
ENGROSSED SUBSTITUTE SENATE BILL 5746

State of Washington

61st Legislature

2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senator Hargrove)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to sentencing provisions for juveniles adjudicated
2 of certain crimes; amending RCW 13.40.020, 13.40.110, and 13.40.308;
3 reenacting and amending 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 2005 c 290 s 1 and 2005 c 238 s 1 are
6 each reenacted and amended to read as follows:

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

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

11 (b) Relating to children alleged or found to be dependent as
12 provided in chapter 26.44 RCW and in RCW 13.34.030 through
13 ((13.34.170)) 13.34.161;

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;

18 (e) Relating to juveniles alleged or found to have committed

1 offenses, traffic or civil infractions, or violations as provided in
2 RCW 13.40.020 through 13.40.230, unless:

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

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

7 (iii) The alleged offense or infraction is a traffic, fish,
8 boating, or game offense, or traffic or civil infraction committed by
9 a juvenile sixteen years of age or older and would, if committed by an
10 adult, be tried or heard in a court of limited jurisdiction, in which
11 instance the appropriate court of limited jurisdiction shall have
12 jurisdiction over the alleged offense or infraction, and no guardian ad
13 litem is required in any such proceeding due to the juvenile's age(~~(+~~
14 ~~PROVIDED, That)~~). If such an alleged offense or infraction and an
15 alleged offense or infraction subject to juvenile court jurisdiction
16 arise out of the same event or incident, the juvenile court may have
17 jurisdiction of both matters(~~(+~~ ~~PROVIDED — FURTHER, — That)~~). The
18 jurisdiction under this subsection does not constitute "transfer" or a
19 "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this
20 subsection(~~(+~~ ~~PROVIDED — FURTHER, — That)~~). Courts of limited
21 jurisdiction which confine juveniles for an alleged offense or
22 infraction may place juveniles in juvenile detention facilities under
23 an agreement with the officials responsible for the administration of
24 the juvenile detention facility in RCW 13.04.035 and 13.20.060;

25 (iv) The alleged offense is a traffic or civil infraction, a
26 violation of compulsory school attendance provisions under chapter
27 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
28 assumed concurrent jurisdiction over those offenses as provided in RCW
29 13.04.0301; or

30 (v) The juvenile is sixteen or seventeen years old on the date the
31 alleged offense is committed and the alleged offense is:

32 (A) A serious violent offense as defined in RCW 9.94A.030;

33 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile
34 has a criminal history consisting of: (I) One or more prior serious
35 violent offenses; (II) two or more prior violent offenses; or (III)
36 three or more of any combination of the following offenses: Any class
37 A felony, any class B felony, vehicular assault, or manslaughter in the

1 second degree, all of which must have been committed after the
2 juvenile's thirteenth birthday and prosecuted separately;

3 (C) Robbery in the first degree, rape of a child in the first
4 degree, or drive-by shooting, committed on or after July 1, 1997;

5 (D) Burglary in the first degree committed on or after July 1,
6 1997, and the juvenile has a criminal history consisting of one or more
7 prior felony or misdemeanor offenses; or

8 (E) Any violent offense as defined in RCW 9.94A.030 committed on or
9 after July 1, 1997, and the juvenile is alleged to have been armed with
10 a firearm.

11 (I) In such a case the adult criminal court shall have exclusive
12 original jurisdiction, except as provided in (e)(v)(E)(II) and (III) of
13 this subsection.

14 (II) The juvenile court shall have exclusive jurisdiction over the
15 disposition of any remaining charges in any case in which the juvenile
16 is found not guilty in the adult criminal court of the charge or
17 charges for which he or she was transferred, or is convicted in the
18 adult criminal court of a lesser included offense that is not also an
19 offense listed in (e)(v) of this subsection. The juvenile court shall
20 enter an order extending juvenile court jurisdiction if the juvenile
21 has turned eighteen years of age during the adult criminal court
22 proceedings pursuant to RCW 13.40.300. However, once the case is
23 returned to juvenile court, the court may hold a decline hearing
24 pursuant to RCW 13.40.110 to determine whether to retain the case in
25 juvenile court for the purpose of disposition or return the case to
26 adult criminal court for sentencing.

27 (III) The prosecutor and respondent may agree to juvenile court
28 jurisdiction and waive application of exclusive adult criminal
29 jurisdiction in (e)(v)(A) through (E) of this subsection and remove the
30 proceeding back to juvenile court with the court's approval. In
31 deciding whether or not to approve the motion to waive exclusive adult
32 jurisdiction, the court shall only consider the facts of the alleged
33 offense as they relate to: The seriousness of the alleged offense and
34 the extent to which the juvenile was involved; whether the alleged
35 offense was committed in an aggressive, violent, premeditated or
36 willful manner; and whether the alleged offense is against persons or
37 property, greater weight being given to offenses against persons,
38 especially if personal injury resulted from the offense.

