

which shall state the amount of the principle of the prearrangement trust fund or funds, the depository of such fund or funds, and cash on hand which is or may be due to such fund as well as such other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually (~~and shall be verified by the president, the secretary or auditor preparing the same, and a certified public accountant in accordance with generally accepted auditing standards~~). These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. Verification of these reports by a certified public accountant in accordance with generally accepted auditing standards shall be required on reports from cemetery authorities which manage prearrangement trust funds totaling in excess of five hundred thousand dollars.

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CHAPTER 191

[Engrossed Substitute House Bill No. 431]

JUVENILE OFFENDERS—CONSOLIDATED JUVENILE SERVICES— JUVENILE DISPOSITION STANDARDS

AN ACT Relating to juvenile justice; amending section 1, chapter 165, Laws of 1969 ex. sess. and RCW 13.06.010; amending section 2, chapter 165, Laws of 1969 ex. sess. as amended by section 13, chapter 141, Laws of 1979 and RCW 13.06.020; amending section 3, chapter 165, Laws of 1969 ex. sess. as amended by section 14, chapter 141, Laws of 1979 and RCW 13.06.030; amending section 4, chapter 165, Laws of 1969 ex. sess. as amended by section 15, chapter 141, Laws of 1979 and RCW 13.06.040; amending section 5, chapter 165, Laws of 1969 ex. sess. as last amended by section 9, chapter 151, Laws of 1979 and RCW 13.06.050; amending section 57, chapter 291, Laws of 1977 ex. sess. as last amended by section 5, chapter 299, Laws of 1981 and RCW 13.40.030; amending section 57 [56], chapter 291, Laws of 1977 ex. sess. as last amended by section 5 [2], chapter 299, Laws of 1981 and RCW 13.40.020; amending section 70, chapter 291, Laws of 1977 ex. sess. as last amended by section 13, chapter 299, Laws of 1981 and RCW 13.40.160; amending section 73, chapter 291, Laws of 1977 ex. sess. as amended by section 69, chapter 155, Laws of 1979 and RCW 13.40.190; amending section 75, chapter 291, Laws of 1977 ex. sess. as amended by section 71, chapter 155, Laws of 1979 and RCW 13.40.210; amending section 72.05.130, chapter 28, Laws of 1959 as last amended by section 8, chapter 217, Laws of 1979 ex. sess. and RCW 72.05.130; amending section 3, chapter 160, Laws of 1913 as last amended by section 6, chapter 155, Laws of 1979 and RCW 13.04.040; amending section 74, chapter 291, Laws of 1977 ex. sess. as amended by section 70, chapter 155, Laws of 1979 and RCW 13.40.200; amending section 62, chapter 291, Laws of 1977 ex. sess. as last amended by section 8, chapter 299, Laws of 1981 and RCW 13.40.080; amending section 1, chapter 170, Laws of 1975 1st ex. sess. as last amended by section 17, chapter 299, Laws of 1981 and RCW 13.40.300; amending section 61, chapter 291, Laws of 1977 ex. sess. as last amended by section 7, chapter 299, Laws of 1981 and RCW 13.40.070; amending section 9, chapter 155, Laws of 1979 as

amended by section 19, chapter 299, Laws of 1981 and RCW 13.50.050; amending section 10, chapter 155, Laws of 1979 and RCW 13.50.100; adding new sections to chapter 13.40 RCW; repealing section 6, chapter 165, Laws of 1969 ex. sess., section 16, chapter 141, Laws of 1979, section 1, chapter 60, Laws of 1981 and RCW 13.06.060; repealing section 7, chapter 214, Laws of 1959, section 203, chapter 141, Laws of 1979, section 94, chapter 136, Laws of 1981 and RCW 72.13.070; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 165, Laws of 1969 ex. sess. and RCW 13.06-.010 are each amended to read as follows:

It is the intention of the legislature in enacting this chapter to increase the protection afforded the citizens of this state, to ~~((permit a more even administration of justice in the juvenile courts, to rehabilitate juvenile offenders, and to reduce the necessity for commitment of juveniles to state juvenile correctional institutions by strengthening and improving the supervision of juveniles placed on probation by the juvenile courts of this state))~~ require community planning, to provide necessary services and supervision for juvenile offenders in the community when appropriate, to reduce reliance on state-operated correctional institutions for offenders whose standard range disposition does not include commitment of the offender to the department, and to encourage the community to efficiently and effectively provide community services to juvenile offenders through consolidation of service delivery systems.

