

---

HOUSE BILL 2611

---

State of Washington

58th Legislature

2004 Regular Session

By Representatives O'Brien, Delvin, Veloria and Kenney; by request of Department of Community, Trade, and Economic Development

Read first time 01/16/2004. Referred to Committee on Juvenile Justice & Family Law.

1 AN ACT Relating to victims of crime; amending RCW 13.40.010,  
2 13.40.165, 13.40.200, 7.69.030, and 7.69A.030; reenacting and amending  
3 RCW 13.40.020, 13.40.080, 13.40.160, and 13.40.190; and providing an  
4 effective date.

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

6 **Sec. 1.** RCW 13.40.010 and 1997 c 338 s 8 are each amended to read  
7 as follows:

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

10 (2) It is the intent of the legislature that a system capable of  
11 having primary responsibility for, being accountable for, and  
12 responding to the needs of youthful offenders and their victims, as  
13 defined by this chapter, be established. It is the further intent of  
14 the legislature that youth, in turn, be held accountable for their  
15 offenses and that communities, families, and the juvenile courts carry  
16 out their functions consistent with this intent. To effectuate these  
17 policies, the legislature declares the following to be equally  
18 important purposes of this chapter:

19 (a) Protect the citizenry from criminal behavior;

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

3 (c) Make the juvenile offender accountable for his or her criminal  
4 behavior;

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

7 (e) Provide due process for juveniles alleged to have committed an  
8 offense;

9 (f) Provide necessary treatment, supervision, and custody for  
10 juvenile offenders;

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

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

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

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

21 (k) Provide opportunities for victim participation in court  
22 hearings on juvenile offender matters and ensure that Article I,  
23 section 35 of the Washington state Constitution, the victim bill of  
24 rights, is fully observed; and

25 (l) Encourage the parents, guardian, or custodian of the juvenile  
26 and the juvenile's victim, to the extent the victim is able to or  
27 chooses to, to actively participate in the juvenile justice process.

28 **Sec. 2.** RCW 13.40.020 and 2002 c 237 s 7 and 2002 c 175 s 19 are  
29 each reenacted and amended to read as follows:

30 For the purposes of this chapter:

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

1 appropriate for the juvenile as determined by the school district.  
2 Placement in community-based rehabilitation programs is subject to  
3 available funds;

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

- 6 (a) A fine, not to exceed five hundred dollars;
- 7 (b) Community restitution not to exceed one hundred fifty hours of  
8 community restitution;

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

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

- 27 (a) Community-based sanctions;
- 28 (b) Community-based rehabilitation;
- 29 (c) Monitoring and reporting requirements;
- 30 (d) Posting of a probation bond;

31 (5) "Confinement" means physical custody by the department of  
32 social and health services in a facility operated by or pursuant to a  
33 contract with the state, or physical custody in a detention facility  
34 operated by or pursuant to a contract with any county. The county may  
35 operate or contract with vendors to operate county detention  
36 facilities. The department may operate or contract to operate  
37 detention facilities for juveniles committed to the department.

1 Pretrial confinement or confinement of less than thirty-one days  
2 imposed as part of a disposition or modification order may be served  
3 consecutively or intermittently, in the discretion of the court;

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

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

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

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

19 (8) "Department" means the department of social and health  
20 services;

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

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

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

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

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

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

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) "Local sanctions" means one or more of the following: (a)  
26 0-30 days of confinement; (b) 0-12 months of community supervision; (c)  
27 0-150 hours of community restitution; or (d) \$0-\$500 fine;

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

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

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

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

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

24 (23) "Secretary" means the secretary of the department of social  
25 and health services. "Assistant secretary" means the assistant  
26 secretary for juvenile rehabilitation for the department;

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

31 (25) "Sex offense" means an offense defined as a sex offense in RCW  
32 9.94A.030;

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

36 (27) "Surety" means an entity licensed under state insurance laws  
37 or by the state department of licensing, to write corporate, property,

1 or probation bonds within the state, and justified and approved by the  
2 superior court of the county having jurisdiction of the case;

3 (28) "Victim" means any person who has sustained emotional,  
4 psychological, physical, or financial injury to person or property as  
5 a direct result or consequence of the crime charged. "Victim" may also  
6 include a known parent or guardian of a victim who is a minor child or  
7 is not a minor child but is incapacitated or incompetent;

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

11 ((+29+)) (30) "Violent offense" means a violent offense as defined  
12 in RCW 9.94A.030;

13 ((+30+)) (31) "Youth court" means a diversion unit under the  
14 supervision of the juvenile court.