1 If the juvenile challenges the state's determination of the
2 juvenile's criminal history under (e)(v) of this subsection, the state
3 may establish the offender's criminal history by a preponderance of the
4 evidence. If the criminal history consists of adjudications entered
5 upon a plea of guilty, the state shall not bear a burden of
6 establishing the knowing and voluntariness of the plea;

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

9 (g) Relating to termination of a diversion agreement under RCW
10 13.40.080, including a proceeding in which the divertee has attained
11 eighteen years of age;

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

18 (i) Relating to petitions to compel disclosure of information filed
19 by the department of social and health services pursuant to RCW
20 74.13.042; and

21 (j) Relating to judicial determinations and permanency planning
22 hearings involving developmentally disabled children who have been
23 placed in out-of-home care pursuant to a voluntary placement agreement
24 between the child's parent, guardian, or legal custodian and the
25 department of social and health services.

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

30 (3) The juvenile court shall have concurrent original jurisdiction
31 with the family court over child custody proceedings under chapter
32 26.10 RCW as provided for in RCW 13.34.155.

33 (4) A juvenile subject to adult superior court jurisdiction under
34 subsection (1)(e)(i) through (v) of this section, who is detained
35 pending trial, may be detained in a detention facility as defined in
36 RCW 13.40.020 pending sentencing or a dismissal.

1 **Sec. 2.** RCW 13.40.020 and 2004 c 120 s 2 are each amended to read
2 as follows:

3 For the purposes of this chapter:

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

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

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

16 (b) Community restitution not to exceed one hundred fifty hours of
17 community restitution;

18 (3) "Community restitution" means compulsory service, without
19 compensation, performed for the benefit of the community by the
20 offender as punishment for committing an offense. Community
21 restitution may be performed through public or private organizations or
22 through work crews;

23 (4) "Community supervision" means an order of disposition by the
24 court of an adjudicated youth not committed to the department or an
25 order granting a deferred disposition. A community supervision order
26 for a single offense may be for a period of up to two years for a sex
27 offense as defined by RCW 9.94A.030 and up to one year for other
28 offenses. As a mandatory condition of any term of community
29 supervision, the court shall order the juvenile to refrain from
30 committing new offenses. As a mandatory condition of community
31 supervision, the court shall order the juvenile to comply with the
32 mandatory school attendance provisions of chapter 28A.225 RCW and to
33 inform the school of the existence of this requirement. Community
34 supervision is an individualized program comprised of one or more of
35 the following:

36 (a) Community-based sanctions;

37 (b) Community-based rehabilitation;

38 (c) Monitoring and reporting requirements;

1 (d) Posting of a probation bond;

2 (5) "Confinement" means physical custody by the department of
3 social and health services in a facility operated by or pursuant to a
4 contract with the state, or physical custody in a detention facility
5 operated by or pursuant to a contract with any county. The county may
6 operate or contract with vendors to operate county detention
7 facilities. The department may operate or contract to operate
8 detention facilities for juveniles committed to the department.
9 Pretrial confinement or confinement of less than thirty-one days
10 imposed as part of a disposition or modification order may be served
11 consecutively or intermittently, in the discretion of the court;

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

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

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

20 (b) The criminal complaint was diverted by a prosecutor pursuant to
21 the provisions of this chapter on agreement of the respondent and after
22 an advisement to the respondent that the criminal complaint would be
23 considered as part of the respondent's criminal history. A
24 successfully completed deferred adjudication that was entered before
25 July 1, 1998, or a deferred disposition shall not be considered part of
26 the respondent's criminal history;

27 (8) "Department" means the department of social and health
28 services;

29 (9) "Detention facility" means a county facility, paid for by the
30 county, for the physical confinement of a juvenile alleged to have
31 committed an offense or an adjudicated offender subject to a
32 disposition or modification order. "Detention facility" includes
33 county group homes, inpatient substance abuse programs, juvenile basic
34 training camps, and electronic monitoring;

35 (10) "Diversion unit" means any probation counselor who enters into
36 a diversion agreement with an alleged youthful offender, or any other
37 person, community accountability board, youth court under the
38 supervision of the juvenile court, or other entity except a law

1 enforcement official or entity, with whom the juvenile court
2 administrator has contracted to arrange and supervise such agreements
3 pursuant to RCW 13.40.080, or any person, community accountability
4 board, or other entity specially funded by the legislature to arrange
5 and supervise diversion agreements in accordance with the requirements
6 of this chapter. For purposes of this subsection, "community
7 accountability board" means a board comprised of members of the local
8 community in which the juvenile offender resides. The superior court
9 shall appoint the members. The boards shall consist of at least three
10 and not more than seven members. If possible, the board should include
11 a variety of representatives from the community, such as a law
12 enforcement officer, teacher or school administrator, high school
13 student, parent, and business owner, and should represent the cultural
14 diversity of the local community;

