
HOUSE BILL 1581

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By Representatives Sterk, Quall, Cooper, Hatfield, Kastama, Talcott, Robertson, D. Schmidt, Sump, Mulliken, Johnson, Smith, Crouse, Boldt, Dunn, Sheahan, Schoesler, Carrell, Thompson, Honeyford, Bush, Keiser, Kessler and Morris

Read first time 01/31/97. Referred to Committee on Education.

1 AN ACT Relating to schools; amending RCW 13.40.160, 13.40.215,
2 28A.225.225, 28A.600.010, and 28A.600.420; prescribing penalties; and
3 declaring an emergency.

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

5 **Sec. 1.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to read
6 as follows:

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

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

18 A disposition outside the standard range shall be determinate and
19 shall be comprised of confinement or community supervision, or a

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

8 (2) Where the respondent is found to be a minor or first offender,
9 the court shall order that the respondent serve a term of community
10 supervision as indicated in option A or option B of schedule D-1, RCW
11 13.40.0357 except as provided in subsections (5) and (6) of this
12 section. If the court determines that a disposition of community
13 supervision would effectuate a manifest injustice the court may impose
14 another disposition under option C of schedule D-1, RCW 13.40.0357.
15 Except as provided in subsection (5) of this section, a disposition
16 other than a community supervision may be imposed only after the court
17 enters reasons upon which it bases its conclusions that imposition of
18 community supervision would effectuate a manifest injustice. When a
19 judge finds a manifest injustice and imposes a sentence of confinement
20 exceeding thirty days, the court shall sentence the juvenile to a
21 maximum term, and the provisions of RCW 13.40.030(2) shall be used to
22 determine the range. The court's finding of manifest injustice shall
23 be supported by clear and convincing evidence.

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

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

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

36 (a) The court shall impose a determinate disposition within the
37 standard range(s) for such offense, as indicated in option A of
38 schedule D-2, RCW 13.40.0357 except as provided in subsections (5) and
39 (6) of this section. If the standard range includes a term of

1 confinement exceeding thirty days, commitment shall be to the
2 department for the standard range of confinement; or

3 (b) If the middle offender has less than 110 points, the court
4 shall impose a determinate disposition of community supervision and/or
5 up to thirty days confinement, as indicated in option B of schedule D-
6 2, RCW 13.40.0357 in which case, if confinement has been imposed, the
7 court shall state either aggravating or mitigating factors as set forth
8 in RCW 13.40.150. If the middle offender has 110 points or more, the
9 court may impose a disposition under option A and may suspend the
10 disposition on the condition that the offender serve up to thirty days
11 of confinement and follow all conditions of community supervision. If
12 the offender violates any condition of the disposition including
13 conditions of a probation bond, the court may impose sanctions pursuant
14 to RCW 13.40.200 or may revoke the suspension and order execution of
15 the disposition. The court shall give credit for any confinement time
16 previously served if that confinement was for the offense for which the
17 suspension is being revoked.

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

25 (d) A disposition pursuant to subsection (4)(c) of this section is
26 appealable under RCW 13.40.230 by the state or the respondent. A
27 disposition pursuant to subsection (4)(a) or (b) of this section is not
28 appealable under RCW 13.40.230.

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

35 The report of the examination shall include at a minimum the
36 following: The respondent's version of the facts and the official
37 version of the facts, the respondent's offense history, an assessment
38 of problems in addition to alleged deviant behaviors, the respondent's
39 social, educational, and employment situation, and other evaluation

1 measures used. The report shall set forth the sources of the
2 evaluator's information.

3 The examiner shall assess and report regarding the respondent's
4 amenability to treatment and relative risk to the community. A
5 proposed treatment plan shall be provided and shall include, at a
6 minimum:

7 (a)(i) Frequency and type of contact between the offender and
8 therapist;

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

11 (iii) Monitoring plans, including any requirements regarding living
12 conditions, lifestyle requirements, and monitoring by family members,
13 legal guardians, or others;

14 (iv) Anticipated length of treatment; and

15 (v) Recommended crime-related prohibitions.

