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COURT OF APPEALS

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NO. 31915-2-II

STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Detention of:

JOHN CHARLES ANDERSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Brian Tollefson, Judge

APPELLANT'S OPENING BRIEF

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ORIGINAL

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I. ASSIGNMENTS OF ERROR

A. FIRST ASSIGNMENT OF ERROR

The trial court erred when it allowed the use of records generated in a confidential and protected treatment environment to be used in this civil commitment proceeding.

Issues Pertaining to First Assignment of Error

1. Where information concerning voluntary treatment of a mental patient is designated as confidential, is any judicially-implied exception proper?
2. If a statute conferring confidentiality to treatment records of a mental patient is unambiguous, can there be any judicially conferred exception?
3. If confidential records have been unlawfully disclosed, may the state use the illegally obtained information in a judicial proceeding for involuntary commitment under RCW 71.09 (Sexual Predator Commitment Act?)
4. Is the remedy for the unlawful disclosure and use of the records reversal of the commitment?

B. SECOND ASSIGNMENT OF ERROR

The trial court erred in concluding that respondent John Anderson committed a “recent overt act,” a necessary element as required by statute and Wash Const Art.

I § 3 and U.S. Const., Amend. 14 (due process) for civil commitment as Mr. Anderson was not confined at the time of the filing of the Petition.

Issues Pertaining to Second Assignment of Error

1. Can consensual sexual acts committed between patients at a mental hospital constitute “recent over acts” within the meaning of RCW 71.09?
2. Did the trial court erroneously rely on the facts of In re Pugh, 68 Wn. App. 687, rev. denied 122 Wn.2d 1018 (1993) in reaching its conclusion?

C. THIRD ASSIGNMENT OF ERROR

The trial court erred in refusing to allow Dr. Richard Wollert to testify for respondent as a rebuttal witness.

Issues Pertaining to Third Assignment of Error

1. Does the trial court abuse its discretion in excluding a witness where there is no showing of bad faith and the proponent of the witness is willing to accommodate opposing counsel in providing for discovery of the witness’ testimony?

II. STATEMENT OF THE CASE

This civil commitment proceeding was brought pursuant to RCW 71.09 et

seq. Respondent waived his right to a trial by jury (CP 4/23/01)¹ and the case was tried before the Honorable Brian Tollefson on April 19, April 20, April 22, April 23, May 4, May 12, May 13, and May 17, 2004 (hereafter RP). The trial court made its oral decision on May 17, (RP 05/17: 527-534) and entered Findings of Fact, Conclusions of Law and Order of Commitment on June 1, 2004. (CP: 178-189) A Notice of Appeal (CP: 190-202) and an Order of Indigency (CP: 203-204) providing for the transcript and the Appointment of Counsel were filed on 06/30/04. The appeal was not perfected and new counsel was appointed on 09/24/04. (CP: 205-207) A Motion to Extend Time was filed and granted on March 2, 2004. This appeal follows.

III. INTERLOCUTORY APPEALS

The respondent twice sought discretionary review of the trial court's order denying his Motion for Judgment on the pleadings. The issues presented and rejected each time by the Commissioner of the court concerned the nature of the confidentiality of patient records of voluntarily committed psychiatric patients at Western State Hospital, their alleged unlawful disclosure, and subsequent use in civil commitment proceedings under RCW 71.09. Respondent argued unsuccessfully in the interlocutory appeals that the proceedings should be dismissed since the state was without the ability to prove its case absent the records generated during Mr.

¹

Sent in a Supplemental Designation of Clerk's Papers which is still pending.

Anderson's voluntary treatment at the hospital. The trial court ruled that the release of the patient records was authorized by implication from RCW 71.05.390 and admissible in the proceedings. (RP 08/01/00: 42-46) The Commissioner for this Court concluded: (1) that the facts were not disputed by the parties; (2) that the case presented a matter of first impression in so far as no precedent exists construing the last paragraph of RCW 71.05.390 as it applies to civil commitment proceedings pursuant to RCW 71.09 and/or the exceptions established in RCW 71.05.390. (Ruling Denying Review App A) The matters raised in the interlocutory appeals are raised as respondent's first assignment of error. The motions are attached as App B.

IV. STATEMENT OF FACTS

John Charles Anderson committed a sexually violent act as a juvenile. (CP: 178-189) He was adjudicated within the state's juvenile system; later he committed a criminal act while at a juvenile correctional facility. Thereafter he committed himself as a voluntary patient to Western State Hospital where he remained in excess of ten years. *Id.* During the course of his voluntary commitment at Western State Hospital, hospital authorities released his records to the Pierce County prosecutor who released them to the attorney general.²

During his stay at Western State Hospital John Anderson engaged in consensual sexual relationships with patients against the advise of counselors and

²

The facts regarding the importance of the records to the proceedings are not disputed. See App A.

psychologists who felt that his partners were inappropriate due to their limited intellectual abilities, mental diagnoses or other circumstances. It was not alleged that any of Mr Anderson's sexual relationships while at the hospital were coerced and it was acknowledged that relationships at the hospital although always disapproved by policy, are nevertheless not rare. (RP 04/19/04: 69-82, 05/12/04: 381-411):

Q. ...Was it uncommon for patients on your ward to have sexual contact with other patients on the ward?

A. We discouraged it as much as we could because even—

Q. that's not my question. Was it common for this to happen despite the rules?

A. There was—it happened, yes..

Q. Was the staff aware that this happened?

A. Not always.

Q. But you in fact were aware of all of these contacts that you described between Mr. Anderson and other patients is that correct?

A. Yes, after they occurred and the he disclosed them or the other patient disclosed them, we were aware.

Q. and was it in fact—does Western State have any policy on things like condoms?

A. They are available.

(RP 04/19/04: 91)

During the trial the state presented the testimony of Dr. Amy Phenix. While other witnesses testified concerning Mr. Anderson, Dr. Phenix testified using an

actuarial assessment of Mr. Anderson's future dangerousness combined with her "guided" clinical assessment to opine that Mr. Anderson presented a risk to the community to commit further acts of a sexually violent nature if not confined in a secure facility. She also diagnosed Mr. Anderson with the mental abnormality of sexual sadism and pedophilia. (CP: 178-189) Respondent's counsel was denied the opportunity to rebut Dr. Phenix' testimony when the trial court granted the State's motion excluding the testimony of Dr. Richard Wollert from trial. (CP: 168-170) According to the trial record, Dr. Wollert's testimony was excluded because Mr. Anderson's counsel had not endorsed the witness in a sufficiently timely manner. (RP 04/19/04: 10) The respondent argued that a brief continuance and/or the immediate availability of the witness for deposition would cure the problem of non-disclosure. Id. According to respondent, Dr. Wollert would have testified that actuarial instruments are the only way of predicting future dangerousness and that at present the data was insufficient use in cases like Respondent's, where the single sexually violent offense was committed when the Respondent was a juvenile. The substance of the testimony of Dr. Wollert would have undermined both the methodology and conclusions of the state's expert. The state was formally advised in writing of the proffered testimony of respondent's expert in counsel's April 12th declaration filed in support of his motion for the appointment of the expert at public expense.(CP: 152-155) The State's expert testified in April but concluded her testimony on May 12, 2004. (RP 05/12: 430) Counsel thereafter renewed the request

to allow Dr. Wollert to testify to rebut Dr. Phenix' testimony. (RP 05/12: 441-448)

The Court again denied the request. Id.

V. ARGUMENT RE FIRST ASSIGNMENT OF ERROR

A. FIRST ASSIGNMENT OF ERROR

The trial court erred when it allowed the use of records generated in a confidential and protected treatment environment to be used in this civil commitment proceeding.

Issues Pertaining to First Assignment of Error

1. Where information concerning voluntary treatment of a mental patient is designated as confidential, is any judicially-implied exception proper?
2. If a statute conferring confidentiality to records of a mental patient is unambiguous, can there be any judicially conferred exception?
3. If confidential records have been unlawfully disclosed, may the state use the illegally obtained information in a judicial proceeding for involuntary commitment under RCW 71.09 (Sexual Predator Commitment Act?)
4. Is the remedy for the unlawful disclosure and use of the records reversal of the commitment?

Standard of Review

While matters merely regarding the admissibility of evidence are reviewed for abuse of discretion, this issue raises a question of law which is reviewed de novo in so far as admissibility depended upon lawful disclosure under relevant statutes designed to protect constitutional rights of privacy.

Statement of Relevant Facts

The facts are not disputed and are set forth both in the Statement of Facts, supra at 3, and in the Respondent's Motions for Discretionary Review (App B), and the Order Denying Review. (App A)

Argument in Support of First Assignment of Error

The relevant statutory provisions contain the following: RCW 71.05.390 (full text App C) provides for confidentiality:

“The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.”

In 1990, the Washington State Legislature enacted a series of amendments and new laws relating to criminal offenders. The bill, known as 1990 WA SB 6259 is attached as App D. SB 6259 contained XIV separate sections relating to a broad range of issues. It also created the sexually violent predator act, RCW 71.09 et seq. In the course of the many amendments the legislature added to RCW 71.05.390 language in a final un-numbered paragraph which referenced the newly created

RCW 71.09. It is the insertion of RCW 71.09 into the chapter's exceptions to confidentiality of records section which has given rise to the issue presented by respondent in his first assignment of error and in his previous motions and requests for interlocutory review.

Ultimately one issue in this case is the meaning of the words "...all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter..." as used in the un-numbered amended paragraph of RCW 71.05.390. (RP 08/01/2000: 31-32, 34-36) The trial court acknowledged that the confidentiality question posed was not covered by any of the specific exceptions set forth in RCW 71.05.390 other than in the final paragraph and found that the amendment to the statute "impliedly" permitted the release of "such information" to the appropriate authorities when you're (sic) seeking a civil commitment under 71.09." Id at 45. The Commissioner of this Court noted that the question was one of first impression in so far as it concerned the State's first attempt to commit a voluntary mental patient as a sexually violent predator and that there were no precedents that construed the last paragraph of RCW 71.05.390 as amended. It denied the motion. (App A- November 16, 2000)

Following the decision in State v. Wheat, 118 Wash. App. 435, 76 P.3d 280 (2003), respondent brought a second motion for interlocutory review alleging that Wheat, supra persuasively stood for the proposition that when a state statute created a personal privacy interest in treatment records on the behalf of those persons who

received such treatment, and when a statute specified only specific exceptions to the privacy right, no further implied exceptions were permissible. Respondent further relied on the Supreme Court's holding in State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) rejecting any invitation to broaden by implication a statute which is unambiguous.

“Just as we ‘cannot add words or clauses to an unambiguous statute:’ statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” (citations omitted.) Id.

The Commissioner again denied review finding Wheat , supra inapposite in so far as it applied to federal regulation regarding the confidentiality of alcohol and drug abuse patient records made applicable to state treatment programs. (App A)

The Supreme Court in its citation of the principles of statutory interpretation in J.P., supra further noted:

“Where we are called upon to interpret an ambiguous statute or conflicting provisions, we may arrive at the legislature's intent by applying recognized principles of statutory construction. A kind of stopgap principle is that, in construing a statute ‘a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.’” (citations omitted.) Id.

RCW 71.05 contains a specific provision for the protection of “treatment records,” in RCW 71.05.630. This provision conflicts with the trial court's disclosure by implication” decision based upon the amendment to RCW 71.05.390 at issue. (The full text of RCW 71.05.630 is set out in App E)

Respondent argues that these principles apply forcefully to his claim that “treatment records” from his commitment at Western State Hospital were exempt from disclosure under the plain meaning of RCW 71.05.390 as amended, allowing the use specifically of “records, files, evidence, findings or orders.” Such an interpretation comports with both basic principles of statutory construction:

(1) The language of the amendment should be confined to its precise words and not read more broadly.

(2) The amendment should be construed consistently with the conflicting provision within RCW 71.05 that is RCW 71.05.630 which specifically addresses and prohibits the release of treatment records.

The remedy for the use of unlawfully disclosed records is exclusion. State v. Wheat, supra. Since the parties acknowledged that the proceeding depended upon the use and collateral uses of the records (App A), reversal of the commitment is required.

VI. ARGUMENT RE SECOND ASSIGNMENT OF ERROR

B. SECOND ASSIGNMENT OF ERROR

The trial court erred in concluding that respondent John Anderson committed a “recent overt act,” a necessary element as required by statute and Wash Const. Art. I § 3 and U.S. Const., Amend. 14 (due process) for civil commitment as Mr. Anderson was not confined at the time of the filing of the Petition.

Issues Pertaining to Second Assignment of Error

1. Can consensual sexual acts committed between patients at a mental hospital constitute “recent over acts” within the meaning of RCW 71.09?
2. Did the trial court erroneously rely on the facts of In re Pugh, 68 Wn. App. 687, rev. denied 122 Wn.2d 1018 (1993) in reaching its conclusion?

Standard of Review

Statutory interpretation is a matter of law. The trial court’s findings and conclusions are reviewed de novo.

Argument in Support of Second Assignment Error

A recent overt act is required whenever a respondent has had an opportunity to commit such an act. See In re Young, 122 Wn.2d 1, 41 (1993), In re Albrecht, 147 Wn.2d 1, 9-12.

In this case the court relied heavily on In re Pugh, 68 Wn.App. 687 (2004) when it found that Mr. Anderson’s consensual sexual acts constituted recent overt acts. However, unlike Mr. Anderson, Mr. Pugh went to prison, and prior to his release, the State sought his commitment. The Court held that the 1986 offenses satisfied the recent overt act requirement. Finding that the 1986 offense was “recent,” the Court stated:

However, in considering whether an overt act, evidencing dangerousness,

satisfies the recentness requirement, it is appropriate to consider the time span in the context of all the surrounding relevant circumstances. . . . The absence of overt acts in the last 5 years might be sufficient to discount the diagnosis and prediction of dangerousness were Pugh then living in the typical community. Pugh, however, has been institutionalized since 1986; isolated from children toward whom he has a predilection to cause harm. The absence of more recent overt acts during confinement is readily explainable as a lack of opportunity to offend rather than a demonstration of improvement so as to negate the showing that he presents a substantial risk of physical harm.

When all of the facts of Pugh are considered, its holding is consistent with Young and Albrecht. It would be absurd to require a recent overt act during the period of prison incarceration, but it is not absurd once the respondent has been released to the community, or, as in this case, respondent is a voluntary patient at the state hospital for over a decade. The holding in Young simply created a bright line rule where a respondent has been incarcerated, instead of the "totality of the circumstances" rule discussed in Pugh.

Civil commitment statutes are to be construed strictly. See In re Detention of J.R., 80 Wash. App. 947, 956 (1996) ("As civil commitment statutes authorize a significant deprivation of liberty, they must be strictly construed.") (Citing In re Swanson, 115 Wash.2d 21, 27 (1990) and In re LaBelle, 107 Wash. 2d 196 (1986)); In re Swanson, 115 Wash.2d at 31 ("In light of the clear language of the statute and Washington case law concerning statutes impacting liberty interests, the time limits at issue [in this civil commitment] must be strictly construed"); Dunner v. McLaughlin, 100 Wash.2d 832, 850 (1984) ("Statutes that involve a deprivation of

liberty are to be strictly construed.") (Citing In re Cross, 99 Wash.2d 373, 379 (1983)).

In this case, the State was required to prove that Mr. Anderson, subsequent to his release from total confinement, committed an act the "either caused harm of a sexually violent nature or which create(d) a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act." RCW 71.09.020(6). The Legislature did not further define the meaning of "reasonable apprehension."

A common law definition of "reasonable apprehension" requires that the State prove some type of overt behavior that is an effort, attempt, or threat to carry out a harmful act. Under the common law the act must be intended to create a reasonable apprehension of harm. State v. Frazier, 81 Wn.2d 628, 631 (1972); State v. Easmond 129 Wn.2d 497, 500 (1996).

In RCW 71.05 cases, where a "recent overt act" requires behavior that is actually dangerous to another person, the State does not have to prove a new criminal offense. See e.g. In re Meistrell, 47 Wn. App. 100, 733 P.2d 1004 (1987) (Teeter totter incident is a recent overt act.); In re A.S., 91 Wn.App. 146, 163, 955 P.2d 836, affirmed, 138 Wn.2d 898 (1999) (Cutting at wrist is a recent overt act.)

However, "recent overt act" must have some meaning that meets a vagueness challenge in order to be constitutional; for the same vagueness test used for criminal statutes applies to civil commitment statutes. In In re Mays, 116 Wn. App. 864, 868-

69 (2003), the Court so held, stating:

We also reject the State's claim that the criminal due process test for vagueness does not apply to civil commitments. "A statute is void for vagueness if it is framed in terms so vague that persons' of common intelligence must necessarily guess at its meaning and differ as to its application." This vagueness test is identical to that used in a criminal case relied upon by the Haley court. Thus, there is no distinction between the vagueness tests applicable to civil and criminal proceedings. (Citations omitted.)

