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SENATE BILL 6742

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State of Washington

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2000 Regular Session

By Senators Costa, Hargrove, Long, Winsley and Patterson

Read first time 01/26/2000. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the rights of victims of juvenile offenders; and  
2 amending RCW 7.69.020, 13.40.010, 13.40.020, 13.40.070, 13.40.077,  
3 13.40.080, and 13.40.160.

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

5 **Sec. 1.** RCW 7.69.020 and 1993 c 350 s 5 are each amended to read  
6 as follows:

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

9 (1) "Crime" means an act, alleged or determined in superior court,  
10 juvenile court, or any district or municipal court to have happened,  
11 and which is punishable as a felony, gross misdemeanor, or misdemeanor  
12 under the laws of this state or equivalent federal or local law.

13 (2) "Survivor" or "survivors" of a victim of crime means a spouse,  
14 child, parent, legal guardian, sibling, or grandparent. If there is  
15 more than one survivor of a victim of crime, one survivor shall be  
16 designated by the prosecutor to represent all survivors for purposes of  
17 providing the notice to survivors required by this chapter.

1 (3) "Victim" means a person against whom a crime has been committed  
2 or the representative of a person against whom a crime has been  
3 committed.

4 (4) "Victim impact statement" means a statement submitted to the  
5 court by the victim or a survivor, individually or with the assistance  
6 of the prosecuting attorney if assistance is requested by the victim or  
7 survivor, which may include but is not limited to information assessing  
8 the financial, medical, social, and psychological impact of the offense  
9 upon the victim or survivors.

10 (5) "Witness" means a person who has been or is expected to be  
11 summoned to testify for the prosecution in a criminal action, or who by  
12 reason of having relevant information is subject to call or likely to  
13 be called as a witness for the prosecution, whether or not an action or  
14 proceeding has been commenced.

15 (6) "Crime victim/witness program" means any crime victim and  
16 witness program of a county or local law enforcement agency or  
17 prosecutor's office, any rape crisis center's sexual assault victim  
18 advocacy program as provided in chapter 70.125 RCW, any domestic  
19 violence program's legal and community advocate program for domestic  
20 violence victims as provided in chapter 70.123 RCW, or any other crime  
21 victim advocacy program which provides trained advocates to assist  
22 crime victims during the investigation and prosecution of the crime.

23 **Sec. 2.** RCW 13.40.010 and 1997 c 338 s 8 are each amended to read  
24 as follows:

25 (1) This chapter shall be known and cited as the Juvenile Justice  
26 Act (~~of 1977~~).

27 (2) It is the intent of the legislature that a system capable of  
28 having primary responsibility for, being accountable for, and  
29 responding to the needs of youthful offenders, and their victims, as  
30 defined by this chapter, be established. It is the further intent of  
31 the legislature that youth, in turn, be held accountable for their  
32 offenses and that communities, families, and the juvenile courts carry  
33 out their functions consistent with this intent. To effectuate these  
34 policies, the legislature declares the following to be equally  
35 important purposes of this chapter:

36 (a) Protect the citizenry from criminal behavior;

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

1 (c) Make the juvenile offender accountable for his or her criminal  
2 behavior;

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

5 (e) Provide due process for juveniles alleged to have committed an  
6 offense;

7 (f) Provide necessary treatment, supervision, and custody for  
8 juvenile offenders;

9 (g) Provide for the handling of juvenile offenders by communities  
10 whenever consistent with public safety;

11 (h) Provide for restitution to victims of crime;

12 (i) Develop effective standards and goals for the operation,  
13 funding, and evaluation of all components of the juvenile justice  
14 system and related services at the state and local levels;

15 (j) Provide for a clear policy to determine what types of offenders  
16 shall receive punishment, treatment, or both, and to determine the  
17 jurisdictional limitations of the courts, institutions, and community  
18 services; ((and))

19 (k) Encourage the parents, guardian, or custodian of the juvenile  
20 to actively participate in the juvenile justice process; and

21 (l) Making each victim of a juvenile offender whole to the fullest  
22 extent possible by addressing the violation against the victim;  
23 restoring a victim's sense of safety; having the justice process  
24 acknowledge the impact the crime has had upon the victim and  
25 considering how the system participants can include the victim's  
26 position to the extent the victim is able or chooses to participate, at  
27 important junctures of the case and at disposition; and addressing the  
28 victim's needs and concerns.