Sec. 2. Section 2, chapter 165, Laws of 1969 ex. sess. as amended by section 13, chapter 141, Laws of 1979 and RCW 13.06.020 are each amended to read as follows:

From any state moneys made available for such purpose, the state of Washington, through the department of social and health services, shall, in accordance with this chapter and applicable departmental rules, share in the cost of ~~((supervising probationers who could otherwise be committed by the juvenile courts to the custody of the secretary of social and health services, and who are granted probation and placed in "special supervision programs"))~~ providing services to juveniles.

Sec. 3. Section 3, chapter 165, Laws of 1969 ex. sess. as amended by section 14, chapter 141, Laws of 1979 and RCW 13.06.030 are each amended to read as follows:

The department of social and health services shall adopt rules prescribing minimum standards for the operation of ~~(("special supervision programs"))~~ consolidated juvenile services programs for juvenile offenders and such other rules as may be necessary for the administration of the provisions of this chapter. ((A "special supervision program" is one embodying a degree of supervision substantially above the usual or the use of new techniques in addition to, or instead of, routine supervision techniques, and which meets the standards prescribed pursuant to this section. Such)) Consolidated juvenile services is a mechanism through which the department of

social and health services supports local county comprehensive program plans in providing services to offender groups. Standards shall be sufficiently flexible to (~~foster the development of new and improved supervision practices~~) support current programs which have demonstrated effectiveness and efficiency, to foster development of innovative and improved services for juvenile offenders, to permit direct contracting with private vendors, and to encourage community support for and assistance to local programs. The secretary of social and health services shall seek advice from appropriate (~~county officials~~) juvenile justice system participants in developing standards and procedures for the operation of (~~"special supervision programs"~~) consolidated juvenile services programs and the distribution of funds under this chapter.

Sec. 4. Section 4, chapter 165, Laws of 1969 ex. sess. as amended by section 15, chapter 141, Laws of 1979 and RCW 13.06.040 are each amended to read as follows:

Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department for financial aid for the cost of (~~"special supervision programs"~~) consolidated juvenile services programs. Any such application must include a plan or plans for providing (~~special supervision of juveniles on probation and a method for certifying that moneys received are spent only for these "special supervision programs"~~) consolidated services to juvenile offenders in accordance with standards of the department.

Sec. 5. Section 5, chapter 165, Laws of 1969 ex. sess. as last amended by section 9, chapter 151, Laws of 1979 and RCW 13.06.050 are each amended to read as follows:

No county shall be entitled to receive any state funds provided by this chapter until its application (~~is~~) and plan are approved, and unless and until the minimum standards prescribed by the department of social and health services are complied with and then only on such terms as are set forth (~~hereafter~~) in this section.

(1) (~~A base commitment rate for each county and for the state as a whole shall be calculated by the department of social and health services. The base commitment rate shall be determined by computing the ratio of the number of juveniles committed to state juvenile correctional institutions plus the number of juveniles who have been convicted of felonies and committed to state correctional institutions after a juvenile court has declined jurisdiction of their cases and remanded them for prosecution in the superior courts, to the county population, such ratio to be expressed in a rate per hundred thousand population, for each of the calendar years 1964 through 1968. The average of these rates for a county for the five year period or the average of the last two years of the period, whichever is higher, shall be the base commitment rate, as certified by the secretary. PROVIDED, That, a~~)

county may elect as its base commitment rate the average of the base commitment rates of all counties in the state over the last two years of the period described above. The county and state population shall be that certified as of April 1st of each year by the office of financial management, such population figures to be provided to the secretary of social and health services not later than June 30th of each year.

(2) An annual commitment rate shall be calculated by the department at the end of each year for each participating county and for the state as a whole, in a like manner as provided in subsection (1). The annual commitment rate shall exclude commitments that fall within the high risk categories as defined by the department.

(3) The amount that may be paid to a county pursuant to this chapter shall be the standard cost of the operation of a special supervision program based upon workload standards established by the department. Payment shall not exceed five thousand dollars per commitment reduction. The "commitment reduction number" is obtained by subtracting (a) the product of the most recent annual commitment rate and population of the county for the same year from (b) the product of the base commitment rate and population of the county for the same year employed in (a).