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

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

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

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

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

33 (16) "Local sanctions" means one or more of the following: (a) 0-
34 30 days of confinement; (b) 0-12 months of community supervision; (c)
35 0-150 hours of community restitution; or (d) \$0-\$500 fine;

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

1 (18) "Monitoring and reporting requirements" means one or more of
2 the following: Curfews; requirements to remain at home, school, work,
3 or court-ordered treatment programs during specified hours;
4 restrictions from leaving or entering specified geographical areas;
5 requirements to report to the probation officer as directed and to
6 remain under the probation officer's supervision; and other conditions
7 or limitations as the court may require which may not include
8 confinement;

9 (19) "Offense" means an act designated a violation or a crime if
10 committed by an adult under the law of this state, under any ordinance
11 of any city or county of this state, under any federal law, or under
12 the law of another state if the act occurred in that state;

13 (20) "Probation bond" means a bond, posted with sufficient security
14 by a surety justified and approved by the court, to secure the
15 offender's appearance at required court proceedings and compliance with
16 court-ordered community supervision or conditions of release ordered
17 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
18 cash or posting of other collateral in lieu of a bond if approved by
19 the court;

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

22 (22) "Restitution" means financial reimbursement by the offender to
23 the victim, and shall be limited to easily ascertainable damages for
24 injury to or loss of property, actual expenses incurred for medical
25 treatment for physical injury to persons, lost wages resulting from
26 physical injury, and costs of the victim's counseling reasonably
27 related to the offense. Restitution shall not include reimbursement
28 for damages for mental anguish, pain and suffering, or other intangible
29 losses. Nothing in this chapter shall limit or replace civil remedies
30 or defenses available to the victim or offender;

31 (23) "Secretary" means the secretary of the department of social
32 and health services. "Assistant secretary" means the assistant
33 secretary for juvenile rehabilitation for the department;

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

1 (25) "Sex offense" means an offense defined as a sex offense in RCW
2 9.94A.030;

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

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

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

13 (29) "Violent offense" means a violent offense as defined in RCW
14 9.94A.030;

15 (30) "Youth court" means a diversion unit under the supervision of
16 the juvenile court.

17 **Sec. 3.** RCW 13.40.110 and 1997 c 338 s 20 are each amended to read
18 as follows:

19 (1) Discretionary decline hearing - The prosecutor, respondent, or
20 the court on its own motion may, before a hearing on the information on
21 its merits, file a motion requesting the court to transfer the
22 respondent for adult criminal prosecution and the matter shall be set
23 for a hearing on the question of declining jurisdiction.

24 (2) Mandatory decline hearing - Unless waived by the court, the
25 parties, and their counsel, a decline hearing shall be held when:

26 (a) The respondent is (~~(fifteen₇)~~) sixteen(~~(₇)~~) or seventeen years
27 of age and the information alleges a class A felony or an attempt,
28 solicitation, or conspiracy to commit a class A felony;

29 (b) The respondent is seventeen years of age and the information
30 alleges assault in the second degree, extortion in the first degree,
31 indecent liberties, child molestation in the second degree, kidnapping
32 in the second degree, or robbery in the second degree; or

33 (c) The information alleges an escape by the respondent and the
34 respondent is serving a minimum juvenile sentence to age twenty-one.

35 (~~(+2)~~) (3) The court after a decline hearing may order the case
36 transferred for adult criminal prosecution upon a finding that the

1 declination would be in the best interest of the juvenile or the
2 public. The court shall consider the relevant reports, facts,
3 opinions, and arguments presented by the parties and their counsel.

4 ~~((3))~~ (4) When the respondent is transferred for criminal
5 prosecution or retained for prosecution in juvenile court, the court
6 shall set forth in writing its finding which shall be supported by
7 relevant facts and opinions produced at the hearing.

8 **Sec. 4.** RCW 13.40.308 and 2007 c 199 s 15 are each amended to read
9 as follows:

10 (1) If a respondent is adjudicated of taking a motor vehicle
11 without permission in the first degree as defined in RCW 9A.56.070, the
12 court shall impose the following minimum sentence, in addition to any
13 restitution the court may order payable to the victim:

14 (a) Juveniles with a prior criminal history score of zero to one-
15 half points shall be sentenced to a standard range sentence that
16 includes no less than ~~((five days of home detention))~~ three months of
17 community supervision, forty-five hours of community restitution,
18 ~~((and))~~ a two hundred dollar fine, and a requirement that the juvenile
19 remain at home such that the juvenile is confined to a private
20 residence for no less than five days. The juvenile may be subject to
21 electronic monitoring where available. If the juvenile is enrolled in
22 school, the confinement shall be served on nonschool days;