The Court continued:

We next address whether the challenged provisions are void for vagueness. "The issue of vagueness involves the procedural due process requirements of fair notice of the conduct warranting detention and clear standards to prevent arbitrary enforcement by those charged with administering the applicable statutes. "The United States Supreme Court has stated that an unconstitutionally vague ordinance is one that "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," and "encourages arbitrary and erratic arrests and convictions." It applies to both criminal actions and civil actions where a loss of constitutional rights is at issue. . . . Id. at 874.

In Mays, the Court found that the term "in need of a more sustained treatment programs" was unconstitutionally vague. Id. at 875. Here, the statutory definition of a recent overt act is likewise vague, unless construed in a manner consistent with the common law definition of "reasonable apprehension of harm." Pugh, supra, is inapposite as set forth supra at 12. Mr. Anderson's sexual intimacies with consensual partners were not "recent overt acts." His commitment must be reversed.

VII. ARGUMENT RE THIRD ASSIGNMENT OF ERROR

C. THIRD ASSIGNMENT OF ERROR

The trial court erred in refusing to allow Dr. Richard Wollert to testify for respondent as a rebuttal witness.

Issues Pertaining to Third Assignment of Error

1. Does the trial court abuse its discretion in excluding a witness where there is no showing of bad faith and the proponent of the witness is willing to accommodate opposing counsel in providing for discovery of the witness' testimony?

Standard of Review :

The exclusion of an untimely endorsed expert witness is reviewed for abuse of discretion. Dempere v. Nelson, 76 Wn. App. 403, 405-06, 886 P.2d 219 (1994); Scott v. Grader, 105 Wn. App. 136, 139, 18 P.3d 1150 (2001). The Court abuses its discretion when its decision is exercised on untenable grounds or reasons. State ex rel Carroll v. Junker, 79 Wn.2d 12, 26 482 P.2d 775 (1971).

Argument in Support of Third Assignment of Error

The trial court declined to allow Dr. Richard Wollert to testify on behalf of respondent. Dr. Wollert's testimony was proffered by respondent to rebut opinions of the state's expert Dr. Amy Phenix regarding the current status of the science of sexual offender evaluations particularly with respect to persons who commit sex offenses as juveniles. Dr. Wollert would have testified that actuarial instruments are the only way of predicting future dangerousness and that at present the data was insufficient to use in cases like Respondent's, where the single sexually violent

offense was committed when the Respondent was a juvenile. Dr. Wollert would have rejected the science of “guided” clinical judgment as employed by Dr. Phenix. Thus, he would have undermined both the methodology and the conclusions of the state’s expert. The trial court declined to permit the witness to testify despite the fact that the respondent offered to continue the trial date, make the witness available for deposition and have the witness available at any convenient time during trial. (RP 04/19/04: 8-10, CP152-155) Respondent sought to call Dr. Wollert as a rebuttal witness.³

The trial court abused its discretion when it excluded Dr. Wollert’s testimony. The trial court placed great emphasis upon Dr. Phenix’ conclusion in finding that Mr. Anderson met the criteria for commitment as a sexually violent predator. (CP 178-189) Dr. Wollert would have testified that Dr. Phenix erred in her conclusions that Mr. Anderson’s mental abnormalities and personality disorders make him likely to commit predatory acts of sexual violence if not confined in a secure facility based upon the science of prediction of risk as employed by the State’s witness. Dr. Phenix’ testimony was critical to the court’s decision. Dr. Wollert’s proffered rebuttal was essential to a fair trial.

A trial court may exclude an expert witness where the late disclosure of the

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See RP 05/12/04: 390-394 In cross-examination of Dr. Phenix, counsel introduced findings from studies of the excluded witness, Dr. Wollert, which undermined Dr. Phenix’ conclusions.

witness is without sufficient reasonable excuse. Dempere v. Nelson, 76 Wn App. 403, 406, 886 P.2d 219 (1994). However, the court abuses its discretion when the opposing party can be reasonably afforded an opportunity to prepare for the witness. Furthermore, the decision to exclude a witness should depend upon whether the proponent intentionally violated discovery rules. A trial court should not exclude testimony unless there is a showing of intentional or tactical non disclosure, willful violation of a court order or other unconscionable conduct by the procurer of the testimony. Miller v. Peterson, 42 Wn.App. 822, 825, 714 P.2d 695 (1986) (Citing Barci v. Intalco Aluminum Corp., 11 Wn.App. 342, 351, 522 P.2d 1159 (1974)). In respondent's case, Mr. Anderson was amenable to continuing the case; the case was being tried to the bench without a jury, the trial judge was extremely accommodating to the scheduling problems of the state's witness (RP 04/19/04); respondent's counsel offered to make Dr. Wollert available for deposition and to present his testimony at any time acceptable to the court and the parties. Furthermore, counsel filed a declaration, outlining the witness' testimony and explaining the difficulties that had occurred with obtaining records from an expert who was not endorsed in order to supply them to Dr. Wollert in preparation for his testimony. (CP: 152-155)

A decision to exclude testimony should not be made lightly. It is only appropriate when it is "apparent from the record that: (1) the party's refusal to obey the discovery order was willful or deliberate, (2) the party's actions substantially prejudiced the opponent's ability to prepare for trial, and (3) the trial court explicitly

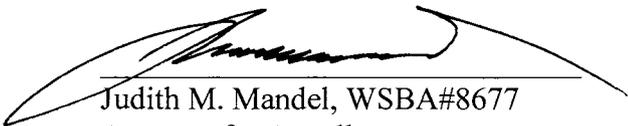
considered whether a lesser sanction would probably have sufficed.” Rivers v. Washington State Conference of Mason Contractors, 145 Wn.2d 64, 686, 41 P.3d 1175 (2002) (applying this standard to a situation with a similar effect as the denial of a witness’ testimony). Because the trial court’s ruling excluding the witness was exercised on unreasonable grounds, the court erred. Because of the importance of the testimony to the commitment case, reversal is required.

VIII. CONCLUSION

For all the reasons set forth, the Court should reverse and remand for a new trial.

DATED this 3/ day of May, 2005.

Respectfully submitted,



Judith M. Mandel, WSBA#8677
Attorney for Appellant

APPENDICES

Order Ruling Denying ReviewA

Respondent's Motions for Discretionary ReviewB

RCW 71.05.390C

Legislative Bill 1990 WA SB 6259D

RCW 71.05.630E

NOV 20 2000

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOHN CHARLES ANDERSON,

Petitioner.

No. 26282-7-II

RULING DENYING REVIEW

FILED APPEALS COURT OF APPEALS DIVISION II NOV 16 PM 2:07 STATE OF WASHINGTON

John Charles Anderson seeks discretionary review of a Pierce County Superior Court order denying Anderson's CR 12(c) motion for judgment on the pleadings. RAP 2.3(b)(2).

The parties do not dispute the facts as they relate to this motion. While Anderson was a voluntary mental patient, the State compiled certain information relevant and essential to its petition seeking to adjudicate Anderson a sexually violent predator. RCW 71.09 et seq. Anderson claims that such information is confidential under RCW 71.05.390. He brought a CR 12(c) motion for judgment on the pleadings predicated on his theory that the State's petition rested on the confidential information without which the State could not prove its case.¹

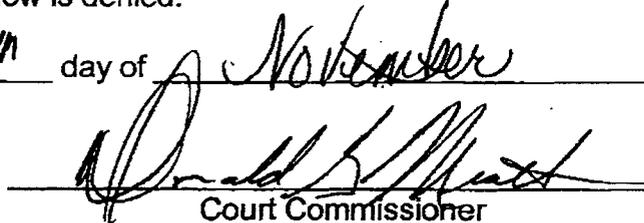
The trial court denied the motion. The court opined that the last paragraph of RCW 71.05.390 "impliedly permits the release of such information to the appropriate authorities when you're seeking a civil commitment under 71.09." Anderson seeks review.

¹ Anderson brought his CR12(c) motion before the trial court made a probable cause determination. RCW 71.09.040.

Anderson concedes that this is a case of first impression at least as it deals with the State's attempt to commit a voluntary mental patient as a sexually violent predator. This court has found no cases, and Anderson has presented none, that construe the last paragraph of RCW 71.05.390 as it applies to civil commitment proceedings pursuant to chapter 71.09 RCW and/or the other exceptions established in RCW 71.05.390. Moreover, public safety concerns reduce the privacy expectations of sexual predators. See *State v. Ward*, 123 Wn.2d 488, 500 (1994). Without endorsing the trial court's decision as correct, this court observes that the trial court's decision is reasonable and arguable.² Thus, it cannot be said that the court obviously or probably erred. Accordingly, it is hereby

ORDERED that review is denied.

DATED this 16th day of November, 2000.



Court Commissioner

cc: Donald Lundahl
Ann Ferrell Stenberg
Sarah B. Sappington
Gregory P. Canova
Hon. Karen Strombom
Pierce County Superior Court
Cause number: 00-2-05591-4
John Charles Anderson

² If records and files maintained under RCW 71.05 are admissible in evidence in a proceeding under RCW 71.09, RCW 71.05.390, it is reasonable to assume the State could use the same records to support a sexually violent predator petition.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

COPY

JOHN CHARLES ANDERSON,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

No. 26282-7-II

RULING DENYING MOTION

04 APR 16 PM 1:01
STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
BY: [Signature]

John Charles Anderson seeks review of a Pierce County Superior Court order denying his CR 12(c) motion for judgment on the pleadings. The State has filed a petition alleging that Anderson is a sexually violent predator, and his trial is scheduled for April 19, 2004. He seeks to prevent the use of treatment records generated while he was voluntarily committed to Western State Hospital. He asserts that without those records, the State does not have sufficient evidence to prove that he is a sexually violent predator. The trial court held that the confidentiality requirements of RCW 71.05.090 do not apply to SVP proceedings. Anderson contends the court obviously or probably erred, justifying review under RAP 2.3(b)(1) and (2).

The order Anderson challenges was entered on August 1, 2000. Anderson sought discretionary review at that time; this court denied review; and

the Clerk of the Court issued a certificate of finality on May 10, 2001. Anderson asks this court to review its prior decision on the basis of "new controlling case authority". That could be the basis for the recall of a mandate. See RAP 12.9. However the rules do not provide for the recall of a certificate of finality.

In any case, such action is not warranted in this case. The trial court found that the final paragraph of RCW 71.05.390 provided an exception to confidentiality. That paragraph states, in pertinent part:

The fact of admission, as well as all records, files, evidence, findings, or orders made prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding, except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial *or in a civil commitment proceeding pursuant to chapter 71.09 RCW.*

(emphasis added). Pursuant to Anderson's first motion for discretionary review, a commissioner of this court ruled that the trial court's decision was reasonable and arguable, and thus neither obvious nor probable error.

Anderson contends new authority, *State v. Wheat*, 118 Wn. App. 435 (2003), makes it clear that the trial court erred in this case. *Wheat* is clearly inapposite. It concerned an entirely different statute, RCW 70.96A.150, which pertains to records of drug and alcohol treatment. RCW 70.96A.150 does not contain the exemption found in the last paragraph of RCW 71.05.390. In addition, it makes federal regulations pertaining to the confidentiality of alcohol and drug abuse patient records applicable to state treatment programs. The

Wheat court found the federal law to be dispositive. *Wheat* is not controlling here.

There being neither procedural nor substantive grounds for further interlocutory review of the trial court's order, it is hereby

ORDERED that this motion is denied.

DATED this 16th day of April,

2002



Commissioner

cc: The Honorable Karen L. Strombom
Pierce County Superior Court
Cause number 00-2-05591-4
Don Lundahl
Krista K. Bush
John Charles Anderson

1
2
3
4 COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

5 JOHN CHARLES ANDERSON,)
6 Petitioner,) No. 26282-7-II
7) Superior Court No.
8) 00-2-05591-4
9 v.)
10) PETITIONER'S MOTION FOR
STATE OF WASHINGTON,) INTERLOCUTORY
11 Respondent.) DISCRETIONARY REVIEW
12)
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15)
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27)

11 **A. Identity of Petitioner**

12 The Appellant, John C. Anderson, respectfully requests the
13 relief designated in Part B.

15 **B. Decision**

16 Mr. Anderson respectfully requests this court to grant an
17 interlocutory discretionary review pursuant to the order of this
18 court of the August 1, 2000, order of The Pierce County Superior
19 Court, the Honorable Karen Strombom, Judge, denying Mr. Anderson's
20 CR 12(c) motion for judgment on the pleadings. A copy of the
21 court's order is attached. (**Exhibit 3, Order**).

23 **C. Issues Presented for Review**

24 1. Where information concerning voluntary treatment of a
25 mental patient is constituted confidential by a statute that must
26 be strictly construed, is a judicially-implied exception that
27 purports to authorize disclosure proper?

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1 2. Where the state unlawfully obtains confidential voluntary
2 mental patient information by committing a civil rights violation,
3 is that information admissible into evidence against the patient in
4 a subsequent proceeding by the state?

5 3. Where the meaning of a statute that must be strictly
6 construed is clear from the language of the statute alone, is
7 judicial construction or interpretation of the statute proper?

8 4. Where confidential psychiatric and medical treatment
9 information concerning a voluntary mental patient is unlawfully
10 disclosed by a state mental hospital, may the state use that
11 information in an involuntary commitment proceeding under chapter
12 71.09 RCW?

13
14 **D. Statement of the Case**

15 Mr. Anderson has been a voluntary patient at Western State
16 Hospital (WSH) since 1990. Accordingly, for the entire time Mr.
17 Anderson was at WSH he was under the protections afforded both
18 voluntary and involuntary patients by chapter 71.05 RCW, the
19 Involuntary Treatment Act (the ITA). This cannot be and is not
20 disputed by the state. The fact that his treatment for the last
21 ten years was voluntary, rather than involuntary, is significant
22 because a number of the exceptions contained in RCW 71.05.390 apply
23 only to patients being "detained" or treated involuntarily pursuant
24 to a court order.

25 The state has filed a petition under chapter 71.09 RCW seeking
26 indefinite involuntary civil commitment of Mr. Anderson, based on
27 an allegation that Mr. Anderson is a sexually violent predator.

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1 (Exhibit 1). In February of this year, while still a voluntary
2 patient, Mr. Anderson was arrested on a warrant that had been
3 issued in this case after the petition had been filed. Mr.
4 Anderson was then transported to the Pierce County Jail where he
5 currently resides. The discovery materials that have been provided
6 to the defense indicate that the state cannot prove the elements
7 required for civil commitment under chapter 71.09 RCW without using
8 Mr. Anderson's voluntary patient information -- the very
9 information that, Mr. Anderson alleges, WSH has unlawfully
10 disclosed. (Exhibit 2, Declaration of Don Lundahl and attachments).

11 The fact that the disclosure was not permitted by the plain
12 language of the applicable statutes is not disputed by the state.
13 RP 44, lines 18-21. Rather, the state argues, and the trial court
14 has ruled, that the disclosure of Mr. Anderson's confidential
15 voluntary patient information by WSH was legally authorized by
16 implication from § 390 of chapter 71.09 RCW, and admissible in this
17 proceeding under that same section. RP 45, lines 1-4.

18 Mr. Anderson contended below that the sole pleading in this
19 matter, the petition, was legally insufficient on its face, because
20 the petition did not allege any specific facts other than that of
21 his initial conviction in 1988. The state argued that the probable
22 cause statement should be considered part of the petition. RP 28,
23 lines 1-3. In the event the petition were to be dismissed as
24 legally insufficient, the state announced its intention to refile
25 immediately and incorporate the information contained in the
26 probable cause statement, most of which was obtained in violation
27 of RCW 71.05.390, into a new petition. RP 28, lines 10-16. Mr.

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1 Anderson's position that RCW 71.09.030 requires that the petition
2 itself state within its four corners facts sufficient to support
3 the allegation that Mr. Anderson is a sexually violent predator,
4 and that the state cannot amend or refile to cure the petition's
5 legal defect because any information that it would seek to use to
6 do so was disclosed in violation of RCW 71.05.390. Respondent
7 therefore moved for a judgment of dismissal on the pleadings on the
8 authority of CR 12(c). That motion was denied, the trial court
9 ruling that under § 390 of chapter 71.05 RCW, WSH had implied legal
10 authority to disclose Mr. Anderson's voluntary patient information
11 which the court also ruled is admissible against Mr. Anderson in
12 this chapter 71.09 RCW proceeding. RP 44-45, (Exhibit 3, Order).

13
14 **E. Argument Why Review Should Be Accepted**

15 Mr. Anderson respectfully asks this court to grant an
16 interlocutory discretionary review of the trial court's ruling
17 denying Mr. Anderson's motion for judgment on the pleadings.

18 Mr. Anderson makes this request under RAP 2.3(a); RAP 2.3(b)
19 (1) on the grounds that the superior court has committed an obvious
20 error which would render further proceedings useless, and RAP
21 2.3(b) (2) on the grounds that the superior court has committed
22 probable error and the decision of the superior court substantially
23 alters the status quo or substantially limits the freedom of a
24 party to act.

25 This is a case of the first impression in Washington in that
26 the state has never before attempted to commit a voluntary mental
27 patient at a state hospital as a sexually violent predator under

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1 chapter 71.09 RCW. Due to the broad scope of coverage of the ITA,
2 the issues in this case impact the privacy rights of all mental
3 patients in Washington, inpatient or outpatient, whether at public
4 or private hospitals, or at local community clinics including the
5 offices of individual practitioners. All are covered by the
6 confidentiality provisions of § 390 of the ITA.