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

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

35 (b)(i) Devote time to a specific education, employment, or
36 occupation;

37 (ii) Undergo available outpatient sex offender treatment for up to
38 two years, or inpatient sex offender treatment not to exceed the
39 standard range of confinement for that offense. A community mental

1 health center may not be used for such treatment unless it has an
2 appropriate program designed for sex offender treatment. The
3 respondent shall not change sex offender treatment providers or
4 treatment conditions without first notifying the prosecutor, the
5 probation counselor, and the court, and shall not change providers
6 without court approval after a hearing if the prosecutor or probation
7 counselor object to the change;

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

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

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

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

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

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

21 (ix) The court shall order that the offender may not attend the
22 public or private elementary, middle, or high school attended by the
23 victim or the victim's siblings. The parents or legal guardians of the
24 offender are responsible for transportation or other costs associated
25 with the offender's change of school that would otherwise be paid by
26 the school district. The court shall send notice of the disposition
27 and restriction on attending the same school as the victim or victim's
28 siblings to the public or private school the juvenile will attend, if
29 known, or if unknown, to the approved private schools and the public
30 school district board of directors of the district in which the
31 juvenile resides or intends to reside. This notice must be sent at the
32 earliest possible date but not later than ten calendar days after entry
33 of the disposition.

34 The sex offender treatment provider shall submit quarterly reports
35 on the respondent's progress in treatment to the court and the parties.
36 The reports shall reference the treatment plan and include at a minimum
37 the following: Dates of attendance, respondent's compliance with
38 requirements, treatment activities, the respondent's relative progress

1 in treatment, and any other material specified by the court at the time
2 of the disposition.

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

5 Except as provided in this subsection (5), after July 1, 1991,
6 examinations and treatment ordered pursuant to this subsection shall
7 only be conducted by sex offender treatment providers certified by the
8 department of health pursuant to chapter 18.155 RCW. A sex offender
9 therapist who examines or treats a juvenile sex offender pursuant to
10 this subsection does not have to be certified by the department of
11 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
12 offender has already moved to another state or plans to move to another
13 state for reasons other than circumventing the certification
14 requirements; (B) no certified providers are available for treatment
15 within a reasonable geographical distance of the offender's home; and
16 (C) the evaluation and treatment plan comply with this subsection (5)
17 and the rules adopted by the department of health.

18 If the offender violates any condition of the disposition or the
19 court finds that the respondent is failing to make satisfactory
20 progress in treatment, the court may revoke the suspension and order
21 execution of the disposition or the court may impose a penalty of up to
22 thirty days' confinement for violating conditions of the disposition.
23 The court may order both execution of the disposition and up to thirty
24 days' confinement for the violation of the conditions of the
25 disposition. The court shall give credit for any confinement time
26 previously served if that confinement was for the offense for which the
27 suspension is being revoked.

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

33 (6) RCW 13.40.193 shall govern the disposition of any juvenile
34 adjudicated of possessing a firearm in violation of RCW
35 9.41.040(1)((+e)) (b)(iii) or any crime in which a special finding is
36 entered that the juvenile was armed with a firearm.

37 (7) Whenever a juvenile offender is entitled to credit for time
38 spent in detention prior to a dispositional order, the dispositional

1 order shall specifically state the number of days of credit for time
2 served.

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

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

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

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

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

20 (ii) The sheriff of the county in which the juvenile will reside;
21 and

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

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

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

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

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

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

9 (c) The thirty-day notice requirements contained in this subsection
10 shall not apply to emergency medical furloughs.

11 (d) The existence of the notice requirements in this subsection
12 will not require any extension of the release date in the event the
13 release plan changes after notification.

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

26 (b) The secretary may authorize a leave, for a juvenile found to
27 have committed a violent offense, a sex offense, or stalking, which
28 shall not exceed forty-eight hours plus travel time, to meet an
29 emergency situation such as a death or critical illness of a member of
30 the juvenile's family. The secretary may authorize a leave, which
31 shall not exceed the time medically necessary, to obtain medical care
32 not available in a juvenile facility maintained by the department.
33 Prior to the commencement of an emergency or medical leave, the
34 secretary shall give notice of the leave to the appropriate law
35 enforcement agency in the jurisdiction in which the juvenile will be
36 during the leave period. The notice shall include the identity of the
37 juvenile, the time period of the leave, the residence of the juvenile
38 during the leave, and the identity of the person responsible for
39 supervising the juvenile during the leave. If previously requested,

1 the department shall also notify the witnesses and victim of the
2 offense which the juvenile was found to have committed or the victim's
3 next of kin if the offense was a homicide.