29 **Sec. 3.** RCW 13.40.020 and 1997 c 338 s 10 are each amended to read  
30 as follows:

31 For the purposes of this chapter:

32 (1) "Community-based rehabilitation" means one or more of the  
33 following: Employment; attendance of information classes; literacy  
34 classes; counseling, outpatient substance abuse treatment programs,  
35 outpatient mental health programs, anger management classes, education  
36 or outpatient treatment programs to prevent animal cruelty, or other  
37 services; or attendance at school or other educational programs  
38 appropriate for the juvenile as determined by the school district.

1 Placement in community-based rehabilitation programs is subject to  
2 available funds;

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

5 (a) A fine, not to exceed five hundred dollars;

6 (b) Community service not to exceed one hundred fifty hours of  
7 service;

8 (3) "Community service" means compulsory service, without  
9 compensation, performed for the benefit of the community by the  
10 offender as punishment for committing an offense. Community service  
11 may be performed through public or private organizations or through  
12 work crews;

13 (4) "Community supervision" means an order of disposition by the  
14 court of an adjudicated youth not committed to the department or an  
15 order granting a deferred disposition. A community supervision order  
16 for a single offense may be for a period of up to two years for a sex  
17 offense as defined by RCW 9.94A.030 and up to one year for other  
18 offenses. As a mandatory condition of any term of community  
19 supervision, the court shall order the juvenile to refrain from  
20 committing new offenses. As a mandatory condition of community  
21 supervision, the court shall order the juvenile to comply with the  
22 mandatory school attendance provisions of chapter 28A.225 RCW and to  
23 inform the school of the existence of this requirement. Community  
24 supervision is an individualized program comprised of one or more of  
25 the following:

26 (a) Community-based sanctions;

27 (b) Community-based rehabilitation;

28 (c) Monitoring and reporting requirements;

29 (d) Posting of a probation bond;

30 (5) "Confinement" means physical custody by the department of  
31 social and health services in a facility operated by or pursuant to a  
32 contract with the state, or physical custody in a detention facility  
33 operated by or pursuant to a contract with any county. The county may  
34 operate or contract with vendors to operate county detention  
35 facilities. The department may operate or contract to operate  
36 detention facilities for juveniles committed to the department.  
37 Pretrial confinement or confinement of less than thirty-one days  
38 imposed as part of a disposition or modification order may be served  
39 consecutively or intermittently, in the discretion of the court;

1 (6) "Court," when used without further qualification, means the  
2 juvenile court judge(s) or commissioner(s);

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

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

9 (b) The criminal complaint was diverted by a prosecutor pursuant to  
10 the provisions of this chapter on agreement of the respondent and after  
11 an advisement to the respondent that the criminal complaint would be  
12 considered as part of the respondent's criminal history. A  
13 successfully completed deferred adjudication that was entered before  
14 July 1, 1998, or a deferred disposition shall not be considered part of  
15 the respondent's criminal history;

16 (8) "Department" means the department of social and health  
17 services;

18 (9) "Detention facility" means a county facility, paid for by the  
19 county, for the physical confinement of a juvenile alleged to have  
20 committed an offense or an adjudicated offender subject to a  
21 disposition or modification order. "Detention facility" includes  
22 county group homes, inpatient substance abuse programs, juvenile basic  
23 training camps, and electronic monitoring;

