
SENATE BILL 6868

State of Washington

61st Legislature

2010 Regular Session

By Senator Hargrove

Read first time 02/19/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the reasons for which a manifest injustice
2 disposition may be imposed upon a juvenile offender; amending RCW
3 13.40.150, 13.40.160, and 13.40.165; and providing an effective date.

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

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

7 (1) In disposition hearings all relevant and material evidence,
8 including oral and written reports, may be received by the court and
9 may be relied upon to the extent of its probative value, even though
10 such evidence may not be admissible in a hearing on the information.
11 The youth or the youth's counsel and the prosecuting attorney shall be
12 afforded an opportunity to examine and controvert written reports so
13 received and to cross-examine individuals making reports when such
14 individuals are reasonably available, but sources of confidential
15 information need not be disclosed. The prosecutor and counsel for the
16 juvenile may submit recommendations for disposition.

17 (2) For purposes of disposition:

18 (a) Violations which are current offenses count as misdemeanors;

1 (b) Violations may not count as part of the offender's criminal
2 history;

3 (c) In no event may a disposition for a violation include
4 confinement.

5 (3) Before entering a dispositional order as to a respondent found
6 to have committed an offense, the court shall hold a disposition
7 hearing, at which the court shall:

8 (a) Consider the facts supporting the allegations of criminal
9 conduct by the respondent;

10 (b) Consider information and arguments offered by parties and their
11 counsel;

12 (c) Consider any predisposition reports;

13 (d) Consult with the respondent's parent, guardian, or custodian on
14 the appropriateness of dispositional options under consideration and
15 afford the respondent and the respondent's parent, guardian, or
16 custodian an opportunity to speak in the respondent's behalf;

17 (e) Allow the victim or a representative of the victim and an
18 investigative law enforcement officer to speak;

19 (f) Determine the amount of restitution owing to the victim, if
20 any, or set a hearing for a later date not to exceed one hundred eighty
21 days from the date of the disposition hearing to determine the amount,
22 except that the court may continue the hearing beyond the one hundred
23 eighty days for good cause;

24 (g) Determine the respondent's offender score;

25 (h) Consider whether or not any of the following mitigating factors
26 exist:

27 (i) The respondent's conduct neither caused nor threatened serious
28 bodily injury or the respondent did not contemplate that his or her
29 conduct would cause or threaten serious bodily injury;

30 (ii) The respondent acted under strong and immediate provocation;

31 (iii) The respondent was suffering from a mental or physical
32 condition that significantly reduced his or her culpability for the
33 offense though failing to establish a defense;

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

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

1 (i) Consider whether or not any of the following aggravating
2 factors exist:

3 (i) In the commission of the offense, or in flight therefrom, the
4 respondent inflicted or attempted to inflict serious bodily injury to
5 another;

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

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

9 (iv) The respondent has a recent criminal history or has failed to
10 comply with conditions of a recent dispositional order or diversion
11 agreement;

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

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

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

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

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

23 (a) The sex of the respondent;

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

25 (c) The creed or religion of the respondent or the respondent's
26 family;

27 (d) The economic or social class of the respondent or the
28 respondent's family; (~~and~~)

29 (e) Factors indicating that the respondent may be or is a dependent
30 child within the meaning of this chapter; and

31 (f) The offender's primary need for inpatient or structured mental
32 health or chemical dependency treatment, other than for sex offender
33 treatment.

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

1 **Sec. 2.** RCW 13.40.160 and 2007 c 199 s 14 are each amended to read
2 as follows:

3 (1) The standard range disposition for a juvenile adjudicated of an
4 offense is determined according to RCW 13.40.0357.

5 (a) When the court sentences an offender to a local sanction as
6 provided in RCW 13.40.0357 option A, the court shall impose a
7 determinate disposition within the standard ranges, except as provided
8 in subsection (2), (3), (4), or (5)((~~, or (6)~~)) of this section. The
9 disposition may be comprised of one or more local sanctions.

