

HOUSE BILL 2535

State of Washington 61st Legislature 2010 Regular Session

By Representatives Hurst and O'Brien

Prefiled 01/05/10. Read first time 01/11/10. Referred to Committee on Human Services.

1 AN ACT Relating to juvenile firearms and weapons crimes; amending
2 RCW 13.40.127 and 13.40.193; and reenacting and amending RCW
3 13.40.0357.

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

5 Sec. 1. RCW 13.40.0357 and 2008 c 230 s 3 and 2008 c 158 s 1 are
6 each reenacted and amended to read as follows:

DESCRIPTION AND OFFENSE CATEGORY

		JUVENILE DISPOSITION
JUVENILE		CATEGORY FOR
DISPOSITION		ATTEMPT, BAILJUMP,
OFFENSE		CONSPIRACY, OR
CATEGORY	DESCRIPTION (RCW CITATION)	SOLICITATION

Arson and Malicious Mischief

A Arson 1 (9A.48.020) B+

1	B	Arson 2 (9A.48.030)	C
2	C	Reckless Burning 1 (9A.48.040)	D
3	D	Reckless Burning 2 (9A.48.050)	E
4	B	Malicious Mischief 1 (9A.48.070)	C
5	C	Malicious Mischief 2 (9A.48.080)	D
6	D	Malicious Mischief 3 (9A.48.090(2) (a) and	
7		(c))	E
8	E	Malicious Mischief 3 (9A.48.090(2)(b))	E
9	E	Tampering with Fire Alarm Apparatus	
10		(9.40.100)	E
11	E	Tampering with Fire Alarm Apparatus with	
12		Intent to Commit Arson (9.40.105)	E
13	A	Possession of Incendiary Device (9.40.120)	B+
14		Assault and Other Crimes Involving	
15		Physical Harm	
16	A	Assault 1 (9A.36.011)	B+
17	B+	Assault 2 (9A.36.021)	C+
18	C+	Assault 3 (9A.36.031)	D+
19	D+	Assault 4 (9A.36.041)	E
20	B+	Drive-By Shooting (9A.36.045)	C+
21	D+	Reckless Endangerment (9A.36.050)	E
22	C+	Promoting Suicide Attempt (9A.36.060)	D+
23	D+	Coercion (9A.36.070)	E
24	C+	Custodial Assault (9A.36.100)	D+
25		Burglary and Trespass	
26	B+	Burglary 1 (9A.52.020)	C+
27	B	Residential Burglary (9A.52.025)	C
28	B	Burglary 2 (9A.52.030)	C
29	D	Burglary Tools (Possession of) (9A.52.060)	E
30	D	Criminal Trespass 1 (9A.52.070)	E
31	E	Criminal Trespass 2 (9A.52.080)	E
32	C	Mineral Trespass (78.44.330)	C
33	C	Vehicle Prowling 1 (9A.52.095)	D
34	D	Vehicle Prowling 2 (9A.52.100)	E
35		Drugs	

1	E	Possession/Consumption of Alcohol	
2		(66.44.270)	E
3	C	Illegally Obtaining Legend Drug	
4		(69.41.020)	D
5	C+	Sale, Delivery, Possession of Legend Drug	
6		with Intent to Sell (69.41.030(2)(a))	D+
7	E	Possession of Legend Drug	
8		(69.41.030(2)(b))	E
9	B+	Violation of Uniform Controlled Substances	
10		Act - Narcotic, Methamphetamine, or	
11		Flunitrazepam Sale (69.50.401(2) (a) or	
12		(b))	B+
13	C	Violation of Uniform Controlled Substances	
14		Act - Nonnarcotic Sale (69.50.401(2)(c))	C
15	E	Possession of Marihuana <40 grams	
16		(69.50.4014)	E
17	C	Fraudulently Obtaining Controlled	
18		Substance (69.50.403)	C
19	C+	Sale of Controlled Substance for Profit	
20		(69.50.410)	C+
21	E	Unlawful Inhalation (9.47A.020)	E
22	B	Violation of Uniform Controlled Substances	
23		Act - Narcotic, Methamphetamine, or	
24		Flunitrazepam Counterfeit Substances	
25		(69.50.4011(2) (a) or (b))	B
26	C	Violation of Uniform Controlled Substances	
27		Act - Nonnarcotic Counterfeit Substances	
28		(69.50.4011(2) (c), (d), or (e))	C
29	C	Violation of Uniform Controlled Substances	
30		Act - Possession of a Controlled Substance	
31		(69.50.4013)	C
32	C	Violation of Uniform Controlled Substances	
33		Act - Possession of a Controlled Substance	
34		(69.50.4012)	C
35		Firearms and Weapons	
36	<u>A-</u>	<u>Unlawful Possession of a Firearm 1</u>	
37		<u>(9.41.040(1))</u>	<u>B+</u>

