

ESSB 5746 - H COMM AMD

By Committee on Human Services

ADOPTED AND ENGROSSED 4/15/09

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.04.030 and 2005 c 290 s 1 and 2005 c 238 s 1 are
4 each reenacted and amended to read as follows:

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

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

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

12 (c) Relating to the termination of a parent and child relationship
13 as provided in RCW 13.34.180 through 13.34.210;

14 (d) To approve or disapprove out-of-home placement as provided in
15 RCW 13.32A.170;

16 (e) Relating to juveniles alleged or found to have committed
17 offenses, traffic or civil infractions, or violations as provided in
18 RCW 13.40.020 through 13.40.230, unless:

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

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

23 (iii) The alleged offense or infraction is a traffic, fish,
24 boating, or game offense, or traffic or civil infraction committed by
25 a juvenile sixteen years of age or older and would, if committed by an
26 adult, be tried or heard in a court of limited jurisdiction, in which
27 instance the appropriate court of limited jurisdiction shall have
28 jurisdiction over the alleged offense or infraction, and no guardian ad
29 litem is required in any such proceeding due to the juvenile's age(~~(+~~
30 ~~PROVIDED, -That~~)). If such an alleged offense or infraction and an

1 alleged offense or infraction subject to juvenile court jurisdiction
2 arise out of the same event or incident, the juvenile court may have
3 jurisdiction of both matters(~~(: PROVIDED - FURTHER, - That)~~). The
4 jurisdiction under this subsection does not constitute "transfer" or a
5 "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this
6 subsection(~~(: PROVIDED - FURTHER, - That)~~). Courts of limited
7 jurisdiction which confine juveniles for an alleged offense or
8 infraction may place juveniles in juvenile detention facilities under
9 an agreement with the officials responsible for the administration of
10 the juvenile detention facility in RCW 13.04.035 and 13.20.060;

11 (iv) The alleged offense is a traffic or civil infraction, a
12 violation of compulsory school attendance provisions under chapter
13 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
14 assumed concurrent jurisdiction over those offenses as provided in RCW
15 13.04.0301; or

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

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

19 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile
20 has a criminal history consisting of: (I) One or more prior serious
21 violent offenses; (II) two or more prior violent offenses; or (III)
22 three or more of any combination of the following offenses: Any class
23 A felony, any class B felony, vehicular assault, or manslaughter in the
24 second degree, all of which must have been committed after the
25 juvenile's thirteenth birthday and prosecuted separately;

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

28 (D) Burglary in the first degree committed on or after July 1,
29 1997, and the juvenile has a criminal history consisting of one or more
30 prior felony or misdemeanor offenses; or

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

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

37 (II) The juvenile court shall have exclusive jurisdiction over the
38 disposition of any remaining charges in any case in which the juvenile

1 is found not guilty in the adult criminal court of the charge or
2 charges for which he or she was transferred, or is convicted in the
3 adult criminal court of a lesser included offense that is not also an
4 offense listed in (e)(v) of this subsection. The juvenile court shall
5 enter an order extending juvenile court jurisdiction if the juvenile
6 has turned eighteen years of age during the adult criminal court
7 proceedings pursuant to RCW 13.40.300. However, once the case is
8 returned to juvenile court, the court may hold a decline hearing
9 pursuant to RCW 13.40.110 to determine whether to retain the case in
10 juvenile court for the purpose of disposition or return the case to
11 adult criminal court for sentencing.

12 (III) The prosecutor and respondent may agree to juvenile court
13 jurisdiction and waive application of exclusive adult criminal
14 jurisdiction in (e)(v)(A) through (E) of this subsection and remove the
15 proceeding back to juvenile court with the court's approval.

16 If the juvenile challenges the state's determination of the
17 juvenile's criminal history under (e)(v) of this subsection, the state
18 may establish the offender's criminal history by a preponderance of the
19 evidence. If the criminal history consists of adjudications entered
20 upon a plea of guilty, the state shall not bear a burden of
21 establishing the knowing and voluntariness of the plea;

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

24 (g) Relating to termination of a diversion agreement under RCW
25 13.40.080, including a proceeding in which the divertee has attained
26 eighteen years of age;

27 (h) Relating to court validation of a voluntary consent to an out-
28 of-home placement under chapter 13.34 RCW, by the parent or Indian
29 custodian of an Indian child, except if the parent or Indian custodian
30 and child are residents of or domiciled within the boundaries of a
31 federally recognized Indian reservation over which the tribe exercises
32 exclusive jurisdiction;

33 (i) Relating to petitions to compel disclosure of information filed
34 by the department of social and health services pursuant to RCW
35 74.13.042; and

36 (j) Relating to judicial determinations and permanency planning
37 hearings involving developmentally disabled children who have been

1 placed in out-of-home care pursuant to a voluntary placement agreement
2 between the child's parent, guardian, or legal custodian and the
3 department of social and health services.

