
HOUSE BILL 1296

State of Washington

55th Legislature

1997 Regular Session

By Representatives DeBolt, Pennington, Ballasiotes, Robertson, Schoesler, Carrell, Mielke, Boldt, McMorris, Mulliken, Clements, Talcott, Parlette, Benson, Crouse, Backlund, Costa, Sullivan, Sump, Sheldon, Cooke, Morris, Thompson, Conway and D. Schmidt

Read first time 01/21/97. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to juvenile persistent offenders; amending RCW
2 13.40.0357, 13.40.150, 13.40.160, 13.40.320, and 13.40.077; reenacting
3 and amending RCW 13.40.020; and prescribing penalties.

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

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

7 For the purposes of this chapter:

8 (1) "Serious offender" means a person fifteen years of age or older
9 who is not a persistent offender and who has committed an offense which
10 if committed by an adult would be:

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

12 (b) Manslaughter in the first degree; or

13 (c) Assault in the second degree, extortion in the first degree,
14 child molestation in the second degree, kidnapping in the second
15 degree, robbery in the second degree, residential burglary, or burglary
16 in the second degree, where such offenses include the infliction of
17 bodily harm upon another or where during the commission of or immediate
18 withdrawal from such an offense the perpetrator is armed with a deadly
19 weapon;

1 (2) "Community service" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender as punishment for committing an offense. Community service
4 may be performed through public or private organizations or through
5 work crews;

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

19 (a) Community-based sanctions;

20 (b) Community-based rehabilitation;

21 (c) Monitoring and reporting requirements;

22 (d) Posting of a probation bond imposed pursuant to RCW 13.40.0357;

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

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

26 (b) Community service not to exceed one hundred fifty hours of
27 service;

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

36 (6) "Monitoring and reporting requirements" means one or more of
37 the following: Curfews; requirements to remain at home, school, work,
38 or court-ordered treatment programs during specified hours;
39 restrictions from leaving or entering specified geographical areas;

1 requirements to report to the probation officer as directed and to
2 remain under the probation officer's supervision; and other conditions
3 or limitations as the court may require which may not include
4 confinement;

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

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

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

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

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

29 (10) "Department" means the department of social and health
30 services;

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

37 (12) "Diversion unit" means any probation counselor who enters into
38 a diversion agreement with an alleged youthful offender, or any other
39 person, community accountability board, or other entity except a law

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

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

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

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

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

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

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

34 (a) Four misdemeanors;

35 (b) Two misdemeanors and one gross misdemeanor;

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

37 (d) Three gross misdemeanors.

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

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

5 (20) "Persistent offender" means a person who has committed three
6 or more offenses which, if committed by an adult, would be the
7 equivalent of or greater than one felony and two gross misdemeanors.

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

10 (~~(21)~~) (22) "Restitution" means financial reimbursement by the
11 offender to the victim, and shall be limited to easily ascertainable
12 damages for injury to or loss of property, actual expenses incurred for
13 medical treatment for physical injury to persons, lost wages resulting
14 from 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 (~~(22)~~) (23) "Secretary" means the secretary of the department of
21 social and health services. "Assistant secretary" means the assistant
22 secretary for juvenile rehabilitation for the department;

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

27 (~~(24)~~) (25) "Sex offense" means an offense defined as a sex
28 offense in RCW 9.94A.030;

29 (~~(25)~~) (26) "Sexual motivation" means that one of the purposes
30 for which the respondent committed the offense was for the purpose of
31 his or her sexual gratification;

32 (~~(26)~~) (27) "Foster care" means temporary physical care in a
33 foster family home or group care facility as defined in RCW 74.15.020
34 and licensed by the department, or other legally authorized care;

35 (~~(27)~~) (28) "Violation" means an act or omission, which if
36 committed by an adult, must be proven beyond a reasonable doubt, and is
37 punishable by sanctions which do not include incarceration;

38 (~~(28)~~) (29) "Violent offense" means a violent offense as defined
39 in RCW 9.94A.030;

