
SUBSTITUTE HOUSE BILL 1601

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lambert, Rockefeller, Talcott, Carrell, Sullivan, Kagi, Benson, Delvin, Clements, Esser, Romero and Kenney)

Read first time 03/02/1999.

1 AN ACT Relating to cooperation between courts and schools regarding
2 juveniles; amending RCW 13.40.020, 13.04.145, 28A.190.010, 13.40.150,
3 and 13.40.480; adding a new section to chapter 13.40 RCW; and creating
4 a new section.

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

6 **Sec. 1.** RCW 13.40.020 and 1997 c 338 s 10 are each amended to read
7 as follows:

8 For the purposes of this chapter:

9 (1) "Community-based rehabilitation" means one or more of the
10 following: Employment; attendance of information classes; literacy
11 classes; counseling, outpatient substance abuse treatment programs,
12 outpatient mental health programs, anger management classes, education
13 or outpatient treatment programs to prevent animal cruelty, or other
14 services; or attendance at school or other educational programs
15 appropriate for the juvenile as determined by the school district.
16 Placement in community-based rehabilitation programs is subject to
17 available funds;

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

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

2 (b) Community service not to exceed one hundred fifty hours of
3 service;

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

9 (4) "Community supervision" means an order of disposition by the
10 court of an adjudicated youth not committed to the department or an
11 order granting a deferred disposition. A community supervision order
12 for a single offense may be for a period of up to two years for a sex
13 offense as defined by RCW 9.94A.030 and up to one year for other
14 offenses. As a mandatory condition of any term of community
15 supervision, the court shall order the juvenile to refrain from
16 committing new offenses. As a mandatory condition of community
17 supervision, the court shall order the juvenile to comply with the
18 mandatory school attendance provisions of chapter 28A.225 RCW and to
19 inform the school of the existence of this requirement. As a condition
20 of any term of community supervision, except for community supervision
21 under an order granting a deferred disposition, the court may order the
22 juvenile to comply with reporting requirements for the purposes of
23 monitoring the juvenile's reading skills, as provided under section 2
24 of this act. Community supervision is an individualized program
25 comprised of one or more of the following:

26 (a) Community-based sanctions;

27 (b) Community-based rehabilitation;

28 (c) Monitoring and reporting requirements;

29 (d) Posting of a probation bond;

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

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

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

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

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

16 (8) "Department" means the department of social and health
17 services;

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

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

1 student, parent, and business owner, and should represent the cultural
2 diversity of the local community;

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

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

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

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

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

21 (16) "Local sanctions" means one or more of the following: (a)
22 0-30 days of confinement; (b) 0-12 months of community supervision; (c)
23 0-150 hours of community service; or (d) \$0-\$500 fine;

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

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

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) "Probation bond" means a bond, posted with sufficient security
2 by a surety justified and approved by the court, to secure the
3 offender's appearance at required court proceedings and compliance with
4 court-ordered community supervision or conditions of release ordered
5 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
6 cash or posting of other collateral in lieu of a bond if approved by
7 the court;

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

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

20 (23) "Secretary" means the secretary of the department of social
21 and health services. "Assistant secretary" means the assistant
22 secretary for juvenile rehabilitation for the department;

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

27 (25) "Sex offense" means an offense defined as a sex offense in RCW
28 9.94A.030;

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

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

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

1 (29) "Violent offense" means a violent offense as defined in RCW
2 9.94A.030.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.40 RCW
4 to read as follows:

5 (1) When a court enters a disposition order for an adjudicated
6 juvenile committed to the department, or a disposition order containing
7 community supervision, the court may include as part of the disposition
8 order or community supervision a requirement that the juvenile
9 demonstrate, within a time specified by the court, an improvement in
10 the juvenile's reading skills and provisions for monitoring the
11 juvenile's reading level if the juvenile is at least twelve years old
12 and is unable to read at a sixth grade level. The court may consider
13 any relevant information, including but not limited to the following:

14 (a) The juvenile's educational records and any existence of an
15 individualized education program. A juvenile's individualized
16 education program may be provided to the court by the school, juvenile,
17 parent, or juvenile's guardian;

18 (b) Whether the juvenile is mentally or physically incapable of
19 achieving an adequate literacy level;

20 (c) The input from the juvenile's parent, guardian, teachers, or
21 other educational instructors; or

22 (d) The court's reasonable judgment based on an informal in-court
23 assessment of the juvenile's reading skills.

24 (2) In determining whether the juvenile has complied with the
25 reading requirement of the disposition order or community supervision
26 under this section, the court may require that the juvenile submit to
27 informal reading assessments at a school within reasonable proximity of
28 the juvenile. In enforcing the reading requirement of the disposition
29 order or community supervision under this section, the court may use
30 sanctions that do include detention or incarceration.

