

SSB 5746 - S AMD 84

By Senators Hargrove, Stevens

ADOPTED 03/09/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.04.030 and 2005 c 290 s 1 and 2005 c 238 s 1 are
4 each reenacted and amended to read as follows:

5 (1) Except as provided in this section, the juvenile courts in this
6 state shall have exclusive original jurisdiction over all proceedings:

7 (a) Under the interstate compact on placement of children as
8 provided in chapter 26.34 RCW;

9 (b) Relating to children alleged or found to be dependent as
10 provided in chapter 26.44 RCW and in RCW 13.34.030 through
11 (~~(13.34.170)~~) 13.34.161;

12 (c) Relating to the termination of a parent and child relationship
13 as provided in RCW 13.34.180 through 13.34.210;

14 (d) To approve or disapprove out-of-home placement as provided in
15 RCW 13.32A.170;

16 (e) Relating to juveniles alleged or found to have committed
17 offenses, traffic or civil infractions, or violations as provided in
18 RCW 13.40.020 through 13.40.230, unless:

19 (i) The juvenile court transfers jurisdiction of a particular
20 juvenile to adult criminal court pursuant to RCW 13.40.110;

21 (ii) The statute of limitations applicable to adult prosecution for
22 the offense, traffic or civil infraction, or violation has expired;

23 (iii) The alleged offense or infraction is a traffic, fish,
24 boating, or game offense, or traffic or civil infraction committed by
25 a juvenile sixteen years of age or older and would, if committed by an
26 adult, be tried or heard in a court of limited jurisdiction, in which
27 instance the appropriate court of limited jurisdiction shall have
28 jurisdiction over the alleged offense or infraction, and no guardian ad
29 litem is required in any such proceeding due to the juvenile's age(~~(+~~
30 ~~PROVIDED, That~~)). _____ If such an alleged offense or infraction and an

1 alleged offense or infraction subject to juvenile court jurisdiction
2 arise out of the same event or incident, the juvenile court may have
3 jurisdiction of both matters(~~(:—PROVIDED—FURTHER,—That)~~). The
4 jurisdiction under this subsection does not constitute "transfer" or a
5 "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this
6 subsection(~~(:—PROVIDED—FURTHER,—That)~~). Courts of limited
7 jurisdiction which confine juveniles for an alleged offense or
8 infraction may place juveniles in juvenile detention facilities under
9 an agreement with the officials responsible for the administration of
10 the juvenile detention facility in RCW 13.04.035 and 13.20.060;

11 (iv) The alleged offense is a traffic or civil infraction, a
12 violation of compulsory school attendance provisions under chapter
13 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
14 assumed concurrent jurisdiction over those offenses as provided in RCW
15 13.04.0301; or

16 (v) The juvenile is sixteen or seventeen years old on the date the
17 alleged offense is committed and the alleged offense is:

18 (A) A serious violent offense as defined in RCW 9.94A.030;

19 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile
20 has a criminal history consisting of: (I) One or more prior serious
21 violent offenses; (II) two or more prior violent offenses; or (III)
22 three or more of any combination of the following offenses: Any class
23 A felony, any class B felony, vehicular assault, or manslaughter in the
24 second degree, all of which must have been committed after the
25 juvenile's thirteenth birthday and prosecuted separately;

26 (C) Robbery in the first degree, rape of a child in the first
27 degree, or drive-by shooting, committed on or after July 1, 1997;

28 (D) Burglary in the first degree committed on or after July 1,
29 1997, and the juvenile has a criminal history consisting of one or more
30 prior felony or misdemeanor offenses; or

31 (E) Any violent offense as defined in RCW 9.94A.030 committed on or
32 after July 1, 1997, and the juvenile is alleged to have been armed with
33 a firearm.

34 (I) In such a case the adult criminal court shall have exclusive
35 original jurisdiction, except as provided in (e)(v)(E)(II) and (III) of
36 this subsection.

