

2 EHB 1581 - S COMM AMD
3 By Committee on Education

4 ADOPTED AS AMENDED 4/17/97

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 13.40.160 and 1995 c 395 s 7 are each amended to read
8 as follows:

9 (1) When the respondent is found to be a serious offender, the
10 court shall commit the offender to the department for the standard
11 range of disposition for the offense, as indicated in option A of
12 schedule D-3, RCW 13.40.0357 except as provided in subsections (5) and
13 (6) of this section.

14 If the court concludes, and enters reasons for its conclusion, that
15 disposition within the standard range would effectuate a manifest
16 injustice the court shall impose a disposition outside the standard
17 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
18 court's finding of manifest injustice shall be supported by clear and
19 convincing evidence.

20 A disposition outside the standard range shall be determinate and
21 shall be comprised of confinement or community supervision, or a
22 combination thereof. When a judge finds a manifest injustice and
23 imposes a sentence of confinement exceeding thirty days, the court
24 shall sentence the juvenile to a maximum term, and the provisions of
25 RCW 13.40.030(2) shall be used to determine the range. A disposition
26 outside the standard range is appealable under RCW 13.40.230 by the
27 state or the respondent. A disposition within the standard range is
28 not appealable under RCW 13.40.230.

29 (2) Where the respondent is found to be a minor or first offender,
30 the court shall order that the respondent serve a term of community
31 supervision as indicated in option A or option B of schedule D-1, RCW
32 13.40.0357 except as provided in subsections (5) and (6) of this
33 section. If the court determines that a disposition of community
34 supervision would effectuate a manifest injustice the court may impose
35 another disposition under option C of schedule D-1, RCW 13.40.0357.
36 Except as provided in subsection (5) of this section, a disposition

1 other than a community supervision may be imposed only after the court
2 enters reasons upon which it bases its conclusions that imposition of
3 community supervision would effectuate a manifest injustice. When a
4 judge finds a manifest injustice and imposes a sentence of confinement
5 exceeding thirty days, the court shall sentence the juvenile to a
6 maximum term, and the provisions of RCW 13.40.030(2) shall be used to
7 determine the range. The court's finding of manifest injustice shall
8 be supported by clear and convincing evidence.

9 Except for disposition of community supervision or a disposition
10 imposed pursuant to subsection (5) of this section, a disposition may
11 be appealed as provided in RCW 13.40.230 by the state or the
12 respondent. A disposition of community supervision or a disposition
13 imposed pursuant to subsection (5) of this section may not be appealed
14 under RCW 13.40.230.

15 (3) Where a respondent is found to have committed an offense for
16 which the respondent declined to enter into a diversion agreement, the
17 court shall impose a term of community supervision limited to the
18 conditions allowed in a diversion agreement as provided in RCW
19 13.40.080(2).

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

21 (a) The court shall impose a determinate disposition within the
22 standard range(s) for such offense, as indicated in option A of
23 schedule D-2, RCW 13.40.0357 except as provided in subsections (5) and
24 (6) of this section. If the standard range includes a term of
25 confinement exceeding thirty days, commitment shall be to the
26 department for the standard range of confinement; or

27 (b) If the middle offender has less than 110 points, the court
28 shall impose a determinate disposition of community supervision and/or
29 up to thirty days confinement, as indicated in option B of schedule D-
30 2, RCW 13.40.0357 in which case, if confinement has been imposed, the
31 court shall state either aggravating or mitigating factors as set forth
32 in RCW 13.40.150. If the middle offender has 110 points or more, the
33 court may impose a disposition under option A and may suspend the
34 disposition on the condition that the offender serve up to thirty days
35 of confinement and follow all conditions of community supervision. If
36 the offender violates any condition of the disposition including
37 conditions of a probation bond, the court may impose sanctions pursuant
38 to RCW 13.40.200 or may revoke the suspension and order execution of
39 the disposition. The court shall give credit for any confinement time

1 previously served if that confinement was for the offense for which the
2 suspension is being revoked.

3 (c) Only if the court concludes, and enters reasons for its
4 conclusions, that disposition as provided in subsection (4)(a) or (b)
5 of this section would effectuate a manifest injustice, the court shall
6 sentence the juvenile to a maximum term, and the provisions of RCW
7 13.40.030(2) shall be used to determine the range. The court's finding
8 of manifest injustice shall be supported by clear and convincing
9 evidence.

10 (d) A disposition pursuant to subsection (4)(c) of this section is
11 appealable under RCW 13.40.230 by the state or the respondent. A
12 disposition pursuant to subsection (4)(a) or (b) of this section is not
13 appealable under RCW 13.40.230.

