

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5746

61st Legislature
2009 Regular Session

Passed by the Senate April 22, 2009
YEAS 46 NAYS 1

President of the Senate

Passed by the House April 15, 2009
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5746** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5746

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

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.

31 If the juvenile challenges the state's determination of the
32 juvenile's criminal history under (e)(v) of this subsection, the state
33 may establish the offender's criminal history by a preponderance of the
34 evidence. If the criminal history consists of adjudications entered
35 upon a plea of guilty, the state shall not bear a burden of
36 establishing the knowing and voluntariness of the plea;

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

1 (g) Relating to termination of a diversion agreement under RCW
2 13.40.080, including a proceeding in which the divertee has attained
3 eighteen years of age;

4 (h) Relating to court validation of a voluntary consent to an out-
5 of-home placement under chapter 13.34 RCW, by the parent or Indian
6 custodian of an Indian child, except if the parent or Indian custodian
7 and child are residents of or domiciled within the boundaries of a
8 federally recognized Indian reservation over which the tribe exercises
9 exclusive jurisdiction;

10 (i) Relating to petitions to compel disclosure of information filed
11 by the department of social and health services pursuant to RCW
12 74.13.042; and

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

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

22 (3) The juvenile court shall have concurrent original jurisdiction
23 with the family court over child custody proceedings under chapter
24 26.10 RCW as provided for in RCW 13.34.155.

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

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

31 For the purposes of this chapter:

32 (1) "Community-based rehabilitation" means one or more of the
33 following: Employment; attendance of information classes; literacy
34 classes; counseling, outpatient substance abuse treatment programs,
35 outpatient mental health programs, anger management classes, education
36 or outpatient treatment programs to prevent animal cruelty, or other
37 services; or attendance at school or other educational programs

1 appropriate for the juvenile as determined by the school district.
2 Placement in community-based rehabilitation programs is subject to
3 available funds;

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

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

7 (b) Community restitution not to exceed one hundred fifty hours of
8 community restitution;

9 (3) "Community restitution" means compulsory service, without
10 compensation, performed for the benefit of the community by the
11 offender as punishment for committing an offense. Community
12 restitution may be performed through public or private organizations or
13 through work crews;

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

27 (a) Community-based sanctions;

28 (b) Community-based rehabilitation;

29 (c) Monitoring and reporting requirements;

30 (d) Posting of a probation bond;

31 (5) "Confinement" means physical custody by the department of
32 social and health services in a facility operated by or pursuant to a
33 contract with the state, or physical custody in a detention facility
34 operated by or pursuant to a contract with any county. The county may
35 operate or contract with vendors to operate county detention
36 facilities. The department may operate or contract to operate
37 detention facilities for juveniles committed to the department.

1 Pretrial confinement or confinement of less than thirty-one days
2 imposed as part of a disposition or modification order may be served
3 consecutively or intermittently, in the discretion of the court;

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

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

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

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

19 (8) "Department" means the department of social and health
20 services;

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

27 (10) "Diversion unit" means any probation counselor who enters into
28 a diversion agreement with an alleged youthful offender, or any other
29 person, community accountability board, youth court under the
30 supervision of the juvenile court, or other entity except a law
31 enforcement official or entity, with whom the juvenile court
32 administrator has contracted to arrange and supervise such agreements
33 pursuant to RCW 13.40.080, or any person, community accountability
34 board, or other entity specially funded by the legislature to arrange
35 and supervise diversion agreements in accordance with the requirements
36 of this chapter. For purposes of this subsection, "community
37 accountability board" means a board comprised of members of the local
38 community in which the juvenile offender resides. The superior court

1 shall appoint the members. The boards shall consist of at least three
2 and not more than seven members. If possible, the board should include
3 a variety of representatives from the community, such as a law
4 enforcement officer, teacher or school administrator, high school
5 student, parent, and business owner, and should represent the cultural
6 diversity of the local community;

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

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

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

17 (14) "Juvenile," "youth," and "child" mean any individual who is
18 under the chronological age of eighteen years and who has not been
19 previously transferred to adult court pursuant to RCW 13.40.110, unless
20 the individual was convicted of a lesser charge or acquitted of the
21 charge for which he or she was previously transferred pursuant to RCW
22 13.40.110 or who is not otherwise under adult court jurisdiction;

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

27 (16) "Local sanctions" means one or more of the following: (a) 0-
28 30 days of confinement; (b) 0-12 months of community supervision; (c)
29 0-150 hours of community restitution; or (d) \$0-\$500 fine;