(4)) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, juvenile crime or arrest rates, existing programs, and the effectiveness and efficiency of consolidating local programs towards reducing commitments to state correctional facilities for offenders whose standard range disposition does not include commitment of the offender to the department and reducing reliance on other traditional departmental services.

(2) The secretary will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in ((reducing the annual commitment rate from its base commitment rate. Whenever a claim made by a county pursuant to this chapter, covering a prior year, is found to be in error, an adjustment may be made on a current claim without the necessity of applying the adjustment to the allocation for the prior year.

(5) In the event a participating county earns in a payment period less than one-half of the sum paid in the previous payment period because of extremely unusual circumstances claimed by the county and verified by the secretary of the department of social and health services, the secretary may pay to the county a sum not to exceed actual program expenditures, provided, however, that in subsequent periods the county will be paid only the amount earned: PROVIDED, That the amendatory provisions of subsection (5) of this act may be applied to payment periods prior to May 20, 1971.

(6) If the amount received by a county in reimbursement of its expenditures in a calendar year is less than the maximum amount computed under

~~subsection (3) above, the difference may be paid to the county as reimbursement of program costs during the next two succeeding years upon receipt of valid claims for reimbursement of program expenses:~~

~~(7)) meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs ((for delinquent juveniles or to develop county institutional programs:~~

~~(8) Any county averaging less than thirty commitments annually during either the two year or five year period used to determine the base commitment rate as defined in subsection (1) above may:~~

~~(a) apply for subsidies under subsection (1); or~~

~~(b) as an alternative, elect to receive from the state the salary of one full time additional probation officer and related employee benefits; or~~

~~(c) elect to receive from the state the salary and related employee benefits of one full time additional probation officer and in addition, reimbursement for certain supporting services other than capital outlay and equipment whose total will not exceed a maximum limit established by the secretary of the department of social and health services; or~~

~~(d) elect to receive from the state reimbursement for certain supporting services other than capital outlay and equipment whose total cost will not exceed a maximum limit established by the secretary of the department of social and health services:~~

~~(9) In the event a county chooses one of the alternative proposals in subsection (8), it will be eligible for reimbursement only so long as the officer and supporting services are wholly used in the performance of probation services to supervision of persons eligible for state commitment and are paid the salary referred to in this section in accordance with a salary schedule adopted by rule of the department and:~~

~~(a) if its base commitment rate is below the state average, its annual commitment rate does not exceed the base commitment rate for the entire state; or~~

~~(b) if its base commitment rate is above the state average, its annual commitment rate does not in the year exceed by two its own base commitment rate:~~

~~(10) Where any county does not have a juvenile probation officer, but obtains such services by agreement with another county or counties, or, where two or more counties mutually provide probation services by agreement for such counties, then under such circumstances the secretary may make the computations and payments under this chapter as though the counties served with probation services were one geographical unit)).~~

Sec. 6. Section 57, chapter 291, Laws of 1977 ex. sess. as last amended by section 5, chapter 299, Laws of 1981 and RCW 13.40.030 are each amended to read as follows:

(1) (a) The juvenile disposition standards commission shall propose to the legislature no later than November 1st of each even-numbered year disposition standards for all offenses. The standards shall establish, in accordance with the purposes of this chapter, ranges which may include terms of confinement and/or community supervision established on the basis of a youth's age, the instant offense, and the history and seriousness of previous offenses, but in no case may the period of confinement and supervision exceed that to which an adult may be subjected for the same offense(s). Standards proposed for offenders listed in RCW 13.40.020(1) shall include a range of confinement which may not be less than thirty days. No standard range may include a period of confinement which includes both more than thirty, and thirty or less, days. Disposition standards proposed by the commission shall provide that in all cases where a youth is sentenced to a term of confinement in excess of thirty days the department may impose an additional period of parole not to exceed eighteen months. Standards of confinement which may be proposed may relate only to the length of the proposed terms and not to the nature of the security to be imposed. In developing proposed disposition standards between the effective date of this act and June 30, 1985, the commission shall consider the capacity of the state juvenile facilities and the projected impact of the proposed standards on that capacity through June 30, 1985.

(b) The secretary shall submit guidelines pertaining to the nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender. Such guidelines shall be submitted to the legislature for its review no later than November 1st of each even-numbered year. At the same time the secretary shall submit a report on security at juvenile facilities during the preceding two-year period. The report shall include the number of escapes from each juvenile facility, the most serious offense for which each escapee had been confined, the number and nature of offenses found to have been committed by juveniles while on escape status, the number of authorized leaves granted, the number of failures to comply with leave requirements, the number and nature of offenses committed while on leave, and the number and nature of offenses committed by juveniles while in the community on minimum security status; to the extent this information is available to the secretary. The department shall include security status definitions in the security guidelines it submits to the legislature pursuant to this section.