10 (b) When the court sentences an offender to a standard range as
11 provided in RCW 13.40.0357 option A that includes a term of confinement
12 exceeding thirty days, commitment shall be to the department for the
13 standard range of confinement, except as provided in subsection (2),
14 (3), (4), or (5)((~~, or (6)~~)) of this section.

15 (2) If the court concludes, and enters reasons for its conclusion,
16 that disposition within the standard range would effectuate a manifest
17 injustice the court shall impose a disposition outside the standard
18 range, as indicated in option D of RCW 13.40.0357. The court's finding
19 of manifest injustice shall be supported by clear and convincing
20 evidence and cannot be based solely upon the offender's need for
21 inpatient, structured mental health or chemical dependency treatment,
22 other than sex offender treatment.

23 A disposition outside the standard range shall be determinate and
24 shall be comprised of confinement or community supervision, or a
25 combination thereof. When a judge finds a manifest injustice and
26 imposes a sentence of confinement exceeding thirty days, the court
27 shall sentence the juvenile to a maximum term, and the provisions of
28 RCW 13.40.030(2) shall be used to determine the range. A disposition
29 outside the standard range is appealable under RCW 13.40.230 by the
30 state or the respondent. A disposition within the standard range is
31 not appealable under RCW 13.40.230.

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

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

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

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

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

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

19 (iv) Anticipated length of treatment; and

20 (v) Recommended crime-related prohibitions.

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

27 After receipt of reports of the examination, the court shall then
28 consider whether the offender and the community will benefit from use
29 of this special sex offender disposition alternative and consider the
30 victim's opinion whether the offender should receive a treatment
31 disposition under this section. If the court determines that this
32 special sex offender disposition alternative is appropriate, then the
33 court shall impose a determinate disposition within the standard range
34 for the offense, or if the court concludes, and enters reasons for its
35 conclusions, that such disposition would cause a manifest injustice,
36 the court shall impose a disposition under option D, and the court may
37 suspend the execution of the disposition and place the offender on
38 community supervision for at least two years. As a condition of the

1 suspended disposition, the court may impose the conditions of community
2 supervision and other conditions, including up to thirty days of
3 confinement and requirements that the offender do any one or more of
4 the following:

5 (b)(i) Devote time to a specific education, employment, or
6 occupation;

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

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

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

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

24 (vi) Pay all court-ordered legal financial obligations, perform
25 community restitution, or any combination thereof;

26 (vii) Make restitution to the victim for the cost of any counseling
27 reasonably related to the offense;

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

30 (ix) The court shall order that the offender shall not attend the
31 public or approved private elementary, middle, or high school attended
32 by the victim or the victim's siblings. The parents or legal guardians
33 of the offender are responsible for transportation or other costs
34 associated with the offender's change of school that would otherwise be
35 paid by the school district. The court shall send notice of the
36 disposition and restriction on attending the same school as the victim
37 or victim's siblings to the public or approved private school the
38 juvenile will attend, if known, or if unknown, to the approved private

1 schools and the public school district board of directors of the
2 district in which the juvenile resides or intends to reside. This
3 notice must be sent at the earliest possible date but not later than
4 ten calendar days after entry of the disposition.

5 The sex offender treatment provider shall submit quarterly reports
6 on the respondent's progress in treatment to the court and the parties.
7 The reports shall reference the treatment plan and include at a minimum
8 the following: Dates of attendance, respondent's compliance with
9 requirements, treatment activities, the respondent's relative progress
10 in treatment, and any other material specified by the court at the time
11 of the disposition.

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

14 Except as provided in this subsection (3), after July 1, 1991,
15 examinations and treatment ordered pursuant to this subsection shall
16 only be conducted by certified sex offender treatment providers or
17 certified affiliate sex offender treatment providers under chapter
18 18.155 RCW. A sex offender therapist who examines or treats a juvenile
19 sex offender pursuant to this subsection does not have to be certified
20 by the department of health pursuant to chapter 18.155 RCW if the court
21 finds that: (A) The offender has already moved to another state or
22 plans to move to another state for reasons other than circumventing the
23 certification requirements; (B) no certified sex offender treatment
24 providers or certified affiliate sex offender treatment providers are
25 available for treatment within a reasonable geographical distance of
26 the offender's home; and (C) the evaluation and treatment plan comply
27 with this subsection (3) and the rules adopted by the department of
28 health.