1	B+	<u>Unlawful Possession of a Firearm 2</u>	
2		<u>(9.41.040(2))</u>	<u>C+</u>
3	B±	Theft of Firearm (9A.56.300)	C
4	B±	Possession of Stolen Firearm (9A.56.310)	C
5	E	Carrying Loaded Pistol Without Permit	
6		(9.41.050)	E
7	((C	Possession of Firearms by Minor (<18)	
8		(9.41.040(2)(a)(iii))	E))
9	D+	Possession of Dangerous Weapon	
10		(9.41.250)	E
11	D	Intimidating Another Person by use of	
12		Weapon (9.41.270)	E
13		Homicide	
14	A+	Murder 1 (9A.32.030)	A
15	A+	Murder 2 (9A.32.050)	B+
16	B+	Manslaughter 1 (9A.32.060)	C+
17	C+	Manslaughter 2 (9A.32.070)	D+
18	B+	Vehicular Homicide (46.61.520)	C+
19		Kidnapping	
20	A	Kidnap 1 (9A.40.020)	B+
21	B+	Kidnap 2 (9A.40.030)	C+
22	C+	Unlawful Imprisonment (9A.40.040)	D+
23		Obstructing Governmental Operation	
24	D	Obstructing a Law Enforcement Officer	
25		(9A.76.020)	E
26	E	Resisting Arrest (9A.76.040)	E
27	B	Introducing Contraband 1 (9A.76.140)	C
28	C	Introducing Contraband 2 (9A.76.150)	D
29	E	Introducing Contraband 3 (9A.76.160)	E
30	B+	Intimidating a Public Servant (9A.76.180)	C+
31	B+	Intimidating a Witness (9A.72.110)	C+
32		Public Disturbance	
33	C+	Riot with Weapon (9A.84.010(2)(b))	D+
34	D+	Riot Without Weapon (9A.84.010(2)(a))	E
35	E	Failure to Disperse (9A.84.020)	E
36	E	Disorderly Conduct (9A.84.030)	E

1		Sex Crimes	
2	A	Rape 1 (9A.44.040)	B+
3	A-	Rape 2 (9A.44.050)	B+
4	C+	Rape 3 (9A.44.060)	D+
5	A-	Rape of a Child 1 (9A.44.073)	B+
6	B+	Rape of a Child 2 (9A.44.076)	C+
7	B	Incest 1 (9A.64.020(1))	C
8	C	Incest 2 (9A.64.020(2))	D
9	D+	Indecent Exposure (Victim <14)	
10		(9A.88.010)	E
11	E	Indecent Exposure (Victim 14 or over)	
12		(9A.88.010)	E
13	B+	Promoting Prostitution 1 (9A.88.070)	C+
14	C+	Promoting Prostitution 2 (9A.88.080)	D+
15	E	O & A (Prostitution) (9A.88.030)	E
16	B+	Indecent Liberties (9A.44.100)	C+
17	A-	Child Molestation 1 (9A.44.083)	B+
18	B	Child Molestation 2 (9A.44.086)	C+
19	C	Failure to Register as a Sex Offender	
20		(9A.44.130)	D
21		Theft, Robbery, Extortion, and Forgery	
22	B	Theft 1 (9A.56.030)	C
23	C	Theft 2 (9A.56.040)	D
24	D	Theft 3 (9A.56.050)	E
25	B	Theft of Livestock 1 and 2 (9A.56.080 and	
26		9A.56.083)	C
27	C	Forgery (9A.60.020)	D
28	A	Robbery 1 (9A.56.200)	B+
29	B+	Robbery 2 (9A.56.210)	C+
30	B+	Extortion 1 (9A.56.120)	C+
31	C+	Extortion 2 (9A.56.130)	D+
32	C	Identity Theft 1 (9.35.020(2))	D
33	D	Identity Theft 2 (9.35.020(3))	E
34	D	Improperly Obtaining Financial Information	
35		(9.35.010)	E
36	B	Possession of a Stolen Vehicle (9A.56.068)	C

