child a notice and finding of financial responsibility
37 requiring the parents or other legally obligated person to appear and
38 show cause in an adjudicative proceeding why the finding of

1 responsibility and/or the amount thereof is incorrect and should not be
2 ordered. This notice and finding shall relate to the costs of support,
3 treatment, ((and)) confinement, and parole supervision of the child in
4 accordance with the department's reimbursement of cost schedule adopted
5 under this section, including periodic payments to be made in the
6 future. The hearing shall be held pursuant to chapter 34.05 RCW, the
7 Administrative Procedure Act, and the rules of the department.

8 (5) The notice and finding of financial responsibility shall be
9 served in the same manner prescribed for the service of a summons in a
10 civil action or may be served on the parent or legally obligated person
11 by certified mail, return receipt requested. The receipt shall be
12 prima facie evidence of service.

13 (6) If the parents or other legally obligated person objects to the
14 notice and finding of financial responsibility, then an application for
15 an adjudicative hearing may be filed within twenty days of the date of
16 service of the notice. If an application for an adjudicative
17 proceeding is filed, the presiding or reviewing officer shall determine
18 the past liability and responsibility, if any, of the parents or other
19 legally obligated person and shall also determine the amount of
20 periodic payments to be made in the future. If the parents or other
21 legally responsible person fails to file an application within twenty
22 days, the notice and finding of financial responsibility shall become
23 a final administrative order.

24 (7) Debts determined pursuant to this section are subject to
25 collection action without further necessity of action by a presiding or
26 reviewing officer. The department may collect the debt in accordance
27 with RCW 43.20B.635, 43.20B.640, 74.20A.060, and 74.20A.070. The
28 department shall exempt from payment parents receiving adoption support
29 under RCW 74.13.100 through 74.13.145, parents eligible to receive
30 adoption support under RCW 74.13.150, and a parent or other legally
31 obligated person when the parent or other legally obligated person, or
32 such person's child, spouse, or spouse's child, was the victim of the
33 offense for which the child was committed.

34 (8) An administrative order entered pursuant to this section shall
35 supersede any court order entered prior to June 13, 1994.

36 (9) The department shall be subrogated to the right of the child
37 and his or her parents or other legally responsible person to receive
38 support payments for the benefit of the child from any parent or
39 legally obligated person pursuant to a support order established by a

1 superior court or pursuant to RCW 74.20A.055. The department's right
2 of subrogation under this section is limited to the liability
3 established in accordance with its cost schedule for support,
4 treatment, and confinement, except as addressed in subsection (10) of
5 this section.

6 (10) Nothing in this section precludes the department from
7 recouping such additional support payments from the child's parents or
8 other legally obligated person as required to qualify for receipt of
9 federal funds. The department may adopt such rules dealing with
10 liability for recoupment of support, treatment, ~~((or))~~ confinement, or
11 parole supervision costs as may become necessary to entitle the state
12 to participate in federal funds unless such rules would be expressly
13 prohibited by law. If any law dealing with liability for recoupment of
14 support, treatment, ~~((or))~~ confinement, or parole supervision costs is
15 ruled to be in conflict with federal requirements which are a
16 prescribed condition of the allocation of federal funds, such
17 conflicting law is declared to be inoperative solely to the extent of
18 the conflict.

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

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

34 NEW SECTION. Sec. 24. A new section is added to chapter 13.40 RCW
35 to read as follows:

36 (1) When a middle offender with one hundred ten points or more is
37 found to have committed an offense that is not a violent or sex

1 offense, the court, on its own motion or the motion of the state or the
2 respondent if the evidence shows that the offender may be chemically
3 dependent, may order an examination by a youth chemical dependency
4 counselor from a chemical dependency treatment facility approved under
5 chapter 70.96A RCW to determine if the offender is chemically dependent
6 and amenable to treatment.

7 (2) The report of the examination shall include at a minimum the
8 following: The offender's version of the facts and the official
9 version of the facts, the offender's offense history, an assessment of
10 drug-alcohol problems and previous treatment attempts, the offender's
11 social, educational, and employment situation, and other evaluation
12 measures used. The report shall set forth the sources of the
13 examiner's information.

14 (3) The examiner shall assess and report regarding the offender's
15 amenability to treatment and relative risk to the community. A
16 proposed treatment plan shall be provided and shall include, at a
17 minimum:

- 18 (a) Whether inpatient and/or outpatient treatment is recommended;
- 19 (b) Availability of appropriate treatment;
- 20 (c) Monitoring plans, including any recommendations regarding
21 living conditions, lifestyle requirements, and monitoring by family
22 members, legal guardians, or others;
- 23 (d) Anticipated length of treatment;
- 24 (e) Recommended crime-related prohibitions; and
- 25 (f) Whether the offender is amenable to treatment.