15 **Sec. 3.** RCW 13.40.080 and 2002 c 237 s 8 and 2002 c 175 s 21 are  
16 each reenacted and amended to read as follows:

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

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

27 (a) Community restitution not to exceed one hundred fifty hours,  
28 not to be performed during school hours if the juvenile is attending  
29 school;

30 (b) Restitution shall be part of the diversion agreement, limited  
31 to the amount of ((~~actual~~)) easily ascertainable loss incurred by any  
32 victim;

33 (c) Attendance at up to ten hours of counseling and/or up to twenty  
34 hours of educational or informational sessions at a community agency.  
35 The educational or informational sessions may include sessions relating  
36 to respect for self, others, and authority; victim awareness;  
37 accountability; self-worth; responsibility; work ethics; good

1 citizenship; literacy; and life skills. For purposes of this section,  
2 "community agency" may also mean a community-based nonprofit  
3 organization, if approved by the diversion unit. The state shall not  
4 be liable for costs resulting from the diversion unit exercising the  
5 option to permit diversion agreements to mandate attendance at up to  
6 ten hours of counseling and/or up to twenty hours of educational or  
7 informational sessions;

8 (d) A fine, not to exceed one hundred dollars;

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

12 (f) Upon request of any victim or witness, requirements to refrain  
13 from any contact with victims or witnesses of offenses committed by the  
14 juvenile.

15 (3) Notwithstanding the provisions of subsection (2) of this  
16 section, youth courts are not limited to the conditions imposed by  
17 subsection (2) of this section in imposing sanctions on juveniles  
18 pursuant to RCW 13.40.630.

19 (4) In assessing periods of community restitution to be performed  
20 and restitution to be paid by a juvenile who has entered into a  
21 diversion agreement, the court officer to whom this task is assigned  
22 shall consult with the juvenile's custodial parent or parents or  
23 guardian and shall consult with the victims ((who have contacted the  
24 diversion unit)) of the juvenile offender, advising of the diversion  
25 process and offering victim impact letter forms and restitution claim  
26 forms and, to the extent possible, shall involve members of the  
27 community. Such members of the community shall meet with the juvenile  
28 and advise the court officer as to the terms of the diversion agreement  
29 and shall supervise the juvenile in carrying out its terms.

30 (5)(a) A diversion agreement may not exceed a period of six months  
31 and may include a period extending beyond the eighteenth birthday of  
32 the diveree.

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

36 (c) If the juvenile has not paid the full amount of restitution by  
37 the end of the additional six-month period, then the juvenile shall be  
38 referred to the juvenile court for entry of an order establishing the



1 amount of restitution still owed to the victim. In this order, the  
2 court shall also determine the terms and conditions of the restitution,  
3 including a payment plan extending up to ten years if the court  
4 determines that the juvenile does not have the means to make full  
5 restitution over a shorter period. For the purposes of this subsection  
6 (5)(c), the juvenile shall remain under the court's jurisdiction for a  
7 maximum term of ten years after the juvenile's eighteenth birthday.  
8 Prior to the expiration of the initial ten-year period, the juvenile  
9 court may extend the judgment for restitution an additional ten years.  
10 (~~The court may not require the juvenile to pay full or partial~~  
11 ~~restitution if the juvenile reasonably satisfies the court that he or~~  
12 ~~she does not have the means to make full or partial restitution and~~  
13 ~~could not reasonably acquire the means to pay the restitution over a~~  
14 ~~ten-year period.)) The county clerk shall make disbursements to  
15 victims named in the order. The restitution to victims named in the  
16 order shall be paid prior to any payment for other penalties or  
17 monetary assessments. A juvenile under obligation to pay restitution  
18 may petition the court for modification of the payment schedule of the  
19 restitution order.~~

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

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

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

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

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

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

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

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

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

1 (ii) The right to confront and cross-examine all adverse witnesses;  
2 (iii) A written statement by the court as to the evidence relied on  
3 and the reasons for termination, should that be the decision; and  
4 (iv) Demonstration by evidence that the divertee has substantially  
5 violated the terms of his or her diversion agreement.