(2) If the commission fails to propose disposition standards as provided in this section, the existing standards shall remain in effect and may be adopted by the legislature or referred to the commission for modification as provided in subsection (3) of this section. If the standards are referred for modification, the provisions of subsection (4) shall be applicable.

(3) The legislature may adopt the proposed standards or refer the proposed standards to the commission for modification. If the legislature fails

to adopt or refer the proposed standards to the commission by February 15th of the following year, the proposed standards shall take effect without legislative approval on July 1st of that year.

(4) If the legislature refers the proposed standards to the commission for modification on or before February 15th, the commission shall resubmit the proposed modifications to the legislature no later than March 1st. The legislature may adopt or modify the resubmitted proposed standards. If the legislature fails to adopt or modify the resubmitted proposed standards by April 1st, the resubmitted proposed standards shall take effect without legislative approval on July 1st of that year.

(5) In developing and promulgating the permissible ranges of confinement under this section the commission shall be subject to the following limitations:

(a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;

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

(c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range.

Sec. 7. Section 57 [56], chapter 291, Laws of 1977 ex. sess. as last amended by section 5 [2], chapter 299, Laws of 1981 and RCW 13.40.020 are each amended to read as follows:

For the purposes of this chapter:

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

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

(b) Manslaughter in the first degree or rape in the second degree; or

(c) Assault in the second degree, extortion in the first degree, indecent liberties, kidnaping in the second degree, robbery in the second degree, burglary in the second degree, or statutory rape in the second degree, where such offenses include the infliction of bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator is armed with a deadly weapon or firearm as defined in RCW 9A.04.110;

(2) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense;

(3) "Community supervision" means an order of disposition by the court of an adjudicated youth. A community supervision order for a single offense may be for a period of up to one year and include one or more of the following:

- (a) A fine, not to exceed one hundred dollars;
- (b) Community service not to exceed one hundred fifty hours of service;
- (c) Attendance of information classes;
- (d) Counseling; or
- (e) Such other services to the extent funds are available for such services, conditions, or limitations as the court may require which may not include confinement;

(4) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a facility operated by or pursuant to a contract with any county. Confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

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

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

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

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history;

(7) "Department" means the department of social and health services;

(8) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender or any other person or entity with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.04.040, as now or hereafter amended, or any person or entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter;

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

(10) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court;

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

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

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

(14) "Minor or first offender" means a person sixteen years of age or younger whose current offense(s) and criminal history fall entirely within one of the following categories:

(a) Four misdemeanors;

(b) Two misdemeanors and one gross misdemeanor;

(c) One misdemeanor and two gross misdemeanors;

(d) Three gross misdemeanors;

(e) One class C felony and one misdemeanor or gross misdemeanor;

(f) One class B felony except: Any felony which constitutes an attempt to commit a class A felony; manslaughter in the first degree; rape in the second degree; assault in the second degree; extortion in the first degree; indecent liberties; kidnaping in the second degree; robbery in the second degree; burglary in the second degree; ((or)) statutory rape in the second degree; vehicular homicide; or arson in the second degree.

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

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

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

(17) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, and lost wages resulting from physical injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(18) "Secretary" means the secretary of the department of social and health services;

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

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

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

Sec. 8. Section 70, chapter 291, Laws of 1977 ex. sess. as last amended by section 13, chapter 299, Laws of 1981 and RCW 13.40.160 are each amended to read as follows:

(1) When the respondent is found to be a serious offender, the court shall commit the offender to the department for the standard range of disposition for the offense.

If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

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

(2) Where the respondent is found to be a minor or first offender, the court shall order that the respondent serve a term of community supervision. If the court determines that a disposition of community supervision would effectuate a manifest injustice the court may impose another disposition. A disposition other than a community supervision may be imposed only after the court enters reasons upon which it bases its conclusions that imposition of community supervision would effectuate a manifest injustice. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

Any disposition other than community supervision may be appealed as provided in RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition of community supervision may not be appealed under RCW 13.40.230 as now or hereafter amended.