29 If the offender violates any condition of the disposition or the
30 court finds that the respondent is failing to make satisfactory
31 progress in treatment, the court may revoke the suspension and order
32 execution of the disposition or the court may impose a penalty of up to
33 thirty days' confinement for violating conditions of the disposition.
34 The court may order both execution of the disposition and up to thirty
35 days' confinement for the violation of the conditions of the
36 disposition. The court shall give credit for any confinement time
37 previously served if that confinement was for the offense for which the
38 suspension is being revoked.

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

6 A disposition entered under this subsection (3) is not appealable
7 under RCW 13.40.230.

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

12 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of
13 confinement, the court may impose the disposition alternative under RCW
14 13.40.167.

15 ~~((When the offender is subject to a standard range commitment
16 of 15 to 36 weeks and is ineligible for a suspended disposition
17 alternative, a manifest injustice disposition below the standard range,
18 special sex offender disposition alternative, chemical dependency
19 disposition alternative, or mental health disposition alternative, the
20 court in a county with a pilot program under RCW 13.40.169 may impose
21 the disposition alternative under RCW 13.40.169.~~

22 ~~(7))~~ RCW 13.40.193 shall govern the disposition of any juvenile
23 adjudicated of possessing a firearm in violation of RCW
24 9.41.040(2)(a)(iii) or any crime in which a special finding is entered
25 that the juvenile was armed with a firearm.

26 ~~((8))~~ (7) RCW 13.40.308 shall govern the disposition of any
27 juvenile adjudicated of theft of a motor vehicle as defined under RCW
28 9A.56.065, possession of a stolen motor vehicle as defined under RCW
29 9A.56.068, taking a motor vehicle without permission in the first
30 degree under RCW 9A.56.070, and taking a motor vehicle without
31 permission in the second degree under RCW 9A.56.075.

32 ~~((9))~~ (8) Whenever a juvenile offender is entitled to credit for
33 time spent in detention prior to a dispositional order, the
34 dispositional order shall specifically state the number of days of
35 credit for time served.

36 ~~((10))~~ (9) Except as provided under subsection (3), (4), or
37 (5) ~~(, or (6))~~ of this section, or option B of RCW 13.40.0357, or RCW

1 13.40.127, the court shall not suspend or defer the imposition or the
2 execution of the disposition.

3 ~~((+11+))~~ (10) In no case shall the term of confinement imposed by
4 the court at disposition exceed that to which an adult could be
5 subjected for the same offense.

6 **Sec. 3.** RCW 13.40.165 and 2004 c 120 s 5 are each amended to read
7 as follows:

8 (1) The purpose of this disposition alternative is to ensure that
9 successful treatment options to reduce recidivism are available to
10 eligible youth, pursuant to RCW 70.96A.520. The court must consider
11 eligibility for the chemical dependency disposition alternative when a
12 juvenile offender is subject to a standard range disposition of local
13 sanctions or 15 to 36 weeks of confinement and has not committed an A-
14 or B+ offense, other than a first time B+ offense under chapter 69.50
15 RCW. The court, on its own motion or the motion of the state or the
16 respondent if the evidence shows that the offender may be chemically
17 dependent or substance abusing, may order an examination by a chemical
18 dependency counselor from a chemical dependency treatment facility
19 approved under chapter 70.96A RCW to determine if the youth is
20 chemically dependent or substance abusing. The offender shall pay the
21 cost of any examination ordered under this subsection unless the court
22 finds that the offender is indigent and no third party insurance
23 coverage is available, in which case the state shall pay the cost.