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

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

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

12 (8) The diversion unit shall, subject to available funds, be  
13 responsible for providing interpreters when juveniles need interpreters  
14 to effectively communicate during diversion unit hearings or  
15 negotiations.

16 (9) The diversion unit shall be responsible for advising a divertee  
17 of his or her rights as provided in this chapter.

18 (10) The diversion unit may refer a juvenile to community-based  
19 counseling or treatment programs.

20 (11) The right to counsel shall inure prior to the initial  
21 interview for purposes of advising the juvenile as to whether he or she  
22 desires to participate in the diversion process or to appear in the  
23 juvenile court. The juvenile may be represented by counsel at any  
24 critical stage of the diversion process, including intake interviews  
25 and termination hearings. The juvenile shall be fully advised at the  
26 intake of his or her right to an attorney and of the relevant services  
27 an attorney can provide. For the purpose of this section, intake  
28 interviews mean all interviews regarding the diversion agreement  
29 process.

30 The juvenile shall be advised that a diversion agreement shall  
31 constitute a part of the juvenile's criminal history as defined by RCW  
32 13.40.020(7). A signed acknowledgment of such advisement shall be  
33 obtained from the juvenile, and the document shall be maintained by the  
34 diversion unit together with the diversion agreement, and a copy of  
35 both documents shall be delivered to the prosecutor if requested by the  
36 prosecutor. The supreme court shall promulgate rules setting forth the  
37 content of such advisement in simple language.

1 (12) When a juvenile enters into a diversion agreement, the  
2 juvenile court may receive only the following information for  
3 dispositional purposes:

4 (a) The fact that a charge or charges were made;

5 (b) The fact that a diversion agreement was entered into;

6 (c) The juvenile's obligations under such agreement;

7 (d) Whether the alleged offender performed his or her obligations  
8 under such agreement; and

9 (e) The facts of the alleged offense.

10 (13) A diversion unit may refuse to enter into a diversion  
11 agreement with a juvenile. When a diversion unit refuses to enter a  
12 diversion agreement with a juvenile, it shall immediately refer such  
13 juvenile to the court for action and shall forward to the court the  
14 criminal complaint and a detailed statement of its reasons for refusing  
15 to enter into a diversion agreement. The diversion unit shall also  
16 immediately refer the case to the prosecuting attorney for action if  
17 such juvenile violates the terms of the diversion agreement.

18 (14) A diversion unit may, in instances where it determines that  
19 the act or omission of an act for which a juvenile has been referred to  
20 it involved no victim, or where it determines that the juvenile  
21 referred to it has no prior criminal history and is alleged to have  
22 committed an illegal act involving no threat of or instance of actual  
23 physical harm and involving not more than fifty dollars in property  
24 loss or damage and that there is no loss outstanding to the person or  
25 firm suffering such damage or loss, counsel and release or release such  
26 a juvenile without entering into a diversion agreement. A diversion  
27 unit's authority to counsel and release a juvenile under this  
28 subsection includes the authority to refer the juvenile to community-  
29 based counseling or treatment programs. Any juvenile released under  
30 this subsection shall be advised that the act or omission of any act  
31 for which he or she had been referred shall constitute a part of the  
32 juvenile's criminal history as defined by RCW 13.40.020(7). A signed  
33 acknowledgment of such advisement shall be obtained from the juvenile,  
34 and the document shall be maintained by the unit, and a copy of the  
35 document shall be delivered to the prosecutor if requested by the  
36 prosecutor. The supreme court shall promulgate rules setting forth the  
37 content of such advisement in simple language. A juvenile determined  
38 to be eligible by a diversion unit for release as provided in this

1 subsection shall retain the same right to counsel and right to have his  
2 or her case referred to the court for formal action as any other  
3 juvenile referred to the unit.