37 (II) The juvenile court shall have exclusive jurisdiction over the
38 disposition of any remaining charges in any case in which the juvenile

1 is found not guilty in the adult criminal court of the charge or
2 charges for which he or she was transferred, or is convicted in the
3 adult criminal court of a lesser included offense that is not also an
4 offense listed in (e)(v) of this subsection. The juvenile court shall
5 enter an order extending juvenile court jurisdiction if the juvenile
6 has turned eighteen years of age during the adult criminal court
7 proceedings pursuant to RCW 13.40.300. However, once the case is
8 returned to juvenile court, the court may hold a decline hearing
9 pursuant to RCW 13.40.110 to determine whether to retain the case in
10 juvenile court for the purpose of disposition or return the case to
11 adult criminal court for sentencing.

12 (III) The prosecutor and respondent may agree to juvenile court
13 jurisdiction and waive application of exclusive adult criminal
14 jurisdiction in (e)(v)(A) through (E) of this subsection and remove the
15 proceeding back to juvenile court with the court's approval. In
16 deciding whether or not to approve the motion to waive exclusive adult
17 jurisdiction, the court shall only consider the facts of the alleged
18 offense as they relate to: The seriousness of the alleged offense and
19 the extent to which the juvenile was involved; whether the alleged
20 offense was committed in an aggressive, violent, premeditated or
21 willful manner; and whether the alleged offense is against persons or
22 property, greater weight being given to offenses against persons,
23 especially if personal injury resulted from the offense.

24 If the juvenile challenges the state's determination of the
25 juvenile's criminal history under (e)(v) of this subsection, the state
26 may establish the offender's criminal history by a preponderance of the
27 evidence. If the criminal history consists of adjudications entered
28 upon a plea of guilty, the state shall not bear a burden of
29 establishing the knowing and voluntariness of the plea;

30 (f) Under the interstate compact on juveniles as provided in
31 chapter 13.24 RCW;

32 (g) Relating to termination of a diversion agreement under RCW
33 13.40.080, including a proceeding in which the divertee has attained
34 eighteen years of age;

35 (h) Relating to court validation of a voluntary consent to an out-
36 of-home placement under chapter 13.34 RCW, by the parent or Indian
37 custodian of an Indian child, except if the parent or Indian custodian

1 and child are residents of or domiciled within the boundaries of a
2 federally recognized Indian reservation over which the tribe exercises
3 exclusive jurisdiction;

4 (i) Relating to petitions to compel disclosure of information filed
5 by the department of social and health services pursuant to RCW
6 74.13.042; and

7 (j) Relating to judicial determinations and permanency planning
8 hearings involving developmentally disabled children who have been
9 placed in out-of-home care pursuant to a voluntary placement agreement
10 between the child's parent, guardian, or legal custodian and the
11 department of social and health services.

12 (2) The family court shall have concurrent original jurisdiction
13 with the juvenile court over all proceedings under this section if the
14 superior court judges of a county authorize concurrent jurisdiction as
15 provided in RCW 26.12.010.

16 (3) The juvenile court shall have concurrent original jurisdiction
17 with the family court over child custody proceedings under chapter
18 26.10 RCW as provided for in RCW 13.34.155.

19 (4) A juvenile subject to adult superior court jurisdiction under
20 subsection (1)(e)(i) through (v) of this section, who is detained
21 pending trial, may be detained in a detention facility as defined in
22 RCW 13.40.020 pending sentencing or a dismissal.

23 **Sec. 2.** RCW 13.40.020 and 2004 c 120 s 2 are each amended to read
24 as follows:

25 For the purposes of this chapter:

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

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

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

1 (b) Community restitution not to exceed one hundred fifty hours of
2 community restitution;

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

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

21 (a) Community-based sanctions;

22 (b) Community-based rehabilitation;

23 (c) Monitoring and reporting requirements;

24 (d) Posting of a probation bond;

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

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

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

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

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

12 (8) "Department" means the department of social and health
13 services;

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

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

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

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

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

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

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

19 (16) "Local sanctions" means one or more of the following: (a) 0-
20 30 days of confinement; (b) 0-12 months of community supervision; (c)
21 0-150 hours of community restitution; or (d) \$0-\$500 fine;