1	B	Possession of Stolen Property 1	
2		(9A.56.150)	C
3	C	Possession of Stolen Property 2	
4		(9A.56.160)	D
5	D	Possession of Stolen Property 3	
6		(9A.56.170)	E
7	B	Taking Motor Vehicle Without Permission	
8		1 (9A.56.070)	C
9	C	Taking Motor Vehicle Without Permission	
10		2 (9A.56.075)	D
11	B	Theft of a Motor Vehicle (9A.56.065)	C
12		Motor Vehicle Related Crimes	
13	E	Driving Without a License (46.20.005)	E
14	B+	Hit and Run - Death (46.52.020(4)(a))	C+
15	C	Hit and Run - Injury (46.52.020(4)(b))	D
16	D	Hit and Run-Attended (46.52.020(5))	E
17	E	Hit and Run-Unattended (46.52.010)	E
18	C	Vehicular Assault (46.61.522)	D
19	C	Attempting to Elude Pursuing Police	
20		Vehicle (46.61.024)	D
21	E	Reckless Driving (46.61.500)	E
22	D	Driving While Under the Influence	
23		(46.61.502 and 46.61.504)	E
24	B+	Felony Driving While Under the Influence	
25		(46.61.502(6))	B
26	B+	Felony Physical Control of a Vehicle While	
27		Under the Influence (46.61.504(6))	B
28		Other	
29	B	Animal Cruelty 1 (16.52.205)	C
30	B	Bomb Threat (9.61.160)	C
31	C	Escape 1 ¹ (9A.76.110)	C
32	C	Escape 2 ¹ (9A.76.120)	C
33	D	Escape 3 (9A.76.130)	E
34	E	Obscene, Harassing, Etc., Phone Calls	
35		(9.61.230)	E

1	A	Other Offense Equivalent to an Adult Class	
2		A Felony	B+
3	B	Other Offense Equivalent to an Adult Class	
4		B Felony	C
5	C	Other Offense Equivalent to an Adult Class	
6		C Felony	D
7	D	Other Offense Equivalent to an Adult Gross	
8		Misdemeanor	E
9	E	Other Offense Equivalent to an Adult	
10		Misdemeanor	E
11	V	Violation of Order of Restitution,	
12		Community Supervision, or Confinement	
13		(13.40.200) ²	V

14 ¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
15 and the standard range is established as follows:

16 1st escape or attempted escape during 12-month period - 4 weeks
17 confinement

18 2nd escape or attempted escape during 12-month period - 8 weeks
19 confinement

20 3rd and subsequent escape or attempted escape during 12-month
21 period - 12 weeks confinement

22 ²If the court finds that a respondent has violated terms of an order,
23 it may impose a penalty of up to 30 days of confinement.

24 **JUVENILE SENTENCING STANDARDS**

25 This schedule must be used for juvenile offenders. The court may
26 select sentencing option A, B, C, D, or RCW 13.40.167.

27	OPTION A	
28	JUVENILE OFFENDER SENTENCING GRID	
29	STANDARD RANGE	
30	<hr/>	
	A+	180 WEEKS TO AGE 21 YEARS
31	<hr/>	
32	A	103 WEEKS TO 129 WEEKS
33	<hr/>	

1	A-	15-36	52-65	80-100	103-129	
2		WEEKS	WEEKS	WEEKS	WEEKS	
3		EXCEPT				
4		30-40				
5		WEEKS FOR				
6		15-17				
7		YEAR OLDS				
8	<hr/>					
9	Current	B+	15-36	52-65	80-100	103-129
10	Offense		WEEKS	WEEKS	WEEKS	WEEKS
11	Category					
12		B	LOCAL			52-65
13			SANCTIONS (LS)	15-36 WEEKS		WEEKS
14						
15		C+	LS			
16				15-36 WEEKS		
17						
18		C	LS			15-36 WEEKS
19			Local Sanctions:			
20			0 to 30 Days			
21		D+	LS	0 to 12 Months Community Supervision		
22				0 to 150 Hours Community Restitution		
23		D	LS	\$0 to \$500 Fine		
24						
25		E	LS			
26						
27				0	1	2
28						3
29						4
						or more
				PRIOR ADJUDICATIONS		

30 NOTE: References in the grid to days or weeks mean periods of
31 confinement.

32 (1) The vertical axis of the grid is the current offense category.
33 The current offense category is determined by the offense of
34 adjudication.

35 (2) The horizontal axis of the grid is the number of prior
36 adjudications included in the juvenile's criminal history. Each prior
37 felony adjudication shall count as one point. Each prior violation,
38 misdemeanor, and gross misdemeanor adjudication shall count as 1/4
39 point. Fractional points shall be rounded down.

40 (3) The standard range disposition for each offense is determined
41 by the intersection of the column defined by the prior adjudications
42 and the row defined by the current offense category.

1 (4) RCW 13.40.180 applies if the offender is being sentenced for
2 more than one offense.

3 (5) A current offense that is a violation is equivalent to an
4 offense category of E. However, a disposition for a violation shall
5 not include confinement.