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

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

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

31 (a)(i) Frequency and type of contact between the offender and
32 therapist;

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

35 (iii) Monitoring plans, including any requirements regarding living
36 conditions, lifestyle requirements, and monitoring by family members,
37 legal guardians, or others;

38 (iv) Anticipated length of treatment; and

39 (v) Recommended crime-related prohibitions.

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

7 After receipt of reports of the examination, the court shall then
8 consider whether the offender and the community will benefit from use
9 of this special sex offender disposition alternative and consider the
10 victim's opinion whether the offender should receive a treatment
11 disposition under this section. If the court determines that this
12 special sex offender disposition alternative is appropriate, then the
13 court shall impose a determinate disposition within the standard range
14 for the offense, and the court may suspend the execution of the
15 disposition and place the offender on community supervision for up to
16 two years. As a condition of the suspended disposition, the court may
17 impose the conditions of community supervision and other conditions,
18 including up to thirty days of confinement and requirements that the
19 offender do any one or more of the following:

20 (b)(i) Devote time to a specific education, employment, or
21 occupation;

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

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

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

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

1 (vi) Pay all court-ordered legal financial obligations, perform
2 community service, or any combination thereof;

3 (vii) Make restitution to the victim for the cost of any counseling
4 reasonably related to the offense; ((or))

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

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

20 The sex offender treatment provider shall submit quarterly reports
21 on the respondent's progress in treatment to the court and the parties.
22 The reports shall reference the treatment plan and include at a minimum
23 the following: Dates of attendance, respondent's compliance with
24 requirements, treatment activities, the respondent's relative progress
25 in treatment, and any other material specified by the court at the time
26 of the disposition.

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

29 Except as provided in this subsection (5), after July 1, 1991,
30 examinations and treatment ordered pursuant to this subsection shall
31 only be conducted by sex offender treatment providers certified by the
32 department of health pursuant to chapter 18.155 RCW. A sex offender
33 therapist who examines or treats a juvenile sex offender pursuant to
34 this subsection does not have to be certified by the department of
35 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
36 offender has already moved to another state or plans to move to another
37 state for reasons other than circumventing the certification
38 requirements; (B) no certified providers are available for treatment
39 within a reasonable geographical distance of the offender's home; and

1 (C) the evaluation and treatment plan comply with this subsection (5)
2 and the rules adopted by the department of health.

3 If the offender violates any condition of the disposition or the
4 court finds that the respondent is failing to make satisfactory
5 progress in treatment, the court may revoke the suspension and order
6 execution of the disposition or the court may impose a penalty of up to
7 thirty days' confinement for violating conditions of the disposition.
8 The court may order both execution of the disposition and up to thirty
9 days' confinement for the violation of the conditions of the
10 disposition. The court shall give credit for any confinement time
11 previously served if that confinement was for the offense for which the
12 suspension is being revoked.

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

18 (6) RCW 13.40.193 shall govern the disposition of any juvenile
19 adjudicated of possessing a firearm in violation of RCW
20 9.41.040(1)((+e)) (b)(iii) or any crime in which a special finding is
21 entered that the juvenile was armed with a firearm.

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

26 (8) Except as provided for in subsection (4)(b) or (5) of this
27 section or RCW 13.40.125, the court shall not suspend or defer the
28 imposition or the execution of the disposition.

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

32 **Sec. 2.** RCW 13.40.215 and 1995 c 324 s 1 are each amended to read
33 as follows:

34 (1)(a) Except as provided in subsection (2) of this section, at the
35 earliest possible date, and in no event later than thirty days before
36 discharge, parole, or any other authorized leave or release, or before
37 transfer to a community residential facility, the secretary shall send
38 written notice of the discharge, parole, authorized leave or release,

1 or transfer of a juvenile found to have committed a violent offense, a
2 sex offense, or stalking, to the following:

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

5 (ii) The sheriff of the county in which the juvenile will reside;
6 and

7 (iii) The approved private schools and the common school district
8 board of directors of the district in which the juvenile intends to
9 reside or the approved private school or public school district in
10 which the juvenile last attended school, whichever is appropriate,
11 except when it has been determined by the department that the juvenile
12 is twenty-one years old; is not required to return to school under
13 chapter 28A.225 RCW; or will be in the community for less than seven
14 consecutive days on approved leave and will not be attending school
15 during that time.

16 (b) After the effective date of this act, the department shall send
17 a written notice to approved private and public schools under the same
18 conditions identified in subsection (1)(a)(iii) of this section when a
19 juvenile adjudicated of any offense is transferred to a community
20 residential facility.