7 The material facts in this case are not in dispute, and the
8 arguments of counsel have been presented to the trial court in
9 three memoranda. (Exhibit 4, Respondent's Memorandum; Exhibit 5,
10 Petitioner's Memorandum in Opposition; Exhibit 6, Respondent's
11 Reply Memorandum). Most of the issues involved have been fully
12 briefed and argued, and those arguments will not be repeated here.

13 The trial court's ruling that there is an "implied" authority
14 for a mental health treatment facility to disclose information
15 regarding ten years of voluntary treatment in derogation of the
16 statutory and constitutional guarantees of the privacy and
17 confidentiality of such information is a startling departure from
18 well-grounded Washington law.

19 The ruling that there is an "implied" authorization for
20 disclosure of treatment information of anyone receiving mental
21 health services seems to be based on a belief that the final
22 paragraph of RCW 71.05.390 applies to treatment records as well as
23 to court files and records maintained pursuant to the Involuntary
24 Treatment Act. RP 45. That conclusion is not supported by the
25 plain language of the statute. The first sentence of RCW 71.05.390
26 reads: "The fact of admission and all information and records
27 compiled, obtained, or maintained in the course of providing

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1 | **services** to either voluntary or involuntary recipients of services
2 | at public or private agencies shall be confidential." emphasis
3 | added; (Exhibit 7, RCW 71.05.390). A number of very specifically
4 | worded exceptions to this general rule follow, none of which apply
5 | to the disclosure made in Mr. Anderson's case. RP 44. The last
6 | paragraph of RCW 71.05.390 deals with the admissibility and
7 | confidentiality of court records and files maintained pursuant to
8 | the Involuntary Treatment Act. These records and files are dealt
9 | with separately from the records of services provided, because they
10 | are court records, not medical treatment records. Court files and
11 | records, unlike medical treatment records, are generally public
12 | records. In construing RCW 71.02.250, a predecessor statute to RCW
13 | 71.05.390, our Supreme Court stated:

14 | "The statutory right to privacy specifically granted by
15 | this statute (RCW 71.02.250), even though it represents
16 | a diametric departure from the general rule that court
17 | records and files are public records and open to
18 | inspection at reasonable times and places, should be
19 | maintained unless sound and substantial reasons are shown
20 | for its abrogation.

21 | Confidentiality and closure of some kinds of
22 | judicial files are not unknown. There are several areas
23 | of law in which public access to judicial proceedings and
24 | records has been curtailed on the theory that privacy and
25 | confidentiality clearly outweigh the dangers from closed
26 | judicial hearings and proceedings.... The right of the
27 | people to know what is going on in their courts in such
28 | cases is considered to be subordinate to the public and
29 | individual benefits of privacy."

30 | State ex rel Carroll v. Junker, 79 Wn.2d 12, 25-26, 482 P.2d 775
31 | (1971). The court in that case made permanent a temporary
32 | injunction preventing access to mental illness court files for
33 | purposes of research. It is clear that the legislature, as well
34 | as our courts, have treated access to court file and records

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1 separately from access to records of treatment services, but have
2 considered the public interest in disclosure subordinate to the
3 very important benefits of protecting privacy interests.

4 The conclusion of the court below that the last paragraph of
5 RCW 71.05.390 "impliedly permits the release of such information to
6 the civil authorities when you're seeking a civil commitment under
7 71.09" ignores the long acknowledged requirement of strict
8 construction of statutes which contain procedural safeguards in
9 derogation of common law. DSHS v. Latta, 92 Wn.2d 812, 819, 601
10 P.2d 520 (1979); In re Henderson, 29 Wn. App. 748, 752, 630 P.2d
11 944 (1981). It also ignores the long list of very specific
12 statutory exceptions allowing disclosure, including RCW 71.05.390
13 subsections 1-15, RCW 71.05.400 (governing release of information
14 to patients' relatives), RCW 71.05.410 (governing release of
15 information concerning the unauthorized disappearance of a
16 patient), RCW 71.05.425 (governing release of information regarding
17 final or conditional release of a person civilly committed after
18 dismissal of a sex or violent offense criminal charges), RCW
19 71.05.427 (also dealing with release of information regarding a
20 person committed after dismissal of a sex offense), RCW 71.05.430
21 (governing release of statistical data, and RCW 10.77.207 (dealing
22 with release of information concerning sex offenders committed
23 under RCW 10.77). Our legislature has dealt very specifically with
24 instances requiring disclosure of information concerning mental
25 health treatment, going into great detail about the type of
26 information which can be released, to whom and under what
27 circumstances it can be released, and what procedural safeguards

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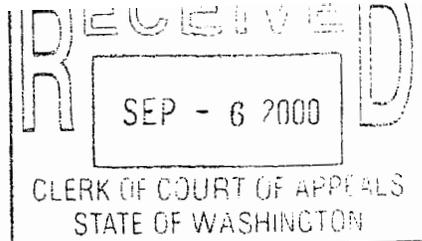
1 (eg. notification of the patient and his counsel) are necessary.
2 Judicial modification by implication of such a specific statutory
3 scheme is unprecedented.

4 The trial court in this case also ignored the very specific
5 statutory requirement contained in RCW 71.09.030 that a petition
6 filed under RCW 71.09 alleging that a person is a "sexually violent
7 predator" must contain sufficient facts to support such an
8 allegation. **Exhibit 8, RCW 71.09.030.** It is undisputed that the
9 petition in this matter did not contain facts sufficient to support
10 the State's allegation that Mr. Anderson was subject to indefinite
11 civil commitment as a sexual violent predator. The trial judge
12 specifically stated that she thought that "there's support for the
13 court to look beyond the petition, . . . ". RP 46, lines 4-6. In
14 fact, there is simply no support for that conclusion contained
15 anywhere in the statutory scheme of RCW 71.09.

16 The general theme underlying both the State's argument and the
17 court's ruling in this matter is that the fact that Mr. Anderson
18 committed a sexual offense in 1988 when he was a juvenile justifies
19 the admitted violation of his privacy interest in his mental health
20 treatment records and any "technical" failure on the part of the
21 State in complying with the procedural rules of RCW 71.05 and
22 71.09. That rationale must be rejected by this court. The State
23 had the ability to accomplish what it wanted to do while complying
24 with the applicable statutes. This court should not sanction or
25 reward the choice not to do so.

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JOHN CHARLES ANDERSON,)	
Petitioner,)	No. 26282-7-II
)	Superior Court No.
)	00-2-05591-4
v.)	
)	PETITIONER'S MOTION FOR
STATE OF WASHINGTON,)	INTERLOCUTORY
Respondent.)	DISCRETIONARY REVIEW

A. Identity of Petitioner

The Appellant, John C. Anderson, respectfully requests the relief designated in Part B.

B. Decision

Mr. Anderson respectfully requests this court to grant an interlocutory discretionary review pursuant to the order of this court of the August 1, 2000, order of The Pierce County Superior Court, the Honorable Karen Strombom, Judge, denying Mr. Anderson's CR 12(c) motion for judgment on the pleadings. A copy of the court's order is attached. (Exhibit 3, Order).

C. Issues Presented for Review

1. Where information concerning voluntary treatment of a mental patient is constituted confidential by a statute that must be strictly construed, is a judicially-implied exception that purports to authorize disclosure proper?

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1 is that information admissible into evidence against the patient in
2 a subsequent proceeding by the state?

3 3. Where the meaning of a statute that must be strictly
4 construed is clear from the language of the statute alone, is
5 judicial construction or interpretation of the statute proper?

6 4. Where confidential psychiatric and medical treatment
7 information concerning a voluntary mental patient is unlawfully
8 disclosed by a state mental hospital, may the state use that
9 information in an involuntary commitment proceeding under chapter
10 71.09 RCW?

11 **D. Statement of the Case**

12 Mr. Anderson has been a voluntary patient at Western State
13 Hospital (WSH) since 1990. Accordingly, for the entire time Mr.
14 Anderson was at WSH he was under the protections afforded both
15 voluntary and involuntary patients by chapter 71.05 RCW, the
16 Involuntary Treatment Act (the ITA). This cannot be and is not
17 disputed by the state. The fact that his treatment for the last
18 ten years was voluntary, rather than involuntary, is significant
19 because a number of the exceptions contained in RCW 71.05.390 apply
20 only to patients being "detained" or treated involuntarily pursuant
21 to a court order.

22 The state has filed a petition under chapter 71.09 RCW seeking
23 indefinite involuntary civil commitment of Mr. Anderson, based on
24 an allegation that Mr. Anderson is a sexually violent predator.
25 (Exhibit 1). In February of this year, while still a voluntary
26 patient, Mr. Anderson was arrested on a warrant that had been
27 issued in this case after the petition had been filed. Mr.

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1 Anderson was then transported to the Pierce County Jail where he
2 currently resides. The discovery materials that have been provided
3 to the defense indicate that the state cannot prove the elements
4 required for civil commitment under chapter 71.09 RCW without using
5 Mr. Anderson's voluntary patient information -- the very
6 information that, Mr. Anderson alleges, WSH has unlawfully
7 disclosed. (**Exhibit 2, Declaration of Don Lundahl and attachments**).
8 The fact that the disclosure was not permitted by the plain
9 language of the applicable statutes is not disputed by the state.
10 RP 44, lines 18-21. Rather, the state argues, and the trial court
11 has ruled, that the disclosure of Mr. Anderson's confidential
12 voluntary patient information by WSH was legally authorized by
13 implication from § 390 of chapter 71.09 RCW, and admissible in this
14 proceeding under that same section. RP 45, lines 1-4.

15 Mr. Anderson contended below that the sole pleading in this
16 matter, the petition, was legally insufficient on its face, because
17 the petition did not allege any specific facts other than that of
18 his initial conviction in 1988. The state argued that the probable
19 cause statement should be considered part of the petition. RP 28,
20 lines 1-3. In the event the petition were to be dismissed as
21 legally insufficient, the state announced its intention to refile
22 immediately and incorporate the information contained in the
23 probable cause statement, most of which was obtained in violation
24 of RCW 71.05.390, into a new petition. RP 28, lines 10-16. Mr.
25 Anderson's position that RCW 71.09.030 requires that the petition
26 itself state within its four corners facts sufficient to support
27 the allegation that Mr. Anderson is a sexually violent predator,

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1 and that the state cannot amend or refile to cure the petition's
2 legal defect because any information that it would seek to use to
3 do so was disclosed in violation of RCW 71.05.390. Respondent
4 therefore moved for a judgment of dismissal on the pleadings on the
5 authority of CR 12(c). That motion was denied, the trial court
6 ruling that under § 390 of chapter 71.05 RCW, WSH had implied legal
7 authority to disclose Mr. Anderson's voluntary patient information
8 which the court also ruled is admissible against Mr. Anderson in
9 this chapter 71.09 RCW proceeding. RP 44-45, (Exhibit 3, Order).

10 **E. Argument Why Review Should Be Accepted**

11 Mr. Anderson respectfully asks this court to grant an
12 interlocutory discretionary review of the trial court's ruling
13 denying Mr. Anderson's motion for judgment on the pleadings.

14 Mr. Anderson makes this request under RAP 2.3(a); RAP 2.3(b)
15 (1) on the grounds that the superior court has committed an obvious
16 error which would render further proceedings useless, and RAP
17 2.3(b) (2) on the grounds that the superior court has committed
18 probable error and the decision of the superior court substantially
19 alters the status quo or substantially limits the freedom of a
20 party to act.

21 This is a case of the first impression in Washington in that
22 the state has never before attempted to commit a voluntary mental
23 patient at a state hospital as a sexually violent predator under
24 chapter 71.09 RCW. Due to the broad scope of coverage of the ITA,
25 the issues in this case impact the privacy rights of all mental
26 patients in Washington, inpatient or outpatient, whether at public
27 or private hospitals, or at local community clinics including the

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1 offices of individual practitioners. All are covered by the
2 confidentiality provisions of § 390 of the ITA.

3 The material facts in this case are not in dispute, and the
4 arguments of counsel have been presented to the trial court in
5 three memoranda. (Exhibit 4, Respondent's Memorandum; Exhibit 5,
6 Petitioner's Memorandum in Opposition; Exhibit 6, Respondent's
7 Reply Memorandum). Most of the issues involved have been fully
8 briefed and argued, and those arguments will not be repeated here.

9 The trial court's ruling that there is an "implied" authority
10 for a mental health treatment facility to disclose information
11 regarding ten years of voluntary treatment in derogation of the
12 statutory and constitutional guarantees of the privacy and
13 confidentiality of such information is a startling departure from
14 well-grounded Washington law.

15 The ruling that there is an "implied" authorization for
16 disclosure of treatment information of anyone receiving mental
17 health services seems to be based on a belief that the final
18 paragraph of RCW 71.05.390 applies to treatment records as well as
19 to court files and records maintained pursuant to the Involuntary
20 Treatment Act. RP 45. That conclusion is not supported by the
21 plain language of the statute. The first sentence of RCW 71.05.390
22 reads: "The fact of admission and all information and records
23 compiled, obtained, or maintained in the course of providing
24 services to either voluntary or involuntary recipients of services
25 at public or private agencies shall be confidential." emphasis
26 added; (Exhibit 7, RCW 71.05.390). A number of very specifically
27 worded exceptions to this general rule follow, none of which apply

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1 to the disclosure made in Mr. Anderson's case. RP 44. The last
2 paragraph of RCW 71.05.390 deals with the admissibility and
3 confidentiality of court records and files maintained pursuant to
4 the Involuntary Treatment Act. These records and files are dealt
5 with separately from the records of services provided, because they
6 are court records, not medical treatment records. Court files and
7 records, unlike medical treatment records, are generally public
8 records. In construing RCW 71.02.250, a predecessor statute to RCW
9 71.05.390, our Supreme Court stated:

10 "The statutory right to privacy specifically granted by
11 this statute (RCW 71.02.250), even though it represents
12 a diametric departure from the general rule that court
13 records and files are public records and open to
inspection at reasonable times and places, should be
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14 Confidentiality and closure of some kinds of
15 judicial files are not unknown. There are several areas
16 of law in which public access to judicial proceedings and
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19 State ex rel Carroll v. Junker, 79 Wn.2d 12, 25-26, 482 P.2d 775
20 (1971). The court in that case made permanent a temporary
21 injunction preventing access to mental illness court files for
22 purposes of research. It is clear that the legislature, as well
23 as our courts, have treated access to court file and records
24 separately from access to records of treatment services, but have
25 considered the public interest in disclosure subordinate to the
26 very important benefits of protecting privacy interests.

27 The conclusion of the court below that the last paragraph of

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1 RCW 71.05.390 "impliedly permits the release of such information to
2 the civil authorities when you're seeking a civil commitment under
3 71.09" ignores the long acknowledged requirement of strict
4 construction of statutes which contain procedural safeguards in
5 derogation of common law. DSHS v. Latta, 92 Wn.2d 812, 819, 601
6 P.2d 520 (1979); In re Henderson, 29 Wn. App. 748, 752, 630 P.2d
7 944 (1981). It also ignores the long list of very specific
8 statutory exceptions allowing disclosure, including RCW 71.05.390
9 subsections 1-15, RCW 71.05.400 (governing release of information
10 to patients' relatives), RCW 71.05.410 (governing release of
11 information concerning the unauthorized disappearance of a
12 patient), RCW 71.05.425 (governing release of information regarding
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15 71.05.427 (also dealing with release of information regarding a
16 person committed after dismissal of a sex offense), RCW 71.05.430
17 (governing release of statistical data, and RCW 10.77.207 (dealing
18 with release of information concerning sex offenders committed
19 under RCW 10.77). Our legislature has dealt very specifically with
20 instances requiring disclosure of information concerning mental
21 health treatment, going into great detail about the type of
22 information which can be released, to whom and under what
23 circumstances it can be released, and what procedural safeguards
24 (eg. notification of the patient and his counsel) are necessary.
25 Judicial modification by implication of such a specific statutory
26 scheme is unprecedented.

27 The trial court in this case also ignored the very specific

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1 | statutory requirement contained in RCW 71.09.030 that a petition
2 | filed under RCW 71.09 alleging that a person is a "sexually violent
3 | predator" must contain sufficient facts to support such an
4 | allegation. **Exhibit 8, RCW 71.09.030.** It is undisputed that the
5 | petition in this matter did not contain facts sufficient to support
6 | the State's allegation that Mr. Anderson was subject to indefinite
7 | civil commitment as a sexual violent predator. The trial judge
8 | specifically stated that she thought that "there's support for the
9 | court to look beyond the petition, . . . ". RP 46, lines 4-6.

10
11 | **F. Conclusion**

12 | Immediate review of Judge Strombom's order is necessary since
13 | Mr. Anderson is in custody as a result of this litigation, the
14 | termination of which may be materially advanced by immediate
15 | review.

16 | DATED this 6th day of September, 2000.