31 (3) For the purposes of monitoring the juvenile's reading skills,
32 the court's jurisdiction over the juvenile may be extended until:

33 (a) The juvenile achieves a sixth grade reading level;

34 (b) The juvenile demonstrates substantial improvement in reading
35 skills to the satisfaction of the court;

36 (c) The court determines that the juvenile is not mentally or
37 physically capable of achieving a sixth grade reading level or
38 significantly improving his or her reading skills;

1 (d) The court determines that there are no appropriate educational
2 resources available to the juvenile or the juvenile is not able to
3 access appropriate educational resources to assist in raising his or
4 her reading level; or

5 (e) The juvenile has reached his or her eighteenth birthday.

6 (4) In no case may the juvenile court's jurisdiction extend beyond
7 the juvenile's eighteenth birthday for the purposes of monitoring the
8 juvenile's reading skills. This section does not apply to juveniles
9 granted deferred disposition.

10 **Sec. 3.** RCW 13.04.145 and 1990 c 33 s 551 are each amended to read
11 as follows:

12 (1) A program of education shall be provided for by the several
13 counties and school districts of the state for common school age
14 persons confined in each of the detention facilities staffed and
15 maintained by the several counties of the state under this chapter and
16 chapters 13.16 and 13.20 RCW. The division of duties, authority, and
17 liabilities of the several counties and school districts of the state
18 respecting the educational programs is the same in all respects as set
19 forth in RCW 28A.190.030 through 28A.190.060 respecting programs of
20 education for state residential school residents. For the purposes of
21 this section, the terms "department of social and health services,"
22 "residential school" or "schools," and "superintendent or chief
23 administrator of a residential school" as used in RCW 28A.190.030
24 through 28A.190.060 shall be respectively construed to mean "the
25 several counties of the state," "detention facilities," and "the
26 administrator of juvenile court detention services." Nothing in this
27 section shall prohibit a school district from utilizing the services of
28 an educational service district subject to RCW 28A.310.180.

29 (2) As part of the program of education under subsection (1) of
30 this section, emphasis should be placed on raising the reading skills
31 of each confined juvenile who is at least twelve years old to at least
32 the sixth grade reading level, unless there has been a determination
33 that the juvenile is mentally or physically incapable of reading at
34 that level.

35 **Sec. 4.** RCW 28A.190.010 and 1996 c 84 s 1 are each amended to read
36 as follows:

1 (1) A program of education shall be provided for by the department
2 of social and health services and the several school districts of the
3 state for common school age persons who have been admitted to
4 facilities staffed and maintained or contracted pursuant to RCW
5 13.40.320 by the department of social and health services for the
6 education and treatment of juveniles who have been diverted or who have
7 been found to have committed a juvenile offense. The division of
8 duties, authority, and liabilities of the department of social and
9 health services and the several school districts of the state
10 respecting the educational programs shall be the same in all respects
11 as set forth in RCW 28A.190.030 through 28A.190.060 respecting programs
12 of education for state residential school residents. For the purposes
13 of this section, the term "residential school" or "schools" as used in
14 RCW 28A.190.030 through 28A.190.060 shall be construed to mean a
15 facility staffed and maintained by the department of social and health
16 services or a program established under RCW 13.40.320, for the
17 education and treatment of juvenile offenders on probation or parole.
18 Nothing in this section shall prohibit a school district from utilizing
19 the services of an educational service district subject to RCW
20 28A.310.180.

21 (2) As part of the program of education under subsection (1) of
22 this section, emphasis should be placed on raising the reading skills
23 of each confined juvenile who is at least twelve years old to at least
24 the sixth grade reading level, unless there has been a determination
25 that the juvenile is mentally or physically incapable of reading at
26 that level.

27 **Sec. 5.** RCW 13.40.150 and 1998 c 86 s 1 are each amended to read
28 as follows:

29 (1) In disposition hearings all relevant and material evidence,
30 including oral and written reports, may be received by the court and
31 may be relied upon to the extent of its probative value, even though
32 such evidence may not be admissible in a hearing on the information.
33 The youth or the youth's counsel and the prosecuting attorney shall be
34 afforded an opportunity to examine and controvert written reports so
35 received and to cross-examine individuals making reports when such
36 individuals are reasonably available, but sources of confidential
37 information need not be disclosed. The prosecutor and counsel for the
38 juvenile may submit recommendations for disposition.

