
HOUSE BILL 2432

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By Representatives Padden, Edmondson, Long, Brough, Cooke, L. Thomas, Dyer, Tate, Mielke and Springer

Read first time 01/14/94. Referred to Committee on Corrections.

1 AN ACT Relating to juvenile offenders; amending RCW 13.40.020 and
2 13.40.070; and adding a new section to chapter 13.40 RCW.

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

4 **Sec. 1.** RCW 13.40.020 and 1993 c 373 s 1 are each amended to read
5 as follows:

6 For the purposes of this chapter:

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

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

10 (b) Manslaughter in the first degree; or

11 (c) Assault in the second degree, extortion in the first degree,
12 child molestation in the second degree, kidnapping in the second
13 degree, robbery in the second degree, residential burglary, or burglary
14 in the second degree, where such offenses include the infliction of
15 bodily harm upon another or where during the commission of or immediate
16 withdrawal from such an offense the perpetrator is armed with a deadly
17 weapon or firearm as defined in RCW 9A.04.110 or 9.94A.125;

18 (2) "Community service" means compulsory service, without
19 compensation, performed for the benefit of the community by the

1 offender as punishment for committing an offense. Community service
2 may be performed through public or private organizations or through
3 work crews;

4 (3) "Community supervision" means an order of disposition by the
5 court of an adjudicated youth not committed to the department. A
6 community supervision order for a single offense may be for a period of
7 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
8 one year for other offenses. Community supervision is an
9 individualized program comprised of one or more of the following:

10 (a) Community-based sanctions;

11 (b) Community-based rehabilitation;

12 (c) Monitoring and reporting requirements;

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

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

16 (b) Community service not to exceed one hundred fifty hours of
17 service;

18 (5) "Community-based rehabilitation" means one or more of the
19 following: Attendance of information classes; counseling, outpatient
20 substance abuse treatment programs, outpatient mental health programs,
21 anger management classes, or other services; or attendance at school or
22 other educational programs appropriate for the juvenile as determined
23 by the school district. Placement in community-based rehabilitation
24 programs is subject to available funds;

25 (6) "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 (7) "Confinement" means physical custody by the department of
34 social and health services in a facility operated by or pursuant to a
35 contract with the state, or physical custody in a detention facility
36 operated by or pursuant to a contract with any county. The county may
37 operate or contract with vendors to operate county detention
38 facilities. The department may operate or contract to operate
39 detention facilities for juveniles committed to the department.

1 Pretrial confinement or confinement of less than thirty-one days
2 imposed as part of a disposition or modification order may be served
3 consecutively or intermittently, in the discretion of the court and may
4 be served in a detention group home, detention foster home, or with
5 electronic monitoring. Detention group homes and detention foster
6 homes used for confinement shall not also be used for the placement of
7 dependent children. Confinement in detention group homes and detention
8 foster homes and electronic monitoring are subject to available funds;

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

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

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

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

21 (10) "Department" means the department of social and health
22 services;

23 (11) "Detention facility" means a county facility for the physical
24 confinement of a juvenile alleged to have committed an offense or an
25 adjudicated offender subject to a disposition or modification order;

26 (12) "Diversion unit" means any probation counselor who enters into
27 a diversion agreement with an alleged youthful offender, or any other
28 person or entity except a law enforcement official or entity, with whom
29 the juvenile court administrator has contracted to arrange and
30 supervise such agreements pursuant to RCW 13.40.080, or any person or
31 entity specially funded by the legislature to arrange and supervise
32 diversion agreements in accordance with the requirements of this
33 chapter;

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

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

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

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

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

10 (18) "Minor or first offender" means a person (~~(sixteen)~~) fourteen
11 years of age or younger:

12 (a) Whose current offense(~~(s) and criminal history~~) falls
13 (~~entirely~~) within one of the following categories:

14 ~~((a) Four)~~ (i) One misdemeanor(~~(s)~~);

15 ~~((b) Two misdemeanors and)~~ (ii) One gross misdemeanor;

16 ~~((c) One misdemeanor and two gross misdemeanors;~~

17 ~~(d) Three gross misdemeanors;~~

18 ~~(e))~~ (iii) One class C felony except manslaughter in the second
19 degree (~~and one misdemeanor or gross misdemeanor~~), felony stalking,
20 or rape in the third degree; or

21 ~~((f))~~ (iv) One class B felony except: Any felony which
22 constitutes an attempt to commit a class A felony; manslaughter in the
23 first degree; assault in the second degree; extortion in the first
24 degree; indecent liberties; kidnapping in the second degree; robbery in
25 the second degree; burglary in the second degree; residential burglary;
26 vehicular homicide; or arson in the second degree(~~(-~~