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18 | DON LUNDAHL, Lawyer

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RCW 71.05.390**Confidential information and records -- Disclosure.**

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility,

agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/....."

(6) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and

WASHINGTON ADVANCE LEGISLATIVE SERVICE

51ST LEGISLATURE
(Regular Session)

SECOND SUBSTITUTE SENATE BILL NO. **6259**
(Chapter 3, Laws of 1990)

1990 Wa. ALS 3; 1990 Wa. Ch. 3; 1990 Wa. **SB 6259**

SYNOPSIS: AN ACT Relating to criminal offenders; amending RCW 13.40.205, 10.77.163, 10.77.165, 10.77.210, 71.05.325, 71.05.390, 71.05.420, 71.05.440, 71.05.670, 9.94A.155, 13.50.050, 9.95.140, 10.97.030, 10.97.050, 70.48.100, 43.43.765, 9.92.151, 9.94A.150, 70.48.210, 13.40.020, 13.40.160, 13.40.110, 13.40.210, 43.43.745, 7.68.060, 7.68.070, 7.68.080, 7.68.085, 9.94A.390, 13.40.150, 9.94A.350, 9.94A.120, 9.94A.360, 9.95.009, 9A.44.050, 9A.44.083, 9A.44.076, and 9A.88.010; reenacting and amending RCW 9.94A.030, 9.94A.310, 9.94A.320, 9.94A.400, 18.130.040, 43.43.830, 43.43.832, 43.43.834, and 43.43.838; adding a new section to chapter 4.24 RCW; adding new sections to chapter 9.94A RCW; adding a new section to chapter 9.95 RCW; adding a new section to chapter 74.13 RCW; adding new sections to chapter 9A.44 RCW; adding a new section to chapter 10.01 RCW; adding new sections to chapter 10.77 RCW; adding new sections to chapter 13.40 RCW; adding a new section to chapter 43.43 RCW; adding a new section to chapter 46.20 RCW; adding a new section to chapter 70.48 RCW; adding new sections to chapter 71.05 RCW; adding a new section to chapter 71.06 RCW; adding new sections to chapter 72.09 RCW; adding a new chapter to Title 18 RCW; adding a new chapter to Title 71 RCW; adding a new section to chapter 43.06 RCW; adding a new chapter to Title 43 RCW; adding a new section to chapter 26.44 RCW; creating new sections; prescribing penalties; providing effective dates; and declaring an emergency.

NOTICE: [A>UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED<A]
[D>Text within these symbols is deleted.<D]
[V>Text within these symbols is vetoed.<V]

To view the next section, type .np* and TRANSMIT.
To view a specific section, transmit p* and the section number. E.g. p*1

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

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PART I

COMMUNITY NOTIFICATION

[*1] NEW SECTION. Sec. 101. A new section is added to chapter 13.40 RCW to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than ten days before discharge, parole, or any other authorized leave or release, or before transfer to a community residential facility, the secretary shall send written notice of the discharge, parole, authorized leave or release, or transfer of a juvenile found to have committed a violent offense or a sex offense, to the following:

(i) The chief of police of the city, if any, in which the juvenile will reside; and

(ii) The sheriff of the county in which the juvenile will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific juvenile:

(i) The victim of the offense for which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the juvenile in any court proceedings involving the offense; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the juvenile. The notice to the chief of police or the sheriff shall include the identity of the juvenile, the residence where the juvenile will reside, the identity of the person, if any, responsible for supervising the juvenile, and the time period of any authorized leave.

(2)(a) If a juvenile found to have committed a violent offense or a sex offense escapes from a facility of the department, the secretary shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the juvenile resided immediately before the juvenile's arrest. If previously requested, the secretary shall also notify the witnesses and the victim of the offense which the juvenile was found to have committed or the victim's next of kin if the crime was a homicide. If the

juvenile is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(b) The secretary may authorize a leave, for a juvenile found to have committed a violent or sex offense, 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 time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. Prior to the commencement of an emergency or medical leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will be 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. If previously requested, the department shall also notify the witnesses and victim of the offense which the juvenile was found to have committed or the victim's next of kin if the offense was a homicide.

In case of an emergency or medical leave the secretary may waive all or any portion of the requirements for leaves pursuant to RCW 13.40.205 (2)(a), (3), (4), and (5).

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The secretary shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children.

[*2] NEW SECTION. Sec. 102. A new section is added to chapter 13.40 RCW to read as follows:

In addition to any other information required to be released under this chapter, the department is authorized, pursuant to section 117 of this act, to release relevant information that is necessary to protect the public concerning juveniles adjudicated of sex offenses.

[*3] Sec. 103. Section 10, chapter 191, Laws of 1983 and RCW 13.40.205 are each amended 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 [D> prior to confinement <D], 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.

[A> (II) SUBSECTIONS (6), (7), AND (8) OF THIS SECTION DO NOT APPLY TO JUVENILES COVERED BY SECTION 101 OF THIS 1990 ACT. <A]

[*4] NEW SECTION. Sec. 104. A new section is added to chapter 10.77 RCW to read as follows:

(1)(a) At the earliest possible date, and in no event later than ten days before conditional release, final discharge, authorized furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of the, conditional release, final discharge, authorized furlough, or transfer of a person who has been found not guilty of a sex or violent offense by reason of insanity and who is now in the custody of the department pursuant to this chapter, to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) In addition to the notice requirements of (a) and (b) of this subsection, the superintendent shall comply with RCW 10.77.163.

(2) If a person who has been found not guilty of a sex or violent offense by reason of insanity and who is committed under this chapter escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim, if any, of the crime for which the person was committed or the victim's next of kin if the crime was a homicide. The superintendent shall also notify appropriate persons pursuant to RCW 10.77.165. If the person is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days, after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children;

(d) "Authorized furlough" means a furlough granted after compliance with RCW 10.77.163.

[*5] NEW SECTION. Sec. 105. A new section is added to chapter 10.77 RCW to read as follows:

In addition to any other information required to be released under this chapter, the department is authorized, pursuant to section 117 of this act, to release relevant information necessary to protect the public concerning a person who was acquitted of a sex offense as defined in RCW 9.94A.030 due to insanity and was subsequently committed to the department pursuant to this chapter.

[*6] Sec. 106. Section 2, chapter 122, Laws of 1983 as amended by section 9, chapter 420, Laws of 1989 and RCW 10.77.163 are each amended to read as follows:

(1) Before a person committed under this chapter is permitted temporarily to leave a treatment facility for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county to which the person is released and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision conditionally to release the person. The notice shall be provided at least thirty days before the anticipated release and shall describe the conditions under which the release is to occur.

(2) In addition to the notice required by subsection (1) of this section, the superintendent of each state institution designated for the custody, care, and treatment of persons committed under this chapter shall notify appropriate law enforcement agencies through the state patrol communications network of the furloughs of persons committed under RCW 10.77.090 or 10.77.110. Notification shall be made at least forty-eight hours before the furlough, and shall include the name of the person, the place to which the person has permission to go, and the dates and times during which the person will be on furlough.

(3) Upon receiving notice that a person committed under this chapter is being temporarily released under subsection (1) of this section, the prosecuting attorney may seek a temporary restraining order to prevent the release of the person on the grounds that the person is dangerous to self or others.

[A> (4) THE NOTICE PROVISIONS OF THIS SECTION ARE IN ADDITION TO THOSE PROVIDED IN SECTION 104 OF THIS 1990 ACT. <A]

[*7] Sec. 107. Section 3, chapter 122, Laws of 1983 as amended by section 10, chapter 420, Laws of 1989 and RCW 10.77.165 are each amended to read as follows:

In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person on conditional release, the superintendent shall notify as appropriate, local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. [A> THE NOTICE PROVISIONS OF THIS SECTION ARE IN ADDITION TO THOSE PROVIDED IN SECTION 104 OF THIS 1990 ACT. <A]

[*8] Sec. 108. Section 21, chapter 117, Laws of 1973 1st ex. sess. as last amended by section 12, chapter 420, Laws of 1989 and RCW 10.77.210 are each amended to read as follows:

Any person involuntarily detained, hospitalized, or committed pursuant to the provisions of this chapter shall have the right to adequate care and individualized treatment. The person who has custody of the patient or is in charge of treatment shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations of the patient that have been filed with the secretary pursuant to this chapter. [A> EXCEPT AS PROVIDED IN SECTIONS 104 AND 117 OF THIS 1990 ACT REGARDING THE RELEASE OF INFORMATION CONCERNING INSANE OFFENDERS WHO ARE ACQUITTED OF SEX OFFENSES AND SUBSEQUENTLY COMMITTED PURSUANT TO THIS CHAPTER, A <A]ll records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his or her attorney, to his or her personal physician, to the prosecuting attorney, to the court, to the protection and advocacy agency, or other expert or professional persons who, upon proper showing, demonstrates a need for access to such records. All records and reports made pursuant to this chapter shall also be made available, upon request, to the department of corrections or the indeterminate sentence review board if the person was on parole or probation at the time of detention, hospitalization, or commitment or the person is subsequently convicted for the crime for which he or she was detained, hospitalized, or committed pursuant to this chapter.

[*9] NEW SECTION. Sec. 109. A new section is added to chapter 71.05 RCW to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than ten days before conditional release, final discharge, authorized leave under RCW 71.05.325(2), or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of conditional release, final discharge, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex or violent offense pursuant to RCW 10.77.090(3) to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
- (ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex or violent offense pursuant to RCW 10.77.090(3);

- (i) The victim of the sex or violent crime that was dismissed pursuant to RCW 10.77.090(3) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;
- (ii) Any witnesses who testified against the person in any court proceedings; and
- (iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex or violent offenses pursuant to RCW 10.77.090(3) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of

police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex or violent crime that was dismissed pursuant to RCW 10.77.090(3) preceding commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.410. If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall read the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children.

[*10] NEW SECTION. Sec. 110. A new section is added to chapter 71.05 RCW to read as follows:

In addition to any other information required to be released under this chapter, the department is authorized, pursuant to section 117 of this act, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex offense as defined in RCW 9.94A.030.

[*11] Sec. 111. Section 2, chapter 67, Laws of 1986 as amended by section 1, chapter 401, Laws of 1989 and RCW 71.05.325 are each amended to read as follows:

(1) Before a person committed under grounds set forth in RCW 71.05.280(3) is released from involuntary treatment because a new petition for involuntary treatment has not been filed under RCW 71.05.320(2), the superintendent, professional person, or designated mental health professional responsible for the decision whether to file a new petition shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision not to file a new petition for involuntary treatment. Notice shall be provided at least thirty days before the period of commitment expires.

(2) (a) Before a person committed under grounds set forth in RCW 71.05.280(3) is permitted temporarily to leave a treatment facility pursuant to RCW 71.05.270 for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county to which the person is to be released and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision conditionally to release the person. The notice shall be provided at least thirty days before the anticipated release and shall describe the conditions under which the release is to occur.

(b) The provisions of RCW 71.05.330(2) apply to proposed temporary releases, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under RCW 71.05.330(2).

(3) Nothing in this section shall be construed to authorize detention of a person unless a valid order of commitment is in effect.

[A> (4) THE NOTICE PROVISIONS OF THIS SECTION ARE IN ADDITION TO THOSE PROVIDED IN SECTION 109 OF THIS 1990 ACT. <A]

[*12] Sec. 112. Section 44, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 8, chapter 67, Laws of 1986 and RCW 71.05.390 are each amended to read as follows:

The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his guardian, must be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person, not employed by the facility, who does not have the medical responsibility for the patient's care or who is not a designated county mental health professional or who is not involved in providing services under the community mental health services act, chapter 71.24 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his guardian, designates persons to whom information or records may be released, or if the person is a minor, when his parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he may be entitled.

(5) For program evaluation and/or research: PROVIDED, That the secretary of social and health services adopts rules for the conduct of such evaluation and/or research. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting or research concerning persons who have received services from (fill in the facility, agency, or person) I, ..., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ ..."

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the [A> INDETERMINATE SENTENCE REVIEW <A] board [D> of prison terms and paroles <D] for persons who are the subject of the records and who are committed to the custody of the department of corrections or [A> INDETERMINATE SENTENCE REVIEW <A] board [D> of prison terms and paroles <D] which information or records are necessary to carry out the responsibilities of their office[D> . PROVIDED, That <D][A> . EXCEPT FOR DISSEMINATION OF INFORMATION RELEASED PURSUANT TO SECTIONS 109 AND 117 OF THIS 1990 ACT, REGARDING PERSONS COMMITTED UNDER THIS CHAPTER UNDER RCW 71.05.280(3) AND 71.05.320(2)(C) AFTER DISMISSAL OF A SEX OFFENSE AS DEFINED IN RCW 9.94A.030, THE EXTENT OF INFORMATION THAT MAY BE RELEASED IS LIMITED AS FOLLOWS: <A]

(a) Only the fact, place, and date of involuntary admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or [A> INDETERMINATE SENTENCE REVIEW <A] board [D> of prison terms and paroles <D] shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his counsel and upon a showing of clear, cogent and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained: PROVIDED HOWEVER, That in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

[A> (11) TO THE PERSONS DESIGNATED IN SECTION 109 OF THIS 1990 ACT FOR THE PURPOSES DESCRIBED IN THAT SECTION. <A]

[A> (12) CIVIL LIABILITY AND IMMUNITY FOR THE RELEASE OF INFORMATION ABOUT A PARTICULAR PERSON WHO IS COMMITTED TO THE DEPARTMENT UNDER RCW 71.05.280(3)

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding [A> EXCEPT IN SUBSEQUENT CRIMINAL PROSECUTION OF A PERSON COMMITTED PURSUANT TO RCW 71.05.280(3) OR 71.05.320(2)(C) ON CHARGES THAT WERE DISMISSED PURSUANT TO CHAPTER 10.77 RCW DUE TO INCOMPETENCY TO STAND TRIAL OR IN A CIVIL COMMITMENT PROCEEDING PURSUANT TO SECTIONS 1001 THROUGH 1012 OF THIS 1990 ACT <A]. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

[*13] Sec. 113. Section 47., chapter 142, Laws of 1973 1st ex. sess. and RCW 71.05.420 are each amended to read as follows:

[A> EXCEPT AS PROVIDED IN SECTION 109 OF THIS 1990 ACT, W <A]hen any disclosure of information or records is made as authorized by RCW 71.05.390 through 71.05.410, the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed.

[*14] Sec. 114. Section 49, chapter 142, Laws of 1973 1st ex. sess. as amended by section 28, chapter 145, Laws of 1974 ex. sess. and RCW 71.05.440 are each amended to read as follows:

[A> EXCEPT AS PROVIDED IN SECTION 117 OF THIS 1990 ACT, A <A]ny person may bring an action against an individual who has wil[A> L <A]fully released confidential information or records concerning him [A> OR HER <A] in violation of the provisions of this chapter, for the greater of the following amounts:

(1) One thousand dollars; or

(2) Three times the amount of actual damages sustained, if any. It shall not be a prerequisite to recovery under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general, damages.

Any person may bring an action to enjoin the release of confidential information or records concerning him [A> OR HER <A] or his [A> OR HER <A] ward, in violation of the provisions of this chapter, and may in the same action seek damages as provided in this section.

The court may award to the plaintiff, should he [A> OR SHE <A] prevail in an action authorized by this section, reasonable attorney fees in addition to those otherwise provided by law.

[*15] Sec. 115. Section 17, chapter 205, Laws of 1989 and RCW 71.05.670 are each amended to read as follows:

[A> EXCEPT AS PROVIDED IN SECTION 117 OF THIS 1990 ACT, A <A]ny person, including the state or any political subdivision of the state, violating RCW 71.05.610 through shall be subject to the provisions of RCW 71.05.440.

[*16] NEW SECTION. Sec. 116. The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

Therefore, this state's policy as expressed in section 117 of this act is to require the exchange of relevant information about sexual predators among public agencies and officials and to authorize the release of necessary and relevant information about sexual predators to members of the general public.

[*17] NEW SECTION. Sec. 117. A new section is added to chapter 4.24 RCW to read as follows:

(1) Public agencies are authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection.

(2) An elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The authorization and immunity in this section applies to information regarding: (a) A person convicted of, or juvenile found to have committed, a sex offense as defined by RCW 9.94A.030; (b) a person found not guilty of a sex offense by reason of insanity under chapter 10.77 RCW; (c) a person found incompetent to stand trial for a sex offense and subsequently committed under chapter 71.05 or 71.34 RCW; (d) a person committed as a sexual psychopath under chapter 71.06 RCW; or (e) a person committed as a sexually violent predator under sections 1001 through 1012 of this act. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(3) Except as otherwise provided by statute, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information as provided in subsection (2) of this section.

(4) Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as otherwise provided by statute.

[*18] NEW SECTION. Sec. 118. An offender's pending appeal, petition for personal restraint, or writ of habeas corpus shall not restrict the agency's, official's, or employee's authority to release relevant information concerning an offender's prior criminal history. However, the agency must release the latest dispositions of the charges as provided in chapter 10.97 RCW, the Washington state criminal records privacy act.

