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**SUBSTITUTE HOUSE BILL 1403**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Lambert, McDonald, Sterk, Carrell and Thompson)

Read first time 03/03/97.

1 AN ACT Relating to requiring a juvenile offender to remain in the  
2 presence of a parent; amending RCW 13.40.160; reenacting and amending  
3 RCW 13.04.030; and prescribing penalties.

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

5 **Sec. 1.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15 are  
6 each reenacted and amended to read as follows:

7 (1) Except as provided in subsection (2) of this section, the  
8 juvenile courts in the several counties of this state, shall have  
9 exclusive original jurisdiction over all proceedings:

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

12 (b) Relating to children alleged or found to be dependent as  
13 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

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

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

1 (e) Relating to juveniles alleged or found to have committed  
2 offenses, traffic infractions, or violations as provided in RCW  
3 13.40.020 through 13.40.230, unless:

4 (i) The juvenile court transfers jurisdiction of a particular  
5 juvenile to adult criminal court pursuant to RCW 13.40.110; or

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

8 (iii) The alleged offense or infraction is a traffic, fish,  
9 boating, or game offense or traffic infraction committed by a juvenile  
10 sixteen years of age or older and would, if committed by an adult, be  
11 tried or heard in a court of limited jurisdiction, in which instance  
12 the appropriate court of limited jurisdiction shall have jurisdiction  
13 over the alleged offense or infraction: PROVIDED, That if such an  
14 alleged offense or infraction and an alleged offense or infraction  
15 subject to juvenile court jurisdiction arise out of the same event or  
16 incident, the juvenile court may have jurisdiction of both matters:  
17 PROVIDED FURTHER, That the jurisdiction under this subsection does not  
18 constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1)  
19 or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited  
20 jurisdiction which confine juveniles for an alleged offense or  
21 infraction may place juveniles in juvenile detention facilities under  
22 an agreement with the officials responsible for the administration of  
23 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

24 (iv) The juvenile is sixteen or seventeen years old and the alleged  
25 offense is: (A) A serious violent offense as defined in RCW 9.94A.030  
26 committed on or after June 13, 1994; or (B) a violent offense as  
27 defined in RCW 9.94A.030 committed on or after June 13, 1994, and the  
28 juvenile has a criminal history consisting of: (I) One or more prior  
29 serious violent offenses; (II) two or more prior violent offenses; or  
30 (III) three or more of any combination of the following offenses: Any  
31 class A felony, any class B felony, vehicular assault, or manslaughter  
32 in the second degree, all of which must have been committed after the  
33 juvenile's thirteenth birthday and prosecuted separately. In such a  
34 case the adult criminal court shall have exclusive original  
35 jurisdiction.

36 If the juvenile challenges the state's determination of the  
37 juvenile's criminal history, the state may establish the offender's  
38 criminal history by a preponderance of the evidence. If the criminal  
39 history consists of adjudications entered upon a plea of guilty, the

1 state shall not bear a burden of establishing the knowing and  
2 voluntariness of the plea;

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

5 (g) Relating to termination of a diversion agreement under RCW  
6 13.40.080, including a proceeding in which the divertee has attained  
7 eighteen years of age;

8 (h) Relating to court validation of a voluntary consent to an out-  
9 of-home placement under chapter 13.34 RCW, by the parent or Indian  
10 custodian of an Indian child, except if the parent or Indian custodian  
11 and child are residents of or domiciled within the boundaries of a  
12 federally recognized Indian reservation over which the tribe exercises  
13 exclusive jurisdiction; and

14 (i) Relating to petitions to compel disclosure of information filed  
15 by the department of social and health services pursuant to RCW  
16 74.13.042.

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

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

25 (4) A parent of a juvenile under juvenile court jurisdiction is  
26 subject to the jurisdiction of the juvenile court for purposes of  
27 enforcing a judge's order under RCW 13.40.160(10).

28 **Sec. 2.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to read  
29 as follows:

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

35 If the court concludes, and enters reasons for its conclusion, that  
36 disposition within the standard range would effectuate a manifest  
37 injustice the court shall impose a disposition outside the standard  
38 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The

1 court's finding of manifest injustice shall be supported by clear and  
2 convincing evidence.