4 (15) A diversion unit may supervise the fulfillment of a diversion  
5 agreement entered into before the juvenile's eighteenth birthday and  
6 which includes a period extending beyond the diverttee's eighteenth  
7 birthday.

8 (16) If a fine required by a diversion agreement cannot reasonably  
9 be paid due to a change of circumstance, the diversion agreement may be  
10 modified at the request of the diverttee and with the concurrence of the  
11 diversion unit to convert an unpaid fine into community restitution.  
12 The modification of the diversion agreement shall be in writing and  
13 signed by the diverttee and the diversion unit. The number of hours of  
14 community restitution in lieu of a monetary penalty shall be converted  
15 at the rate of the prevailing state minimum wage per hour.

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

23 **Sec. 4.** RCW 13.40.160 and 2003 c 378 s 3 and 2003 c 53 s 99 are  
24 each reenacted and amended to read as follows:

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

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

32 (b) When the court sentences an offender to a standard range as  
33 provided in RCW 13.40.0357 option A that includes a term of confinement  
34 exceeding thirty days, commitment shall be to the department for the  
35 standard range of confinement, except as provided in subsection (2),  
36 (3), (4), (5), or (6) of this section.

1 (2) If the court concludes, and enters reasons for its conclusion,  
2 that disposition within the standard range would effectuate a manifest  
3 injustice the court shall impose a disposition outside the standard  
4 range, as indicated in option D of RCW 13.40.0357. The court's finding  
5 of manifest injustice shall be supported by clear and convincing  
6 evidence.

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

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

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

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

33 (a)(i) Frequency and type of contact between the offender and  
34 therapist;

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

37 (iii) Monitoring plans, including any requirements regarding living

1 conditions, lifestyle requirements, and monitoring by family members,  
2 legal guardians, or others;

3 (iv) Anticipated length of treatment; and

4 (v) Recommended crime-related prohibitions.

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

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

27 (b)(i) Devote time to a specific education, employment, or  
28 occupation;

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

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

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

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

8 (vi) Pay all court-ordered legal financial obligations, perform  
9 community restitution, or any combination thereof;

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

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

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

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

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

36 Except as provided in this subsection (3), after July 1, 1991,  
37 examinations and treatment ordered pursuant to this subsection shall  
38 only be conducted by sex offender treatment providers certified by the

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

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

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

26 A disposition entered under this subsection (3) is not appealable  
27 under RCW 13.40.230.

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

32 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of  
33 confinement, the court may impose the disposition alternative under RCW  
34 13.40.--- (section 4, chapter 378, Laws of 2003).

35 (6) When the offender is subject to a standard range commitment of  
36 15 to 36 weeks and is ineligible for a suspended disposition  
37 alternative, a manifest injustice disposition below the standard range,  
38 special sex offender disposition alternative, chemical dependency



1 disposition alternative, or mental health disposition alternative, the  
2 court in a county with a pilot program under RCW 13.40.--- (section 5,  
3 chapter 378, Laws of 2003) may impose the disposition alternative under  
4 RCW 13.40.--- (section 5, chapter 378, Laws of 2003).

5 (7) RCW 13.40.193 shall govern the disposition of any juvenile  
6 adjudicated of possessing a firearm in violation of RCW  
7 9.41.040(2)(a)(iii) or any crime in which a special finding is entered  
8 that the juvenile was armed with a firearm.

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

13 (9) Except as provided under subsection (3), (4), (5), or (6) of  
14 this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the  
15 court shall not suspend or defer the imposition or the execution of the  
16 disposition.