[*19] NEW SECTION. Sec. 119. The governor shall cause a study of federal and state

statutes and regulations governing the confidentiality and disclosure of information about dangerous offenders in the criminal justice, juvenile justice, and mental health systems. The governor shall report to the legislature no later than November 1, 1990 with recommendations for a comprehensive policy approach to confidentiality and dissemination of information about offenders who pose a danger to the public and recommendations regarding the immunity and liability of public agencies, officials, and employees when releasing or failing to release that information.

[*20] NEW SECTION. Sec. 120. A new section is added to chapter 71.06 RCW to read as follows:

In addition to any other information required to be released under this chapter, the department is authorized, pursuant to section 117 of this act, to release relevant information that is necessary to protect the public, concerning a specific sexual psychopath committed under this chapter.

[*21] Sec. 121. Section 1, chapter 346, Laws of 1985 as amended by section 1, chapter 30, Laws of 1989 and RCW 9.94A.155 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, [A] COMMUNITY PLACEMENT, [A] work release placement, furlough, or escape[D], if such notice has been requested in writing [D] about a specific inmate convicted of a violent offense or a sex offense as defined by RCW 9.94A.030, to all of the following:

(a) The chief of police of the city, if any, in which the inmate will reside[D], if known, [D] or in which placement will be made in a work release program; [A] AND [A]

(b) The sheriff of the county in which the inmate will reside[D], if known, [D] or in which placement will be made in a work release program[D], [D][A] . [A]

[D] (c) [D] [A] (2) THE SAME NOTICE AS REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL BE SENT TO THE FOLLOWING IF SUCH NOTICE HAS BEEN REQUESTED IN WRITING ABOUT A SPECIFIC INMATE CONVICTED OF A VIOLENT OFFENSE OR A SEX OFFENSE AS DEFINED BY RCW 9.94A.030: [A]

[A] (A) [A] The victim[D], if any, [D] of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

[D] (d) [D] [A] (B) [A] Any witnesses who testified against the inmate in any court proceedings involving the violent offense; and

[D] (e) [D] [A] (C) [A] Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

[D] (2) [D] [A] (3) [A] If an inmate convicted of a violent offense or a sex offense as defined by RCW 9.94A.030 escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim[D], if any; [D] of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured,

the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

[D> (3) <D] [A> (4) IF THE VICTIM, THE VICTIM'S NEXT OF KIN, OR ANY WITNESS IS UNDER THE AGE OF SIXTEEN, THE NOTICE REQUIRED BY THIS SECTION SHALL BE SENT TO THE PARENTS OR LEGAL GUARDIAN OF THE CHILD. <A]

[A> (5) <A] The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

[D> (4) <D] [A> (6) <A] For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

[D> (5) <D] [A> (7) <A] Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

[*22] NEW SECTION. Sec. 122. A new section is added to chapter 9.94A RCW to read as follows:

Three months before, the anticipated release from total confinement of a person convicted of a sex offense as defined in RCW 9.94A.030 that was committed between June 30, 1984, and July 1, 1988, the department shall notify in writing the prosecuting attorney of the county where the person was convicted. The department shall inform the prosecutor of the following:

- (1) The person's name, identifying factors, anticipated future residence, and offense history;
- (2) A brief narrative describing the person's conduct during confinement and any treatment received; and
- (3) Whether the department recommends that a civil commitment petition be filed under section 1003 of this act.

The department, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

[*23] NEW SECTION. Sec. 123. A new section is added to chapter 9.94A RCW to read as follows:

The department, its employees, and officials, shall be immune from liability for release of information regarding sex offenders that complies with section 117 of this act.

[*24] NEW SECTION. Sec. 124. A new section is added to chapter 9.94A RCW to read as follows:

In addition to any other information required to be released under other provisions of this chapter, the department may, pursuant to section 117 of this act, release information concerning convicted sex offenders confined to the department of corrections.

[*25] Sec. 125. Section 9, chapter 155, Laws of 1979 as last amended by section 8, chapter 150, Laws of 1987 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 [D> and <D][A> , <A] RCW 13.50.010[A> , AND SECTIONS 101 AND 117 OF THIS 1990 ACT <A].

(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) [A> EXCEPT AS PROVIDED IN SECTION 117 OF THIS 1990 ACT, I <A]nformation 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 shall be released upon request 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 shall be released upon request 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, subject to subsection (24)

of this section, 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, subject to subsection (24) of this section, 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) and subsection (24) of this section.

(15) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any conviction for any adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW for any juvenile adjudication of guilt for a class A offense [A> OR A SEX OFFENSE AS DEFINED IN RCW 9.94A.030 <A].

(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, subject to subsection (24) of this section, 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, subject to subsection (24) of this section, 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, subject to subsection (24) of this section, 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 subsection (24) of this section and 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.

(24) No identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

[*26] Sec. 126. Section 15, chapter 133, Laws of 1955 and RCW 9.95.140 are each amended to read as follows:

The board of prison terms and paroles shall cause a complete record to be kept of every prisoner released on parole. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. The board may make rules as to the privacy of such records and their use by others than the board and its staff. [A> IN DETERMINING THE RULES REGARDING DISSEMINATION OF INFORMATION REGARDING CONVICTED SEX OFFENDERS UNDER THE BOARD'S JURISDICTION, THE BOARD SHALL CONSIDER THE PROVISIONS OF SECTIONS 116 AND 117 OF THIS 1990 ACT AND SHALL BE IMMUNE FROM LIABILITY FOR THE RELEASE OF INFORMATION CONCERNING SEX OFFENDERS AS

The superintendent of the penitentiary and the reformatory and all officers and employees thereof and all other public officials shall at all times cooperate with the board and furnish to the board, its officers, and employees such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the board, its officers, and employees free access to all prisoners confined in the penal institutions of the state.

[*27] NEW SECTION. Sec. 127. A new section is added to chapter 9.95 RCW to read as follows:

In addition to any other information required to be released under this chapter, the indeterminate sentence review board may, pursuant to section 117 of this act, release information concerning inmates under the jurisdiction of the indeterminate sentence review board who are convicted of sex offenses as defined in RCW 9.94A.030.

[*28] Sec. 128. Section 3, chapter 314, Laws of 1977 ex. sess. as last amended by section 1, chapter 36, Laws of 1979 ex. sess. and RCW 10.97.030 are each amended to read as follows:

For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, [D> other than juveniles, <D] consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including sentences, correctional supervision, and release. The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130 as now existing or hereafter amended;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330 as now existing or hereafter amended;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject means any disposition of charges, except a decision not to prosecute, a dismissal, or acquittal [A] EXCEPT WHEN THE ACQUITTAL IS DUE TO A FINDING OF NOT GUILTY BY REASON OF INSANITY PURSUANT TO CHAPTER 10.77 RCW AND THE PERSON WAS COMMITTED PURSUANT TO CHAPTER 10.77 RCW [A]: PROVIDED, HOWEVER, That a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination.

[*29] Sec. 129. Section 5, chapter 314, Laws of 1977 ex. sess. and RCW 10.97.050 are each amended to read as follows:

(1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

- (a) An indication of to whom (agency or person) criminal history record information was disseminated;
- (b) The date on which the information was disseminated;
- (c) The individual to whom the information relates; and
- (d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

[A> (8) IN ADDITION TO THE OTHER PROVISIONS IN THIS SECTION ALLOWING DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION, SECTION 117 OF THIS 1990 ACT GOVERNS DISSEMINATION OF INFORMATION CONCERNING OFFENDERS WHO COMMIT SEX OFFENSES AS DEFINED BY RCW 9.94A.030. CRIMINAL JUSTICE AGENCIES, THEIR EMPLOYEES, AND OFFICIALS SHALL BE IMMUNE FROM CIVIL LIABILITY FOR

DISSEMINATION ON CRIMINAL HISTORY RECORD INFORMATION CONCERNING SEX OFFENDERS AS PROVIDED IN SECTION 117 OF THIS 1990 ACT. <A]

[*30] Sec. 130. Section 10, chapter 316, Laws of 1977 ex. sess. and RCW 70.48.100 are each amended to read as follows:

(1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) [A> EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION T <A]he records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted; or

(d) Upon the written permission of the person.

[A> (3) (A) LAW ENFORCEMENT MAY USE BOOKING PHOTOGRAPHS OF A PERSON ARRESTED OR CONFINED IN A LOCAL OR STATE PENAL INSTITUTION TO ASSIST THEM IN CONDUCTING INVESTIGATIONS OF CRIMES. <A]

[A> (B) PHOTOGRAPHS AND INFORMATION CONCERNING A PERSON CONVICTED OF A SEX OFFENSE AS DEFINED IN RCW 9.94A.030 MAY BE DISSEMINATED AS PROVIDED IN SECTIONS 401 THROUGH 409 AND 117 OF THIS 1990 ACT. <A]

[*31] Sec. 131. Section 14, chapter 152, Laws of 1972 ex. sess. as amended by section 108, chapter 3, Laws of 1983 and RCW 43.43.765 are each amended to read as follows:

The principal officers of the jails, correctional institutions, state mental institutions and all places of detention to which a person is committed under chapter 10.77 RCW [D> or <D] [A> , <A] chapter 71.06 RCW[A> , OR SECTIONS 1001 THROUGH 1012 OF THIS 1990 ACT <A] for treatment or under a sentence of imprisonment for any crime as provided for in RCW 43.43.735 shall within seventy-two hours, report to the section, any interinstitutional transfer, release or change of release status of any person held in custody pursuant to the rules promulgated by the chief.

The principal officers of all state mental institutions to which a person has been committed under chapter 10.77 RCW [D> or <D][A> , <A] chapter 71.06 RCW[A> , OR SECTIONS 1001 THROUGH 1012 OF THIS 1990 ACT <A] shall keep a record of the photographs, description, fingerprints, and other identification data as may be obtainable from the appropriate criminal justice agency.

PART II

EARNED EARLY RELEASE

[*32] Sec. 201. Section 1, chapter 248, Laws of 1989 and RCW 9.92.151 are each amended to read as follows:

The sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the [D] facility [A] CORRECTIONAL AGENCY HAVING JURISDICTION [A]. The earned early release time shall be for good behavior and good performance as determined by the [D] facility [A] CORRECTIONAL AGENCY HAVING JURISDICTION. ANY PROGRAM ESTABLISHED PURSUANT TO THIS SECTION SHALL ALLOW AN OFFENDER TO EARN EARLY RELEASE CREDITS FOR PRESENTENCE INCARCERATION. THE CORRECTIONAL AGENCY SHALL NOT CREDIT THE OFFENDER WITH EARNED EARLY RELEASE CREDITS IN ADVANCE OF THE OFFENDER ACTUALLY EARNING THE CREDITS. IN THE CASE OF AN OFFENDER CONVICTED OF A SERIOUS VIOLENT OFFENSE OR A SEX OFFENSE THAT IS A CLASS A FELONY COMMITTED ON OR AFTER JULY 1, 1990, THE AGGREGATE EARNED EARLY RELEASE TIME MAY NOT EXCEED FIFTEEN PERCENT OF THE SENTENCE [A]. In no [A] OTHER [A] case may the aggregate earned early release time exceed one-third of the total sentence.

[*33] Sec. 202. Section 2, chapter 248, Laws of 1989 and RCW 9.94A.150 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter [A] AND COMMITTED TO THE CUSTODY OF THE DEPARTMENT [A] shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except [D] for persons convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW [D] [A] AS OTHERWISE PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION [A], the term [D] s [D] of the sentence of an offender committed to a [D] county jail facility, or a [D] correctional facility operated by the department, may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the correctional [D] facility [D] [A] AGENCY HAVING JURISDICTION [A] in which the offender is confined. The earned early release time shall be for good behavior and good performance, as determined by the correctional [D] facility [D] [A] AGENCY HAVING JURISDICTION. THE CORRECTIONAL AGENCY SHALL NOT CREDIT THE OFFENDER WITH EARNED EARLY RELEASE CREDITS IN ADVANCE OF THE OFFENDER ACTUALLY EARNING THE CREDITS [A]. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department of corrections, the county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned early release time. [A] IN THE CASE OF AN OFFENDER CONVICTED OF A SERIOUS VIOLENT OFFENSE OR A SEX OFFENSE THAT IS A CLASS A FELONY COMMITTED ON OR AFTER JULY 1, 1990, THE AGGREGATE EARNED EARLY RELEASE TIME MAY NOT EXCEED FIFTEEN PERCENT OF THE SENTENCE. [A] In no [A] OTHER [A] case shall the aggregate earned early release time exceed one-third of the total sentence [D] . Persons convicted of a sex offense or an offense categorized as a serious [D] [D] violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW may become eligible for community custody in lieu of earned early release time in accordance with the program developed by the department [D];

(2) [D] When [D] A person convicted of a sex offense or an offense offense categorized as a

serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW [D] is [A] eligible [A] , IN ACCORDANCE WITH A PROGRAM DEVELOPED BY THE DEPARTMENT, [A] for transfer to community custody status in lieu of earned early release time pursuant to subsection (1) of this section [D] , as computed by the department of corrections, the offender shall be transferred to community custody. [A] ; [A]

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(5) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing him or herself in the community;

(6) The governor may pardon any offender;

(7) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

(8) An offender may leave a correctional facility prior to completion of his sentence if the sentence has been reduced as provided in RCW 9.94A.160.

[*34] Sec. 203. Section 17, chapter 232, Laws of 1979 ex. sess. as last amended by section 3, chapter 248, Laws of 1989 and RCW 70.48.210 are each amended to read as follows:

(1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or

her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) The prisoner's sentence may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The earned early release time shall be for good behavior and good performance as determined by the facility. [A> THE FACILITY SHALL NOT CREDIT THE OFFENDER WITH EARNED EARLY RELEASE CREDITS IN ADVANCE OF THE OFFENDER ACTUALLY EARNING THE CREDITS. IN THE CASE OF AN OFFENDER CONVICTED OF A SERIOUS VIOLENT OFFENSE OR A SEX OFFENSE THAT IS A CLASS A FELONY COMMITTED ON OR AFTER JULY 1, 1990, THE AGGREGATE EARNED EARLY RELEASE TIME MAY NOT EXCEED FIFTEEN PERCENT OF THE SENTENCE. <A] In no [A> OTHER <A] case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay.

PART III

JUVENILE JUSTICE ACT AMENDMENTS

[*35] Sec. 301. Section 56, chapter 291, Laws of 1977 ex. sess. as last amended by section 1, chapter 407, Laws of 1989 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 [D> or rape in the second degree <D]; or

(c) Assault in the second degree, extortion in the first degree, child molestation in the [D> first or <D] second degree, [D> rape of a child in the second degree, <D] kidnapping in the second degree, robbery in the second degree, [A> RESIDENTIAL BURGLARY, <A] or burglary 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 [A> TWO YEARS FOR A SEX OFFENSE AS DEFINED BY RCW 9.94A.030 AND UP TO <A] one year [A> FOR OTHER OFFENSES <A] 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 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 except manslaughter in the second degree 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; [D] rape in the second degree; [D] assault in the second degree; extortion in the first degree; indecent liberties; kidnapping in the second degree; robbery in the second degree; burglary in the second degree; [D] rape of a child in the second degree [D] [A] RESIDENTIAL BURGLARY [A]; vehicular homicide; [D] child molestation in the first degree; [D] 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, [D] and [D] lost wages resulting from physical injury[A] , AND COSTS OF THE VICTIM'S COUNSELING REASONABLY

RELATED TO THE OFFENSE IF THE OFFENSE IS A SEX OFFENSE <A>. 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) [A> "SEX OFFENSE" MEANS AN OFFENSE DEFINED AS A SEX OFFENSE IN RCW 9.94A.030; <A]

[A> (21) "SEXUAL MOTIVATION" MEANS THE RESPONDENT COMMITTED THE OFFENSE FOR THE PURPOSE OF HIS OR HER SEXUAL GRATIFICATION; <A]

[A> (22) <A] "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;

[D> (21) <D] [A> (23) <A] "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.

[*36] Sec. 302. Section 70, chapter 291, Laws of 1977 ex. sess. as last amended by section 4, chapter 407. Laws of 1989 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, as indicated in option A of schedule D-3, RCW 13.40.0357 [A> EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION <A].