1		Assault and Other Crimes	
2		Involving Physical Harm	
3	A	Assault 1 (9A.36.011)	B+
4	B+	Assault 2 (9A.36.021)	C+
5	C+	Assault 3 (9A.36.031)	D+
6	D+	Assault 4 (9A.36.041)	E
7	D+	Reckless Endangerment	
8		(9A.36.050)	E
9	C+	Promoting Suicide Attempt	
10		(9A.36.060)	D+
11	D+	Coercion (9A.36.070)	E
12	C+	Custodial Assault (9A.36.100)	D+
13		Burglary and Trespass	
14	B+	Burglary 1 (9A.52.020)	C+
15	B	Burglary 2 (9A.52.030)	C
16	D	Burglary Tools (Possession of)	
17		(9A.52.060)	E
18	D	Criminal Trespass 1 (9A.52.070)	E
19	E	Criminal Trespass 2 (9A.52.080)	E
20	D	Vehicle Prowling (9A.52.100)	E
21		Drugs	
22	E	Possession/Consumption of Alcohol	
23		(66.44.270)	E
24	C	Illegally Obtaining Legend Drug	
25		(69.41.020)	D
26	C+	Sale, Delivery, Possession of Legend	
27		Drug with Intent to Sell	
28		(69.41.030)	D+
29	E	Possession of Legend Drug	
30		(69.41.030)	E
31	B+	Violation of Uniform Controlled	
32		Substances Act - Narcotic or	
33		Methamphetamine Sale	
34		(69.50.401(a)(1)(i) or (ii))	B+
35	C	Violation of Uniform Controlled	
36		Substances Act - Nonnarcotic Sale	
37		(69.50.401(a)(1)(iii))	C

1	E	Possession of Marihuana <40 grams	
2		(69.50.401(e))	E
3	C	Fraudulently Obtaining Controlled	
4		Substance (69.50.403)	C
5	C+	Sale of Controlled Substance	
6		for Profit (69.50.410)	C+
7	E	Unlawful Inhalation (9.47A.020)	E
8	B	Violation of Uniform Controlled	
9		Substances Act - Narcotic or	
10		Methamphetamine	
11		Counterfeit Substances	
12		(69.50.401(b)(1)(i) or (ii))	B
13	C	Violation of Uniform Controlled	
14		Substances Act - Nonnarcotic	
15		Counterfeit Substances	
16		(69.50.401(b)(1) (iii), (iv),	
17		(v))	C
18	C	Violation of Uniform Controlled	
19		Substances Act - Possession of a	
20		Controlled Substance	
21		(69.50.401(d))	C
22	C	Violation of Uniform Controlled	
23		Substances Act - Possession of a	
24		Controlled Substance	
25		(69.50.401(c))	C
26		Firearms and Weapons	
27	E	Carrying Loaded Pistol Without	
28		Permit (9.41.050)	E
29	C	Possession of Firearms by	
30		Minor (<18) (9.41.040(1) (b)	
31		(((iv))) (iii))	C
32	D+	Possession of Dangerous Weapon	
33		(9.41.250)	E
34	D	Intimidating Another Person by use	
35		of Weapon (9.41.270)	E
36		Homicide	
37	A+	Murder 1 (9A.32.030)	A
38	A+	Murder 2 (9A.32.050)	B+

1	B+	Manslaughter 1 (9A.32.060)	C+
2	C+	Manslaughter 2 (9A.32.070)	D+
3	B+	Vehicular Homicide (46.61.520)	C+
4		Kidnapping	
5	A	Kidnap 1 (9A.40.020)	B+
6	B+	Kidnap 2 (9A.40.030)	C+
7	C+	Unlawful Imprisonment	
8		(9A.40.040)	D+
9		Obstructing Governmental Operation	
10	E	Obstructing a	
11		Law Enforcement Officer	
12		(9A.76.020)	E
13	E	Resisting Arrest (9A.76.040)	E
14	B	Introducing Contraband 1	
15		(9A.76.140)	C
16	C	Introducing Contraband 2	
17		(9A.76.150)	D
18	E	Introducing Contraband 3	
19		(9A.76.160)	E
20	B+	Intimidating a Public Servant	
21		(9A.76.180)	C+
22	B+	Intimidating a Witness	
23		(9A.72.110)	C+
24		Public Disturbance	
25	C+	Riot with Weapon (9A.84.010)	D+
26	D+	Riot Without Weapon	
27		(9A.84.010)	E
28	E	Failure to Disperse (9A.84.020)	E
29	E	Disorderly Conduct (9A.84.030)	E
30		Sex Crimes	
31	A	Rape 1 (9A.44.040)	B+
32	A-	Rape 2 (9A.44.050)	B+
33	C+	Rape 3 (9A.44.060)	D+
34	A-	Rape of a Child 1 (9A.44.073)	B+
35	B	Rape of a Child 2 (9A.44.076)	C+
36	B	Incest 1 (9A.64.020(1))	C
37	C	Incest 2 (9A.64.020(2))	D