4 In case of an emergency or medical leave the secretary may waive
5 all or any portion of the requirements for leaves pursuant to RCW
6 13.40.205 (2)(a), (3), (4), and (5).

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

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

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

31 (6) For purposes of this section the following terms have the
32 following meanings:

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

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

35 (c) "Stalking" means the crime of stalking as defined in RCW
36 9A.46.110;

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

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

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

10 (a) Acceptance of (~~these~~) a nonresident student(~~s~~) would result
11 in the district experiencing a financial hardship;

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

14 (c) The student has been expelled or suspended from a public school
15 for more than ten consecutive days. Any policy allowing for
16 readmission of expelled or suspended students under this subsection (c)
17 must apply uniformly to both resident and nonresident applicants.

18 For purposes of subsection (1)(b) of this section, "gang" means an
19 organization, association, or group of three or more persons that has
20 a common name or identifying sign or symbol and whose members,
21 individually or collectively, commit or have committed two or more acts
22 that: Support or further the purposes or activities of the
23 organization, association, or group; and are a violation of state or
24 federal criminal law or include planning, organizing, financing,
25 soliciting, or threatening the commission of an act that is a violation
26 of state or federal criminal law.

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

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

33 Every board of directors, unless otherwise specifically provided by
34 law, shall:

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

1 (2) Adopt and make available to each pupil, teacher and parent in
2 the district reasonable written rules (~~and regulations~~) regarding
3 pupil conduct, discipline, and rights, including but not limited to
4 short-term suspensions as referred to in RCW 28A.305.160 and (~~long-~~
5 ~~term~~) suspensions in excess of ten consecutive days. Such rules (~~and~~
6 ~~regulations~~) shall not be inconsistent with any of the following:
7 Federal statutes and regulations, state statutes, common law (~~(or)~~),
8 the rules (~~and regulations~~) of the superintendent of public
9 instruction (~~(or)~~), and the state board of education (~~and~~). The
10 board's rules shall include such substantive and procedural due process
11 guarantees as prescribed by the state board of education under RCW
12 28A.305.160. Commencing with the 1976-77 school year, when such rules
13 (~~and regulations~~) are made available to each pupil, teacher, and
14 parent, they shall be accompanied by a detailed description of rights,
15 responsibilities, and authority of teachers and principals with respect
16 to the discipline of pupils as prescribed by state statutory law,
17 superintendent of public instruction, and state board of education
18 rules (~~and regulations~~) and rules and regulations of the school
19 district.

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

23 (3) Suspend, expel, or discipline pupils in accordance with RCW
24 28A.305.160.

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

27 (1) Any elementary or secondary school student who is determined to
28 have carried a firearm onto, or to have possessed a firearm on, public
29 elementary or secondary school premises, public school-provided
30 transportation, or areas of facilities while being used exclusively by
31 public schools, shall be expelled from school for not less than one
32 year under RCW 28A.600.010. The superintendent of the school district,
33 educational service district, state school for the deaf, or state
34 school for the blind may modify the expulsion of a student on a case-
35 by-case basis.

36 (2) For purposes of this section, "firearm" means a firearm as
37 defined in 18 U.S.C. Sec. 921, and a "firearm" as defined in RCW
38 9.41.010.

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

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

9 (5) This section does not apply to:

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

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

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

18 (6) A school district may suspend or expel a student for up to one
19 year subject to subsections (1), (3), (4), and (5) of this section, if
20 the student displayed in a threatening or dangerous manner an
21 instrument that appeared to be a firearm, on public elementary or
22 secondary school premises, public school-provided transportation, or
23 areas of facilities while being used exclusively by public schools.

24 NEW SECTION. **Sec. 6.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and takes effect
31 immediately.

--- END ---