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

20 **Sec. 5.** RCW 13.40.165 and 2003 c 378 s 6 are each amended to read  
21 as follows:

22 (1) The purpose of this disposition alternative is to ensure that  
23 successful treatment options to reduce recidivism are available to  
24 eligible youth, pursuant to RCW 70.96A.520. The court must consider  
25 eligibility for the chemical dependency disposition alternative when a  
26 juvenile offender is subject to a standard range disposition of local  
27 sanctions or 15 to 36 weeks of confinement and has not committed an A-  
28 or B+ offense, other than a first time B+ offense under chapter 69.50  
29 RCW. The court, on its own motion or the motion of the state or the  
30 respondent if the evidence shows that the offender may be chemically  
31 dependent or substance abusing, may order an examination by a chemical  
32 dependency counselor from a chemical dependency treatment facility  
33 approved under chapter 70.96A RCW to determine if the youth is  
34 chemically dependent or substance abusing. The offender shall pay the  
35 cost of any examination ordered under this subsection unless the court  
36 finds that the offender is indigent and no third party insurance  
37 coverage is available, in which case the state shall pay the cost.

1 (2) The report of the examination shall include at a minimum the  
2 following: The respondent's version of the facts and the official  
3 version of the facts, the respondent's offense history, an assessment  
4 of drug-alcohol problems and previous treatment attempts, the  
5 respondent's social, educational, and employment situation, and other  
6 evaluation measures used. The report shall set forth the sources of  
7 the examiner's information.

8 (3) The examiner shall assess and report regarding the respondent's  
9 relative risk to the community. A proposed treatment plan shall be  
10 provided and shall include, at a minimum:

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

12 (b) Availability of appropriate treatment;

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

16 (d) Anticipated length of treatment; and

17 (e) Recommended crime-related prohibitions.

18 (4) The court on its own motion may order, or on a motion by the  
19 state or the respondent shall order, a second examination. The  
20 evaluator shall be selected by the party making the motion. The  
21 requesting party shall pay the cost of any examination ordered under  
22 this subsection unless the requesting party is the offender and the  
23 court finds that the offender is indigent and no third party insurance  
24 coverage is available, in which case the state shall pay the cost.

25 (5)(a) After receipt of reports of the examination, the court shall  
26 then consider whether the offender and the community will benefit from  
27 use of this chemical dependency disposition alternative and consider  
28 the victim's opinion whether the offender should receive a treatment  
29 disposition under this section.

30 (b) If the court determines that this chemical dependency  
31 disposition alternative is appropriate, then the court shall impose the  
32 standard range for the offense, or if the court concludes, and enters  
33 reasons for its conclusion, that such disposition would effectuate a  
34 manifest injustice, the court shall impose a disposition above the  
35 standard range as indicated in option D of RCW 13.40.0357 if the  
36 disposition is an increase from the standard range and the confinement  
37 of the offender does not exceed a maximum of fifty-two weeks, suspend  
38 execution of the disposition, and place the offender on community

1 supervision for up to one year. As a condition of the suspended  
2 disposition, the court shall require the offender to undergo available  
3 outpatient drug/alcohol treatment and/or inpatient drug/alcohol  
4 treatment. For purposes of this section, inpatient treatment may not  
5 exceed ninety days. As a condition of the suspended disposition, the  
6 court may impose conditions of community supervision and other  
7 sanctions, including up to thirty days of confinement, one hundred  
8 fifty hours of community restitution, and payment of legal financial  
9 obligations and restitution.

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

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

19 If the offender violates any condition of the disposition or the  
20 court finds that the respondent is failing to make satisfactory  
21 progress in treatment, the court may impose sanctions pursuant to RCW  
22 13.40.200 or revoke the suspension and order execution of the  
23 disposition. The court shall give credit for any confinement time  
24 previously served if that confinement was for the offense for which the  
25 suspension is being revoked.

26 (7) For purposes of this section, "victim" means any person who has  
27 sustained emotional, psychological, physical, or financial injury to  
28 person or property as a direct result of or consequence of the offense  
29 charged. "Victim" may also include a known parent or guardian of a  
30 victim who is a minor child or is not a minor child but is  
31 incapacitated, incompetent, disabled, or deceased.

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

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

1 (10) A disposition under this section is not appealable under RCW  
2 13.40.230.