1	D+	Indecent Exposure	
2		(Victim <14) (9A.88.010)	E
3	E	Indecent Exposure	
4		(Victim 14 or over) (9A.88.010)	E
5	B+	Promoting Prostitution 1	
6		(9A.88.070)	C+
7	C+	Promoting Prostitution 2	
8		(9A.88.080)	D+
9	E	O & A (Prostitution) (9A.88.030)	E
10	B+	Indecent Liberties (9A.44.100)	C+
11	B+	Child Molestation 1 (9A.44.083)	C+
12	C+	Child Molestation 2 (9A.44.086)	C
13		Theft, Robbery, Extortion, and Forgery	
14	B	Theft 1 (9A.56.030)	C
15	C	Theft 2 (9A.56.040)	D
16	D	Theft 3 (9A.56.050)	E
17	B	Theft of Livestock (9A.56.080)	C
18	C	Forgery (9A.60.020)	D
19	A	Robbery 1 (9A.56.200)	B+
20	B+	Robbery 2 (9A.56.210)	C+
21	B+	Extortion 1 (9A.56.120)	C+
22	C+	Extortion 2 (9A.56.130)	D+
23	B	Possession of Stolen Property 1	
24		(9A.56.150)	C
25	C	Possession of Stolen Property 2	
26		(9A.56.160)	D
27	D	Possession of Stolen Property 3	
28		(9A.56.170)	E
29	C	Taking Motor Vehicle Without	
30		Owner's Permission (9A.56.070)	D
31		Motor Vehicle Related Crimes	
32	E	Driving Without a License	
33		(46.20.021)	E
34	C	Hit and Run - Injury	
35		(46.52.020(4))	D
36	D	Hit and Run-Attended	
37		(46.52.020(5))	E

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

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

34 1st escape or attempted escape during 12-month period - 4 weeks
35 confinement

36 2nd escape or attempted escape during 12-month period - 8 weeks
37 confinement

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

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

5 **SCHEDULE B**

6 **PRIOR OFFENSE INCREASE FACTOR**

7 For use with all CURRENT OFFENSES occurring on or after July 1,
8 1989.

9 **TIME SPAN**

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

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).

27 **SCHEDULE C**

28 **CURRENT OFFENSE POINTS**

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

31 **AGE**

32	OFFENSE	12 &					
33	CATEGORY	Under	13	14	15	16	17

1
2	A+ STANDARD RANGE 180-224 WEEKS
3	A 250 300 350 375 375 375
4	A- 150 150 150 200 200 200
5	B+ 110 110 120 130 140 150
6	B 45 45 50 50 57 57
7	C+ 44 44 49 49 55 55
8	C 40 40 45 45 50 50
9	D+ 16 18 20 22 24 26
10	D 14 16 18 20 22 24
11	E 4 4 4 6 8 10

**JUVENILE SENTENCING STANDARDS
SCHEDULE D-1**

14 This schedule may only be used for minor/first offenders. After the
 15 determination is made that a youth is a minor/first offender, the court
 16 has the discretion to select sentencing option A, B, or C.

MINOR/FIRST OFFENDER

**OPTION A
STANDARD RANGE**

20	Community			
21		Community	Service	
22	Points	Supervision	Hours	Fine
23			
24	1-9	0-3 months	and/or 0-8	and/or 0-\$10
25	10-19	0-3 months	and/or 0-8	and/or 0-\$10
26	20-29	0-3 months	and/or 0-16	and/or 0-\$10
27	30-39	0-3 months	and/or 8-24	and/or 0-\$25
28	40-49	3-6 months	and/or 16-32	and/or 0-\$25
29	50-59	3-6 months	and/or 24-40	and/or 0-\$25
30	60-69	6-9 months	and/or 32-48	and/or 0-\$50
31	70-79	6-9 months	and/or 40-56	and/or 0-\$50
32	80-89	9-12 months	and/or 48-64	and/or 10-\$100
33	90-109	9-12 months	and/or 56-72	and/or 10-\$100

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OR

OPTION B

STATUTORY OPTION

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

A term of community supervision with a maximum of 150 hours, \$100.00 fine, and 12 months supervision.

OR

OPTION C

MANIFEST INJUSTICE

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

JUVENILE SENTENCING STANDARDS

SCHEDULE D-2

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

MIDDLE OFFENDER

OPTION A

STANDARD RANGE

Points	Community			Fine	Confinement	
	Supervision	Service Hours	Hours		Days	Weeks
1-9	0-3 months	and/or 0-8	and/or 0-8	and/or 0-\$10	and/or 0	and/or 0
10-19	0-3 months	and/or 0-8	and/or 0-8	and/or 0-\$10	and/or 0	and/or 0
20-29	0-3 months	and/or 0-16	and/or 0-16	and/or 0-\$10	and/or 0	and/or 0
30-39	0-3 months	and/or 8-24	and/or 8-24	and/or 0-\$25	and/or 2-4	and/or 2-4
40-49	3-6 months	and/or 16-32	and/or 16-32	and/or 0-\$25	and/or 2-4	and/or 2-4
50-59	3-6 months	and/or 24-40	and/or 24-40	and/or 0-\$25	and/or 5-10	and/or 5-10