6 OR

7 **OPTION B**

8 **SUSPENDED DISPOSITION ALTERNATIVE**

9 (1) If the offender is subject to a standard range disposition
10 involving confinement by the department, the court may impose the
11 standard range and suspend the disposition on condition that the
12 offender comply with one or more local sanctions and any educational or
13 treatment requirement. The treatment programs provided to the offender
14 must be either research-based best practice programs as identified by
15 the Washington state institute for public policy or the joint
16 legislative audit and review committee, or for chemical dependency
17 treatment programs or services, they must be evidence-based or
18 research-based best practice programs. For the purposes of this
19 subsection:

20 (a) "Evidence-based" means a program or practice that has had
21 multiple site random controlled trials across heterogeneous populations
22 demonstrating that the program or practice is effective for the
23 population; and

24 (b) "Research-based" means a program or practice that has some
25 research demonstrating effectiveness, but that does not yet meet the
26 standard of evidence-based practices.

27 (2) If the offender fails to comply with the suspended disposition,
28 the court may impose sanctions pursuant to RCW 13.40.200 or may revoke
29 the suspended disposition and order the disposition's execution.

30 (3) An offender is ineligible for the suspended disposition option
31 under this section if the offender is:

32 (a) Adjudicated of an A+ offense;

33 (b) Fourteen years of age or older and is adjudicated of one or
34 more of the following offenses:

35 (i) A class A offense, or an attempt, conspiracy, or solicitation
36 to commit a class A offense;

37 (ii) Manslaughter in the first degree (RCW 9A.32.060); ((~~or~~))

1 (iii) Assault in the second degree (RCW 9A.36.021), extortion in
2 the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW
3 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential
4 burglary (RCW 9A.52.025), burglary in the second degree (RCW
5 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW
6 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a
7 witness (RCW 9A.72.110), violation of the uniform controlled substances
8 act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070),
9 when the offense includes infliction of bodily harm upon another or
10 when during the commission or immediate withdrawal from the offense the
11 respondent or accomplice was armed with a deadly weapon;

12 (iv) Unlawful possession of a firearm in the first degree (RCW
13 9.41.040(1)) or unlawful possession of a firearm in the second degree
14 (RCW 9.41.040(2));

15 (c) Ordered to serve a disposition for a firearm violation under
16 RCW 13.40.193; or

17 (d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

18 OR

19 **OPTION C**

20 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

21 If the juvenile offender is subject to a standard range disposition
22 of local sanctions or 15 to 36 weeks of confinement and has not
23 committed an A- or B+ offense, the court may impose a disposition under
24 RCW 13.40.160(4) and 13.40.165.

25 OR

26 **OPTION D**

27 **MANIFEST INJUSTICE**

28 If the court determines that a disposition under option A, B, or C
29 would effectuate a manifest injustice, the court shall impose a
30 disposition outside the standard range under RCW 13.40.160(2).

31 **Sec. 2.** RCW 13.40.127 and 2009 c 236 s 1 are each amended to read
32 as follows:

33 (1) A juvenile is eligible for deferred disposition unless he or
34 she:

35 (a) Is charged with a sex or violent offense;

1 (b) Is charged with unlawful possession of a firearm in the second
2 degree, theft of a firearm, or possession of a stolen firearm;

3 (c) Has a criminal history which includes any felony;

4 (~~(c)~~) (d) Has a prior deferred disposition or deferred
5 adjudication; or

6 (~~(d)~~) (e) Has two or more adjudications.

7 (2) The juvenile court may, upon motion at least fourteen days
8 before commencement of trial and, after consulting the juvenile's
9 custodial parent or parents or guardian and with the consent of the
10 juvenile, continue the case for disposition for a period not to exceed
11 one year from the date the juvenile is found guilty. The court shall
12 consider whether the offender and the community will benefit from a
13 deferred disposition before deferring the disposition.

14 (3) Any juvenile who agrees to a deferral of disposition shall:

15 (a) Stipulate to the admissibility of the facts contained in the
16 written police report;

17 (b) Acknowledge that the report will be entered and used to support
18 a finding of guilt and to impose a disposition if the juvenile fails to
19 comply with terms of supervision; and

20 (c) Waive the following rights to: (i) A speedy disposition; and
21 (ii) call and confront witnesses.

22 The adjudicatory hearing shall be limited to a reading of the
23 court's record.

24 (4) Following the stipulation, acknowledgment, waiver, and entry of
25 a finding or plea of guilt, the court shall defer entry of an order of
26 disposition of the juvenile.