3 **Sec. 6.** RCW 13.40.190 and 1997 c 338 s 29 and 1997 c 121 s 9 are  
4 each reenacted and amended to read as follows:

5 (1) In its dispositional order, the court shall require the  
6 respondent to make restitution to any persons who have suffered loss or  
7 damage as a result of the offense committed by the respondent. In  
8 addition, restitution may be ordered for loss or damage if the offender  
9 pleads guilty to a lesser offense or fewer offenses and agrees with the  
10 prosecutor's recommendation that the offender be required to pay  
11 restitution to a victim of an offense or offenses which, pursuant to a  
12 plea agreement, are not prosecuted. The payment of restitution shall  
13 be in addition to any punishment which is imposed pursuant to the other  
14 provisions of this chapter. The court may determine the amount, terms,  
15 and conditions of the restitution including a payment plan extending up  
16 to ten years if the court determines that the respondent does not have  
17 the means to make full restitution over a shorter period. Restitution  
18 may include the costs of counseling reasonably related to the offense.  
19 If the respondent participated in the crime with another person or  
20 other persons, all such participants shall be jointly and severally  
21 responsible for the payment of restitution. For the purposes of this  
22 section, the respondent shall remain under the court's jurisdiction for  
23 a maximum term of ten years after the respondent's eighteenth birthday.  
24 Prior to the expiration of the ten-year period, the juvenile court may  
25 extend the judgment for the payment of restitution for an additional  
26 ten years.

27 (2) Regardless of the provisions of subsection (1) of this section,  
28 the court shall order restitution in all cases where the victim is  
29 entitled to benefits under the crime victims' compensation act, chapter  
30 7.68 RCW. If the court does not order restitution and the victim of  
31 the crime has been determined to be entitled to benefits under the  
32 crime victims' compensation act, the department of labor and  
33 industries, as administrator of the crime victims' compensation  
34 program, may petition the court within one year of entry of the  
35 disposition order for entry of a restitution order. Upon receipt of a  
36 petition from the department of labor and industries, the court shall  
37 hold a restitution hearing and shall enter a restitution order.

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

5 (4) A respondent under obligation to pay restitution may petition  
6 the court for modification of the restitution (~~order~~) payment  
7 schedule.

8 **Sec. 7.** RCW 13.40.200 and 2002 c 175 s 25 are each amended to read  
9 as follows:

10 (1) When a respondent fails to comply with an order of restitution,  
11 community supervision, penalty assessments, or confinement of less than  
12 thirty days, the court upon motion of the prosecutor or its own motion,  
13 may modify the order after a hearing on the violation.

14 (2) The hearing shall afford the respondent the same due process of  
15 law as would be afforded an adult probationer. The court may issue a  
16 summons or a warrant to compel the respondent's appearance. The state  
17 shall have the burden of proving by a preponderance of the evidence the  
18 fact of the violation. The respondent shall have the burden of showing  
19 that the violation was not a willful refusal to comply with the terms  
20 of the order. If a respondent has failed to pay a fine, penalty  
21 assessments, or restitution or to perform community restitution hours,  
22 as required by the court, it shall be the respondent's burden to show  
23 that he or she did not have the means and could not reasonably have  
24 acquired the means to pay the fine, penalty assessments, or restitution  
25 or perform community restitution.

26 (3) If the court finds that a respondent has willfully violated the  
27 terms of an order pursuant to subsections (1) and (2) of this section,  
28 it may impose a penalty of up to thirty days' confinement. Penalties  
29 for multiple violations occurring prior to the hearing shall not be  
30 aggregated to exceed thirty days' confinement. Regardless of the  
31 number of times a respondent is brought to court for violations of the  
32 terms of a single disposition order, the combined total number of days  
33 spent by the respondent in detention shall never exceed the maximum  
34 term to which an adult could be sentenced for the underlying offense.

35 (4) If a respondent has been ordered to pay a fine or monetary  
36 penalty and due to a change of circumstance cannot reasonably comply  
37 with the order, the court, upon motion of the respondent, may order

1 that the unpaid fine or monetary penalty be converted to community  
2 restitution unless the monetary penalty is the crime victim penalty  
3 assessment, which cannot be converted, waived, or otherwise modified,  
4 except for schedule of payment. The number of hours of community  
5 restitution in lieu of a monetary penalty or fine shall be converted at  
6 the rate of the prevailing state minimum wage per hour. The monetary  
7 penalties or fines collected shall be deposited in the county general  
8 fund. A failure to comply with an order under this subsection shall be  
9 deemed a failure to comply with an order of community supervision and  
10 may be proceeded against as provided in this section.