1	60-69	6-9 months	and/or 32-48	and/or 0-\$50	and/or 5-10
2	70-79	6-9 months	and/or 40-56	and/or 0-\$50	and/or 10-20
3	80-89	9-12 months	and/or 48-64	and/or 0-\$100	and/or 10-20
4	90-109	9-12 months	and/or 56-72	and/or 0-\$100	and/or 15-30
5	110-129				8-12
6	130-149				13-16
7	150-199				21-28
8	200-249				30-40
9	250-299				52-65
10	300-374				80-100
11	375+				103-129

12 Middle offenders with 110 points or more do not have to be committed.
13 They may be assigned community supervision under option B.
14 All A+ offenses 180-224 weeks

15 **OR**

16 **OPTION B**

17 **STATUTORY OPTION**

- 18 0-12 Months Community Supervision
- 19 0-150 Hours Community Service
- 20 0-100 Fine
- 21 Posting of a Probation Bond

22 If the offender has less than 110 points, the court may impose a
23 determinate disposition of community supervision and/or up to 30 days
24 confinement; in which case, if confinement has been imposed, the court
25 shall state either aggravating or mitigating factors as set forth in
26 RCW 13.40.150.

27 If the middle offender has 110 points or more, the court may impose
28 a disposition under option A and may suspend the disposition on the
29 condition that the offender serve up to thirty days of confinement and
30 follow all conditions of community supervision. If the offender fails
31 to comply with the terms of community supervision, the court may impose
32 sanctions pursuant to RCW 13.40.200 or may revoke the suspended
33 disposition and order execution of the disposition. If the court
34 imposes confinement for offenders with 110 points or more, the court
35 shall state either aggravating or mitigating factors set forth in RCW
36 13.40.150.

37 **OR**

OPTION C
MANIFEST INJUSTICE

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

JUVENILE SENTENCING STANDARDS
SCHEDULE D-3

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

SERIOUS OFFENDER
OPTION A
STANDARD RANGE

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
375+	103-129 weeks
All A+ Offenses	180-224 weeks

OR

OPTION B
MANIFEST INJUSTICE

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

JUVENILE SENTENCING STANDARDS

SCHEDULE D-4

1
2 This schedule may only be used for persistent offenders. After the
3 determination is made that a youth is a persistent offender, the court
4 must commit the offender to the department for confinement until his or
5 her twenty-first birthday unless the court recommends that the
6 department commit the offender to the juvenile offender basic training
7 camp program. If the persistent offender fails to successfully
8 complete the basic training camp program, complete a substance abuse
9 treatment program if the department of social and health services
10 determines that such a program is necessary, and complete a course to
11 obtain a general equivalency degree, then the offender must be
12 committed to the department for confinement until his or her twenty-
13 first birthday.

14 **Sec. 3.** RCW 13.40.150 and 1995 c 268 s 5 are each amended to read
15 as follows:

16 (1) In disposition hearings all relevant and material evidence,
17 including oral and written reports, may be received by the court and
18 may be relied upon to the extent of its probative value, even though
19 such evidence may not be admissible in a hearing on the information.
20 The youth or the youth's counsel and the prosecuting attorney shall be
21 afforded an opportunity to examine and controvert written reports so
22 received and to cross-examine individuals making reports when such
23 individuals are reasonably available, but sources of confidential
24 information need not be disclosed. The prosecutor and counsel for the
25 juvenile may submit recommendations for disposition.

26 (2) For purposes of disposition:

27 (a) Violations which are current offenses count as misdemeanors;
28 (b) Violations may not count as part of the offender's criminal
29 history;

30 (c) In no event may a disposition for a violation include
31 confinement.

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

35 (a) Consider the facts supporting the allegations of criminal
36 conduct by the respondent;

37 (b) Consider information and arguments offered by parties and their
38 counsel;

1 (c) Consider any predisposition reports;

2 (d) Consult with the respondent's parent, guardian, or custodian on
3 the appropriateness of dispositional options under consideration and
4 afford the respondent and the respondent's parent, guardian, or
5 custodian an opportunity to speak in the respondent's behalf;

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

8 (f) Determine the amount of restitution owing to the victim, if
9 any;

10 (g) Determine whether the respondent is a persistent offender, a
11 serious offender, a middle offender, or a minor or first offender;

12 (h) Consider whether or not any of the following mitigating factors
13 exist:

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

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

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

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

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

26 (i) Consider whether or not any of the following aggravating
27 factors exist:

28 (i) In the commission of the offense, or in flight therefrom, the
29 respondent inflicted or attempted to inflict serious bodily injury to
30 another;

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

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

34 (iv) The respondent has a recent criminal history or has failed to
35 comply with conditions of a recent dispositional order or diversion
36 agreement;

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

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

3 (vii) There are other complaints which have resulted in diversion
4 or a finding or plea of guilty but which are not included as criminal
5 history.