27 (5) Any juvenile granted a deferral of disposition under this
28 section shall be placed under community supervision. The court may
29 impose any conditions of supervision that it deems appropriate
30 including posting a probation bond. Payment of restitution under RCW
31 13.40.190 shall be a condition of community supervision under this
32 section.

33 The court may require a juvenile offender convicted of animal
34 cruelty in the first degree to submit to a mental health evaluation to
35 determine if the offender would benefit from treatment and such
36 intervention would promote the safety of the community. After
37 consideration of the results of the evaluation, as a condition of

1 community supervision, the court may order the offender to attend
2 treatment to address issues pertinent to the offense.

3 (6) A parent who signed for a probation bond has the right to
4 notify the counselor if the juvenile fails to comply with the bond or
5 conditions of supervision. The counselor shall notify the court and
6 surety of any failure to comply. A surety shall notify the court of
7 the juvenile's failure to comply with the probation bond. The state
8 shall bear the burden to prove, by a preponderance of the evidence,
9 that the juvenile has failed to comply with the terms of community
10 supervision.

11 (7) A juvenile's lack of compliance shall be determined by the
12 judge upon written motion by the prosecutor or the juvenile's juvenile
13 court community supervision counselor. If a juvenile fails to comply
14 with terms of supervision, the court shall enter an order of
15 disposition.

16 (8) At any time following deferral of disposition the court may,
17 following a hearing, continue the case for an additional one-year
18 period for good cause.

19 (9) At the conclusion of the period set forth in the order of
20 deferral and upon a finding by the court of full compliance with
21 conditions of supervision and payment of full restitution, the
22 respondent's conviction shall be vacated and the court shall dismiss
23 the case with prejudice, except that a conviction under RCW 16.52.205
24 shall not be vacated.

25 (10)(a) Records of deferred disposition cases vacated under
26 subsection (9) of this section shall be sealed no later than thirty
27 days after the juvenile's eighteenth birthday provided that the
28 juvenile does not have any charges pending at that time. If a juvenile
29 has already reached his or her eighteenth birthday before July 26,
30 2009, and does not have any charges pending, he or she may request that
31 the court issue an order sealing the records of his or her deferred
32 disposition cases vacated under subsection (9) of this section, and
33 this request shall be granted. Nothing in this subsection shall
34 preclude a juvenile from petitioning the court to have the records of
35 his or her deferred dispositions sealed under RCW 13.50.050 (11) and
36 (12).

37 (b) Records sealed under this provision shall have the same legal
38 status as records sealed under RCW 13.50.050.

1 **Sec. 3.** RCW 13.40.193 and 2003 c 53 s 100 are each amended to read
2 as follows:

3 (1) ~~((If a respondent is found to have been in possession of a~~
4 ~~firearm in violation of RCW 9.41.040(2)(a)(iii), the court shall impose~~
5 ~~a minimum disposition of ten days of confinement.))~~ If the offender's
6 standard range of disposition for the offense as indicated in RCW
7 13.40.0357 is more than thirty days of confinement, the court shall
8 commit the offender to the department for the standard range
9 disposition. The offender shall not be released until the offender has
10 served a minimum of ten days in confinement.

11 (2) If the court finds that the respondent or an accomplice was
12 armed with a firearm, the court shall determine the standard range
13 disposition for the offense pursuant to RCW 13.40.160. If the offender
14 or an accomplice was armed with a firearm when the offender committed
15 any felony other than possession of a machine gun, possession of a
16 stolen firearm, drive-by shooting, theft of a firearm, unlawful
17 possession of a firearm in the first and second degree, or use of a
18 machine gun in a felony, the following periods of total confinement
19 must be added to the sentence: For a class A felony, six months; for
20 a class B felony, four months; and for a class C felony, two months.
21 The additional time shall be imposed regardless of the offense's
22 juvenile disposition offense category as designated in RCW 13.40.0357.

23 (3) ~~((When a disposition under this section would effectuate a~~
24 ~~manifest injustice, the court may impose another disposition. When a~~
25 ~~judge finds a manifest injustice and imposes a disposition of~~
26 ~~confinement exceeding thirty days, the court shall commit the juvenile~~
27 ~~to a maximum term, and the provisions of RCW 13.40.030(2) shall be used~~
28 ~~to determine the range. When a judge finds a manifest injustice and~~
29 ~~imposes a disposition of confinement less than thirty days, the~~
30 ~~disposition shall be comprised of confinement or community supervision~~
31 ~~or both.~~

32 (4)) Any term of confinement ordered pursuant to this section
33 shall run consecutively to any term of confinement imposed in the same
34 disposition for other offenses.

--- END ---