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

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

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

37 (20) "Probation bond" means a bond, posted with sufficient security
38 by a surety justified and approved by the court, to secure the

1 offender's appearance at required court proceedings and compliance with
2 court-ordered community supervision or conditions of release ordered
3 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
4 cash or posting of other collateral in lieu of a bond if approved by
5 the court;

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

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

17 (23) "Secretary" means the secretary of the department of social
18 and health services. "Assistant secretary" means the assistant
19 secretary for juvenile rehabilitation for the department;

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

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

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

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

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

36 (29) "Violent offense" means a violent offense as defined in RCW
37 9.94A.030;

1 (30) "Youth court" means a diversion unit under the supervision of
2 the juvenile court.

3 **Sec. 3.** RCW 13.40.110 and 1997 c 338 s 20 are each amended to read
4 as follows:

5 (1) Discretionary decline hearing - The prosecutor, respondent, or
6 the court on its own motion may, before a hearing on the information on
7 its merits, file a motion requesting the court to transfer the
8 respondent for adult criminal prosecution and the matter shall be set
9 for a hearing on the question of declining jurisdiction.

10 (2) Mandatory decline hearing - Unless waived by the court, the
11 parties, and their counsel, a decline hearing shall be held when:

12 (a) The respondent is (~~(fifteen₇)~~) sixteen(~~(₇)~~) or seventeen years
13 of age and the information alleges a class A felony or an attempt,
14 solicitation, or conspiracy to commit a class A felony;

15 (b) The respondent is seventeen years of age and the information
16 alleges assault in the second degree, extortion in the first degree,
17 indecent liberties, child molestation in the second degree, kidnapping
18 in the second degree, or robbery in the second degree; or

19 (c) The information alleges an escape by the respondent and the
20 respondent is serving a minimum juvenile sentence to age twenty-one.

21 (~~(+2)~~) (3) The court after a decline hearing may order the case
22 transferred for adult criminal prosecution upon a finding that the
23 declination would be in the best interest of the juvenile or the
24 public. The court shall consider the relevant reports, facts,
25 opinions, and arguments presented by the parties and their counsel.

26 (~~(+3)~~) (4) When the respondent is transferred for criminal
27 prosecution or retained for prosecution in juvenile court, the court
28 shall set forth in writing its finding which shall be supported by
29 relevant facts and opinions produced at the hearing.

30 **Sec. 4.** RCW 13.40.308 and 2007 c 199 s 15 are each amended to read
31 as follows:

32 (1) If a respondent is adjudicated of taking a motor vehicle
33 without permission in the first degree as defined in RCW 9A.56.070, the
34 court shall impose the following minimum sentence, in addition to any
35 restitution the court may order payable to the victim:

1 (a) Juveniles with a prior criminal history score of zero to one-
2 half points shall be sentenced to a standard range sentence that
3 includes no less than (~~five days of home detention~~) three months of
4 community supervision, forty-five hours of community restitution,
5 (~~and~~) a two hundred dollar fine, and a requirement that the juvenile
6 remain at home such that the juvenile is confined to a private
7 residence for no less than five days. The juvenile may be subject to
8 electronic monitoring where available. If the juvenile is enrolled in
9 school, the confinement shall be served on nonschool days;

10 (b) Juveniles with a prior criminal history score of three-quarters
11 to one and one-half points shall be sentenced to (~~to~~) a standard
12 range sentence that includes six months of community supervision, no
13 less than ten days of detention, ninety hours of community restitution,
14 and a four hundred dollar fine; and

15 (c) Juveniles with a prior criminal history score of two or more
16 points shall be sentenced to no less than fifteen to thirty-six weeks
17 (~~of confinement, seven days of home detention~~) commitment to the
18 juvenile rehabilitation administration, four months of parole
19 supervision, ninety hours of community restitution, (~~and~~) a four
20 hundred dollar fine, and a requirement that the juvenile remain at home
21 such that the juvenile is confined in a private residence for no less
22 than seven days. The juvenile may be subject to electronic monitoring
23 where available. If the juvenile is enrolled in school, the
24 confinement shall be served on nonschool days.