(3) Where a respondent is found to have committed an offense for which the respondent declined to enter into a diversion agreement, the court shall impose a term of community supervision limited to the conditions allowed in

a diversion agreement as provided in RCW 13.40.080(2) as now or hereafter amended.

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

(a) The court shall impose a determinate disposition within the standard range(s) for such offense: PROVIDED, That if the standard range includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement; or

(b) The court shall impose a determinate disposition of community supervision and/or up to thirty days confinement in which case, if confinement has been imposed, the court shall state either aggravating or mitigating factors as set forth in RCW 13.40.150 as now or hereafter amended.

(c) Only if the court concludes, and enters reasons for its conclusions, that disposition as provided in subsection (4) (a) or (b) of this section would effectuate a manifest injustice, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

(d) A disposition pursuant to subsection (4)(c) of this section is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition pursuant to subsection (4) (a) or (b) of this section is not appealable under RCW 13.40.230 as now or hereafter amended.

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

(6) In its dispositional order, the court shall not suspend or defer the imposition or the execution of the disposition.

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

Sec. 9. Section 73, chapter 291, Laws of 1977 ex. sess. as amended by section 69, chapter 155, Laws of 1979 and RCW 13.40.190 are each amended to read as follows:

(1) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. The court may determine the

amount, terms, and conditions of the restitution. If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. The court may not require the respondent to pay full or partial restitution if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay such restitution. In cases where an offender has been committed to the department for a period of confinement exceeding fifteen weeks, restitution may be waived.

(2) A respondent under obligation to pay restitution may petition the court for modification of the restitution order.

NEW SECTION. Sec. 10. There is added to chapter 13.40 RCW a new section to read as follows:

(1) A juvenile sentenced to a term of confinement to be served under the supervision of the department shall not be released from the physical custody of the department prior to the release date established under RCW 13.40.210 except as otherwise provided in this section.

(2) A juvenile serving a term of confinement under the supervision of the department may be released on authorized leave from the physical custody of the department only if consistent with public safety and if:

(a) Sixty percent of the minimum term of confinement has been served; and

(b) The purpose of the leave is to enable the juvenile:

(i) To visit the juvenile's family for the purpose of strengthening or preserving family relationships;

(ii) To make plans for parole or release which require the juvenile's personal appearance in the community and which will facilitate the juvenile's reintegration into the community; or

(iii) To make plans for a residential placement out of the juvenile's home which requires the juvenile's personal appearance in the community.

(3) No authorized leave may exceed seven consecutive days. The total of all pre-minimum term authorized leaves granted to a juvenile prior to final discharge from confinement shall not exceed thirty days.

(4) Prior to authorizing a leave, the secretary shall require a written leave plan, which shall detail the purpose of the leave and how it is to be achieved, the address at which the juvenile shall reside, the identity of the person responsible for supervising the juvenile during the leave, and a statement by such person acknowledging familiarity with the leave plan and agreeing to supervise the juvenile and to notify the secretary immediately if the juvenile violates any terms or conditions of the leave. The leave plan shall include such terms and conditions as the secretary deems appropriate and shall be signed by the juvenile.

(5) Upon authorizing a leave, the secretary shall issue to the juvenile an authorized leave order which shall contain the name of the juvenile, the fact

that the juvenile is on leave from a designated facility, the time period of the leave, and the identity of an appropriate official of the department to contact when necessary. The authorized leave order shall be carried by the juvenile at all times while on leave.

(6) Prior to the commencement of any authorized leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will reside during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave.

(7) The secretary may authorize a leave, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the period of time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. In cases of emergency or medical leave the secretary may waive all or any portions of subsections (2)(a), (3), (4), (5), and (6) of this section.

(8) If requested by the juvenile's victim or the victim's immediate family prior to confinement, the secretary shall give notice of any leave to the victim or the victim's immediate family.

(9) A juvenile who violates any condition of an authorized leave plan may be taken into custody and returned to the department in the same manner as an adult in identical circumstances.

(10) Notwithstanding the provisions of this section, a juvenile placed in minimum security status may participate in work, educational, community service, or treatment programs in the community up to twelve hours a day if approved by the secretary. Such a release shall not be deemed a leave of absence.