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, as indicated in option B of schedule D-3, RCW 13.40.0357. 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[D> (5) <D] [A> (2) <A], 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 as indicated in option A or option B of schedule D-1, RCW 13.40.0357 [A> EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION <A]. If the court determines that a disposition of community supervision would effectuate a manifest injustice the court may impose another disposition under option C of schedule D-1. RCW 13.40.0357. [A> EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, A <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[D] (5) [A] (2) [A], 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] Any [A] EXCEPT FOR [A] disposition [D] other than [D] [A] OF [A] community supervision [A] OR A DISPOSITION IMPOSED PURSUANT TO SUBSECTION (5) OF THIS SECTION, A DISPOSITION [A] 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 [A] OR A DISPOSITION IMPOSED PURSUANT TO SUBSECTION (5) OF THIS SECTION [A] 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, as indicated in option A of schedule D-2, RCW 13.40.0357 [A] EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION [A]: 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, as indicated in option B of schedule D-2, RCW 13.40.0357 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 [D] (5) [A] (2) [A], 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) [A] WHEN A SERIOUS, MIDDLE, OR MINOR FIRST OFFENDER IS FOUND TO HAVE COMMITTED A SEX OFFENSE, OTHER THAN A SEX OFFENSE THAT IS ALSO A SERIOUS VIOLENT OFFENSE AS DEFINED BY RCW 9.94A.030, AND HAS NO HISTORY OF A PRIOR SEX OFFENSE, THE COURT, ON ITS OWN MOTION OR THE MOTION OF THE STATE OR THE RESPONDENT, MAY ORDER AN EXAMINATION TO DETERMINE WHETHER THE RESPONDENT IS AMENABLE TO TREATMENT. [A]

[A] THE REPORT OF THE EXAMINATION SHALL INCLUDE AT A MINIMUM THE FOLLOWING: THE RESPONDENT'S VERSION OF THE FACTS AND THE OFFICIAL VERSION OF THE FACTS, THE RESPONDENT'S OFFENSE HISTORY, AN ASSESSMENT OF PROBLEMS IN ADDITION TO ALLEGED DEVIANT BEHAVIORS, THE RESPONDENT'S SOCIAL, EDUCATIONAL, AND EMPLOYMENT SITUATION, AND OTHER EVALUATION MEASURES USED. THE REPORT SHALL SET FORTH THE SOURCES OF THE EVALUATOR'S INFORMATION. [A]

[A> THE EXAMINER SHALL ASSESS AND REPORT REGARDING THE RESPONDENT'S AMENABILITY TO TREATMENT AND RELATIVE RISK TO THE COMMUNITY. A PROPOSED TREATMENT PLAN SHALL BE PROVIDED AND SHALL INCLUDE, AT A MINIMUM: <A]

[A> (A) (I) FREQUENCY AND TYPE OF CONTACT BETWEEN THE OFFENDER AND THERAPIST; <A]

[A> (II) SPECIFIC ISSUES TO BE ADDRESSED IN THE TREATMENT AND DESCRIPTION OF PLANNED TREATMENT MODALITIES; <A]

[A> (III) MONITORING PLANS, INCLUDING ANY REQUIREMENTS REGARDING LIVING CONDITIONS, LIFESTYLE REQUIREMENTS, AND MONITORING BY FAMILY MEMBERS, LEGAL GUARDIANS, OR OTHERS; <A]

[A> (IV) ANTICIPATED LENGTH OF TREATMENT; AND <A]

[A> (V) RECOMMENDED CRIME-RELATED PROHIBITIONS. <A]

[A> THE COURT ON ITS OWN MOTION MAY ORDER, OR ON A MOTION BY THE STATE SHALL ORDER, A SECOND EXAMINATION REGARDING THE OFFENDER'S AMENABILITY TO TREATMENT. THE EVALUATOR SHALL BE SELECTED BY THE PARTY MAKING THE MOTION. THE DEFENDANT SHALL PAY THE COST OF ANY SECOND EXAMINATION ORDERED UNLESS THE COURT FINDS THE DEFENDANT TO BE INDIGENT IN WHICH CASE THE STATE SHALL PAY THE COST. <A]

[A> AFTER RECEIPT OF REPORTS OF THE EXAMINATION, THE COURT SHALL THEN CONSIDER WHETHER THE OFFENDER AND THE COMMUNITY WILL BENEFIT FROM USE OF THIS SPECIAL SEX OFFENDER DISPOSITION ALTERNATIVE AND CONSIDER THE VICTIM'S OPINION WHETHER THE OFFENDER SHOULD RECEIVE A TREATMENT DISPOSITION UNDER THIS SECTION. IF THE COURT DETERMINES THAT THIS SPECIAL SEX OFFENDER DISPOSITION ALTERNATIVE IS APPROPRIATE, THEN THE COURT SHALL IMPOSE A DETERMINATE DISPOSITION WITHIN THE STANDARD RANGE FOR THE OFFENSE, AND THE COURT MAY SUSPEND THE EXECUTION OF THE DISPOSITION AND PLACE THE OFFENDER ON COMMUNITY SUPERVISION FOR UP TO TWO YEARS. AS A CONDITION OF THE SUSPENDED DISPOSITION, THE COURT MAY IMPOSE THE CONDITIONS OF COMMUNITY SUPERVISION AND OTHER CONDITIONS, INCLUDING UP TO THIRTY DAYS OF CONFINEMENT AND REQUIREMENTS THAT THE OFFENDER DO ANY ONE OR MORE OF THE FOLLOWING: <A]

[A> (I) DEVOTE TIME TO A SPECIFIC EDUCATION, EMPLOYMENT, OR OCCUPATION; <A]

[A> (II) UNDERGO AVAILABLE OUTPATIENT SEX OFFENDER TREATMENT FOR UP TO TWO YEARS, OR INPATIENT SEX OFFENDER TREATMENT NOT TO EXCEED THE STANDARD RANGE OF CONFINEMENT FOR THAT OFFENSE. A COMMUNITY MENTAL HEALTH CENTER MAY NOT BE USED FOR SUCH TREATMENT UNLESS IT HAS AN APPROPRIATE PROGRAM DESIGNED FOR SEX OFFENDER TREATMENT. THE RESPONDENT SHALL NOT CHANGE SEX OFFENDER TREATMENT PROVIDERS OR TREATMENT CONDITIONS WITHOUT FIRST NOTIFYING THE PROSECUTOR, THE PROBATION COUNSELOR, AND THE COURT, AND SHALL NOT CHANGE PROVIDERS WITHOUT COURT APPROVAL AFTER A HEARING IF THE PROSECUTOR OR PROBATION COUNSELOR OBJECT TO THE CHANGE; <A]

[A> (III) REMAIN WITHIN PRESCRIBED GEOGRAPHICAL BOUNDARIES AND NOTIFY THE COURT OR THE PROBATION COUNSELOR PRIOR TO ANY CHANGE IN THE OFFENDER'S ADDRESS, EDUCATIONAL PROGRAM, OR EMPLOYMENT; <A]

[A> (IV) REPORT TO THE PROSECUTOR AND THE PROBATION COUNSELOR PRIOR TO ANY

CHANGE IN A SEX OFFENDER TREATMENT PROVIDER. THIS CHANGE SHALL HAVE PRIOR APPROVAL BY THE COURT; <A]

[A> (V) REPORT AS DIRECTED TO THE COURT AND A PROBATION COUNSELOR; <A]

[A> (VI) PAY ALL COURT-ORDERED LEGAL FINANCIAL OBLIGATIONS, PERFORM COMMUNITY SERVICE, OR ANY COMBINATION THEREOF; OR <A]

[A> (VII) MAKE RESTITUTION TO THE VICTIM FOR THE COST OF ANY COUNSELING REASONABLY RELATED TO THE OFFENSE. <A]

[A> THE SEX OFFENDER TREATMENT PROVIDER SHALL SUBMIT QUARTERLY REPORTS ON THE RESPONDENT'S PROGRESS IN TREATMENT TO THE COURT AND THE PARTIES. THE REPORTS SHALL REFERENCE THE TREATMENT PLAN AND INCLUDE AT A MINIMUM THE FOLLOWING: DATES OF ATTENDANCE, RESPONDENT'S COMPLIANCE WITH REQUIREMENTS, TREATMENT ACTIVITIES, THE RESPONDENT'S RELATIVE PROGRESS IN TREATMENT, AND ANY OTHER MATERIAL SPECIFIED BY THE COURT AT THE TIME OF THE DISPOSITION. <A]

[A> AT THE TIME OF THE DISPOSITION, THE COURT MAY SET TREATMENT REVIEW HEARINGS AS THE COURT CONSIDERS APPROPRIATE. <A]

[A> AFTER JULY 1, 1991, EXAMINATIONS AND TREATMENT ORDERED PURSUANT TO THIS SUBSECTION SHALL ONLY BE CONDUCTED BY SEX OFFENDER TREATMENT PROVIDERS CERTIFIED BY THE DEPARTMENT OF HEALTH PURSUANT TO SECTIONS 801 THROUGH 809 OF THIS 1990 ACT. <A]

[A> IF THE OFFENDER VIOLATES ANY CONDITION OF THE DISPOSITION OR THE COURT FINDS THAT THE RESPONDENT IS FAILING TO MAKE SATISFACTORY PROGRESS IN TREATMENT, THE COURT MAY REVOKE THE SUSPENSION AND ORDER EXECUTION OF THE SENTENCE. THE COURT SHALL GIVE CREDIT FOR ANY CONFINEMENT TIME PREVIOUSLY SERVED IF THAT CONFINEMENT WAS FOR THE OFFENSE FOR WHICH THE SUSPENSION IS BEING REVOKED. <A]

[A> FOR PURPOSES OF THIS SECTION, "VICTIM" MEANS ANY PERSON WHO HAS SUSTAINED EMOTIONAL, PSYCHOLOGICAL, PHYSICAL, OR FINANCIAL INJURY TO PERSON OR PROPERTY AS A DIRECT RESULT OF THE CRIME CHARGED. "VICTIM" MAY ALSO INCLUDE A KNOWN PARENT OR GUARDIAN OF A VICTIM WHO IS A MINOR CHILD UNLESS THE PARENT OR GUARDIAN IS THE PERPETRATOR OF THE OFFENSE. <A]

[A> (6) <A] 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.

[D> (6) In its dispositional order <D] [A> (7) EXCEPT AS PROVIDED FOR IN SUBSECTION (5) OF THIS SECTION <A], the court shall not suspend or defer the imposition or the execution of the disposition.

[D> (7) <D] [A> (8) <A] 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.

[*37] Sec. 303. Section 65, chapter 291, Laws of 1977 ex. sess. as last amended by section 18, chapter 145, Laws of 1988 and RCW 13.40.110 are each amended to read as follows:

(1) The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for

adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction. Unless waived by the court, the parties, and their counsel, a decline hearing shall be held where:

(a) The respondent is [A] FIFTEEN, [A] sixteen, [A] or seventeen years of age and the information alleges a class A felony or an attempt[A] , SOLICITATION, OR CONSPIRACY [A] to commit a class A felony; or

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, [D] rape of a child in the second degree, [D] child molestation in the [D] first or [D] second degree, kidnapping in the second degree, [D] rape in the second degree, [D] or robbery in the second degree.

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

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

[*38] Sec. 304. Section 75, chapter 291, Laws of 1977 ex. sess. as last amended by section 4, chapter 505, Laws of 1987 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 new 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 recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority 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 at the end of each calendar year if any such early releases have occurred during that year as a result of excessive in-residence population. 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[A> , EXCEPT THAT IN THE CASE OF A JUVENILE SENTENCED FOR RAPE IN THE FIRST OR SECOND DEGREE, RAPE OF A CHILD IN THE FIRST OR SECOND DEGREE, CHILD MOLESTATION IN THE FIRST DEGREE, OR INDECENT LIBERTIES WITH FORCIBLE COMPULSION, THE PERIOD OF PAROLE SHALL BE TWENTY-FOUR MONTHS <A]. [D> Such <D] [A> A <A] parole program [D> shall be <D] [A> IS <A] 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) Under 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.

(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; [D> and <D] (d) [A> EXCEPT AS PROVIDED IN (E) OF THIS SUBSECTION, <A] 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[A> ; AND (E) THE SECRETARY MAY ORDER ANY OF THE CONDITIONS OR MAY RETURN THE OFFENDER TO CONFINEMENT IN AN INSTITUTION FOR THE REMAINDER OF THE SENTENCE RANGE IF THE OFFENSE FOR WHICH THE OFFENDER WAS SENTENCED IS RAPE IN THE FIRST OR SECOND DEGREE, RAPE OF A CHILD IN THE FIRST OR SECOND DEGREE, CHILD MOLESTATION IN THE FIRST DEGREE, INDECENT LIBERTIES WITH FORCIBLE COMPULSION, OR A SEX OFFENSE THAT IS ALSO A SERIOUS VIOLENT OFFENSE AS DEFINED BY RCW 9.94A.030 <A].

(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.

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

[*39] NEW SECTION. Sec. 305. A new section is added to chapter 74.13 RCW to read as follows:

(1) For the purposes of funds appropriated for the treatment of at-risk juvenile sex offenders, "at-risk juvenile sex offenders" means those juveniles in the care and custody of the state who:

(a) Have been abused; and

(b) Have committed a sexually aggressive or other violent act that is sexual in nature; or

(c) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by

RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) In expending these funds, the department of social and health services shall establish in each region a case review committee to review all cases for which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

- (a) The age of the juvenile;
- (b) The extent and type of abuse to which the juvenile has been subjected;
- (c) The juvenile's past conduct;
- (d) The benefits that can be expected from the treatment; and
- (e) The cost of the treatment.

PART IV

REGISTRATION OF SEX OFFENDERS

[*40] NEW SECTION. Sec. 401. The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in section 402 of this act.

[*41] NEW SECTION. Sec. 402. A new section is added to chapter 9A.44 RCW to read as follows:

- (1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence.
- (2) The person shall, within forty-five days of establishing residence in Washington, or if a current resident within thirty days of release from confinement, if any, provide the county sheriff with the following information: (a) Name; (b) address; (c) place of employment; (d) crime for which convicted; (e) date and place of conviction; (f) aliases used; and (g) social security number.
- (3) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.
- (4) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.
- (5) "Sex offense" for the purpose of sections 402 through 406 of this act means any offense defined as a sex offense by RCW 9.94A.030:

(a) Committed on or after the effective date of this section; or

(b) Committed prior to the effective date of this section if the person, as a result of the offense, is under the custody or active supervision of the department of corrections or the department of social and health services on or after the effective date of this section.

(6) A person who knowingly fails to register as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

[*42] NEW SECTION. Sec. 403. A new section is added to chapter 43.43 RCW to read as follows:

The county sheriff shall forward the information and fingerprints obtained pursuant to section 402 of this act to the Washington state patrol within five working days. The state patrol shall maintain a central registry of sex offenders required to register under section 402 of this act and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of sections 402 through 408 of this act. The Washington state patrol shall reimburse the counties for the costs of processing the sex offender registration, including taking the fingerprints and the photographs.

[*43] NEW SECTION. Sec. 404. A new section is added to chapter 10.01 RCW to read as follows:

The court shall provide written notification to any defendant charged with a sex offense of the registration requirements of section 402 of this act. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant.

[*44] NEW SECTION. Sec. 405. A new section is added to chapter 72.09 RCW to read as follows:

(1) The department shall provide written notification to an inmate convicted of a sex offense of the registration requirements of section 402 of this act at the time of the inmate's release from confinement and shall receive and retain a signed acknowledgement of receipt.

(2) The department shall provide written notification to an individual convicted of a sex offense from another state of the registration requirements of section 402 of this act at the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270.

[*45] NEW SECTION. Sec. 406. A new section is added to chapter 70.48 RCW to read as follows:

A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a sexual offense as defined in RCW 9.94A.030 of the registration requirements of section 402 of this act at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification.

[*46] NEW SECTION. Sec. 407. A new section is added to chapter 46.20 RCW to read as follows:

The department, at the time a person renews his or her driver's license or identicard, or

surrenders a driver's license from another jurisdiction pursuant to RCW 46.20.021 and makes an application for a driver's license or an identicaid, shall provide the applicant with written information on the registration requirements of section 402 of this act.

[*47] NEW SECTION. Sec. 408. A new section is added to chapter 9A.44 RCW to read as follows:

(1) The duty to register under section 402 of this act shall end:

(a) For a person convicted of a class A felony: Such person may only be relieved of the duty to register under subsection (2) of this section.

(b) For a person convicted of a class B felony: Fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) Any person having a duty to register under section 402 of this act may petition the superior court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects his or her to the duty to register, or, in the case of convictions in other states, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. The court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of sections 402 through 408 of this act.

(3) Unless relieved of the duty to register pursuant to this section, a violation of section 402 of this act is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

(4) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to section 402 of this act.

[*48] Sec. 409. Section 10, chapter 152, Laws of 1972 ex. sess. as last amended by section 6, chapter 346, Laws of 1985 and RCW 43.43.745 are each amended to read as follows:

(1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740.

(2) Every time the secretary authorizes a furlough as provided for in RCW 72.66.012 the department of corrections shall notify, forty-eight hours prior to the beginning of such furlough, the section that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough

status. In the case of an emergency furlough the forty-eight hour time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough. Upon receipt of furlough information pursuant to the provisions of this subsection the section shall notify the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest attachment of the Washington state patrol in the county wherein the furloughed prisoner shall be residing and such other criminal justice agencies as the section may determine should be so notified.

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense: PROVIDED, That the chief shall promulgate rules pursuant to chapter 34.05 RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the state [A> INDETERMINATE SENTENCE REVIEW <A] board [D> of prison terms and paroles <D], or is discharged from custody on expiration of sentence, the department of corrections shall promptly notify the section that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his release or discharge, and shall additionally notify the section of change in residence or conditions of release or discharge of persons on active parole supervision, and shall notify the section when persons are discharged from active parole supervision.