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

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

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

28 (iii) Any person specified in writing by the prosecuting attorney.
29 Information regarding victims, next of kin, or witnesses requesting the
30 notice, information regarding any other person specified in writing by
31 the prosecuting attorney to receive the notice, and the notice are
32 confidential and shall not be available to the juvenile. The notice to
33 the chief of police or the sheriff shall include the identity of the
34 juvenile, the residence where the juvenile will reside, the identity of
35 the person, if any, responsible for supervising the juvenile, and the
36 time period of any authorized leave.

37 ((+e)) (d) The thirty-day notice requirements contained in this
38 subsection shall not apply to emergency medical furloughs.

1 (~~(d)~~) (e) The existence of the notice requirements in this
2 subsection will not require any extension of the release date in the
3 event the release plan changes after notification.

4 (2)(a) If a juvenile found to have committed a violent offense, a
5 sex offense, or stalking escapes from a facility of the department, the
6 secretary shall immediately notify, by the most reasonable and
7 expedient means available, the chief of police of the city and the
8 sheriff of the county in which the juvenile resided immediately before
9 the juvenile's arrest. If previously requested, the secretary shall
10 also notify the witnesses and the victim of the offense which the
11 juvenile was found to have committed or the victim's next of kin if the
12 crime was a homicide. If the juvenile is recaptured, the secretary
13 shall send notice to the persons designated in this subsection as soon
14 as possible but in no event later than two working days after the
15 department learns of such recapture.

16 (b) The secretary may authorize a leave, for a juvenile found to
17 have committed a violent offense, a sex offense, or stalking, which
18 shall not exceed forty-eight hours plus travel time, to meet an
19 emergency situation such as a death or critical illness of a member of
20 the juvenile's family. The secretary may authorize a leave, which
21 shall not exceed the time medically necessary, to obtain medical care
22 not available in a juvenile facility maintained by the department.
23 Prior to the commencement of an emergency or medical leave, the
24 secretary shall give notice of the leave to the appropriate law
25 enforcement agency in the jurisdiction in which the juvenile will be
26 during the leave period. The notice shall include the identity of the
27 juvenile, the time period of the leave, the residence of the juvenile
28 during the leave, and the identity of the person responsible for
29 supervising the juvenile during the leave. If previously requested,
30 the department shall also notify the witnesses and victim of the
31 offense which the juvenile was found to have committed or the victim's
32 next of kin if the offense was a homicide.

33 In case of an emergency or medical leave the secretary may waive
34 all or any portion of the requirements for leaves pursuant to RCW
35 13.40.205 (2)(a), (3), (4), and (5).

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

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

5 (5) Upon discharge, parole, or other authorized leave or release,
6 a convicted juvenile sex offender shall not attend a public or approved
7 private elementary, middle, or high school that is attended by a victim
8 or a sibling of a victim of the sex offender. The parents or legal
9 guardians of the convicted juvenile sex offender shall be responsible
10 for transportation or other costs associated with or required by the
11 sex offender's change in school that otherwise would be paid by a
12 school district. Upon discharge, parole, or other authorized leave or
13 release of a convicted juvenile sex offender, the secretary shall send
14 written notice of the discharge, parole, or other authorized leave or
15 release and the requirements of this subsection to the common school
16 district board of directors of the district in which the sex offender
17 intends to reside or the district in which the sex offender last
18 attended school, whichever is appropriate. The secretary shall send a
19 similar notice to any approved private school the juvenile will attend,
20 if known, or if unknown, to the approved private schools within the
21 district the juvenile resides or intends to reside.

22 (6) For purposes of this section the following terms have the
23 following meanings:

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

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

26 (c) "Stalking" means the crime of stalking as defined in RCW
27 9A.46.110;

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

30 **Sec. 3.** RCW 28A.225.225 and 1995 c 52 s 3 are each amended to read
31 as follows:

32 (1) All districts accepting applications from nonresident students
33 or from students receiving home-based instruction for admission to the
34 district's schools shall consider equally all applications received.
35 Each school district shall adopt a policy establishing rational, fair,
36 and equitable standards for acceptance and rejection of applications by
37 June 30, 1990. The policy may include rejection of a nonresident
38 student(~~s~~) if:

1 (a) Acceptance of ((these)) a nonresident student((s)) would result
2 in the district experiencing a financial hardship;

3 (b) The student's disciplinary records indicate a history of
4 violent or disruptive behavior or gang membership; or

5 (c) The student has been expelled or suspended from a public school
6 for more than ten consecutive days. Any policy allowing for
7 readmission of expelled or suspended students under this subsection
8 (1)(c) must apply uniformly to both resident and nonresident
9 applicants.

