
HOUSE BILL 1653

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By Representatives Backlund, Padden, Sherstad, Hickel, Mulliken, Koster, Goldsmith, Campbell, Hargrove, Radcliff, Thompson, Honeyford, Elliot, Huff, McMorris and Smith

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1 AN ACT Relating to deadly weapons; amending RCW 13.40.193,
2 13.40.196, 13.40.070, 13.40.160, and 13.40.265; and prescribing
3 penalties.

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

5 **Sec. 1.** RCW 13.40.193 and 1994 sp.s. c 7 s 525 are each amended to
6 read as follows:

7 (1) If a respondent is found to have been in possession of a
8 firearm in violation of RCW 9.41.040(1)(e), the court shall impose a
9 determinate disposition of ten days of confinement and up to twelve
10 months of community supervision. If the offender's standard range of
11 disposition for the offense as indicated in RCW 13.40.0357 is more than
12 thirty days of confinement, the court shall commit the offender to the
13 department for the standard range disposition. The offender shall not
14 be released until the offender has served a minimum of ten days in
15 confinement.

16 (2) If the court finds that the respondent or an accomplice was
17 armed with a firearm, the court shall determine the standard range
18 disposition for the offense pursuant to RCW 13.40.160. Ninety days of
19 confinement shall be added to the entire standard range disposition of

1 confinement if the offender or an accomplice was armed with a firearm
2 when the offender committed: (a) Any violent offense; or (b) escape in
3 the first degree; burglary in the second degree; theft of livestock in
4 the first or second degree; or any felony drug offense. If the
5 offender or an accomplice was armed with a firearm and the offender is
6 being adjudicated for an anticipatory felony offense under chapter
7 9A.28 RCW to commit one of the offenses listed in this subsection,
8 ninety days shall be added to the entire standard range disposition of
9 confinement. The ninety days shall be imposed regardless of the
10 offense's juvenile disposition offense category as designated in RCW
11 13.40.0357. The department shall not release the offender until the
12 offender has served a minimum of ninety days in confinement, unless the
13 juvenile is committed to and successfully completes the juvenile
14 offender basic training camp disposition option.

15 (3) If the court finds that the respondent or an accomplice was
16 armed with a deadly weapon as defined in RCW 9.94A.125 other than a
17 firearm, the court shall determine the standard range disposition for
18 the offense pursuant to RCW 13.40.160. Thirty days of confinement
19 shall be added to the entire standard range disposition of confinement
20 if the offender or an accomplice was armed with a deadly weapon other
21 than a firearm when the offender committed: (a) Any violent offense;
22 or (b) escape in the first degree; burglary in the second degree; theft
23 of livestock in the first or second degree; or any felony drug offense.
24 If the offender or an accomplice was armed with a deadly weapon other
25 than a firearm and the offender is being adjudicated for an
26 anticipatory felony offense under chapter 9A.28 RCW to commit one of
27 the offenses listed in this subsection, thirty days shall be added to
28 the entire standard range disposition of confinement. The thirty days
29 shall be imposed regardless of the offense's juvenile disposition
30 offense category as designated in RCW 13.40.0357. The department shall
31 not release the offender until the offender has served a minimum of
32 thirty days in confinement, unless the juvenile is committed to and
33 successfully completes the juvenile offender basic training camp
34 disposition option.

35 (4) Option B of schedule D-2, RCW 13.40.0357, shall not be
36 available for middle offenders who receive a disposition under this
37 section. When a disposition under this section would effectuate a
38 manifest injustice, the court may impose another disposition. When a
39 judge finds a manifest injustice and imposes a disposition of

1 confinement exceeding thirty days, the court shall commit the juvenile
2 to a maximum term, and the provisions of RCW 13.40.030(2) shall be used
3 to determine the range. When a judge finds a manifest injustice and
4 imposes a disposition of confinement less than thirty days, the
5 disposition shall be comprised of confinement or community supervision
6 or both.

7 ~~((4))~~ (5) Any term of confinement ordered pursuant to this
8 section may run concurrently to any term of confinement imposed in the
9 same disposition for other offenses.