[D> No city, town, county, or local law enforcement authority or other agency thereof may require that a convicted felon entering, sojourning, visiting, in transit, or residing in such city, town, county, or local area report or make himself known as a convicted felon or make application for and/or carry on his person a felon identification card or other registration document. <D] [A> LOCAL LAW ENFORCEMENT AGENCIES MAY REQUIRE PERSONS CONVICTED OF SEX OFFENSES TO REGISTER PURSUANT TO SECTION 402 OF THIS 1990 ACT. IN ADDITION, N <A]othing [D> herein <D] [A> IN THIS SECTION <A] shall[D> , however, <D] be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense when such information is obtained from a source other than from [D> such requirement <D] [A> REGISTRATION PURSUANT TO SECTION 402 OF THIS 1990 ACT <A] which source may include any officer or other agency or subdivision of the state.

PART V

CRIME VICTIMS' COMPENSATION

[*49] Sec. 501. Section 6, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 1, chapter 98, Laws of 1986 and RCW 7.68.060 are each amended to read as follows:

(1) For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 as now or hereafter amended shall apply: PROVIDED, That no compensation of any kind shall be available under this chapter if:

(a) An application for benefits is not received by the department within one year after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of dependents or beneficiaries accrued; or

(b) The criminal act is not reported by the victim or someone on his [A> OR HER <A] behalf to a local police department or sheriff's office within [D> seventy two hours <D] [A> TWELVE MONTHS <A] of its occurrence or, if it could not reasonably have been reported within that

period, within [D> seventy two hours <D] [A> TWELVE MONTHS <A] of the time when a report could reasonably have been made. [A> IN MAKING DETERMINATIONS AS TO REASONABLE TIME LIMITS, THE DEPARTMENT SHALL GIVE GREATEST WEIGHT TO THE NEEDS OF THE VICTIMS. <A]

(2) This section shall apply only to criminal acts reported after December 31, 1985.

[A> (3) BECAUSE VICTIMS OF CHILDHOOD CRIMINAL ACTS MAY REPRESS CONSCIOUS MEMORY OF SUCH CRIMINAL ACTS FAR BEYOND THE AGE OF EIGHTEEN, THE RIGHTS OF ADULT VICTIMS OF CHILDHOOD CRIMINAL ACTS SHALL ACCRUE AT THE TIME THE VICTIM DISCOVERS OR REASONABLY SHOULD HAVE DISCOVERED THE ELEMENTS OF THE CRIME. IN MAKING DETERMINATIONS AS TO REASONABLE TIME LIMITS, THE DEPARTMENT SHALL GIVE GREATEST WEIGHT TO THE NEEDS OF THE VICTIM. <A]

[*50] Sec. 502. Section 7, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 5, chapter 5, Laws of 1989 1st ex. sess. and RCW 7.68.070 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW as now or hereafter amended except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 as now or hereafter amended are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 as now or hereafter amended are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 as now or hereafter amended are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 as now or hereafter amended shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed the maximum cost used by the department of social and health services for the funeral and burial of a deceased indigent person under chapter 74.08 RCW in any claim: PROVIDED FURTHER, That if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal

act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 as now or hereafter amended for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018 as now or hereafter amended:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 as now or hereafter amended for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 as now or hereafter amended for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 as now or hereafter amended for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 as now or hereafter amended apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 as now or hereafter amended are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than [D> fifteen <D] [A> THIRTY <A] thousand dollars shall be granted as a result of a single injury or death,

except that benefits granted as the result of total permanent disability or death shall not exceed [D> twenty <D] [A> FORTY <A] thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to [D> ten <D] [A> FIFTEEN <A] thousand dollars.

(15) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

(16) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act, except to the extent that the costs for such services exceed service limits established by the department of social and health services.

[*51] Sec. 503. Section 8, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 6, chapter 5, Laws of 1989 1st ex. sess. and RCW 7.68.080 are each amended to read as follows:

The provisions of chapter 51.36 RCW as now or hereafter amended govern the provision of medical aid under this chapter to victims injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, except that:

(1) The provisions contained in RCW 51.36.030, 51.36.040, and 51.36.080 as now or hereafter amended do not apply to this chapter;

(2) The specific provisions of RCW 51.36.020 as now or hereafter amended relating to supplying emergency transportation do not apply: PROVIDED, That[A> : <A]

[A> (A) W <A]hen the injury to any victim is so serious as to require the victim's being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed from the fund established pursuant to RCW 7.68.090[A> ; AND <A]

[A> (B) IN THE CASE OF ALLEGED RAPE OR MOLESTATION OF A CHILD THE REASONABLE COSTS OF A COLPOSCOPE EXAMINATION SHALL BE REIMBURSED FROM THE FUND PURSUANT TO RCW 7.68.090 <A]. Hospital, clinic, and medical charges along with all related fees under this chapter shall conform to regulations promulgated by the director. The director shall set these service levels and fees at a level no lower than those established by the department of social and health services under Title 74 RCW. In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner. The director shall establish rules adopted in accordance with chapter 34.05 RCW. Nothing in this chapter may be construed to require the payment of interest on any billing, fee, or charge.

[*52] Sec. 504. Section 3, chapter 5, Laws of 1989 1st ex. sess. and RCW 7.68.085 are each amended to read as follows:

The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per [D> victim <D] [A> INJURY OR DEATH. PAYMENT FOR MEDICAL SERVICES IN EXCESS OF THE CAP SHALL BE MADE AVAILABLE TO ANY INNOCENT VICTIM UNDER THE SAME <A] [A> CONDITIONS AS OTHER MEDICAL SERVICES AND IF THE MEDICAL SERVICES ARE: <A]

[A> (1) NECESSARY FOR A PREVIOUSLY ACCEPTED CONDITION; <A]

[A> (2) NECESSARY TO PROTECT THE VICTIM'S LIFE OR PREVENT DETERIORATION OF THE VICTIM'S PREVIOUSLY ACCEPTED CONDITION; AND <A]

[A> (3) NOT AVAILABLE FROM AN ALTERNATIVE SOURCE. <A]

[A> THE DIRECTOR OF FINANCIAL MANAGEMENT AND THE DIRECTOR OF LABOR AND INDUSTRIES SHALL MONITOR EXPENDITURES FROM THE PUBLIC SAFETY AND EDUCATION ACCOUNT. ONCE EACH FISCAL QUARTER, THE DIRECTOR OF FINANCIAL MANAGEMENT SHALL DETERMINE IF EXPENDITURES FROM THE PUBLIC SAFETY AND EDUCATION ACCOUNT DURING THE PRIOR FISCAL QUARTER EXCEEDED ALLOTMENTS BY MORE THAN TEN PERCENT. WITHIN THIRTY DAYS OF A DETERMINATION THAT EXPENDITURES EXCEEDED ALLOTMENTS BY MORE THAN TEN PERCENT, THE DIRECTOR OF FINANCIAL MANAGEMENT SHALL DEVELOP AND IMPLEMENT A PLAN TO REDUCE EXPENDITURES FROM THE ACCOUNT TO A LEVEL THAT DOES NOT EXCEED THE ALLOTMENTS. SUCH A PLAN MAY INCLUDE ACROSS-THE-BOARD REDUCTIONS IN ALLOTMENTS FROM THE ACCOUNT TO ALL NONJUDICIAL AGENCIES EXCEPT FOR THE CRIME VICTIMS COMPENSATION PROGRAM. IN IMPLEMENTING THE PLAN, THE DIRECTOR OF FINANCIAL MANAGEMENT SHALL SEEK THE COOPERATION OF JUDICIAL AGENCIES IN REDUCING THEIR EXPENDITURES FROM THE ACCOUNT. THE DIRECTOR OF FINANCIAL MANAGEMENT SHALL NOTIFY THE LEGISLATIVE FISCAL COMMITTEES PRIOR TO IMPLEMENTATION OF THE PLAN. <A]

[A> DEVELOPMENT AND IMPLEMENTATION OF THE PLAN IS NOT REQUIRED IF THE DIRECTOR OF FINANCIAL MANAGEMENT NOTIFIES THE LEGISLATIVE FISCAL COMMITTEES THAT INCREASES IN THE OFFICIAL REVENUE FORECAST FOR THE PUBLIC SAFETY AND EDUCATION ACCOUNT FOR THAT FISCAL QUARTER WILL ELIMINATE THE NEED TO REDUCE EXPENDITURES FROM THE ACCOUNT. THE OFFICIAL REVENUE FORECAST FOR THE PUBLIC SAFETY AND EDUCATION ACCOUNT SHALL BE PREPARED BY THE ECONOMIC AND REVENUE FORECAST COUNCIL PURSUANT TO RCW 82.01.120 AND 82.01.130. <A]

[A> FOR THE PURPOSES OF THIS SECTION, AN INDIVIDUAL WILL NOT BE REQUIRED TO USE HIS OR HER ASSETS OTHER THAN FUNDS RECOVERED AS A RESULT OF A CIVIL ACTION OR CRIMINAL RESTITUTION, FOR MEDICAL EXPENSES OR PAIN AND SUFFERING, IN ORDER TO QUALIFY FOR AN ALTERNATIVE SOURCE OF PAYMENT <A].

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services.

PART VI

SEXUAL MOTIVATION IN CRIMINAL OFFENSES

[*53] NEW SECTION. Sec. 601. A new section is added to chapter 9.94A RCW to read as follows:

(1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case other than sex offenses as defined in RCW 9.94A.030(29) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at

the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030(29) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

[*54] Sec. 602. Section 2, chapter 252, Laws of 1989 and section 1, chapter 394, Laws of 1989 and RCW 9.94A.030 are each reenacted and amended to read as follows:

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

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means [D] a one year [D] [A] THAT [A] period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order, of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12) (a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" [A> SHALL ALWAYS INCLUDE JUVENILE CONVICTIONS FOR SEX OFFENSES AND SHALL ALSO <A] includes a defendant's [A> OTHER <A] prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a

felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to comply with any limitations on the inmate's movements while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20) (a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction [A> EXCEPT FOR ADJUDICATIONS OF SEX OFFENSES <A].

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention has been ordered by the court, in the residence of either the defendant or a member of the defendant's immediate family, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; [D> or <D]

(b) [A> A FELONY WITH A FINDING OF SEXUAL MOTIVATION UNDER SECTION 601 OF THIS 1990 ACT; OR <A]

[A> (C) <A] Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(30) [A> "SEXUAL MOTIVATION" MEANS THAT ONE OF THE PURPOSES FOR WHICH THE DEFENDANT COMMITTED THE CRIME WAS FOR THE PURPOSE OF HIS OR HER SEXUAL GRATIFICATION. <A]

[A> (31) <A] "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

[D> (31) <D] [A> (32) <A] "Victim" means any person who has sustained [A> EMOTIONAL, PSYCHOLOGICAL, <A] physical[A> , <A] or financial injury to person or property as a direct result of the crime charged.

[D> (32) <D] [A> (33) <A] "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, [D> child molestation in the first degree, rape in the second degree, <D] kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the

operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

[D> (33) <D] [A> (34) <A] "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

[D> (34) <D] [A> (35) <A] "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program. Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 [A> OR RESIDENTIAL BURGLARY <A] conditioned upon the offender: (a) Successfully completing twenty-one days in a work release program, (b) having no convictions for burglary in the second degree [A> OR RESIDENTIAL BURGLARY <A] during the preceding two years and not more than two prior convictions for burglary [A> OR RESIDENTIAL BURGLARY <A], (c) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (d) having no prior charges of escape, and (e) fulfilling the other conditions of the home detention program. Participation in a home detention program shall be conditioned upon: (a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (b) abiding by the rules of the home detention program, and (c) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

[*55] Sec. 603. Section 10, chapter 115, Laws of 1983 as last amended by section 1, chapter 408, Laws of 1989 and RCW 9.94A.390 are each amended to read as follows:

If the sentencing court finds that an exceptional sentence outside the standard range should be imposed in accordance with RCW 9.94A.120(2), the sentence is subject to review only as provided for in RCW 9.94A.210(4).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(1) Mitigating Circumstances

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law, was significantly impaired (voluntary use of drugs or alcohol is excluded).

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(c) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(d) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so; or

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or

(iii) The current offense involved the manufacture of controlled substances for use by other parties; or

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or

(v) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional); or

(e) [A> THE CURRENT OFFENSE INCLUDED A FINDING OF SEXUAL MOTIVATION PURSUANT TO SECTION 601 OF THIS 1990 ACT; <A]

[A> (F) <A] The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time; or

[D> (f) <D] [A> (G) <A] The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

[*56] NEW SECTION. Sec. 604. A new section is added to chapter 13.40 RCW to read as follows:

(1) The prosecuting attorney shall file a special allegation of sexual motivation in every juvenile offense other than sex offenses as defined in RCW 9.94A.030(29) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably consistent defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a juvenile case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the juvenile committed the offense with a sexual motivation. The court shall make a finding of fact of whether or not the sexual motivation was present at the time of the commission of the offense. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030(29) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of "sexual motivation" without approval of the court through an order of dismissal. The court shall not dismiss the special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

[*57] Sec. 605. Section 69; chapter 291, Laws of 1977 ex. sess. as last amended by section 12, chapter 299, Laws of 1981 and RCW 13.40.150 are each amended to read as follows:

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

(2) For purposes of disposition:

(a) Violations which are current offenses count as misdemeanors;

(b) Violations may not count as part of the offender's criminal history;

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

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

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

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

(c) Consider any predisposition reports;

(d) Afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf;

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

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

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

(h) Consider whether or not any of the following mitigating factors exist;

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

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

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

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

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

(i) Consider whether or not any of the following aggravating factors exist;

- (i) In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;
- (ii) The offense was committed in an especially heinous, cruel, or depraved manner;
- (iii) The victim or victims were particularly vulnerable;
- (iv) The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;
- (v) [A> THE CURRENT OFFENSE INCLUDED A FINDING OF SEXUAL MOTIVATION PURSUANT TO SECTION 601 OF THIS 1990 ACT; <A]

[A> (VI) <A] The respondent was the leader of a criminal enterprise involving several persons; and

[D> (vi) <D] [A> (VI) <A] There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history.

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

- (a) The sex of the respondent;
- (b) The race or color of the respondent or the respondent's family;
- (c) The creed or religion of the respondent or the respondent's family;
- (d) The economic or social class of the respondent or the respondent's family; and
- (e) Factors indicating that the respondent may be or is a dependent child within the meaning of this chapter.

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

[*58] NEW SECTION. Sec. 606. (1) Sections 601 through 605 of this act, for purposes of sentencing adult or juvenile offenders, shall take effect July 1, 1990, and shall apply to crimes or offenses committed on or after July 1, 1990.

(2) For purposes of defining a "sexually violent offense" pursuant to section 1002(4) of this act, sections 601 through 605 of this act shall take effect July 1, 1990, and shall apply to crimes committed on, before, or after July 1, 1990.