24 (10) "Diversion unit" means any probation counselor who enters into  
25 a diversion agreement with an alleged youthful offender, or any other  
26 person, community accountability board, or other entity except a law  
27 enforcement official or entity, with whom the juvenile court  
28 administrator has contracted to arrange and supervise such agreements  
29 pursuant to RCW 13.40.080, or any person, community accountability  
30 board, or other entity specially funded by the legislature to arrange  
31 and supervise diversion agreements in accordance with the requirements  
32 of this chapter. For purposes of this subsection, "community  
33 accountability board" means a board comprised of members of the local  
34 community in which the juvenile offender resides. The superior court  
35 shall appoint the members. The boards shall consist of at least three  
36 and not more than seven members. If possible, the board should include  
37 a variety of representatives from the community, such as a law  
38 enforcement officer, teacher or school administrator, high school

1 student, parent, and business owner, and should represent the cultural  
2 diversity of the local community;

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

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

8 (13) "Intensive supervision program" means a parole program that  
9 requires intensive supervision and monitoring, offers an array of  
10 individualized treatment and transitional services, and emphasizes  
11 community involvement and support in order to reduce the likelihood a  
12 juvenile offender will commit further offenses;

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

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

21 (16) "Local sanctions" means one or more of the following: (a)  
22 0-30 days of confinement; (b) 0-12 months of community supervision; (c)  
23 0-150 hours of community service; or (d) \$0-\$500 fine;

24 (17) "Manifest injustice" means a disposition that would either  
25 impose an excessive penalty on the juvenile or would impose a serious,  
26 and clear danger to society in light of the purposes of this chapter;

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

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

1 (20) "Probation bond" means a bond, posted with sufficient security  
2 by a surety justified and approved by the court, to secure the  
3 offender's appearance at required court proceedings and compliance with  
4 court-ordered community supervision or conditions of release ordered  
5 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of  
6 cash or posting of other collateral in lieu of a bond if approved by  
7 the court;

8 (21) "Respondent" means a juvenile who is alleged or proven to have  
9 committed an offense;

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

20 (23) "Secretary" means the secretary of the department of social  
21 and health services. "Assistant secretary" means the assistant  
22 secretary for juvenile rehabilitation for the department;

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

27 (25) "Sex offense" means an offense defined as a sex offense in RCW  
28 9.94A.030;

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

32 (27) "Surety" means an entity licensed under state insurance laws  
33 or by the state department of licensing, to write corporate, property,  
34 or probation bonds within the state, and justified and approved by the  
35 superior court of the county having jurisdiction of the case;

36 (28) "Victim" means any person who has sustained emotional,  
37 psychological, physical, or financial injury to person or property as  
38 a result of the offense charged. "Victim" also means a parent or

1 guardian of a victim who is a minor child unless the parent or guardian  
2 is the perpetrator of the offense charged.

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

6 ~~((29))~~ (30) "Violent offense" means a violent offense as defined  
7 in RCW 9.94A.030.

8 **Sec. 4.** RCW 13.40.070 and 1997 c 338 s 17 are each amended to read  
9 as follows:

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

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

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

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

22 (3) If the requirements of subsections (1)(a) and (b) of this  
23 section are met, the prosecutor shall either file an information in  
24 juvenile court or divert the case, as set forth in subsections (5),  
25 (6), and (7) of this section. If the prosecutor finds that the  
26 requirements of subsection (1)(a) and (b) of this section are not met,  
27 the prosecutor shall maintain a record, for one year, of such decision  
28 and the reasons therefor. In lieu of filing an information or  
29 diverting an offense a prosecutor may file a motion to modify community  
30 supervision where such offense constitutes a violation of community  
31 supervision.

32 (4) An information shall be a plain, concise, and definite written  
33 statement of the essential facts constituting the offense charged. It  
34 shall be signed by the prosecuting attorney and conform to chapter  
35 10.37 RCW.