10 **Sec. 2.** RCW 13.40.196 and 1994 sp.s. c 7 s 526 are each amended to
11 read as follows:

12 A prosecutor may file a special allegation that the offender or an
13 accomplice was armed with a ~~((firearm))~~ deadly weapon as defined in RCW
14 9.94A.125 when the offender committed the alleged offense. If a
15 special allegation has been filed and the court finds that the offender
16 committed the alleged offense, the court shall also make a finding
17 whether the offender or an accomplice was armed with a ~~((firearm))~~
18 deadly weapon when the offender committed the offense.

19 **Sec. 3.** RCW 13.40.070 and 1994 sp.s. c 7 s 543 are each amended to
20 read as follows:

21 (1) Complaints referred to the juvenile court alleging the
22 commission of an offense shall be referred directly to the prosecutor.
23 The prosecutor, upon receipt of a complaint, shall screen the complaint
24 to determine whether:

25 (a) The alleged facts bring the case within the jurisdiction of the
26 court; and

27 (b) On a basis of available evidence there is probable cause to
28 believe that the juvenile did commit the offense.

29 (2) If the identical alleged acts constitute an offense under both
30 the law of this state and an ordinance of any city or county of this
31 state, state law shall govern the prosecutor's screening and charging
32 decision for both filed and diverted cases.

33 (3) If the requirements of subsections (1) (a) and (b) of this
34 section are met, the prosecutor shall either file an information in
35 juvenile court or divert the case, as set forth in subsections (5),
36 (6), and (7) of this section. If the prosecutor finds that the
37 requirements of subsection (1) (a) and (b) of this section are not met,

1 the prosecutor shall maintain a record, for one year, of such decision
2 and the reasons therefor. In lieu of filing an information or
3 diverting an offense a prosecutor may file a motion to modify community
4 supervision where such offense constitutes a violation of community
5 supervision.

6 (4) An information shall be a plain, concise, and definite written
7 statement of the essential facts constituting the offense charged. It
8 shall be signed by the prosecuting attorney and conform to chapter
9 10.37 RCW.

10 (5) Where a case is legally sufficient, the prosecutor shall file
11 an information with the juvenile court if:

12 (a) An alleged offender is accused of a class A felony, a class B
13 felony, an attempt to commit a class B felony, a class C felony listed
14 in RCW 9.94A.440(2) as a crime against persons or listed in RCW
15 9A.46.060 as a crime of harassment, a class C felony that is a
16 violation of RCW 9.41.080 or 9.41.040(1)(e), or any other offense
17 listed in RCW 13.40.020(1) (b) or (c); or

18 (b) An alleged offender is accused of a felony and has a criminal
19 history of any felony, or at least two gross misdemeanors, or at least
20 two misdemeanors; or

21 (c) An alleged offender has previously been committed to the
22 department; or

23 (d) An alleged offender has been referred by a diversion unit for
24 prosecution or desires prosecution instead of diversion; or

25 (e) An alleged offender has two or more diversion contracts on the
26 alleged offender's criminal history; or

27 (f) A special allegation has been filed that the offender or an
28 accomplice was armed with a ((firearm)) deadly weapon when the offense
29 was committed.

30 (6) Where a case is legally sufficient the prosecutor shall divert
31 the case if the alleged offense is a misdemeanor or gross misdemeanor
32 or violation and the alleged offense is the offender's first offense or
33 violation. If the alleged offender is charged with a related offense
34 that must or may be filed under subsections (5) and (7) of this
35 section, a case under this subsection may also be filed.

36 (7) Where a case is legally sufficient and falls into neither
37 subsection (5) nor (6) of this section, it may be filed or diverted.
38 In deciding whether to file or divert an offense under this section the
39 prosecutor shall be guided only by the length, seriousness, and recency

1 of the alleged offender's criminal history and the circumstances
2 surrounding the commission of the alleged offense.