23 (b) Juveniles with a prior criminal history score of three-quarters
24 to one and one-half points shall be sentenced to ~~((a))~~ a standard
25 range sentence that includes six months of community supervision, no
26 less than ten days of detention, ninety hours of community restitution,
27 and a four hundred dollar fine; and

28 (c) Juveniles with a prior criminal history score of two or more
29 points shall be sentenced to no less than fifteen to thirty-six weeks
30 ~~((of confinement, seven days of home detention))~~ commitment to the
31 juvenile rehabilitation administration, four months of parole
32 supervision, ninety hours of community restitution, ~~((and))~~ a four
33 hundred dollar fine, and a requirement that the juvenile remain at home
34 such that the juvenile is confined in a private residence for no less
35 than seven days. The juvenile may be subject to electronic monitoring
36 where available. If the juvenile is enrolled in school, the
37 confinement shall be served on nonschool days.

1 (2) If a respondent is adjudicated of theft of a motor vehicle as
2 defined under RCW 9A.56.065, or possession of a stolen vehicle as
3 defined under RCW 9A.56.068, the court shall impose the following
4 minimum sentence, in addition to any restitution the court may order
5 payable to the victim:

6 (a) Juveniles with a prior criminal history score of zero to one-
7 half points shall be sentenced to a standard range sentence that
8 includes ~~((either: (i) No less than five days of home detention and))~~
9 no less than three months of community supervision, forty-five hours of
10 community restitution~~((; or (ii) no home detention and ninety hours of~~
11 ~~community restitution))~~, a two hundred dollar fine, and either ninety
12 hours of community restitution or a requirement that the juvenile
13 remain at home such that the juvenile is confined in a private
14 residence for no less than five days. The juvenile may be subject to
15 electronic monitoring where available;

16 (b) Juveniles with a prior criminal history score of three-quarters
17 to one and one-half points shall be sentenced to ~~((a))~~ a standard
18 range sentence that includes no less than six months of community
19 supervision, no less than ten days of detention, ninety hours of
20 community restitution, and a four hundred dollar fine; and

21 (c) Juveniles with a prior criminal history score of two or more
22 points shall be sentenced to no less than fifteen to thirty-six weeks
23 ~~((of confinement, seven days of home detention))~~ commitment to the
24 juvenile rehabilitation administration, four months of parole
25 supervision, ninety hours of community restitution, ((and)) a four
26 hundred dollar fine, and a requirement that the juvenile remain at home
27 such that the juvenile is confined in a private residence for no less
28 than seven days. If the juvenile is enrolled in school, the
29 confinement shall be served on nonschool days. The juvenile may be
30 subject to electronic monitoring where available.

31 (3) If a respondent is adjudicated of taking a motor vehicle
32 without permission in the second degree as defined in RCW 9A.56.075,
33 the court shall impose a standard range as follows:

34 (a) Juveniles with a prior criminal history score of zero to one-
35 half points shall be sentenced to a standard range sentence that
36 includes ~~((either: (i) No less than one day of home detention, one))~~
37 three months of community supervision~~((; and))~~ fifteen hours of
38 community restitution~~((; or (ii) no home detention, one month of~~

1 ~~supervision, and thirty hours of community restitution)) and a~~
2 requirement that the juvenile remain at home such that the juvenile is
3 confined in a private residence for no less than one day. If the
4 juvenile is enrolled in school, the confinement shall be served on
5 nonschool days. The juvenile may be subject to electronic monitoring
6 where available;

7 (b) Juveniles with a prior criminal history score of three-quarters
8 to one and one-half points shall be sentenced to a standard range
9 sentence that includes no less than one day of detention, (~~two days of~~
10 ~~home detention, two~~) three months of community supervision, thirty
11 hours of community restitution, (~~and~~) a one hundred fifty dollar fine
12 and a requirement that the juvenile remain at home such that the
13 juvenile is confined in a private residence for no less than two days.
14 If the juvenile is enrolled in school, the confinement shall be served
15 on nonschool days. The juvenile may be subject to electronic
16 monitoring where available; and

17 (c) Juveniles with a prior criminal history score of two or more
18 points shall be sentenced to no less than three days of detention,
19 (~~seven days of home detention, three~~) six months of community
20 supervision, forty-five hours of community restitution, (~~and~~) a one
21 hundred fifty dollar fine, and a requirement that the juvenile remain
22 at home such that the juvenile is confined in a private residence for
23 no less than seven days. If the juvenile is enrolled in school, the
24 confinement shall be served on nonschool days. The juvenile may be
25 subject to electronic monitoring where available.

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