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



1 (a) An alleged offender is accused of a class A felony, a class B  
2 felony, an attempt to commit a class B felony, a class C felony listed  
3 in RCW 9.94A.440(2) as a crime against persons or listed in RCW  
4 9A.46.060 as a crime of harassment, or a class C felony that is a  
5 violation of RCW 9.41.080 or 9.41.040(1)(b)(iii); or

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

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

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

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

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

17 (6) Where a case is legally sufficient the prosecutor shall divert  
18 the case if the alleged offense is a misdemeanor or gross misdemeanor  
19 or violation and the alleged offense is the offender's first offense or  
20 violation. If the alleged offender is charged with a related offense  
21 that must or may be filed under subsections (5) and (7) of this  
22 section, a case under this subsection may also be filed.

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

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

37 (9) The prosecuting attorney responsible for making the decision  
38 whether to file an information or divert the juvenile shall notify each  
39 victim of the decision which is made. In addition, if the juvenile is

1 automatically diverted under subsection (6) of this section, the  
2 prosecuting attorney shall notify each victim of the diversion. If a  
3 decision is made to not file an information or divert the juvenile, the  
4 prosecuting attorney shall include a description of any appropriate  
5 procedures available to a victim to initiate a criminal proceeding.  
6 Notice to a victim under this subsection shall be made within five days  
7 of reaching the decision, and the prosecuting attorney shall, upon  
8 request of any victim, provide information to the victim on the status  
9 of the case.

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

16 ((+10+)) (11) The prosecutor, juvenile court probation counselor,  
17 or diversion unit may, in exercising their authority under this section  
18 or RCW 13.40.080, refer juveniles to mediation or victim offender  
19 reconciliation programs. Such mediation or victim offender  
20 reconciliation programs shall be voluntary for victims.

21 **Sec. 5.** RCW 13.40.077 and 1997 c 338 s 18 are each amended to read  
22 as follows:

23 RECOMMENDED PROSECUTING STANDARDS  
24 FOR CHARGING AND PLEA DISPOSITIONS

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

30 Evidentiary sufficiency.

31 (1) Decision not to prosecute.

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

1 GUIDELINES/COMMENTARY:

2 Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (i) Assault cases where the victim has suffered little or no  
25 injury;

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

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

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

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

33 Notification

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

36 (2) Decision to prosecute.

37 STANDARD:

38 Crimes against persons will be filed if sufficient admissible  
39 evidence exists, which, when considered with the most plausible,

1 reasonably foreseeable defense that could be raised under the evidence,  
2 would justify conviction by a reasonable and objective fact-finder.  
3 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
4 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
5 9A.64.020 the prosecutor should avoid pre-filing agreements or  
6 diversions intended to place the accused in a program of treatment or  
7 counseling, so that treatment, if determined to be beneficial, can be  
8 proved under RCW 13.40.160(~~(+4)~~) (3).

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

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

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

18 (3) Selection of Charges/Degree of Charge

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

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

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

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

27 (i) Charging a higher degree;

28 (ii) Charging additional counts.

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

35 (4) Police Investigation

36 A prosecuting attorney is dependent upon law enforcement agencies  
37 to conduct the necessary factual investigation which must precede the  
38 decision to prosecute. The prosecuting attorney shall ensure that a  
39 thorough factual investigation has been conducted before a decision to

1 prosecute is made. In ordinary circumstances the investigation should  
2 include the following:

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

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

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

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

11 (5) Exceptions

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

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

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

17 (c) The arrest of the suspect is necessary to complete the  
18 investigation of the crime.

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

24 (6) Investigation Techniques

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

27 (a) Polygraph testing;

28 (b) Hypnosis;

29 (c) Electronic surveillance;

30 (d) Use of informants.

31 (7) Prefiling Discussions with Defendant

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

35 (8) Plea dispositions:

36 STANDARD

37 (a) Except as provided in subsection (2) of this section, a  
38 respondent will normally be expected to plead guilty to the charge or

1 charges which adequately describe the nature of his or her criminal  
2 conduct or go to trial.

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

7 (i) Evidentiary problems which make conviction of the original  
8 charges doubtful;

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

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

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

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

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

18 (vii) The nature and seriousness of the offense or offenses  
19 charged;

20 (viii) The probable effect of witnesses.