3 (8) Whenever a juvenile is placed in custody or, where not placed
4 in custody, referred to a diversionary interview, the parent or legal
5 guardian of the juvenile shall be notified as soon as possible
6 concerning the allegation made against the juvenile and the current
7 status of the juvenile. Where a case involves victims of crimes
8 against persons or victims whose property has not been recovered at the
9 time a juvenile is referred to a diversionary unit, the victim shall be
10 notified of the referral and informed how to contact the unit.

11 (9) The responsibilities of the prosecutor under subsections (1)
12 through (8) of this section may be performed by a juvenile court
13 probation counselor for any complaint referred to the court alleging
14 the commission of an offense which would not be a felony if committed
15 by an adult, if the prosecutor has given sufficient written notice to
16 the juvenile court that the prosecutor will not review such complaints.

17 (10) The prosecutor, juvenile court probation counselor, or
18 diversion unit may, in exercising their authority under this section or
19 RCW 13.40.080, refer juveniles to mediation or victim offender
20 reconciliation programs. Such mediation or victim offender
21 reconciliation programs shall be voluntary for victims.

22 **Sec. 4.** RCW 13.40.160 and 1994 sp.s. c 7 s 523 are each amended to
23 read as follows:

24 (1) When the respondent is found to be a serious offender, the
25 court shall commit the offender to the department for the standard
26 range of disposition for the offense, as indicated in option A of
27 schedule D-3, RCW 13.40.0357 except as provided in subsections (5) and
28 (6) of this section.

29 If the court concludes, and enters reasons for its conclusion, that
30 disposition within the standard range would effectuate a manifest
31 injustice the court shall impose a disposition outside the standard
32 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
33 court's finding of manifest injustice shall be supported by clear and
34 convincing evidence.

35 A disposition outside the standard range shall be determinate and
36 shall be comprised of confinement or community supervision, or a
37 combination thereof. When a judge finds a manifest injustice and
38 imposes a sentence of confinement exceeding thirty days, the court

1 shall sentence the juvenile to a maximum term, and the provisions of
2 RCW 13.40.030(2) shall be used to determine the range. A disposition
3 outside the standard range is appealable under RCW 13.40.230 by the
4 state or the respondent. A disposition within the standard range is
5 not appealable under RCW 13.40.230.

6 (2) Where the respondent is found to be a minor or first offender,
7 the court shall order that the respondent serve a term of community
8 supervision as indicated in option A or option B of schedule D-1, RCW
9 13.40.0357 except as provided in subsections (5) and (6) of this
10 section. If the court determines that a disposition of community
11 supervision would effectuate a manifest injustice the court may impose
12 another disposition under option C of schedule D-1, RCW 13.40.0357.
13 Except as provided in subsection (5) of this section, a disposition
14 other than a community supervision may be imposed only after the court
15 enters reasons upon which it bases its conclusions that imposition of
16 community supervision would effectuate a manifest injustice. When a
17 judge finds a manifest injustice and imposes a sentence of confinement
18 exceeding thirty days, the court shall sentence the juvenile to a
19 maximum term, and the provisions of RCW 13.40.030(2) shall be used to
20 determine the range. The court's finding of manifest injustice shall
21 be supported by clear and convincing evidence.

22 Except for disposition of community supervision or a disposition
23 imposed pursuant to subsection (5) of this section, a disposition may
24 be appealed as provided in RCW 13.40.230 by the state or the
25 respondent. A disposition of community supervision or a disposition
26 imposed pursuant to subsection (5) of this section may not be appealed
27 under RCW 13.40.230.

28 (3) Where a respondent is found to have committed an offense for
29 which the respondent declined to enter into a diversion agreement, the
30 court shall impose a term of community supervision limited to the
31 conditions allowed in a diversion agreement as provided in RCW
32 13.40.080(2).