1 (2) For purposes of disposition:
2 (a) Violations which are current offenses count as misdemeanors;
3 (b) Violations may not count as part of the offender's criminal
4 history;
5 (c) In no event may a disposition for a violation include
6 confinement.
7 (3) Before entering a dispositional order as to a respondent found
8 to have committed an offense, the court shall hold a disposition
9 hearing, at which the court shall:
10 (a) Consider the facts supporting the allegations of criminal
11 conduct by the respondent;
12 (b) Consider information and arguments offered by parties and their
13 counsel;
14 (c) Consider any predisposition reports, including any reports
15 received from the juvenile's school or other educational institution
16 and whether the juvenile has an individualized education program for
17 special education services;
18 (d) Consult with the respondent's parent, guardian, or custodian on
19 the appropriateness of dispositional options under consideration and
20 afford the respondent and the respondent's parent, guardian, or
21 custodian an opportunity to speak in the respondent's behalf;
22 (e) Allow the victim or a representative of the victim and an
23 investigative law enforcement officer to speak;
24 (f) Determine the amount of restitution owing to the victim, if
25 any, or set a hearing for a later date not to exceed one hundred eighty
26 days from the date of the disposition hearing to determine the amount,
27 except that the court may continue the hearing beyond the one hundred
28 eighty days for good cause;
29 (g) Determine the respondent's offender score;
30 (h) Consider whether or not any of the following mitigating factors
31 exist:
32 (i) The respondent's conduct neither caused nor threatened serious
33 bodily injury or the respondent did not contemplate that his or her
34 conduct would cause or threaten serious bodily injury;
35 (ii) The respondent acted under strong and immediate provocation;
36 (iii) The respondent was suffering from a mental or physical
37 condition that significantly reduced his or her culpability for the
38 offense though failing to establish a defense;

1 (iv) Prior to his or her detection, the respondent compensated or
2 made a good faith attempt to compensate the victim for the injury or
3 loss sustained; and

4 (v) There has been at least one year between the respondent's
5 current offense and any prior criminal offense;

6 (i) Consider whether or not any of the following aggravating
7 factors exist:

8 (i) In the commission of the offense, or in flight therefrom, the
9 respondent inflicted or attempted to inflict serious bodily injury to
10 another;

11 (ii) The offense was committed in an especially heinous, cruel, or
12 depraved manner;

13 (iii) The victim or victims were particularly vulnerable;

14 (iv) The respondent has a recent criminal history or has failed to
15 comply with conditions of a recent dispositional order or diversion
16 agreement;

17 (v) The current offense included a finding of sexual motivation
18 pursuant to RCW 13.40.135;

19 (vi) The respondent was the leader of a criminal enterprise
20 involving several persons;

21 (vii) There are other complaints which have resulted in diversion
22 or a finding or plea of guilty but which are not included as criminal
23 history; and

24 (viii) The standard range disposition is clearly too lenient
25 considering the seriousness of the juvenile's prior adjudications.

26 (4) The following factors may not be considered in determining the
27 punishment to be imposed:

28 (a) The sex of the respondent;

29 (b) The race or color of the respondent or the respondent's family;

30 (c) The creed or religion of the respondent or the respondent's
31 family;

32 (d) The economic or social class of the respondent or the
33 respondent's family; and

34 (e) Factors indicating that the respondent may be or is a dependent
35 child within the meaning of this chapter.

36 (5) A court may not commit a juvenile to a state institution solely
37 because of the lack of facilities, including treatment facilities,
38 existing in the community.

1 **Sec. 6.** RCW 13.40.480 and 1998 c 269 s 12 are each amended to read
2 as follows:

3 (1) Pursuant to RCW 28A.600.475, and to the extent permitted by the
4 family educational and privacy rights act of 1974, 20 U.S.C. Sec.
5 1232g(b), and in order to serve the juvenile while in detention and to
6 prepare any postconviction services, schools shall make all student
7 records and information, including records of a student's
8 individualized education program necessary for risk assessment,
9 security classification, and placement available to court personnel and
10 the department within three working days of a request under this
11 section.

12 (2)(a) When a juvenile has one or more prior convictions, a request
13 for records shall be made by the county prosecuting attorney, or
14 probation department if available, to the school not more than ten days
15 following the juvenile's arrest or detention, whichever occurs later,
16 and prior to trial. The request may be made by subpoena.

17 (b) Where a juvenile has no prior conviction, a request to release
18 records shall be made by subpoena upon the juvenile's conviction. When
19 the request for a juvenile's student records and information is made by
20 subpoena following conviction, the court or other issuing agency shall
21 order the school on which the subpoena is served not to disclose to any
22 person the existence or contents of the subpoena or any information
23 furnished in response to the subpoena. When the court or issuing
24 agency so orders, the school shall not provide notice to the juvenile
25 or his or her parents.

26 NEW SECTION. **Sec. 7.** The state shall reimburse counties for
27 costs, if any, associated with implementing the provisions in sections
28 2 and 3 of this act.

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