PART VII

CRIMINAL SENTENCING

[*59] Sec. 701. Section 2, chapter 115, Laws of 1983 as last amended by section 1, chapter 124, Laws of 1989 and by section 101, chapter 271, Laws of 1989 and RCW 9.94A.310 are each reenacted and amended to read as follows: >100> >101>

TABLE 1

Sentencing Grid

**SERIOUSNESS
SCORE**

OFFENDER SCORE

	0	1	2	3
[D> XIV <D]				
[A> XV <A]				
[D> XIII <D]				
[A> XIV <A]	23y4m	24y4m	25y4m	26y4m
	240-	250-	261-	271-
	320	333	347	361
[D> XII <D]				
[A> XIII <A]	12y	13y	14y	15y
	123-	134-	144-	154-
	164	178	192	205
[D> XI	6y	6y9m	7y6m	8y3m
	62	69	77	85
	82	92	102	113 <D]
[A> XII	9Y	9Y11M	10Y9M	11Y8M
	93-	102-	111-	120-
	123	136	147	160
XI	7Y6M	8Y4M	9Y2M	9Y11M
	78-	86-	95-	102-
	102	114	125	136 <A]
X	5y	5y6m	6y	6y6m
	51-	57-	62-	67-
	68	75	82	89
IX	3y	3y6m	4y	4y6m
	31-	36-	41-	46-
	41	48	54	61
VIII	2y	2y6m	3y	3y6m
	21-	26-	31-	36-
	27	34	41	48
VII	18m	2y	2y6m	3y
	15-	21-	26-	31-
	20	27	34	41
VI	13m	18m	2y	2y6m
	12+-	15-	21-	26-
	14	20	27	34
V	9m	13m	15m	18m
	6-	12+-	13-	15-
	12	14	17	20
IV	6m	9m	13m	15m
	3-	6-	12+-	13-
	9	12	14	17
III	2m	5m	8m	11m
	1-	3-	4-	9-
	3	8	12	12
II		4m	6m	8m

	0-90	2-	3-	4-
	Days	6	9	12
I			3m	4m
	0-60	0-90	2-	2-
	Days	Days	5	6

**SERIOUSNESS
SCORE**

OFFENDER SCORE

	4	5	6
[D> XIV <D]			
[A> XV <A]	Life Sentence without Parole/Death Penalty		
[D> XIII <D]			
[A> XIV <A]	27y4m	28y4m	30y4m
	281-	291-	312-
	374	388	416
[D> XII <D]			
[A> XIII <A]	16y	17y	19y
	165-	175-	195-
	219	233	260
[D> XI	9y	9y9m	12y6m
	93	100	129
	123	133	171 <D]
[A> XII	12Y6M	13Y5M	15Y9M
	129-	138-	162-
	171	184	216
XI	10Y9M	11Y7M	14Y2M
	111-	120-	146-
	147	158	194 <A]
X	7y	7y6m	9y6m
	72-	77-	98-
	96	102	130
IX	5y	5y6m	7y6m
	51-	57-	77-
	68	75	102
VIII	4y	4y6m	6y6m
	41-	46-	67-
	54	61	89
VII	3y6m	4y	5y6m
	36-	41-	57-
	48	54	75
VI	3y	3y6m	4y6m
	31-	36-	46-
	41	48	61
V	2y2m	3y2m	4y
	22-	33-	41-

	29	43	54
IV	18m	2y2m	3y2m
	15-	22-	33-
	20	29	43
III	14m	20m	2y2m
	12+-	17-	22-
	16	22	29
II	13m	16m	20m
	12+-	14-	17-
	14	18	22
I	5m	8m	13m
	3-	4-	12+-
	8	12	14

**SERIOUSNESS
SCORE**

OFFENDER SCORE

	7	8	9 or more
[D> XIV <D]			
[A> XV <A]	Life Sentence without Parole/Death Penalty		
[D> XIII <D]			
[A> XIV <A]	32y10m	36y	40y
	338-	370-	411-
	450	493	548
[D> XII <D]			
[A> XIII <A]	21y	25y	29y
	216-	257-	298-
	288	342	397
[D> XI	13y6m	15y6m	17y6m
	139	159	180
	185	212	240 <D]
[A> XII	17Y3M	20Y3M	23Y3M
	178-	209-	240-
	236	277	318
XI	15Y5M	17Y11M	20Y5M
	159-	185-	210-
	211	245	280 <A]
X	10y6m	12y6m	14y6m
	108-	129-	149-
	144	171	198
IX	8y6m	10y6m	12y6m
	87-	108-	129-
	116	144	171
VIII	7y6m	8y6m	10y6m
	77-	87-	108-

	102	116	144
VII	6y6m	7y6m	8y6m
	67-	77-	87-
	89	102	116
VI	5y6m	6y6m	7y6m
	57-	67-	77-
	75	89	102
V	5y	6y	7y
	51-	62-	72-
	68	82	96
IV	4y2m	5y2m	6y2m
	43-	53-	63-
	57	70	84
III	3y2m	4y2m	5y
	33-	43-	51-
	43	57	68
II	2y2m	3y2m	4y2m
	22-	33-	43-
	29	43	57
I	16m	20m	2y2m
	14-	17-	22-
	18	22	29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) The following additional times shall be added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon as defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice was armed with a deadly weapon and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following times shall be added to the presumptive range determined under subsection (2) of this section:

(a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

(b) 18 months for Burglary 1 (RCW 9A.52.020)

(c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

(4) The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following times shall be added to the presumptive sentence range determined under subsection (2) of this section:

- (a) Eighteen months for offenses committed under RCW 69.50.401(a)(1)(i);
- (b) Fifteen months for offenses committed under RCW 69.50.401(a)(1)(ii), (iii), and (iv);
- (c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(5) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

[*60] Sec. 702. Section 1, chapter 99, Laws of 1989, section 102, chapter 271, Laws of 1989, section 1, chapter 405, Laws of 1989, section 3, chapter 412, Laws of 1989, section 3, chapter 1, Laws of 1989 2nd ex. sess. and RCW 9.94A.320 are each reenacted and amended to read as follows:

**TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

[D> XIV <D]	
[A> XV <A]	Aggravated Murder 1 (RCW 10.95.020)
[D> XIII <D]	
[A> XIV <A]	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
[D> XII <D]	
[A> XIII <A]	Murder 2 (RCW 9A.32.050)
[D> XI <D]	
[A> XII <A]	Assault 1 (RCW 9A.36.011)
[A> XI	RAPE 1 (RCW 9A.44.040) <A]
	[A> RAPE OF A CHILD 1 (RCW 9A.44.073) <A]
X	Kidnapping 1 (RCW 9A.40.020)
	[D> Rape 1 (RCW 9A.44.010)
	Rape of a Child 1 (RCW 9A.44.073) <D]
	[A> RAPE 2 (RCW 9A.44.050)
	RAPE OF A CHILD 2 (RCW 9A.44.076)
	CHILD MOLESTATION 1 (RCW 9A.44.083) <A]
	Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))

IX

Over 18 and deliver heroin or narcotic from
Schedule I or
II to someone under 18 (RCW 69.50.406)
Leading Organized Crime (RCW 9A.82.060(1)(a))
Robbery 1 (RCW 9A.56.200)
Manslaughter 1 (RCW 9A.32.060)
Explosive devices prohibited (RCW 70.74.180)
[A> INDECENT LIBERTIES
(WITH FORCIBLE COMPULSION) (RCW
9A.44.100(1)(A)) <A]
Endangering life and property by explosives
with threat to
human being (RCW 70.74.270)
Over 18 and deliver narcotic from Schedule
III, IV, or V or
a nonnarcotic from Schedule I-V to
someone under 18 and 3
years junior (RCW 69.50.406)
Controlled Substance Homicide
(RCW 69.50.415)
Sexual Exploitation[D> Under 16 <D]
(RCW 9.68A.040[D> (2)(a) <D])
Inciting Criminal Profiteering
(RCW 9A.82.060(1)(b))

VIII

Arson 1 (RCW 9A.48.020)
[D> Rape 2 (RCW 9A.44.050) <D]
[D> Rape of a Child 2 (RCW 9A.44.076)
Child Molestation 1 (RCW 9A.44.083) <D]
Promoting Prostitution 1 (RCW 9A.88.070)
Selling heroin for profit (RCW 69.50.410)
Manufacture, deliver, or possess with
intent to deliver
heroin or cocaine (RCW 69.50.401(a)(1)(i))
Manufacture, deliver, or possess with
intent to deliver
methamphetamine (RCW 69.50.401(a)(1)(ii))
Vehicular Homicide, by being under
the influence of
Intoxicating liquor or any drug or by
the operation of
any vehicle in a reckless manner
(RCW 46.61.520)

VII

Burglary 1 (RCW 9A.52.020)
Vehicular Homicide, by disregard for

VI

the safety of others
(RCW 46.61.520)
Introducing Contraband 1 (RCW 9A.76.140)
Indecent Liberties ([D> with <D] [A> WITHOUT <A]
forcible compulsion)
(RCW 9A.44.100(1)[D> (a) <D] [A> (B) AND (C) <A])
[D> Sexual Exploitation, Under 10
(RCW 9.68A.040(2)(b)) <D]
[A> CHILD MOLESTATION 2 (RCW 9A.44.086) <A]
Dealing in depictions of minor engaged in
sexually explicit
conduct (RCW 9.68A.050)
Sending, bringing into state depictions of
minor engaged in
sexually explicit conduct (RCW 9.
68A.060)
Involving a minor in drug dealing
(RCW 69.50.401(f))
Bribery (RCW 9A.68.010)
Manslaughter 2 (RCW 9A.32.070)
[D> Child Molestation 2 (RCW 9A.44.086) <D]
[A> RAPE OF A CHILD 3 (RCW 9A.44.079) <A]
Intimidating a Juror/Witness
(RCW 9A.72.110, 9A.72.130)
Damaging building, etc., by explosion
with no threat to
human being (RCW 70.74.280(2))
Endangering life and property by explosives
with no threat
to human being (RCW 70.74.270)
[D> Indecent Liberties (without forcible
compulsion) (RCW
9A.44.100(1)(b) and (c)) <D]
Incest 1 (RCW 9A.64.020(1))
Selling for profit (controlled or
counterfeit) any
controlled substance (except heroin)
(RCW 69.50.410)
Manufacture, deliver, or possess with
intent to deliver
narcotics from Schedule I or II
(except heroin or
cocaine) (RCW 69.50.401(a)(1)(i))
Intimidating a Judge (RCW 9A.72.160)

V

Bail Jumping with Murder 1

(RCW 9A.76.170(2)(a))

Criminal Mistreatment 1 (RCW 9A.42.020)

Rape 3 (RCW 9A.44.060)

[A> SEXUAL MISCONDUCT WITH A MINOR 1 (RCW 9A.44.093) <A]

[A> CHILD MOLESTATION 3 (RCW 9A.44.089) <A]

Kidnapping 2 (RCW 9A.40.030)

Extortion 1 (RCW 9A.56.120)

Incest 2 (RCW 9A.64.020(2))

Perjury 1 (RCW 9A.72.020)

Extortionate Extension of Credit (RCW 9A.82.020)

Advancing money or property for

extortionate extension of

credit (RCW 9A.82.030)

Extortionate Means to Collect

Extensions of Credit (RCW

9A.82.040)

Rendering Criminal Assistance 1

(RCW 9A.76.070)

Bail Jumping with class A Felony

(RCW 9A.76.170(2)(b))

Delivery of imitations controlled

substance by person

eighteen or over to person

under eighteen (RCW

69.52.030(2))

IV

Residential Burglary (RCW 9A.52.025)

Theft of Livestock 1 (RCW 9A.36.080)

Robbery 2 (RCW 9A.56.210)

Assault 2 (RCW 9A.36.021)

Escape 1 (RCW 9A.76.110)

Arson 2 (RCW 9A.48.030)

[D> Rape of a Child 3 (RCW 9A.44.079) <D]

Bribing a Witness/Bribe Received by

Witness (RCW 9A.72.090,

9A.72.100)

Malicious Harassment (RCW 9A.36.080)

Threats to Bomb (RCW 9.61.160)

Willful Failure to Return from Furlough

(RCW 72.66.060)

Hit and Run -- Injury Accident

(RCW 46.52.020(4))

Vehicular Assault (RCW 46.61.522)

Manufacture, deliver, or possess with

III

intent to deliver
narcotics from Schedule III, IV, or V
or nonnarcotics
from Schedule I-V (except marijuana or
methamphetamines)
(RCW 69.50.401(a)(1)(ii) through (iv))
Influencing Outcome of Sporting Event
(RCW 9A.82.070)
Use of Proceeds of Criminal Profiteering
(RCW 9A.82.080 (1)
and (2))
Knowingly Trafficking in Stolen Property
(RCW 9A.82.050(2))
Criminal mistreatment 2 (RCW 9A.42.030)
[D> Sexual Misconduct with a Minor 1
(RCW 9A.44.093) <D]
[D> Child Molestation 3 (RCW 9A.44.089) <D]
Extortion 2 (RCW 9A.56.130)
Unlawful Imprisonment (RCW 9A.40.040)
Assault 3 (RCW 9A.36.031)
Custodial Assault (RCW 9A.36.100)
Unlawful possession of firearm or pistol
by felon
(RCW
9.41.040)
Harassment (RCW 9A.46.020)
Promoting Prostitution 2 (RCW 9A.88.080)
Willful Failure to Return from Work Release
(RCW 72.65.070)
Burglary 2 (RCW 9A.52.030)
Introducing Contraband 2 (RCW 9A.76.150)
Communication with a Minor for Immoral
Purposes (RCW
9.68A.090)
Patronizing a Juvenile Prostitute
(RCW 9.68A.100)
Escape 2 (RCW 9A.76.120)
Perjury 2 (RCW 9A.72.030)
Bail Jumping with class B or C Felony
(RCW 9A.76.170(2)(c))
Intimidating a Public Servant (RCW 9A.76.180)
Tampering with a Witness (RCW 9A.72.120)
Manufacture, deliver, or possess with
intent to deliver
marijuana (RCW 69.50.401(a)(1)(ii))

II

Delivery of a material in lieu of a
controlled substance
(RCW 69.50.401(c))
Manufacture, distribute, or possess
with intent to
distribute an imitation controlled
substance (RCW
69.52.030(1))
Recklessly Trafficking in Stolen
Property (RCW
9A.82.050(1))
Theft of livestock 2 (RCW 9A.56.080)
Securities Act violation (RCW 21.20.400)
Malicious Mischief 1 (RCW 9A.45.070)
Possession of Stolen Property 1
(RCW 9A.56.150)
Theft 1 (RCW 9A.56.030)
Possession of controlled substance that
is either heroin
or
narcotics from Schedule I or II
(RCW 69.50.401(d))
Possession of phencyclidine (PCP)
(RCW 69.50.401(d))
Create, deliver, or possess a
counterfeit controlled
substance (RCW 69.50.401(b))
Computer Trespass 1 (RCW 9A.52.110)
Reckless Endangerment 1 (RCW 9A.36.045)
Theft 2 (RCW 9A.56.040)
Possession of Stolen Property 2
(RCW 9A.56.160)
Forgery (RCW 9A.60.020)
Taking Motor Vehicle Without Permission
(RCW 9A.56.070)
Vehicle Prowl 1 (RCW 9A.52.095)
Attempting to Elude a Pursuing
Police Vehicle
(RCW
46.61.024)
Malicious Mischief 2 (RCW 9A.48.080)
Reckless Burning 1 (RCW 9A.48.040)
Unlawful Issuance of Checks or Drafts
(RCW 9A.56.060)
Unlawful Use of Food Stamps

I

(RCW 9.91.140 (2) and (3))
False Verification for Welfare
(RCW 74.08.055)
Forged Prescription (RCW 69.41.020)
Forged Prescription for a
Controlled Substance
(RCW
69.50.403)
Possess Controlled Substance that
is a Narcotic
from
Schedule III, IV, or V or Non-narcotic
from Schedule
I-V
(except phencyclidine)
(RCW 69.50.401(d))

[*61] Sec. 703. Section 6, chapter 115, Laws of 1983 and RCW 9.94A.350 are each amended to read as follows:

The offense seriousness level is determined by the offense of conviction. [D> Felony offenses are divided into fourteen levels of seriousness, ranging from low (seriousness level 1) to high (seriousness level XIV see RCW 9.94A.320 (Table 2)). <D]

[*62] Sec. 704. Section 11, chapter 115, Laws of 1983 as last amended by section 24, chapter 143, Laws of 1988 and by section 5, chapter 157, Laws of 1988 and RCW 9.94A.400 are each reenacted and amended to read as follows:

(1) (a) Except

Rev. Code Wash. (ARCW) § 71.05.630

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*** STATUTES CURRENT THROUGH 2004 GENERAL ELECTION (2005 c 2). ***
*** Annotations current through April 5, 2005. ***

TITLE 71. MENTAL ILLNESS
CHAPTER 71.05. MENTAL ILLNESS

◆ **GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY**

Rev. Code Wash. (ARCW) § 71.05.630 (2005)

§ 71.05.630. Treatment records -- Confidential -- Release

(1) Except as otherwise provided by law, all treatment records shall remain confidential. Treatment records may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of an individual may be released without informed written consent in the following circumstances:

(a) To an individual, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the individual whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to individuals employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive an individual who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the individual from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.225, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When an individual is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the individual's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the individual's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental illness or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(3) Whenever federal law or federal regulations restrict the release of information contained

in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

HISTORY: 2000 c 75 § 5; 1989 c 205 § 13.

NOTES:

INTENT -- 2000 C 75: See note following RCW 71.05.445.

CONTINGENT EFFECTIVE DATE -- 1989 C 205 §§ 11-19: See note following RCW 71.05.610.

EFFECT OF AMENDMENTS.

2000 c 75 § 5, effective June 8, 2000, deleted the second sentence in (2)(j), pertaining to notification by the individual's corrections officer of the provisions of this section and added the exception to the third sentence; deleted last sentence of (2)(j)(iv), pertaining to disclosure in cases involving a person under supervision of the department of corrections; deleted (2)(l), pertaining to the officer with custody over a person discharged or transferred from a treatment facility; and redesignated (2)(m) as (2)(l).

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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> **§ 71.05.630. Treatment records -- Confidential -- Release**

Citation: **Wash. Rev. Code sec. 71.05.630**

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN CHARLES ANDERSON,)
)
 Appellant,)
)
 v.)
)
 STATE OF WASHINGTON,)
)
 Respondent.)

No. 31915-2-II

DECLARATION OF MAILING,
SERVICE AND/OR FACSIMILE

I, Jillian Lambing, declare under penalty of perjury under the laws of the State of Washington that on the 1st day of June, 2005, I deposited in the U.S. mail, properly stamped and addressed, or sent by facsimile, or by legal messenger service, or hand delivered a copy of APPELLANT'S OPENING BRIEF to the following:

Krista Kay Bush
Attorney General
900 Fourth Ave Suite 2000
Seattle, WA 98164-1012

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DECLARATION OF MAILING, SERVICE AND/OR FACSIMILE

Judith M. Mandel
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524 Tacoma Ave So
Tacoma, WA 98402

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6 Dated this 1st day of June, 2005 in Tacoma, Washington.
7

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9 _____
10 Jillian Lambing
11 Legal Assistant

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27 DECLARATION OF MAILING, SERVICE AND/OR FACSIMILE

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