33 (4) If a respondent is found to be a middle offender:

34 (a) The court shall impose a determinate disposition within the
35 standard range(s) for such offense, as indicated in option A of
36 schedule D-2, RCW 13.40.0357 except as provided in subsections (5) and
37 (6) of this section: PROVIDED, That if the standard range includes a
38 term of confinement exceeding thirty days, commitment shall be to the
39 department for the standard range of confinement; or

1 (b) The court shall impose a disposition under (a) of this
2 subsection, which shall be suspended, and shall impose a determinate
3 disposition of community supervision and/or up to thirty days
4 confinement, as indicated in option B of schedule D-2, RCW 13.40.0357
5 in which case, if confinement has been imposed, the court shall state
6 either aggravating or mitigating factors as set forth in RCW 13.40.150.
7 If the offender violates any condition of the disposition, the court
8 may revoke the suspension and order execution of the sentence. The
9 court shall give credit for any confinement time previously served if
10 that confinement was for the offense for which the suspension is being
11 revoked.

12 (c) Only if the court concludes, and enters reasons for its
13 conclusions, that disposition as provided in subsection (4)(a) or (b)
14 of this section would effectuate a manifest injustice, the court shall
15 sentence the juvenile to a maximum term, and the provisions of RCW
16 13.40.030(2) shall be used to determine the range. The court's finding
17 of manifest injustice shall be supported by clear and convincing
18 evidence.

19 (d) A disposition pursuant to subsection (4)(c) of this section is
20 appealable under RCW 13.40.230 by the state or the respondent. A
21 disposition pursuant to subsection (4) (a) or (b) of this section is
22 not appealable under RCW 13.40.230.

23 (5) When a serious, middle, or minor first offender is found to
24 have committed a sex offense, other than a sex offense that is also a
25 serious violent offense as defined by RCW 9.94A.030, and has no history
26 of a prior sex offense, the court, on its own motion or the motion of
27 the state or the respondent, may order an examination to determine
28 whether the respondent is amenable to treatment.

29 The report of the examination shall include at a minimum the
30 following: The respondent's version of the facts and the official
31 version of the facts, the respondent's offense history, an assessment
32 of problems in addition to alleged deviant behaviors, the respondent's
33 social, educational, and employment situation, and other evaluation
34 measures used. The report shall set forth the sources of the
35 evaluator's information.

36 The examiner shall assess and report regarding the respondent's
37 amenability to treatment and relative risk to the community. A
38 proposed treatment plan shall be provided and shall include, at a
39 minimum:

1 (a)(i) Frequency and type of contact between the offender and
2 therapist;

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

5 (iii) Monitoring plans, including any requirements regarding living
6 conditions, lifestyle requirements, and monitoring by family members,
7 legal guardians, or others;

8 (iv) Anticipated length of treatment; and

9 (v) Recommended crime-related prohibitions.

10 The court on its own motion may order, or on a motion by the state
11 shall order, a second examination regarding the offender's amenability
12 to treatment. The evaluator shall be selected by the party making the
13 motion. The defendant shall pay the cost of any second examination
14 ordered unless the court finds the defendant to be indigent in which
15 case the state shall pay the cost.

16 After receipt of reports of the examination, the court shall then
17 consider whether the offender and the community will benefit from use
18 of this special sex offender disposition alternative and consider the
19 victim's opinion whether the offender should receive a treatment
20 disposition under this section. If the court determines that this
21 special sex offender disposition alternative is appropriate, then the
22 court shall impose a determinate disposition within the standard range
23 for the offense, and the court may suspend the execution of the
24 disposition and place the offender on community supervision for up to
25 two years. As a condition of the suspended disposition, the court may
26 impose the conditions of community supervision and other conditions,
27 including up to thirty days of confinement and requirements that the
28 offender do any one or more of the following:

29 (b)(i) Devote time to a specific education, employment, or
30 occupation;

31 (ii) Undergo available outpatient sex offender treatment for up to
32 two years, or inpatient sex offender treatment not to exceed the
33 standard range of confinement for that offense. A community mental
34 health center may not be used for such treatment unless it has an
35 appropriate program designed for sex offender treatment. The
36 respondent shall not change sex offender treatment providers or
37 treatment conditions without first notifying the prosecutor, the
38 probation counselor, and the court, and shall not change providers

1 without court approval after a hearing if the prosecutor or probation
2 counselor object to the change;

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

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

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

10 (vi) Pay all court-ordered legal financial obligations, perform
11 community service, or any combination thereof; or

12 (vii) Make restitution to the victim for the cost of any counseling
13 reasonably related to the offense.