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

8 (3) The juvenile court shall have concurrent original jurisdiction
9 with the family court over child custody proceedings under chapter
10 26.10 RCW as provided for in RCW 13.34.155.

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

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

17 For the purposes of this chapter:

18 (1) "Community-based rehabilitation" means one or more of the
19 following: Employment; attendance of information classes; literacy
20 classes; counseling, outpatient substance abuse treatment programs,
21 outpatient mental health programs, anger management classes, education
22 or outpatient treatment programs to prevent animal cruelty, or other
23 services; or attendance at school or other educational programs
24 appropriate for the juvenile as determined by the school district.
25 Placement in community-based rehabilitation programs is subject to
26 available funds;

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

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

30 (b) Community restitution not to exceed one hundred fifty hours of
31 community restitution;

32 (3) "Community restitution" means compulsory service, without
33 compensation, performed for the benefit of the community by the
34 offender as punishment for committing an offense. Community
35 restitution may be performed through public or private organizations or
36 through work crews;

1 (4) "Community supervision" means an order of disposition by the
2 court of an adjudicated youth not committed to the department or an
3 order granting a deferred disposition. A community supervision order
4 for a single offense may be for a period of up to two years for a sex
5 offense as defined by RCW 9.94A.030 and up to one year for other
6 offenses. As a mandatory condition of any term of community
7 supervision, the court shall order the juvenile to refrain from
8 committing new offenses. As a mandatory condition of community
9 supervision, the court shall order the juvenile to comply with the
10 mandatory school attendance provisions of chapter 28A.225 RCW and to
11 inform the school of the existence of this requirement. Community
12 supervision is an individualized program comprised of one or more of
13 the following:

- 14 (a) Community-based sanctions;
- 15 (b) Community-based rehabilitation;
- 16 (c) Monitoring and reporting requirements;
- 17 (d) Posting of a probation bond;

18 (5) "Confinement" means physical custody by the department of
19 social and health services in a facility operated by or pursuant to a
20 contract with the state, or physical custody in a detention facility
21 operated by or pursuant to a contract with any county. The county may
22 operate or contract with vendors to operate county detention
23 facilities. The department may operate or contract to operate
24 detention facilities for juveniles committed to the department.
25 Pretrial confinement or confinement of less than thirty-one days
26 imposed as part of a disposition or modification order may be served
27 consecutively or intermittently, in the discretion of the court;

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

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

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

36 (b) The criminal complaint was diverted by a prosecutor pursuant to
37 the provisions of this chapter on agreement of the respondent and after
38 an advisement to the respondent that the criminal complaint would be

1 considered as part of the respondent's criminal history. A
2 successfully completed deferred adjudication that was entered before
3 July 1, 1998, or a deferred disposition shall not be considered part of
4 the respondent's criminal history;

5 (8) "Department" means the department of social and health
6 services;

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

13 (10) "Diversion unit" means any probation counselor who enters into
14 a diversion agreement with an alleged youthful offender, or any other
15 person, community accountability board, youth court under the
16 supervision of the juvenile court, or other entity except a law
17 enforcement official or entity, with whom the juvenile court
18 administrator has contracted to arrange and supervise such agreements
19 pursuant to RCW 13.40.080, or any person, community accountability
20 board, or other entity specially funded by the legislature to arrange
21 and supervise diversion agreements in accordance with the requirements
22 of this chapter. For purposes of this subsection, "community
23 accountability board" means a board comprised of members of the local
24 community in which the juvenile offender resides. The superior court
25 shall appoint the members. The boards shall consist of at least three
26 and not more than seven members. If possible, the board should include
27 a variety of representatives from the community, such as a law
28 enforcement officer, teacher or school administrator, high school
29 student, parent, and business owner, and should represent the cultural
30 diversity of the local community;

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

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

36 (13) "Intensive supervision program" means a parole program that
37 requires intensive supervision and monitoring, offers an array of

1 individualized treatment and transitional services, and emphasizes
2 community involvement and support in order to reduce the likelihood a
3 juvenile offender will commit further offenses;

4 (14) "Juvenile," "youth," and "child" mean any individual who is
5 under the chronological age of eighteen years and who has not been
6 previously transferred to adult court pursuant to RCW 13.40.110, unless
7 the individual was convicted of a lesser charge or acquitted of the
8 charge for which he or she was previously transferred pursuant to RCW
9 13.40.110 or who is not otherwise under adult court jurisdiction;