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

8 (a) The sex of the respondent;

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

10 (c) The creed or religion of the respondent or the respondent's
11 family;

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

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

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

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

21 (1) When the respondent is found to be a persistent offender, the
22 court shall commit the offender to the department for confinement until
23 his or her twenty-first birthday unless the court recommends that the
24 department commit the offender to the juvenile offender basic training
25 camp program. If the persistent offender fails to successfully
26 complete the basic training camp program, complete a substance abuse
27 treatment program if the department of social and health services
28 determines that such a program is necessary, and complete a course to
29 obtain a general equivalency degree, then the offender must be
30 committed to the department for confinement until his or her twenty-
31 first birthday.

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

37 If the court concludes, and enters reasons for its conclusion, that
38 disposition within the standard range would effectuate a manifest

1 injustice the court shall impose a disposition outside the standard
2 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
3 court's finding of manifest injustice shall be supported by clear and
4 convincing evidence.

5 A disposition outside the standard range shall be determinate and
6 shall be comprised of confinement or community supervision, or a
7 combination thereof. When a judge finds a manifest injustice and
8 imposes a sentence of confinement exceeding thirty days, the court
9 shall sentence the juvenile to a maximum term, and the provisions of
10 RCW 13.40.030(2) shall be used to determine the range. A disposition
11 outside the standard range is appealable under RCW 13.40.230 by the
12 state or the respondent. A disposition within the standard range is
13 not appealable under RCW 13.40.230.

14 ~~((+2))~~ (3) Where the respondent is found to be a minor or first
15 offender, the court shall order that the respondent serve a term of
16 community supervision as indicated in option A or option B of schedule
17 D-1, RCW 13.40.0357 except as provided in subsections ~~((+5))~~ (6) and
18 ~~((+6))~~ (7) of this section. If the court determines that a
19 disposition of community supervision would effectuate a manifest
20 injustice the court may impose another disposition under option C of
21 schedule D-1, RCW 13.40.0357. Except as provided in subsection ~~((+5))~~
22 (6) of this section, a disposition other than a community supervision
23 may be imposed only after the court enters reasons upon which it bases
24 its conclusions that imposition of community supervision would
25 effectuate a manifest injustice. When a judge finds a manifest
26 injustice and imposes a sentence of confinement exceeding thirty days,
27 the court shall sentence the juvenile to a maximum term, and the
28 provisions of RCW 13.40.030(2) shall be used to determine the range.
29 The court's finding of manifest injustice shall be supported by clear
30 and convincing evidence.

31 Except for disposition of community supervision or a disposition
32 imposed pursuant to subsection ~~((+5))~~ (6) of this section, a
33 disposition may be appealed as provided in RCW 13.40.230 by the state
34 or the respondent. A disposition of community supervision or a
35 disposition imposed pursuant to subsection ~~((+5))~~ (6) of this section
36 may not be appealed under RCW 13.40.230.

37 ~~((+3))~~ (4) Where a respondent is found to have committed an
38 offense for which the respondent declined to enter into a diversion
39 agreement, the court shall impose a term of community supervision

1 limited to the conditions allowed in a diversion agreement as provided
2 in RCW 13.40.080(2).

3 ~~((4))~~ (5) If a respondent is found to be a middle offender:

4 (a) The court shall impose a determinate disposition within the
5 standard range(s) for such offense, as indicated in option A of
6 schedule D-2, RCW 13.40.0357 except as provided in subsections ~~((5))~~
7 (6) and ~~((6))~~ (7) of this section. If the standard range includes a
8 term of confinement exceeding thirty days, commitment shall be to the
9 department for the standard range of confinement; or

10 (b) If the middle offender has less than 110 points, the court
11 shall impose a determinate disposition of community supervision and/or
12 up to thirty days confinement, as indicated in option B of schedule D-
13 2, RCW 13.40.0357 in which case, if confinement has been imposed, the
14 court shall state either aggravating or mitigating factors as set forth
15 in RCW 13.40.150. If the middle offender has 110 points or more, the
16 court may impose a disposition under option A and may suspend the
17 disposition on the condition that the offender serve up to thirty days
18 of confinement and follow all conditions of community supervision. If
19 the offender violates any condition of the disposition including
20 conditions of a probation bond, the court may impose sanctions pursuant
21 to RCW 13.40.200 or may revoke the suspension and order execution of
22 the disposition. The court shall give credit for any confinement time
23 previously served if that confinement was for the offense for which the
24 suspension is being revoked.