3 A disposition outside the standard range shall be determinate and  
4 shall be comprised of confinement or community supervision, or a  
5 combination thereof. When a judge finds a manifest injustice and  
6 imposes a sentence of confinement exceeding thirty days, the court  
7 shall sentence the juvenile to a maximum term, and the provisions of  
8 RCW 13.40.030(2) shall be used to determine the range. A disposition  
9 outside the standard range is appealable under RCW 13.40.230 by the  
10 state or the respondent. A disposition within the standard range is  
11 not appealable under RCW 13.40.230.

12 (2) Where the respondent is found to be a minor or first offender,  
13 the court shall order that the respondent serve a term of community  
14 supervision as indicated in option A or option B of schedule D-1, RCW  
15 13.40.0357 except as provided in subsections (5) and (6) of this  
16 section. If the court determines that a disposition of community  
17 supervision would effectuate a manifest injustice the court may impose  
18 another disposition under option C of schedule D-1, RCW 13.40.0357.  
19 Except as provided in subsection (5) of this section, a disposition  
20 other than a community supervision may be imposed only after the court  
21 enters reasons upon which it bases its conclusions that imposition of  
22 community supervision would effectuate a manifest injustice. When a  
23 judge finds a manifest injustice and imposes a sentence of confinement  
24 exceeding thirty days, the court shall sentence the juvenile to a  
25 maximum term, and the provisions of RCW 13.40.030(2) shall be used to  
26 determine the range. The court's finding of manifest injustice shall  
27 be supported by clear and convincing evidence.

28 Except for disposition of community supervision or a disposition  
29 imposed pursuant to subsection (5) of this section, a disposition may  
30 be appealed as provided in RCW 13.40.230 by the state or the  
31 respondent. A disposition of community supervision or a disposition  
32 imposed pursuant to subsection (5) of this section may not be appealed  
33 under RCW 13.40.230.

34 (3) Where a respondent is found to have committed an offense for  
35 which the respondent declined to enter into a diversion agreement, the  
36 court shall impose a term of community supervision limited to the  
37 conditions allowed in a diversion agreement as provided in RCW  
38 13.40.080(2).

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

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

7 (b) If the middle offender has less than 110 points, the court  
8 shall impose a determinate disposition of community supervision and/or  
9 up to thirty days confinement, as indicated in option B of schedule D-  
10 2, RCW 13.40.0357 in which case, if confinement has been imposed, the  
11 court shall state either aggravating or mitigating factors as set forth  
12 in RCW 13.40.150. If the middle offender has 110 points or more, the  
13 court may impose a disposition under option A and may suspend the  
14 disposition on the condition that the offender serve up to thirty days  
15 of confinement and follow all conditions of community supervision. If  
16 the offender violates any condition of the disposition including  
17 conditions of a probation bond, the court may impose sanctions pursuant  
18 to RCW 13.40.200 or may revoke the suspension and order execution of  
19 the disposition. The court shall give credit for any confinement time  
20 previously served if that confinement was for the offense for which the  
21 suspension is being revoked.

22 (c) Only if the court concludes, and enters reasons for its  
23 conclusions, that disposition as provided in subsection (4) (a) or (b)  
24 of this section would effectuate a manifest injustice, the court shall  
25 sentence the juvenile to a maximum term, and the provisions of RCW  
26 13.40.030(2) shall be used to determine the range. The court's finding  
27 of manifest injustice shall be supported by clear and convincing  
28 evidence.

29 (d) A disposition pursuant to subsection (4)(c) of this section is  
30 appealable under RCW 13.40.230 by the state or the respondent. A  
31 disposition pursuant to subsection (4) (a) or (b) of this section is  
32 not appealable under RCW 13.40.230.

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

1 The report of the examination shall include at a minimum the  
2 following: The respondent's version of the facts and the official  
3 version of the facts, the respondent's offense history, an assessment  
4 of problems in addition to alleged deviant behaviors, the respondent's  
5 social, educational, and employment situation, and other evaluation  
6 measures used. The report shall set forth the sources of the  
7 evaluator's information.