11 (5) When a respondent has willfully violated the terms of a  
12 probation bond, the court may modify, revoke, or retain the probation  
13 bond as provided in RCW 13.40.054.

14 **Sec. 8.** RCW 7.69.030 and 1999 c 323 s 2 are each amended to read  
15 as follows:

16 There shall be a reasonable effort made to ensure that victims,  
17 survivors of victims, and witnesses of crimes have the following  
18 rights, which apply to any criminal court and/or juvenile court  
19 proceeding:

20 (1) With respect to victims of violent or sex crimes, to receive,  
21 at the time of reporting the crime to law enforcement officials, a  
22 written statement of the rights of crime victims as provided in this  
23 chapter. The written statement shall include the name, address, and  
24 telephone number of a county or local crime victim/witness program, if  
25 such a crime victim/witness program exists in the county;

26 (2) To be informed by local law enforcement agencies or the  
27 prosecuting attorney of the final disposition of the case in which the  
28 victim, survivor, or witness is involved;

29 (3) To be notified by the party who issued the subpoena that a  
30 court proceeding to which they have been subpoenaed will not occur as  
31 scheduled, in order to save the person an unnecessary trip to court;

32 (4) To receive protection from harm and threats of harm arising out  
33 of cooperation with law enforcement and prosecution efforts, and to be  
34 provided with information as to the level of protection available;

35 (5) To be informed of the procedure to be followed to apply for and  
36 receive any witness fees to which they are entitled;

1 (6) To be provided, whenever practical, a secure waiting area  
2 during court proceedings that does not require them to be in close  
3 proximity to defendants and families or friends of defendants;

4 (7) To have any stolen or other personal property expeditiously  
5 returned by law enforcement agencies or the superior court when no  
6 longer needed as evidence. When feasible, all such property, except  
7 weapons, currency, contraband, property subject to evidentiary  
8 analysis, and property of which ownership is disputed, shall be  
9 photographed and returned to the owner within ten days of being taken;

10 (8) To be provided with appropriate employer intercession services  
11 to ensure that employers of victims, survivors of victims, and  
12 witnesses of crime will cooperate with the criminal justice process in  
13 order to minimize an employee's loss of pay and other benefits  
14 resulting from court appearance;

15 (9) To access to immediate medical assistance and not to be  
16 detained for an unreasonable length of time by a law enforcement agency  
17 before having such assistance administered. However, an employee of  
18 the law enforcement agency may, if necessary, accompany the person to  
19 a medical facility to question the person about the criminal incident  
20 if the questioning does not hinder the administration of medical  
21 assistance;

22 (10) With respect to victims of violent and sex crimes, to have a  
23 crime victim advocate from a crime victim/witness program, or any other  
24 support person of the victim's choosing, present at any prosecutorial  
25 or defense interviews with the victim, and at any judicial proceedings  
26 related to criminal acts committed against the victim. This subsection  
27 applies if practical and if the presence of the crime victim advocate  
28 does not cause any unnecessary delay in the investigation or  
29 prosecution of the case. The role of the crime victim advocate is to  
30 provide emotional support to the crime victim;

31 (11) With respect to victims and survivors of victims, to be  
32 physically present in court during trial, or if subpoenaed to testify,  
33 to be scheduled as early as practical in the proceedings in order to be  
34 physically present during trial after testifying and not to be excluded  
35 solely because they have testified;

36 (12) With respect to victims and survivors of victims, to be  
37 informed by the prosecuting attorney of the date, time, and place of

1 the trial and of the sentencing hearing for felony convictions upon  
2 request by a victim or survivor;

3 (13) To submit a victim impact statement or report to the court,  
4 with the assistance of the prosecuting attorney if requested, which  
5 shall be included in all presentence reports and permanently included  
6 in the files and records accompanying the offender committed to the  
7 custody of a state agency or institution;

8 (14) With respect to victims and survivors of victims, to present  
9 a statement personally or by representation, at the sentencing hearing  
10 for felony convictions;

11 (15) With respect to victims and survivors of victims, to entry of  
12 an order of restitution by the court in all felony cases, even when the  
13 offender is sentenced to confinement, unless extraordinary  
14 circumstances exist which make restitution inappropriate in the court's  
15 judgment; and

16 (16) With respect to victims and survivors of victims, to present  
17 a statement in person, via audio or videotape, in writing or by  
18 representation at any hearing conducted regarding an application for  
19 pardon or commutation of sentence.