25 (c) Only if the court concludes, and enters reasons for its
26 conclusions, that disposition as provided in ~~((subsection(4)))~~ (a) or
27 (b) of this ~~((section))~~ subsection would effectuate a manifest
28 injustice, the court shall sentence the juvenile to a maximum term, and
29 the provisions of RCW 13.40.030(2) shall be used to determine the
30 range. The court's finding of manifest injustice shall be supported by
31 clear and convincing evidence.

32 (d) A disposition pursuant to ~~((subsection(4)))(c)~~ of this
33 ~~((section))~~ subsection is appealable under RCW 13.40.230 by the state
34 or the respondent. A disposition pursuant to ~~((subsection(4)))(a)~~ or
35 (b) of this ~~((section))~~ subsection is not appealable under RCW
36 13.40.230.

37 ~~((5))~~ (6) When a serious, middle, or minor first offender is
38 found to have committed a sex offense, other than a sex offense that is
39 also a serious violent offense as defined by RCW 9.94A.030, and has no

1 history of a prior sex offense, the court, on its own motion or the
2 motion of the state or the respondent, may order an examination to
3 determine whether the respondent is amenable to treatment.

4 The report of the examination shall include at a minimum the
5 following: The respondent's version of the facts and the official
6 version of the facts, the respondent's offense history, an assessment
7 of problems in addition to alleged deviant behaviors, the respondent's
8 social, educational, and employment situation, and other evaluation
9 measures used. The report shall set forth the sources of the
10 evaluator's information.

11 The examiner shall assess and report regarding the respondent's
12 amenability to treatment and relative risk to the community. A
13 proposed treatment plan shall be provided and shall include, at a
14 minimum:

15 (a)(i) Frequency and type of contact between the offender and
16 therapist;

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

19 (iii) Monitoring plans, including any requirements regarding living
20 conditions, lifestyle requirements, and monitoring by family members,
21 legal guardians, or others;

22 (iv) Anticipated length of treatment; and

23 (v) Recommended crime-related prohibitions.

24 The court on its own motion may order, or on a motion by the state
25 shall order, a second examination regarding the offender's amenability
26 to treatment. The evaluator shall be selected by the party making the
27 motion. The defendant shall pay the cost of any second examination
28 ordered unless the court finds the defendant to be indigent in which
29 case the state shall pay the cost.

30 After receipt of reports of the examination, the court shall then
31 consider whether the offender and the community will benefit from use
32 of this special sex offender disposition alternative and consider the
33 victim's opinion whether the offender should receive a treatment
34 disposition under this section. If the court determines that this
35 special sex offender disposition alternative is appropriate, then the
36 court shall impose a determinate disposition within the standard range
37 for the offense, and the court may suspend the execution of the
38 disposition and place the offender on community supervision for up to
39 two years. As a condition of the suspended disposition, the court may

1 impose the conditions of community supervision and other conditions,
2 including up to thirty days of confinement and requirements that the
3 offender do any one or more of the following:

4 (b)(i) Devote time to a specific education, employment, or
5 occupation;

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

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

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

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

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

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

27 (viii) Comply with the conditions of any court-ordered probation
28 bond.

29 The sex offender treatment provider shall submit quarterly reports
30 on the respondent's progress in treatment to the court and the parties.
31 The reports shall reference the treatment plan and include at a minimum
32 the following: Dates of attendance, respondent's compliance with
33 requirements, treatment activities, the respondent's relative progress
34 in treatment, and any other material specified by the court at the time
35 of the disposition.

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

38 Except as provided in this subsection (~~((+5))~~) (6), after July 1,
39 1991, examinations and treatment ordered pursuant to this subsection

1 shall only be conducted by sex offender treatment providers certified
2 by the department of health pursuant to chapter 18.155 RCW. A sex
3 offender therapist who examines or treats a juvenile sex offender
4 pursuant to this subsection does not have to be certified by the
5 department of health pursuant to chapter 18.155 RCW if the court finds
6 that: (A) The offender has already moved to another state or plans to
7 move to another state for reasons other than circumventing the
8 certification requirements; (B) no certified providers are available
9 for treatment within a reasonable geographical distance of the
10 offender's home; and (C) the evaluation and treatment plan comply with
11 this subsection (~~((+5+))~~) (6) and the rules adopted by the department of
12 health.