14 The sex offender treatment provider shall submit quarterly reports
15 on the respondent's progress in treatment to the court and the parties.
16 The reports shall reference the treatment plan and include at a minimum
17 the following: Dates of attendance, respondent's compliance with
18 requirements, treatment activities, the respondent's relative progress
19 in treatment, and any other material specified by the court at the time
20 of the disposition.

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

23 Except as provided in this subsection (5), after July 1, 1991,
24 examinations and treatment ordered pursuant to this subsection shall
25 only be conducted by sex offender treatment providers certified by the
26 department of health pursuant to chapter 18.155 RCW. A sex offender
27 therapist who examines or treats a juvenile sex offender pursuant to
28 this subsection does not have to be certified by the department of
29 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
30 offender has already moved to another state or plans to move to another
31 state for reasons other than circumventing the certification
32 requirements; (B) no certified providers are available for treatment
33 within a reasonable geographical distance of the offender's home; and
34 (C) the evaluation and treatment plan comply with this subsection (5)
35 and the rules adopted by the department of health.

36 If the offender violates any condition of the disposition or the
37 court finds that the respondent is failing to make satisfactory
38 progress in treatment, the court may revoke the suspension and order
39 execution of the disposition or the court may impose a penalty of up to

1 thirty days' confinement for violating conditions of the disposition.
2 The court may order both execution of the disposition and up to thirty
3 days' confinement for the violation of the conditions of the
4 disposition. The court shall give credit for any confinement time
5 previously served if that confinement was for the offense for which the
6 suspension is being revoked.

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

12 (6) RCW 13.40.193 shall govern the disposition of any juvenile
13 adjudicated of possessing a firearm in violation of RCW 9.41.040(1)(e)
14 or any crime in which a special finding is entered that the juvenile
15 was armed with a ((firearm)) deadly weapon.

16 (7) Whenever a juvenile offender is entitled to credit for time
17 spent in detention prior to a dispositional order, the dispositional
18 order shall specifically state the number of days of credit for time
19 served.

20 (8) Except as provided for in subsection (5) of this section, the
21 court shall not suspend or defer the imposition or the execution of the
22 disposition.

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

26 **Sec. 5.** RCW 13.40.265 and 1994 sp.s. c 7 s 435 are each amended to
27 read as follows:

28 (1)(a) If a juvenile thirteen years of age or older is found by
29 juvenile court to have committed an offense while armed with a
30 ((firearm)) deadly weapon or an offense that is a violation of RCW
31 9.41.040(1)(e) or chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court
32 shall notify the department of licensing within twenty-four hours after
33 entry of the judgment.

34 (b) Except as otherwise provided in (c) of this subsection, upon
35 petition of a juvenile who has been found by the court to have
36 committed an offense that is a violation of chapter 66.44, 69.41,
37 69.50, or 69.52 RCW, the court may at any time the court deems

1 appropriate notify the department of licensing that the juvenile's
2 driving privileges should be reinstated.

3 (c) If the offense is the juvenile's first violation of chapter
4 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the
5 court for reinstatement of the juvenile's privilege to drive revoked
6 pursuant to RCW 46.20.265 until ninety days after the date the juvenile
7 turns sixteen or ninety days after the judgment was entered, whichever
8 is later. If the offense is the juvenile's second or subsequent
9 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile
10 may not petition the court for reinstatement of the juvenile's
11 privilege to drive revoked pursuant to RCW 46.20.265 until the date the
12 juvenile turns seventeen or one year after the date judgment was
13 entered, whichever is later.

14 (2)(a) If a juvenile enters into a diversion agreement with a
15 diversion unit pursuant to RCW 13.40.080 concerning an offense that is
16 a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion
17 unit shall notify the department of licensing within twenty-four hours
18 after the diversion agreement is signed.

19 (b) If a diversion unit has notified the department pursuant to (a)
20 of this subsection, the diversion unit shall notify the department of
21 licensing when the juvenile has completed the agreement.

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