10 For purposes of subsection (1)(b) of this section, "gang" means an
11 organization, association, or group of three or more persons that has
12 a common name or identifying sign or symbol and whose members,
13 individually or collectively, commit or have committed two or more acts
14 that: Support or further the purposes or activities of the
15 organization, association, or group; and are a violation of state or
16 federal criminal law or include planning, organizing, financing,
17 soliciting, or threatening the commission of an act that is a violation
18 of state or federal criminal law.

19 (2) The district shall provide to applicants written notification
20 of the approval or denial of the application in a timely manner. If
21 the application is rejected, the notification shall include the reason
22 or reasons for denial and the right to appeal under RCW 28A.225.230(3).

23 **Sec. 4.** RCW 28A.600.010 and 1990 c 33 s 496 are each amended to
24 read as follows:

25 Every board of directors, unless otherwise specifically provided by
26 law, shall:

27 (1) Enforce the rules ~~((and regulations))~~ prescribed by the
28 superintendent of public instruction and the state board of education
29 for the government of schools, pupils, and certificated employees.

30 (2) Adopt and make available to each pupil, teacher and parent in
31 the district reasonable written rules ~~((and regulations))~~ regarding
32 pupil conduct, discipline, and rights, including but not limited to
33 short-term suspensions as referred to in RCW 28A.305.160 and ~~((long-~~
34 term)) suspensions in excess of ten consecutive days. Such rules ~~((and~~
35 ~~regulations))~~ shall not be inconsistent with any of the following:
36 Federal statutes and regulations, state statutes, common law ~~((or)),~~
37 the rules ~~((and regulations))~~ of the superintendent of public
38 instruction ~~((or)),~~ and the state board of education ~~((and)).~~ The

1 board's rules shall include such substantive and procedural due process
2 guarantees as prescribed by the state board of education under RCW
3 28A.305.160. Commencing with the 1976-77 school year, when such rules
4 (~~and regulations~~) are made available to each pupil, teacher, and
5 parent, they shall be accompanied by a detailed description of rights,
6 responsibilities, and authority of teachers and principals with respect
7 to the discipline of pupils as prescribed by state statutory law,
8 superintendent of public instruction, and state board of education
9 rules (~~and regulations~~) and rules and regulations of the school
10 district.

11 For the purposes of this subsection, computation of days included
12 in "short-term" and "long-term" suspensions shall be determined on the
13 basis of consecutive school days.

14 (3) Suspend, expel, or discipline pupils in accordance with RCW
15 28A.305.160.

16 **Sec. 5.** RCW 28A.600.420 and 1995 c 335 s 304 are each amended to
17 read as follows:

18 (1) Any elementary or secondary school student who is determined to
19 have carried a firearm onto, or to have possessed a firearm on, public
20 elementary or secondary school premises, public school-provided
21 transportation, or areas of facilities while being used exclusively by
22 public schools, shall be expelled from school for not less than one
23 year under RCW 28A.600.010. The superintendent of the school district,
24 educational service district, state school for the deaf, or state
25 school for the blind may modify the expulsion of a student on a case-
26 by-case basis.

27 (2) For purposes of this section, "firearm" means a firearm as
28 defined in 18 U.S.C. Sec. 921, and a "firearm" as defined in RCW
29 9.41.010.

30 (3) This section shall be construed in a manner consistent with the
31 individuals with disabilities education act, 20 U.S.C. Sec. 1401 et
32 seq.

33 (4) Nothing in this section prevents a public school district,
34 educational service district, the state school for the deaf, or the
35 state school for the blind if it has expelled a student from such
36 student's regular school setting from providing educational services to
37 the student in an alternative setting.

38 (5) This section does not apply to:

1 (a) Any student while engaged in military education authorized by
2 school authorities in which rifles are used but not other firearms; or

3 (b) Any student while involved in a convention, showing,
4 demonstration, lecture, or firearms safety course authorized by school
5 authorities in which the rifles of collectors or instructors are
6 handled or displayed but not other firearms; or

7 (c) Any student while participating in a rifle competition
8 authorized by school authorities.

9 (6) A school district may suspend or expel a student for up to one
10 year subject to subsections (1), (3), (4), and (5) of this section, if
11 the student acts with malice as defined under RCW 9A.04.110 and
12 displays an instrument that appeared to be a firearm, on public
13 elementary or secondary school premises, public school-provided
14 transportation, or areas of facilities while being used exclusively by
15 public schools.

16 NEW SECTION. Sec. 6. If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected."

20 **EHB 1581** - S COMM AMD
21 By Committee on Education

22 ADOPTED 4/17/97

23 On page 1, line 1 of the title, after "schools;" strike the
24 remainder of the title and insert "amending RCW 13.40.160, 13.40.215,
25 28A.225.225, 28A.600.010, and 28A.600.420; and prescribing penalties."

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