25 (2) If a respondent is adjudicated of theft of a motor vehicle as
26 defined under RCW 9A.56.065, or possession of a stolen vehicle as
27 defined under RCW 9A.56.068, the court shall impose the following
28 minimum sentence, in addition to any restitution the court may order
29 payable to the victim:

30 (a) Juveniles with a prior criminal history score of zero to one-
31 half points shall be sentenced to a standard range sentence that
32 includes (~~either: (i) No less than five days of home detention and~~)
33 no less than three months of community supervision, forty-five hours of
34 community restitution(~~(; or (ii) no home detention and ninety hours of~~
35 ~~community restitution~~), a two hundred dollar fine, and either ninety
36 hours of community restitution or a requirement that the juvenile
37 remain at home such that the juvenile is confined in a private

1 residence for no less than five days. The juvenile may be subject to
2 electronic monitoring where available;

3 (b) Juveniles with a prior criminal history score of three-quarters
4 to one and one-half points shall be sentenced to ~~((a))~~ a standard
5 range sentence that includes no less than six months of community
6 supervision, no less than ten days of detention, ninety hours of
7 community restitution, and a four hundred dollar fine; and

8 (c) Juveniles with a prior criminal history score of two or more
9 points shall be sentenced to no less than fifteen to thirty-six weeks
10 ~~((of confinement, seven days of home detention))~~ commitment to the
11 juvenile rehabilitation administration, four months of parole
12 supervision, ninety hours of community restitution, ((and)) a four
13 hundred dollar fine, and a requirement that the juvenile remain at home
14 such that the juvenile is confined in a private residence for no less
15 than seven days. If the juvenile is enrolled in school, the
16 confinement shall be served on nonschool days. The juvenile may be
17 subject to electronic monitoring where available.

18 (3) If a respondent is adjudicated of taking a motor vehicle
19 without permission in the second degree as defined in RCW 9A.56.075,
20 the court shall impose a standard range as follows:

21 (a) Juveniles with a prior criminal history score of zero to one-
22 half points shall be sentenced to a standard range sentence that
23 includes ~~((either: (i) No less than one day of home detention, one))~~
24 three months of community supervision~~((, and))~~ fifteen hours of
25 community restitution~~((; or (ii) no home detention, one month of~~
26 supervision, and thirty hours of community restitution)) and a
27 requirement that the juvenile remain at home such that the juvenile is
28 confined in a private residence for no less than one day. If the
29 juvenile is enrolled in school, the confinement shall be served on
30 nonschool days. The juvenile may be subject to electronic monitoring
31 where available;

32 (b) Juveniles with a prior criminal history score of three-quarters
33 to one and one-half points shall be sentenced to a standard range
34 sentence that includes no less than one day of detention, ~~((two days of~~
35 home detention, two)) three months of community supervision, thirty
36 hours of community restitution, ((and)) a one hundred fifty dollar fine
37 and a requirement that the juvenile remain at home such that the
38 juvenile is confined in a private residence for no less than two days.

1 If the juvenile is enrolled in school, the confinement shall be served
2 on nonschool days. The juvenile may be subject to electronic
3 monitoring where available; and

4 (c) Juveniles with a prior criminal history score of two or more
5 points shall be sentenced to no less than three days of detention,
6 (~~seven days of home detention, three~~) six months of community
7 supervision, forty-five hours of community restitution, (~~and~~) a one
8 hundred fifty dollar fine, and a requirement that the juvenile remain
9 at home such that the juvenile is confined in a private residence for
10 no less than seven days. If the juvenile is enrolled in school, the
11 confinement shall be served on nonschool days. The juvenile may be
12 subject to electronic monitoring where available."

SSB 5746 - S AMD

By Senators Hargrove, Stevens

ADOPTED 03/09/2009

13 On page 1, line 2 of the title, after "crimes;" strike the
14 remainder of the title and insert "amending RCW 13.40.020, 13.40.110,
15 and 13.40.308; reenacting and amending RCW 13.04.030; and prescribing
16 penalties."

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