Sec. 11. Section 75, chapter 291, Laws of 1977 ex. sess. as amended by section 71, chapter 155, Laws of 1979 and RCW 13.40.210 are each amended to read as follows:

(1) The secretary shall, except in the case of a juvenile committed by a court to a term of confinement in a state institution outside the appropriate standard range for the offense(s) for which the juvenile was found to be guilty established pursuant to RCW 13.40.030, as now or hereafter amended, set a release or discharge date for each juvenile committed to its custody which shall be within the prescribed range to which a juvenile has been committed. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter: PROVIDED, That days spent in the custody of

the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may, until June 30, 1985, recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary may have temporary authority until June 30, 1985, to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release. In no event shall a serious offender, as defined in RCW 13.40.020(1) be granted release under the provisions of this subsection.

(3) Following the juvenile's release pursuant to subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months. Such a parole program shall be mandatory for offenders released under subsection (2) of this section. The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal may require the juvenile to: (a) Undergo available medical or psychiatric treatment; (b) report as directed to a parole officer; (c) pursue a course of study or vocational training; (d) remain within prescribed geographical boundaries and notify the department of any change in his or her address; and (e) refrain from committing new offenses. After termination of the parole period, the juvenile shall be discharged from the department's supervision.

((3)) (4) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (a) Continued supervision under the same conditions previously imposed; (b) intensified supervision with increased reporting requirements; (c) additional conditions of supervision authorized by this chapter; and (d) imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract

with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision.

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

Sec. 12. Section 72.05.130, chapter 28, Laws of 1959 as last amended by section 8, chapter 217, Laws of 1979 ex. sess. and RCW 72.05.130 are each amended to read as follows:

The department shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities controlled and operated by the department, except for the programs of education provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, which shall be established, operated and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state. When the secretary determines it necessary, the secretary may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department, and the transfer of such persons from any such institution, school, or facility to any other

such school, institution, or facility: PROVIDED, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court. This shall not apply to the state school for the deaf or the state school for the blind.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school and Maple Lane school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school and Maple Lane school are hereby designated as "close security" institutions to which shall be given the custody of children with the most serious behavior problems.

NEW SECTION. Sec. 13. Section 6, chapter 165, Laws of 1969 ex. sess., section 16, chapter 141, Laws of 1979, section 1, chapter 60, Laws of 1981 and RCW 13.06.060 are each repealed.

Sec. 14. Section 3, chapter 160, Laws of 1913 as last amended by section 6, chapter 155, Laws of 1979 and RCW 13.04.040 are each amended to read as follows:

The administrator shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the administrator. The probation counselor shall:

(1) Receive and examine referrals to the juvenile court for the purpose of considering the filing of a petition or information pursuant to RCW 13.34.040, 13.34.180, and 13.40.070 as now or hereafter amended, and RCW 13.32A.150;

(2) Make recommendations to the court regarding the need for continued detention or shelter care of a child unless otherwise provided in this title;

(3) Arrange and supervise diversion agreements as provided in RCW 13.40.080, as now or hereafter amended, and ensure that the requirements of such agreements are met except as otherwise provided in this title;

(4) Prepare predisposition studies as required in RCW 13.34.120 and 13.40.130, as now or hereafter amended, and be present at the disposition hearing to respond to questions regarding the predisposition study: PROVIDED, That such duties shall be performed by the department of social and health services for cases relating to dependency or to the termination of a parent and child relationship which is filed by the department of social and health services unless otherwise ordered by the court; and

(5) Supervise court orders of disposition to ensure that all requirements of the order are met.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests of juveniles

under their supervision for the violation of any state law or county or city ordinance.

The administrator may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or houses of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the legislative authority of the county, or in cases of joint counties, judicial districts of more than one county, or joint judicial districts such sums as shall be agreed upon by the legislative authorities of the counties affected, and such persons shall be paid as other county officers are paid.

The administrator is hereby authorized, and to the extent possible is encouraged to, contract with private agencies existing within the community for the provision of services to youthful offenders and youth who have entered into diversion agreements pursuant to RCW 13.40.080, as now or hereafter amended.

The administrator shall establish procedures for the collection of fines assessed under RCW 13.40.080 (2)(1) and (13) and for the payment of the fines into the county general fund.

Sec. 15. Section 74, chapter 291, Laws of 1977 ex. sess. as amended by section 70, chapter 155, Laws of 1979 and RCW 13.40.200 are each amended to read as follows:

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

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

(3) (a) If the court finds that a respondent has wilfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days confinement.