26 (4) The court on its own motion may order, or on a motion by the
27 state shall order, a second examination regarding the offender's
28 amenability to treatment. The evaluator shall be selected by the party
29 making the motion. The offender shall pay the cost of any examination
30 ordered under this subsection (4) or subsection (1) of this section
31 unless the court finds that the offender is indigent and no third party
32 insurance coverage is available, in which case the state shall pay the
33 cost.

34 (5)(a) After receipt of reports of the examination, the court shall
35 then consider whether the offender and the community will benefit from
36 use of this chemical dependent disposition alternative and consider the
37 victim's opinion whether the offender should receive a treatment
38 disposition under this section.

1 (b) If the court determines that this chemical dependent
2 disposition alternative is appropriate, then the court shall impose the
3 standard range for the offense, suspend execution of the disposition,
4 and place the offender on community supervision for up to one year. As
5 a condition of the suspended disposition, the court shall require the
6 offender to undergo available outpatient drug/alcohol treatment and/or
7 inpatient drug/alcohol treatment. For purposes of this section, the
8 sum of confinement time and inpatient treatment may not exceed ninety
9 days. As a condition of the suspended disposition, the court may
10 impose conditions of community supervision and other sanctions,
11 including up to thirty days of confinement, one hundred fifty hours of
12 community service, and payment of legal financial obligations and
13 restitution.

14 (6) The drug/alcohol treatment provider shall submit monthly
15 reports on the offender's progress in treatment to the court and the
16 parties. The reports shall reference the treatment plan and include at
17 a minimum the following: Dates of attendance, offender's compliance
18 with requirements, treatment activities, the offender's relative
19 progress in treatment, and any other material specified by the court at
20 the time of the disposition.

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

23 If the offender violates any condition of the disposition or the
24 court finds that the offender is failing to make satisfactory progress
25 in treatment, the court may revoke the suspension and order execution
26 of the sentence. The court shall give credit for any confinement time
27 previously served if that confinement was for the offense for which the
28 suspension is being revoked.

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

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

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

1 NEW SECTION. **Sec. 25.** A new section is added to chapter 13.40 RCW
2 to read as follows:

3 When the court finds a manifest injustice, imposes a sentence of
4 confinement exceeding thirty days, and sets the maximum term, the
5 department shall determine the range subject to the following
6 limitations:

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

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

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

16 NEW SECTION. **Sec. 26.** 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. 27.** 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

1 the offender by the department; reoffends; or constitutes a serious
2 threat to the physical safety of others.

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

8 (a) If the sentencing court finds that the youthful offender has
9 meaningfully participated in the rehabilitative programs made available
10 by the department, has not reoffended, and has not posed a serious
11 threat to the physical safety of others, the court shall release the
12 youthful offender from the suspended adult sentence.

13 (b) Unless the youthful offender is released from the adult
14 sentence as provided for in (a) of this subsection, the court shall
15 remand the youthful offender to the department of corrections to begin
16 serving the adult sentence.

17 (4) Only the youthful offender's adult sentence shall be considered
18 when determining under chapter 9.94A RCW an appropriate sentence for
19 future adult offenses.

20 NEW SECTION. **Sec. 28.** A new section is added to chapter 13.40 RCW
21 to read as follows:

22 If at any time a person classified as a youthful offender under RCW
23 13.40.110(4) is remanded to begin serving an adult sentence, the
24 youthful offender shall be given credit for all incarceration time
25 served on the juvenile sentence.

26 NEW SECTION. **Sec. 29.** This act applies to offenses committed on
27 or after July 1, 1997.

28 NEW SECTION. **Sec. 30.** The following acts or parts of acts are
29 each repealed:

30 (1) RCW 13.40.025 and 1996 c 232 s 4, 1995 c 269 s 302, 1986 c 288
31 s 8, 1984 c 287 s 11, & 1981 c 299 s 3; and

32 (2) RCW 13.40.030 and 1996 c 232 s 5, 1989 c 407 s 3, 1985 c 73 s
33 1, 1983 c 191 s 6, 1981 c 299 s 5, 1979 c 155 s 55, & 1977 ex.s. c 291
34 s 57.

1 NEW SECTION. **Sec. 31.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 32.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 July 1, 1997.

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