20 **Sec. 9.** RCW 7.69A.030 and 1997 c 283 s 2 are each amended to read  
21 as follows:

22 In addition to the rights of victims and witnesses provided for in  
23 RCW 7.69.030, there shall be every reasonable effort made by law  
24 enforcement agencies, prosecutors, and judges to assure that child  
25 victims and witnesses are afforded the rights enumerated in this  
26 section. Except as provided in RCW 7.69A.050 regarding child victims  
27 or child witnesses of violent crimes, sex crimes, or child abuse, the  
28 enumeration of rights shall not be construed to create substantive  
29 rights and duties, and the application of an enumerated right in an  
30 individual case is subject to the discretion of the law enforcement  
31 agency, prosecutor, or judge. Child victims and witnesses have the  
32 following rights, which apply to any criminal court and/or juvenile  
33 court proceeding:

34 (1) To have explained in language easily understood by the child,  
35 all legal proceedings and/or police investigations in which the child  
36 may be involved.



1 (2) With respect to child victims of sex or violent crimes or child  
2 abuse, to have a crime victim advocate from a crime victim/witness  
3 program, or any other support person of the victim's choosing, present  
4 at any prosecutorial or defense interviews with the child victim. This  
5 subsection applies if practical and if the presence of the crime victim  
6 advocate does not cause any unnecessary delay in the investigation or  
7 prosecution of the case. The role of the crime victim advocate is to  
8 provide emotional support to the child victim and to promote the  
9 child's feelings of security and safety.

10 (3) To be provided, whenever possible, a secure waiting area during  
11 court proceedings and to have an advocate or support person remain with  
12 the child prior to and during any court proceedings.

13 (4) To not have the names, addresses, nor photographs of the living  
14 child victim or witness disclosed by any law enforcement agency,  
15 prosecutor's office, or state agency without the permission of the  
16 child victim, child witness, parents, or legal guardians to anyone  
17 except another law enforcement agency, prosecutor, defense counsel, or  
18 private or governmental agency that provides services to the child  
19 victim or witness.

20 (5) To allow an advocate to make recommendations to the prosecuting  
21 attorney about the ability of the child to cooperate with prosecution  
22 and the potential effect of the proceedings on the child.

23 (6) To allow an advocate to provide information to the court  
24 concerning the child's ability to understand the nature of the  
25 proceedings.

26 (7) To be provided information or appropriate referrals to social  
27 service agencies to assist the child and/or the child's family with the  
28 emotional impact of the crime, the subsequent investigation, and  
29 judicial proceedings in which the child is involved.

30 (8) To allow an advocate to be present in court while the child  
31 testifies in order to provide emotional support to the child.

32 (9) To provide information to the court as to the need for the  
33 presence of other supportive persons at the court proceedings while the  
34 child testifies in order to promote the child's feelings of security  
35 and safety.

36 (10) To allow law enforcement agencies the opportunity to enlist  
37 the assistance of other professional personnel such as child protection

1 services, victim advocates or prosecutorial staff trained in the  
2 interviewing of the child victim.

3 (11) With respect to child victims of violent or sex crimes or  
4 child abuse, to receive either directly or through the child's parent  
5 or guardian if appropriate, at the time of reporting the crime to law  
6 enforcement officials, a written statement of the rights of child  
7 victims as provided in this chapter. The written statement shall  
8 include the name, address, and telephone number of a county or local  
9 crime victim/witness program, if such a crime victim/witness program  
10 exists in the county.

11 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2004.

--- END ---