13 If the offender violates any condition of the disposition or the
14 court finds that the respondent is failing to make satisfactory
15 progress in treatment, the court may revoke the suspension and order
16 execution of the disposition or the court may impose a penalty of up to
17 thirty days' confinement for violating conditions of the disposition.
18 The court may order both execution of the disposition and up to thirty
19 days' confinement for the violation of the conditions of the
20 disposition. The court shall give credit for any confinement time
21 previously served if that confinement was for the offense for which the
22 suspension is being revoked.

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

28 (~~((+6+))~~) (7) RCW 13.40.193 shall govern the disposition of any
29 juvenile adjudicated of possessing a firearm in violation of RCW
30 9.41.040(1)(~~((+e+))~~) (b)(iii) or any crime in which a special finding is
31 entered that the juvenile was armed with a firearm.

32 (~~((+7+))~~) (8) Whenever a juvenile offender is entitled to credit for
33 time spent in detention prior to a dispositional order, the
34 dispositional order shall specifically state the number of days of
35 credit for time served.

36 (~~((+8+))~~) (9) Except as provided for in subsection (~~((+4+))~~) (5)(b) or
37 (~~((+5+))~~) (6) of this section or RCW 13.40.125, the court shall not
38 suspend or defer the imposition or the execution of the disposition.

1 (~~(9)~~) (10) In no case shall the term of confinement imposed by
2 the court at disposition exceed that to which an adult could be
3 subjected for the same offense.

4 **Sec. 5.** RCW 13.40.320 and 1995 c 40 s 1 are each amended to read
5 as follows:

6 (1) The department of social and health services shall establish
7 and operate a medium security juvenile offender basic training camp
8 program. The department shall site a juvenile offender basic training
9 camp facility in the most cost-effective facility possible and shall
10 review the possibility of using an existing abandoned and/or available
11 state, federally, or military-owned site or facility.

12 (2) The department may contract under this chapter with private
13 companies, the national guard, or other federal, state, or local
14 agencies to operate the juvenile offender basic training camp,
15 notwithstanding the provisions of RCW 41.06.380. Requests for
16 proposals from possible contractors shall not call for payment on a per
17 diem basis.

18 (3) The juvenile offender basic training camp shall accommodate at
19 least seventy offenders. The beds shall count as additions to, and not
20 be used as replacements for, existing bed capacity at existing
21 department of social and health services juvenile facilities.

22 (4) The juvenile offender basic training camp shall be a structured
23 and regimented model lasting one hundred twenty days emphasizing the
24 building up of an offender's self-esteem, confidence, and discipline.
25 The juvenile offender basic training camp program shall provide
26 participants with basic education, prevocational training, work-based
27 learning, live work, work ethic skills, conflict resolution counseling,
28 substance abuse intervention, anger management counseling, and
29 structured intensive physical training. The juvenile offender basic
30 training camp program shall have a curriculum training and work
31 schedule that incorporates a balanced assignment of these or other
32 rehabilitation and training components for no less than sixteen hours
33 per day, six days a week.

34 The department shall adopt rules for the safe and effective
35 operation of the juvenile offender basic training camp program,
36 standards for an offender's successful program completion, and rules
37 for the continued after-care supervision of offenders who have
38 successfully completed the program.

1 (5) Offenders eligible for the juvenile offender basic training
2 camp option (~~(shall be)~~) are those with a disposition of not more than
3 seventy-eight weeks or those persistent offenders who are otherwise
4 eligible. Violent and sex offenders shall not be eligible for the
5 juvenile offender basic training camp program.

6 (6) If the court determines that the offender is eligible for the
7 juvenile offender basic training camp option, the court may recommend
8 that the department place the offender in the program. The department
9 shall evaluate the offender and may place the offender in the program.
10 The evaluation shall include, at a minimum, a risk assessment developed
11 by the department and designed to determine the offender's suitability
12 for the program. No juvenile who is assessed as a high risk offender
13 or suffers from any mental or physical problems that could endanger his
14 or her health or drastically affect his or her performance in the
15 program shall be admitted to or retained in the juvenile offender basic
16 training camp program.

17 (7) All juvenile offenders eligible for the juvenile offender basic
18 training camp sentencing option shall spend one hundred twenty days of
19 their disposition in a juvenile offender basic training camp. If the
20 juvenile offender's activities while in the juvenile offender basic
21 training camp are so disruptive to the juvenile offender basic training
22 camp program, as determined by the secretary according to rules adopted
23 by the department, as to result in the removal of the juvenile offender
24 from the juvenile offender basic training camp program, or if the
25 offender cannot complete the juvenile offender basic training camp
26 program due to medical problems, the secretary shall require that the
27 offender be committed to a juvenile institution to serve the entire
28 remainder of his or her disposition, less the amount of time already
29 served in the juvenile offender basic training camp program.