8 The examiner shall assess and report regarding the respondent's  
9 amenability to treatment and relative risk to the community. A  
10 proposed treatment plan shall be provided and shall include, at a  
11 minimum:

12 (a)(i) Frequency and type of contact between the offender and  
13 therapist;

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

16 (iii) Monitoring plans, including any requirements regarding living  
17 conditions, lifestyle requirements, and monitoring by family members,  
18 legal guardians, or others;

19 (iv) Anticipated length of treatment; and

20 (v) Recommended crime-related prohibitions.

21 The court on its own motion may order, or on a motion by the state  
22 shall order, a second examination regarding the offender's amenability  
23 to treatment. The evaluator shall be selected by the party making the  
24 motion. The defendant shall pay the cost of any second examination  
25 ordered unless the court finds the defendant to be indigent in which  
26 case the state shall pay the cost.

27 After receipt of reports of the examination, the court shall then  
28 consider whether the offender and the community will benefit from use  
29 of this special sex offender disposition alternative and consider the  
30 victim's opinion whether the offender should receive a treatment  
31 disposition under this section. If the court determines that this  
32 special sex offender disposition alternative is appropriate, then the  
33 court shall impose a determinate disposition within the standard range  
34 for the offense, and the court may suspend the execution of the  
35 disposition and place the offender on community supervision for up to  
36 two years. As a condition of the suspended disposition, the court may  
37 impose the conditions of community supervision and other conditions,  
38 including up to thirty days of confinement and requirements that the  
39 offender do any one or more of the following:

1 (b)(i) Devote time to a specific education, employment, or  
2 occupation;

3 (ii) Undergo available outpatient sex offender treatment for up to  
4 two years, or inpatient sex offender treatment not to exceed the  
5 standard range of confinement for that offense. A community mental  
6 health center may not be used for such treatment unless it has an  
7 appropriate program designed for sex offender treatment. The  
8 respondent shall not change sex offender treatment providers or  
9 treatment conditions without first notifying the prosecutor, the  
10 probation counselor, and the court, and shall not change providers  
11 without court approval after a hearing if the prosecutor or probation  
12 counselor object to the change;

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

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

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

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

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

24 (viii) Comply with the conditions of any court-ordered probation  
25 bond.

26 The sex offender treatment provider shall submit quarterly reports  
27 on the respondent's progress in treatment to the court and the parties.  
28 The reports shall reference the treatment plan and include at a minimum  
29 the following: Dates of attendance, respondent's compliance with  
30 requirements, treatment activities, the respondent's relative progress  
31 in treatment, and any other material specified by the court at the time  
32 of the disposition.

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

35 Except as provided in this subsection (5), after July 1, 1991,  
36 examinations and treatment ordered pursuant to this subsection shall  
37 only be conducted by sex offender treatment providers certified by the  
38 department of health pursuant to chapter 18.155 RCW. A sex offender  
39 therapist who examines or treats a juvenile sex offender pursuant to

1 this subsection does not have to be certified by the department of  
2 health pursuant to chapter 18.155 RCW if the court finds that: (A) The  
3 offender has already moved to another state or plans to move to another  
4 state for reasons other than circumventing the certification  
5 requirements; (B) no certified providers are available for treatment  
6 within a reasonable geographical distance of the offender's home; and  
7 (C) the evaluation and treatment plan comply with this subsection (5)  
8 and the rules adopted by the department of health.

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

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

24 (6) RCW 13.40.193 shall govern the disposition of any juvenile  
25 adjudicated of possessing a firearm in violation of RCW  
26 9.41.040(~~((1)+(e))~~) (1)(b)(iii) or any crime in which a special finding  
27 is entered that the juvenile was armed with a firearm.

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

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

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

38 (10) In addition to any other dispositional term or condition that  
39 may be imposed on a juvenile found to have committed an offense, the



1 court may enter any or all of the following orders, which may be  
2 enforced by the contempt power of the court:

3 (a) That the parents take charge of and exercise control over the  
4 juvenile;

5 (b) That the juvenile submit to the parents and obey all their  
6 lawful orders and directions;

7 (c) That the juvenile remain continuously in the presence of the  
8 juvenile's parent for a period of time and under circumstances that the  
9 court considers reasonable. The term "in the presence of" means within  
10 range of sight or hearing, or such other limitations as the court  
11 considers reasonable; and

12 (d) That the parents and the child, either separately or together,  
13 attend counseling services or substance abuse treatment programs as the  
14 court deems necessary.

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