(b) If the violation of the terms of the order under (a) of this subsection is failure to pay fines, penalty assessments, complete community service, or

make restitution, the term of confinement imposed under (a) of this subsection shall be assessed at a rate of one day of confinement for each twenty-five dollars or eight hours owed.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community service. The number of hours of community service in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section.

Sec. 16. Section 62, chapter 291, Laws of 1977 ex. sess. as last amended by section 8, chapter 299, Laws of 1981 and RCW 13.40.080 are each amended to read as follows:

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

(2) A diversion agreement shall be limited to:

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

(b) Restitution limited to the amount of actual loss incurred by the victim, and to an amount the juvenile has the means or potential means to pay; ~~((and))~~

(c) Attendance at up to two hours of counseling and/or up to ten hours of educational or informational sessions at a community agency: ~~PROVIDED, That the state shall not be liable for costs resulting from the diversionary unit exercising the option to permit diversion agreements to mandate attendance at up to two hours of counseling and/or up to ten hours of educational or informational sessions; and~~

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

(3) In assessing periods of community service to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall to the extent possible involve members of the community. Such members of the community shall

meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(4) A diversion agreement may not exceed a period of six months for a misdemeanor or gross misdemeanor or one year for a felony and may include a period extending beyond the eighteenth birthday of the divertee. Any restitution assessed during its term may not exceed an amount which the juvenile could be reasonably expected to pay during this period. If additional time is necessary for the juvenile to complete restitution to the victim, the time period limitations of this subsection may be extended by an additional six months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process,

including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(6) as now or hereafter amended. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversionary unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

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

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

(10) A diversionary unit may refuse to enter into a diversion agreement with a juvenile. It shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversionary unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile (~~((fails to make restitution or perform community service as required by))~~) violates the terms of the diversion agreement.

(11) A diversionary unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement: PROVIDED, That any juvenile so handled shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(6) as now or hereafter amended. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to

the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language: PROVIDED FURTHER, That a juvenile determined to be eligible by a diversionary unit for such release shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(12) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

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

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

(15) The authority to impose and collect fines under this section shall terminate on June 30, 1985.

Sec. 17. Section 1, chapter 170, Laws of 1975 1st ex. sess. as last amended by section 17, chapter 299, Laws of 1981 and RCW 13.40.300 are each amended to read as follows:

(1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) The juvenile court has committed the juvenile offender to the department of social and health services for a sentence consisting of the standard range of disposition for the offense and the sentence includes a period beyond the juvenile offender's eighteenth birthday; or

(b) The juvenile court has committed the juvenile offender to the department of social and health services for a sentence outside the standard

range of disposition for the offense and the sentence includes a period beyond the juvenile's eighteenth birthday and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile offender for that period; or

(c) Proceedings are pending seeking the adjudication of a juvenile offense or seeking a disposition order or the enforcement of such an order and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday.

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday.

~~((4))~~ (4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older.

Sec. 18. Section 61, chapter 291, Laws of 1977 ex. sess. as last amended by section 7, chapter 299, Laws of 1981 and RCW 13.40.070 are each amended to read as follows:

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

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

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

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

(3) If the requirements of subsections (1) (a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections ~~((4))~~ (5) ~~((and))~~, (6), and (7) of this section. If the prosecutor neither files nor diverts the case, he shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

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

~~((4))~~ (5) Where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, assault in the third degree, rape in the third degree, or any other offense listed in RCW 13.40.020(1) (b) or (c); or

(b) An alleged offender is accused of a felony and has a criminal history of at least one class A or class B felony, or two class C felonies, or at least two gross misdemeanors, or at least two misdemeanors and one additional misdemeanor or gross misdemeanor, or at least one class C felony and one misdemeanor or gross misdemeanor; or

(c) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion.

~~((5))~~ (6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense(s) in combination with the alleged offender's criminal history do not exceed three offenses or violations and do not include any felonies: PROVIDED, That if the alleged offender is charged with a related offense that must or may be filed under subsections ~~((4))~~ (5) and ~~((6))~~ (7) of this section, a case under this subsection may also be filed.

~~((6))~~ (7) Where a case is legally sufficient and falls into neither subsection ~~((4))~~ (5) nor ~~((5))~~ (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

~~((7))~~ (8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversionary interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile.