21 (c) In a case involving a crime against a person, as set forth in  
22 RCW 9.94A.440, the prosecuting attorney shall: (i) Make reasonable  
23 efforts to inform each victim of the offense of the nature of, and any  
24 reasons for, any plea agreement, including all offenses the prosecutor  
25 has agreed not to file; and (ii) ascertain any objections or comments  
26 the victim has to the plea agreement.

27 (d) No plea agreement shall be influenced by the race, gender,  
28 religion, or creed of the respondent. This includes but is not limited  
29 to the prosecutor's decision to utilize such disposition alternatives  
30 as the Special Sex Offender Disposition Alternative, the Chemical  
31 Dependency Disposition Alternative, and manifest injustice.

32 (9) Disposition recommendations:

33 STANDARD

34 The prosecutor may reach an agreement regarding disposition  
35 recommendations.

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

1       **Sec. 6.** RCW 13.40.080 and 1999 c 91 s 1 are each amended to read  
2 as follows:

3       (1) A diversion agreement shall be a contract between a juvenile  
4 accused of an offense and a diversionary unit whereby the juvenile  
5 agrees to fulfill certain conditions in lieu of prosecution. Such  
6 agreements may be entered into only after the prosecutor, or probation  
7 counselor pursuant to this chapter, has determined that probable cause  
8 exists to believe that a crime has been committed and that the juvenile  
9 committed it. Such agreements shall be entered into as expeditiously  
10 as possible.

11       (2) A diversion agreement shall ~~((be limited to))~~ require  
12 restitution to each victim in the amount of actual loss incurred by the  
13 victim and, in addition, may include one or more of the following:

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

16       ~~(b) ((Restitution limited to the amount of actual loss incurred by~~  
17 ~~the victim;~~

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

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

36       ~~((e))~~ (d) Requirements to remain during specified hours at home,  
37 school, or work, and restrictions on leaving or entering specified  
38 geographical areas; and



1       (~~(f)~~) (e) Upon request of the victim or witness, requirements to  
2 refrain from any contact with victims or witnesses of offenses  
3 committed by the juvenile.

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

13       (4)(a) A diversion agreement may not exceed a period of six months  
14 and may include a period extending beyond the eighteenth birthday of  
15 the divertee.

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

19       (c) If the juvenile has not paid the full amount of restitution by  
20 the end of the additional six-month period, then the juvenile shall be  
21 referred to the juvenile court for entry of an order establishing the  
22 amount of restitution still owed to the victim. In this order, the  
23 court shall also determine the terms and conditions of the restitution,  
24 including a payment plan extending up to ten years if the court  
25 determines that the juvenile does not have the means to make full  
26 restitution over a shorter period. For the purposes of this subsection  
27 (4)(c), the juvenile shall remain under the court's jurisdiction for a  
28 maximum term of ten years after the juvenile's eighteenth birthday.  
29 Prior to the expiration of the initial ten-year period, the juvenile  
30 court may extend the judgment for restitution an additional ten years.  
31 The court may not require the juvenile to pay full or partial  
32 restitution if the juvenile reasonably satisfies the court that he or  
33 she does not have the means to make full or partial restitution and  
34 could not reasonably acquire the means to pay the restitution over a  
35 ten-year period. The county clerk shall make disbursements to victims  
36 named in the order. The restitution to victims named in the order  
37 shall be paid prior to any payment for other penalties or monetary  
38 assessments. (~~(A juvenile under obligation to pay restitution may  
39 petition the court for modification of the restitution order.)~~)

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

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

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

10 (b) Violation of the terms of the agreement shall be the only  
11 grounds for termination;

12 (c) No diverttee may be terminated from a diversion program without  
13 being given a court hearing, which hearing shall be preceded by:

14 (i) Written notice of alleged violations of the conditions of the  
15 diversion program; and

16 (ii) Disclosure of all evidence to be offered against the diverttee;

17 (d) The hearing shall be conducted by the juvenile court and shall  
18 include:

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

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

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

23 (iv) Demonstration by evidence that the diverttee has substantially  
24 violated the terms of his or her diversion agreement.