27 ~~For purposes of this definition, current violations shall be~~
28 ~~counted as misdemeanors)); and~~

29 (b) Who previously has never been adjudicated of an offense in this
30 state, federal court, or another state; and

31 (c) Who has never participated in a diversion program or any other
32 deferred prosecution program for an offense; and

33 (d) Who is not charged with a deadly weapon special allegation as
34 provided in section 3 of this act;

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

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

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

13 (22) "Secretary" means the secretary of the department of social
14 and health services;

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

19 (24) "Sex offense" means an offense defined as a sex offense in RCW
20 9.94A.030;

21 (25) "Sexual motivation" means that one of the purposes for which
22 the respondent committed the offense was for the purpose of his or her
23 sexual gratification;

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

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

30 **Sec. 2.** RCW 13.40.070 and 1992 c 205 s 107 are each amended to
31 read as follows:

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

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

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

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

7 (3) If the requirements of subsections (1) (a) and (b) of this
8 section are met, the prosecutor shall either file an information in
9 juvenile court or divert the case, as set forth in subsections (5),
10 (6), and (7) of this section. If the prosecutor finds that the
11 requirements of subsection (1) (a) and (b) of this section are not met,
12 the prosecutor shall maintain a record, for one year, of such decision
13 and the reasons therefor. In lieu of filing an information or
14 diverting an offense a prosecutor may file a motion to modify community
15 supervision where such offense constitutes a violation of community
16 supervision.

17 (4) An information shall be a plain, concise, and definite written
18 statement of the essential facts constituting the offense charged. It
19 shall be signed by the prosecuting attorney and conform to chapter
20 10.37 RCW.

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

23 (a) An alleged offender is accused of a class A felony, a class B
24 felony, an attempt to commit a class B felony, a class C felony listed
25 in RCW 9.94A.440(2) as a crime against persons, felony stalking, or any
26 other offense listed in RCW 13.40.020(1) (b) or (c); or

27 (b) An alleged offender is (~~accused of a felony and has a criminal~~
28 ~~history of at least one class A or class B felony, or two class C~~
29 ~~felonies, or at least two gross misdemeanors, or at least two~~
30 ~~misdemeanors and one additional misdemeanor or gross misdemeanor, or at~~
31 ~~least one class C felony and one misdemeanor or gross misdemeanor~~) a
32 serious offender; or

33 (c) An alleged offender (~~has previously been committed to the~~
34 ~~department~~) is a middle offender who previously has been adjudicated
35 of an offense or who has had one or more diversions as a middle
36 offender or a minor or first offender; or

37 (d) An alleged offender has been referred by a diversion unit for
38 prosecution or desires prosecution instead of diversion(~~or~~

1 ~~(e) An alleged offender has three or more diversions on the alleged~~
2 ~~offender's criminal history)).~~

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

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

18 (8) Whenever a juvenile is placed in custody or, where not placed
19 in custody, referred to a diversionary interview, the parent or legal
20 guardian of the juvenile shall be notified as soon as possible
21 concerning the allegation made against the juvenile and the current
22 status of the juvenile. Where a case involves victims ~~((of crimes~~
23 ~~against persons or victims))~~ whose property has not been recovered at
24 the time a juvenile is referred to a diversionary unit, the victim
25 shall be notified of the referral and informed how to contact the unit.

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

32 (10) The prosecutor, juvenile court probation counselor, or
33 diversion unit may, in exercising their authority under this section or
34 RCW 13.40.080, refer juveniles to mediation or victim offender
35 reconciliation programs. Such mediation or victim offender
36 reconciliation programs shall be voluntary for victims.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.40 RCW
38 to read as follows:

1 (1) When sufficient admissible evidence exists to support a finding
2 that the alleged offender or an accomplice was armed with a deadly
3 weapon when the offense was committed, the prosecutor may file a
4 special allegation that the alleged offender or an accomplice was armed
5 with a deadly weapon when the offense was committed.

6 (2) If the information contains a deadly weapon special allegation,
7 the court shall make a finding of fact, upon a plea of guilty or an
8 adjudication of guilt on the underlying offense, whether the accused or
9 an accomplice was armed with a deadly weapon when the offense was
10 committed.

11 (3) For purposes of this section, "deadly weapon" means a deadly
12 weapon as defined in RCW 9.94A.125 or 9A.04.110.

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