30 (8) All offenders who successfully graduate from the one hundred
31 twenty day juvenile offender basic training camp program shall spend
32 the remainder of their disposition on parole in a division of juvenile
33 rehabilitation intensive aftercare program in the local community. The
34 program shall provide for the needs of the offender based on his or her
35 progress in the aftercare program as indicated by ongoing assessment of
36 those needs and progress. The intensive aftercare program shall
37 monitor postprogram juvenile offenders and assist them to successfully
38 reintegrate into the community. In addition, the program shall develop
39 a process for closely monitoring and assessing public safety risks.

1 The intensive aftercare program shall be designed and funded by the
2 department of social and health services.

3 (9) The department shall also develop and maintain a data base to
4 measure recidivism rates specific to this incarceration program. The
5 data base shall maintain data on all juvenile offenders who complete
6 the juvenile offender basic training camp program for a period of two
7 years after they have completed the program. The data base shall also
8 maintain data on the criminal activity, educational progress, and
9 employment activities of all juvenile offenders who participated in the
10 program. The department shall produce an outcome evaluation report on
11 the progress of the juvenile offender basic training camp program to
12 the appropriate committees of the legislature no later than December
13 12, 1996.

14 **Sec. 6.** RCW 13.40.077 and 1996 c 9 s 1 are each amended to read as
15 follows:

16 RECOMMENDED PROSECUTING STANDARDS
17 FOR CHARGING AND PLEA DISPOSITIONS

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

23 Evidentiary sufficiency.

24 (1) Decision not to prosecute.

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

32 GUIDELINES/COMMENTARY:

33 Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (i) Assault cases where the victim has suffered little or no
21 injury;

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

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

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

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

29 Notification

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

32 (2) Decision to prosecute.

33 STANDARD:

34 Crimes against persons will be filed if sufficient admissible
35 evidence exists, which, when considered with the most plausible,
36 reasonably foreseeable defense that could be raised under the evidence,
37 would justify conviction by a reasonable and objective fact-finder.
38 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
39 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and

1 9A.64.020 the prosecutor should avoid prefiling agreements or
2 diversions intended to place the accused in a program of treatment or
3 counseling, so that treatment, if determined to be beneficial, can be
4 proved under RCW 13.40.160(5).

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

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

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

14 (3) Selection of Charges/Degree of Charge

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

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

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

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

22 Overcharging includes:

23 (i) Charging a higher degree;

24 (ii) Charging additional counts.

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

31 (4) Police Investigation

32 A prosecuting attorney is dependent upon law enforcement agencies
33 to conduct the necessary factual investigation which must precede the
34 decision to prosecute. The prosecuting attorney shall ensure that a
35 thorough factual investigation has been conducted before a decision to
36 prosecute is made. In ordinary circumstances the investigation should
37 include the following:

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

- 1 (b) The completion of necessary laboratory tests; and
2 (c) The obtaining, in accordance with constitutional requirements,
3 of the suspect's version of the events.

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

7 (5) Exceptions

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

- 10 (a) Probable cause exists to believe the suspect is guilty; and
11 (b) The suspect presents a danger to the community or is likely to
12 flee if not apprehended; or
13 (c) The arrest of the suspect is necessary to complete the
14 investigation of the crime.

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

21 (6) Investigation Techniques

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

- 24 (a) Polygraph testing;
25 (b) Hypnosis;
26 (c) Electronic surveillance;
27 (d) Use of informants.
28 (7) Prefiling Discussions with Defendant

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

32 (8) Plea dispositions:

33 STANDARD

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

38 (b) In certain circumstances, a plea agreement with a respondent in
39 exchange for a plea of guilty to a charge or charges that may not fully

1 describe the nature of his or her criminal conduct may be necessary and
2 in the public interest. Such situations may include the following:

3 (i) Evidentiary problems which make conviction of the original
4 charges doubtful;

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

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

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

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

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

14 (vii) The nature and seriousness of the offense or offenses
15 charged;

16 (viii) The probable effect of witnesses.

17 (c) It is not appropriate for a prosecutor to accept a plea of
18 guilty to a charge that does not adequately describe the nature of the
19 respondent's action if a consideration in the plea is the avoidance of
20 a designation as a persistent offender as defined under RCW
21 13.40.020(20).

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

27 (9) Disposition recommendations:

28 STANDARD

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

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

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