25 (e) The prosecutor may file an information on the offense for which  
26 the diverttee was diverted:

27 (i) In juvenile court if the diverttee is under eighteen years of  
28 age; or

29 (ii) In superior court or the appropriate court of limited  
30 jurisdiction if the diverttee is eighteen years of age or older.

31 (7) The diversion unit shall, subject to available funds, be  
32 responsible for providing interpreters when juveniles need interpreters  
33 to effectively communicate during diversion unit hearings or  
34 negotiations.

35 (8) The diversion unit shall be responsible for advising a diverttee  
36 of his or her rights as provided in this chapter.

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

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

11 The juvenile shall be advised that a diversion agreement shall  
12 constitute a part of the juvenile's criminal history as defined by RCW  
13 13.40.020(7). A signed acknowledgment of such advisement shall be  
14 obtained from the juvenile, and the document shall be maintained by the  
15 diversionary unit together with the diversion agreement, and a copy of  
16 both documents shall be delivered to the prosecutor if requested by the  
17 prosecutor. The supreme court shall promulgate rules setting forth the  
18 content of such advisement in simple language.

19 (11) When a juvenile enters into a diversion agreement, the  
20 juvenile court may receive only the following information for  
21 dispositional purposes:

- 22 (a) The fact that a charge or charges were made;
- 23 (b) The fact that a diversion agreement was entered into;
- 24 (c) The juvenile's obligations under such agreement;
- 25 (d) Whether the alleged offender performed his or her obligations  
26 under such agreement; and
- 27 (e) The facts of the alleged offense.

28 (12) A diversionary unit may refuse to enter into a diversion  
29 agreement with a juvenile. When a diversionary unit refuses to enter  
30 a diversion agreement with a juvenile, it shall immediately refer such  
31 juvenile to the court for action and shall forward to the court the  
32 criminal complaint and a detailed statement of its reasons for refusing  
33 to enter into a diversion agreement. The diversionary unit shall also  
34 immediately refer the case to the prosecuting attorney for action if  
35 such juvenile violates the terms of the diversion agreement.

36 (13) A diversionary unit may, in instances where it determines that  
37 the act or omission of an act for which a juvenile has been referred to  
38 it involved no victim, or where it determines that the juvenile  
39 referred to it has no prior criminal history and is alleged to have

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

21 (14) A diversion unit may supervise the fulfillment of a diversion  
22 agreement entered into before the juvenile's eighteenth birthday and  
23 which includes a period extending beyond the diverttee's eighteenth  
24 birthday.

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

33 (16) Fines imposed under this section shall be collected and paid  
34 into the county general fund in accordance with procedures established  
35 by the juvenile court administrator under RCW 13.04.040 and may be used  
36 only for juvenile services. In the expenditure of funds for juvenile  
37 services, there shall be a maintenance of effort whereby counties  
38 exhaust existing resources before using amounts collected under this  
39 section.

1       **Sec. 7.** RCW 13.40.160 and 1999 c 91 s 2 are each amended to read  
2 as follows:

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

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

10       (b) When the court sentences an offender to a standard range as  
11 provided in RCW 13.40.0357 option A that includes a term of confinement  
12 exceeding thirty days, commitment shall be to the department for the  
13 standard range of confinement, except as provided in subsections (2),  
14 (3), and (4) of this section.

15       (2) If the court concludes, and enters reasons for its conclusion,  
16 that disposition within the standard range would effectuate a manifest  
17 injustice the court shall impose a disposition outside the standard  
18 range, as indicated in option C of RCW 13.40.0357. The court's finding  
19 of manifest injustice shall be supported by clear and convincing  
20 evidence.

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

30       (3) When a juvenile offender is found to have committed a sex  
31 offense, other than a sex offense that is also a serious violent  
32 offense as defined by RCW 9.94A.030, and has no history of a prior sex  
33 offense, the court, on its own motion or the motion of the state or the  
34 respondent, may order an examination to determine whether the  
35 respondent is amenable to treatment.