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

33 (18) "Monitoring and reporting requirements" means one or more of
34 the following: Curfews; requirements to remain at home, school, work,
35 or court-ordered treatment programs during specified hours;
36 restrictions from leaving or entering specified geographical areas;
37 requirements to report to the probation officer as directed and to

1 remain under the probation officer's supervision; and other conditions
2 or limitations as the court may require which may not include
3 confinement;

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

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

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

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

26 (23) "Secretary" means the secretary of the department of social
27 and health services. "Assistant secretary" means the assistant
28 secretary for juvenile rehabilitation for the department;

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

33 (25) "Sex offense" means an offense defined as a sex offense in RCW
34 9.94A.030;

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

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

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

8 (29) "Violent offense" means a violent offense as defined in RCW
9 9.94A.030;

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

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

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

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

21 (a) The respondent is (~~(fifteen)~~) sixteen(~~(7)~~) or seventeen years
22 of age and the information alleges a class A felony or an attempt,
23 solicitation, or conspiracy to commit a class A felony;

24 (b) The respondent is seventeen years of age and the information
25 alleges assault in the second degree, extortion in the first degree,
26 indecent liberties, child molestation in the second degree, kidnapping
27 in the second degree, or robbery in the second degree; or

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

30 (~~(+2)~~) (3) The court after a decline hearing may order the case
31 transferred for adult criminal prosecution upon a finding that the
32 declination would be in the best interest of the juvenile or the
33 public. The court shall consider the relevant reports, facts,
34 opinions, and arguments presented by the parties and their counsel.

35 (~~(+3)~~) (4) When the respondent is transferred for criminal
36 prosecution or retained for prosecution in juvenile court, the court

1 shall set forth in writing its finding which shall be supported by
2 relevant facts and opinions produced at the hearing.

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

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

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

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

23 (c) Juveniles with a prior criminal history score of two or more
24 points shall be sentenced to no less than fifteen to thirty-six weeks
25 ~~((of confinement, seven days of home detention))~~ commitment to the
26 juvenile rehabilitation administration, four months of parole
27 supervision, ninety hours of community restitution, and a four hundred
28 dollar fine.

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

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 five days of home detention and))~~
37 no less than three months of community supervision, forty-five hours of

1 ~~community restitution((; or (ii) no home detention and ninety hours of~~
2 ~~community restitution)), a two hundred dollar fine, and either ninety~~
3 ~~hours of community restitution or a requirement that the juvenile~~
4 ~~remain at home such that the juvenile is confined in a private~~
5 ~~residence for no less than five days. The juvenile may be subject to~~
6 ~~electronic monitoring 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))~~ a standard
9 range sentence that includes no less than six months of community
10 supervision, no less than ten days of detention, ninety hours of
11 community restitution, and a four hundred dollar fine; and

12 (c) Juveniles with a prior criminal history score of two or more
13 points shall be sentenced to no less than fifteen to thirty-six weeks
14 ~~((of confinement, seven days of home detention))~~ commitment to the
15 juvenile rehabilitation administration, four months of parole
16 supervision, ninety hours of community restitution, and a four hundred
17 dollar fine.

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

21 (a) Juveniles with a prior criminal history score of zero to one-
22 half points shall be sentenced to a standard range sentence that
23 includes ~~((either: (i) No less than one day of home detention, one))~~
24 three months of community supervision, ~~((and))~~ fifteen hours of
25 community restitution~~((; or (ii) no home detention, one month of~~
26 ~~supervision, and thirty hours of community restitution)), and a~~
27 requirement that the juvenile remain at home such that the juvenile is
28 confined in a private residence for no less than one day. If the
29 juvenile is enrolled in school, the confinement shall be served on
30 nonschool days. The juvenile may be subject to electronic monitoring
31 where available;

32 (b) Juveniles with a prior criminal history score of three-quarters
33 to one and one-half points shall be sentenced to a standard range
34 sentence that includes no less than one day of detention, ~~((two days of~~
35 ~~home detention, two))~~ three months of community supervision, thirty
36 hours of community restitution, ~~((and))~~ a one hundred fifty dollar
37 fine, and a requirement that the juvenile remain at home such that the
38 juvenile is confined in a private residence for no less than two days.

1 If the juvenile is enrolled in school, the confinement shall be served
2 on nonschool days. The juvenile may be subject to electronic
3 monitoring where available; and

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

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