24 (2) The report of the examination shall include at a minimum the
25 following: The respondent's version of the facts and the official
26 version of the facts, the respondent's offense history, an assessment
27 of drug-alcohol problems and previous treatment attempts, the
28 respondent's social, educational, and employment situation, and other
29 evaluation measures used. The report shall set forth the sources of
30 the examiner's information.

31 (3) The examiner shall assess and report regarding the respondent's
32 relative risk to the community. A proposed treatment plan shall be
33 provided and shall include, at a minimum:

- 34 (a) Whether inpatient and/or outpatient treatment is recommended;
35 (b) Availability of appropriate treatment;
36 (c) Monitoring plans, including any requirements regarding living

1 conditions, lifestyle requirements, and monitoring by family members,
2 legal guardians, or others;

3 (d) Anticipated length of treatment; and

4 (e) Recommended crime-related prohibitions.

5 (4) The court on its own motion may order, or on a motion by the
6 state or the respondent shall order, a second examination. The
7 evaluator shall be selected by the party making the motion. The
8 requesting party shall pay the cost of any examination ordered under
9 this subsection unless the requesting party is the offender and the
10 court finds that the offender is indigent and no third party insurance
11 coverage is available, in which case the state shall pay the cost.

12 (5)(a) After receipt of reports of the examination, the court shall
13 then consider whether the offender and the community will benefit from
14 use of this chemical dependency disposition alternative and consider
15 the victim's opinion whether the offender should receive a treatment
16 disposition under this section.

17 (b) If the court determines that this chemical dependency
18 disposition alternative is appropriate, then the court shall impose the
19 standard range for the offense, or if the court concludes, and enters
20 reasons for its conclusion, that such disposition would effectuate a
21 manifest injustice, the court shall impose a disposition above the
22 standard range as indicated in option D of RCW 13.40.0357 if the
23 disposition is an increase from the standard range and the confinement
24 of the offender does not exceed a maximum of fifty-two weeks, suspend
25 execution of the disposition, and place the offender on community
26 supervision for up to one year. The manifest injustice disposition
27 under this section shall not be based solely upon the likelihood that
28 the offender will not be successful under this disposition alternative
29 or upon the offender's need or continued need for inpatient or
30 structured substance abuse treatment. As a condition of the suspended
31 disposition, the court shall require the offender to undergo available
32 outpatient drug/alcohol treatment and/or inpatient drug/alcohol
33 treatment. For purposes of this section, inpatient treatment may not
34 exceed ninety days. As a condition of the suspended disposition, the
35 court may impose conditions of community supervision and other
36 sanctions, including up to thirty days of confinement, one hundred
37 fifty hours of community restitution, and payment of legal financial
38 obligations and restitution.

1 (6) The drug/alcohol treatment provider shall submit monthly
2 reports on the respondent's progress in treatment to the court and the
3 parties. The reports shall reference the treatment plan and include at
4 a minimum the following: Dates of attendance, respondent's compliance
5 with requirements, treatment activities, the respondent's relative
6 progress in treatment, and any other material specified by the court at
7 the time of the disposition.

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

10 If the offender violates any condition of the disposition or the
11 court finds that the respondent is failing to make satisfactory
12 progress in treatment, the court may impose sanctions pursuant to RCW
13 13.40.200 or revoke the suspension and order execution of the
14 disposition. The court shall give credit for any confinement time
15 previously served if that confinement was for the offense for which the
16 suspension is being revoked.

17 (7) For purposes of this section, "victim" means any person who has
18 sustained emotional, psychological, physical, or financial injury to
19 person or property as a direct result of the offense charged. "Victim"
20 may also include a known parent or guardian of a victim who is a minor
21 child or is not a minor child but is incapacitated, incompetent,
22 disabled, or deceased.

23 (8) Whenever a juvenile offender is entitled to credit for time
24 spent in detention prior to a dispositional order, the dispositional
25 order shall specifically state the number of days of credit for time
26 served.

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

30 (10) A disposition under this section is not appealable under RCW
31 13.40.230.

32 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2010.

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