36       The report of the examination shall include at a minimum the  
37 following: The respondent's version of the facts and the official  
38 version of the facts, the respondent's offense history, an assessment  
39 of problems in addition to alleged deviant behaviors, the respondent's

1 social, educational, and employment situation, and other evaluation  
2 measures used. The report shall set forth the sources of the  
3 evaluator's information.

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

8 (a)(i) Frequency and type of contact between the offender and  
9 therapist;

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

12 (iii) Monitoring plans, including any requirements regarding living  
13 conditions, lifestyle requirements, and monitoring by family members,  
14 legal guardians, or others;

15 (iv) Anticipated length of treatment; and

16 (v) Recommended crime-related prohibitions.

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

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

1 (b)(i) Devote time to a specific education, employment, or  
2 occupation;

3 (ii) Undergo available outpatient sex offender treatment for up to  
4 two years, or inpatient sex offender treatment not to exceed the  
5 standard range of confinement for that offense. A community mental  
6 health center may not be used for such treatment unless it has an  
7 appropriate program designed for sex offender treatment. The  
8 respondent shall not change sex offender treatment providers or  
9 treatment conditions without first notifying the prosecutor, the  
10 probation counselor, and the court, and shall not change providers  
11 without court approval after a hearing if the prosecutor or probation  
12 counselor object to the change;

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

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

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

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

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

24 (viii) Comply with the conditions of any court-ordered probation  
25 bond(~~(i-er~~

26 ~~(ix))~~).

27 Upon request of any victim or motion of the prosecutor, the court  
28 shall order that the offender (~~(may)~~) not attend the public or approved  
29 private elementary, middle, or high school attended by the victim or  
30 the victim's siblings. The parents or legal guardians of the offender  
31 are responsible for transportation or other costs associated with the  
32 offender's change of school that would otherwise be paid by the school  
33 district. The court shall send notice of the disposition and  
34 restriction on attending the same school as the victim or victim's  
35 siblings to the public or approved private school the juvenile will  
36 attend, if known, or if unknown, to the approved private schools and  
37 the public school district board of directors of the district in which  
38 the juvenile resides or intends to reside. This notice must be sent at

1 the earliest possible date but not later than ten calendar days after  
2 entry of the disposition.

3 The sex offender treatment provider shall submit quarterly reports  
4 on the respondent's progress in treatment to the court and the parties.  
5 The reports shall reference the treatment plan and include at a minimum  
6 the following: Dates of attendance, respondent's compliance with  
7 requirements, treatment activities, the respondent's relative progress  
8 in treatment, and any other material specified by the court at the time  
9 of the disposition.

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

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

25 If the offender violates any condition of the disposition or the  
26 court finds that the respondent is failing to make satisfactory  
27 progress in treatment, the court may revoke the suspension and order  
28 execution of the disposition or the court may impose a penalty of up to  
29 thirty days' confinement for violating conditions of the disposition.  
30 The court may order both execution of the disposition and up to thirty  
31 days' confinement for the violation of the conditions of the  
32 disposition. The court shall give credit for any confinement time  
33 previously served if that confinement was for the offense for which the  
34 suspension is being revoked.

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



1       A disposition entered under this subsection (3) is not appealable  
2 under RCW 13.40.230.

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

7       (5) RCW 13.40.193 shall govern the disposition of any juvenile  
8 adjudicated of possessing a firearm in violation of RCW  
9 9.41.040(1)(b)(iii) or any crime in which a special finding is entered  
10 that the juvenile was armed with a firearm.

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

15       (7) Except as provided under subsection (3) or (4) of this section  
16 or RCW 13.40.127, the court shall not suspend or defer the imposition  
17 or the execution of the disposition.

18       (8) In no case shall the term of confinement imposed by the court  
19 at disposition exceed that to which an adult could be subjected for the  
20 same offense.

--- END ---