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

14 (16) "Local sanctions" means one or more of the following: (a) 0-
15 30 days of confinement; (b) 0-12 months of community supervision; (c)
16 0-150 hours of community restitution; or (d) \$0-\$500 fine;

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

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

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

32 (20) "Probation bond" means a bond, posted with sufficient security
33 by a surety justified and approved by the court, to secure the
34 offender's appearance at required court proceedings and compliance with
35 court-ordered community supervision or conditions of release ordered
36 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
37 cash or posting of other collateral in lieu of a bond if approved by
38 the court;

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

3 (22) "Restitution" means financial reimbursement by the offender to
4 the victim, and shall be limited to easily ascertainable damages for
5 injury to or loss of property, actual expenses incurred for medical
6 treatment for physical injury to persons, lost wages resulting from
7 physical injury, and costs of the victim's counseling reasonably
8 related to the offense. Restitution shall not include reimbursement
9 for damages for mental anguish, pain and suffering, or other intangible
10 losses. Nothing in this chapter shall limit or replace civil remedies
11 or defenses available to the victim or offender;

12 (23) "Secretary" means the secretary of the department of social
13 and health services. "Assistant secretary" means the assistant
14 secretary for juvenile rehabilitation for the department;

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

19 (25) "Sex offense" means an offense defined as a sex offense in RCW
20 9.94A.030;

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

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

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

31 (29) "Violent offense" means a violent offense as defined in RCW
32 9.94A.030;

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

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

37 (1) Discretionary decline hearing - The prosecutor, respondent, or

1 the court on its own motion may, before a hearing on the information on
2 its merits, file a motion requesting the court to transfer the
3 respondent for adult criminal prosecution and the matter shall be set
4 for a hearing on the question of declining jurisdiction.

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

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

10 (b) The respondent is seventeen years of age and the information
11 alleges assault in the second degree, extortion in the first degree,
12 indecent liberties, child molestation in the second degree, kidnapping
13 in the second degree, or robbery in the second degree; or

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

16 (~~(+2)~~) (3) The court after a decline hearing may order the case
17 transferred for adult criminal prosecution upon a finding that the
18 declination would be in the best interest of the juvenile or the
19 public. The court shall consider the relevant reports, facts,
20 opinions, and arguments presented by the parties and their counsel.

21 (~~(+3)~~) (4) When the respondent is transferred for criminal
22 prosecution or retained for prosecution in juvenile court, the court
23 shall set forth in writing its finding which shall be supported by
24 relevant facts and opinions produced at the hearing.

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

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

31 (a) Juveniles with a prior criminal history score of zero to one-
32 half points shall be sentenced to a standard range sentence that
33 includes no less than (~~(five days of home detention)~~) three months of
34 community supervision, forty-five hours of community restitution,
35 (~~(and)~~) a two hundred dollar fine, and a requirement that the juvenile
36 remain at home such that the juvenile is confined to a private

1 residence for no less than five days. The juvenile may be subject to
2 electronic monitoring where available. If the juvenile is enrolled in
3 school, the confinement shall be served on nonschool days;

4 (b) Juveniles with a prior criminal history score of three-quarters
5 to one and one-half points shall be sentenced to (({a})) a standard
6 range sentence that includes six months of community supervision, no
7 less than ten days of detention, ninety hours of community restitution,
8 and a four hundred dollar fine; and

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

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

20 (a) Juveniles with a prior criminal history score of zero to one-
21 half points shall be sentenced to a standard range sentence that
22 includes (~~(either: (i) No less than five days of home detention and~~)
23 no less than three months of community supervision, forty-five hours of
24 community restitution(~~(; or (ii) no home detention and ninety hours of~~
25 ~~community restitution)~~), a two hundred dollar fine, and either ninety
26 hours of community restitution or a requirement that the juvenile
27 remain at home such that the juvenile is confined in a private
28 residence for no less than five days. The juvenile may be subject to
29 electronic monitoring where available;

30 (b) Juveniles with a prior criminal history score of three-quarters
31 to one and one-half points shall be sentenced to (({a})) a standard
32 range sentence that includes no less than six months of community
33 supervision, no less than ten days of detention, ninety hours of
34 community restitution, and a four hundred dollar fine; and

35 (c) Juveniles with a prior criminal history score of two or more
36 points shall be sentenced to no less than fifteen to thirty-six weeks
37 (~~(of confinement, seven days of home detention)~~) commitment to the

1 juvenile rehabilitation administration, four months of parole
2 supervision, ninety hours of community restitution, and a four hundred
3 dollar fine.

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

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

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

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

37 Correct the title.

--- END ---