~~((8))~~ (9) The responsibilities of the prosecutor under subsections (1) through ~~((7))~~ (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

Sec. 19. Section 9, chapter 155, Laws of 1979 as amended by section 19, chapter 299, Laws of 1981 and RCW 13.50.050 are each amended to read as follows:

(1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (11) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section and RCW 13.50.010.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(8) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(9) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding may be released to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system may be released to the adult corrections system.

(10) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(11) The court shall grant the motion to seal records made pursuant to subsection (10) of this section if it finds that:

(a) Two years have elapsed from the later of: (i) Final discharge of the person from the supervision of any agency charged with supervising juvenile offenders; or (ii) from the entry of a court order relating to the commission of a juvenile offense or a criminal offense;

(b) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense; and

(c) No proceeding is pending seeking the formation of a diversion agreement with that person.

(12) The person making a motion pursuant to subsection (10) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(13) If the court grants the motion to seal made pursuant to subsection (10) of this section, it shall order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(14) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8).

(15) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order.

(16) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and order the destruction of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(17) The court may grant the motion to destroy records made pursuant to subsection (16) of this section if it finds:

- (a) The person making the motion is at least twenty-three years of age;
- (b) The person has not subsequently been convicted of a felony;
- (c) No proceeding is pending against that person seeking the conviction of a criminal offense; and
- (d) The person has never been found guilty of a serious offense.

(18) A person eighteen years of age or older whose criminal history consists of only one referral for diversion may request that the court order the records in that case destroyed. The request shall be granted if the court finds that two years have elapsed since completion of the diversion agreement.

(19) If the court grants the motion to destroy records made pursuant to subsection (16) or (18) of this section, it shall order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(20) The person making the motion pursuant to subsection (16) or (18) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(21) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(22) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(23) Any juvenile justice or care agency may, subject to the limitations in subparagraphs (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older, or is eighteen years of age or older and his or her criminal history consists entirely of one diversion agreement and two years have passed since completion of the agreement.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

Sec. 20. Section 10, chapter 155, Laws of 1979 and RCW 13.50.100 are each amended to read as follows:

- (1) This section governs records not covered by RCW 13.50.050.
- (2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.
- (3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this

section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the state-wide juvenile court information system.

(4) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile.

(5) A juvenile or his or her parent denied access to any records following an agency determination under subsection (4) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsections (4) (a) and (b) of this section.

(6) The person making a motion under subsection (5) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(7) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (4) of this section.

(8) Information concerning a juvenile or a juvenile's family contained in records covered by this section may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

NEW SECTION. Sec. 21. Section 7, chapter 214, Laws of 1959, section 203, chapter 141, Laws of 1979, section 94, chapter 136, Laws of 1981 and RCW 72.13.070 are each repealed.

NEW SECTION. Sec. 22. There is added to chapter 13.40 RCW a new section to read as follows:

(1) Notwithstanding the provisions of RCW 13.04.115, the secretary, with the consent of the secretary of the department of corrections, has the

authority to transfer a juvenile presently or hereafter committed to the department of social and health services to the department of corrections for appropriate institutional placement in accordance with this section.

(2) The secretary of the department of social and health services may, with the consent of the secretary of the department of corrections, transfer a juvenile offender to the department of corrections if it is established at a hearing before a review board that continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution. The department of social and health services shall establish rules for the conduct of the hearing, including provision of counsel for the juvenile offender.

(3) A juvenile offender transferred to an institution operated by the department of corrections shall not remain in such an institution beyond the maximum term of confinement imposed by the juvenile court.

(4) A juvenile offender who has been transferred to the department of corrections under this section may, in the discretion of the secretary of the department of social and health services and with the consent of the secretary of the department of corrections, be transferred from an institution operated by the department of corrections to a facility for juvenile offenders deemed appropriate by the secretary.

NEW SECTION. Sec. 23. There is added to chapter 13.40 RCW a new section to read as follows:

A juvenile offender ordered to serve a term of confinement with the department of social and health services who is subsequently sentenced to the department of corrections may, with the consent of the department of corrections, be transferred by the secretary of social and health services to the department of corrections to serve the balance of the term of confinement ordered by the juvenile court. The juvenile and adult sentences shall be served consecutively. In no case shall the secretary credit time served as a result of an adult conviction against the term of confinement ordered by the juvenile court.

NEW SECTION. Sec. 24. Section 1 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 23, 1983.

Passed the Senate April 16, 1983.

Approved by the Governor May 16, 1983.

Filed in Office of Secretary of State May 16, 1983.