
HOUSE BILL 2806

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By Representatives Morris, Long, Wineberry, Moak, Grant, Bray, Cooke, Johanson, Rayburn, Caver, Lemmon, G. Cole, J. Kohl, Conway, Springer and L. Johnson

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1 AN ACT Relating to juvenile substance abuse; amending RCW 13.40.020
2 and 13.40.160; creating a new section; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that a significant
5 portion of juvenile offenders are substance abusers. The legislature
6 finds that substance abuse is an important cause of juvenile criminal
7 behavior. Unless substance-abusing juvenile offenders are required to
8 undergo substance treatment as part of the overall rehabilitative
9 process, the juveniles are significantly likely to reoffend. The
10 legislature finds that a special substance abuser disposition
11 alternative will increase juvenile offender rehabilitation.

12 **Sec. 2.** RCW 13.40.020 and 1993 c 373 s 1 are each amended to read
13 as follows:

14 For the purposes of this chapter:

15 (1) "Serious offender" means a person fifteen years of age or older
16 who has committed an offense which if committed by an adult would be:

17 (a) A class A felony, or an attempt to commit a class A felony;

18 (b) Manslaughter in the first degree; or

1 (c) Assault in the second degree, extortion in the first degree,
2 child molestation in the second degree, kidnapping in the second
3 degree, robbery in the second degree, residential burglary, or burglary
4 in the second degree, where such offenses include the infliction of
5 bodily harm upon another or where during the commission of or immediate
6 withdrawal from such an offense the perpetrator is armed with a deadly
7 weapon or firearm as defined in RCW 9A.04.110;

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

13 (3) "Community supervision" means an order of disposition by the
14 court of an adjudicated youth not committed to the department. A
15 community supervision order for a single offense may be for a period of
16 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
17 one year for other offenses. Community supervision is an
18 individualized program comprised of one or more of the following:

19 (a) Community-based sanctions;

20 (b) Community-based rehabilitation;

21 (c) Monitoring and reporting requirements;

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

24 (a) A fine, not to exceed one hundred dollars;

25 (b) Community service not to exceed one hundred fifty hours of
26 service;

27 (5) "Community-based rehabilitation" means one or more of the
28 following: Attendance of information classes; counseling, outpatient
29 substance abuse treatment programs, outpatient mental health programs,
30 anger management classes, or other services; or attendance at school or
31 other educational programs appropriate for the juvenile as determined
32 by the school district. Placement in community-based rehabilitation
33 programs is subject to available funds;

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

1 or limitations as the court may require which may not include
2 confinement;

3 (7) "Confinement" means physical custody by the department of
4 social and health services in a facility operated by or pursuant to a
5 contract with the state, or physical custody in a detention facility
6 operated by or pursuant to a contract with any county. "Confinement"
7 includes state and county group homes, foster care homes, inpatient
8 substance abuse treatment programs, juvenile boot camps, and electronic
9 monitoring. The county may operate or contract with vendors to operate
10 county detention facilities. The department may operate or contract to
11 operate detention facilities for juveniles committed to the department.
12 Pretrial confinement or confinement of less than thirty-one days
13 imposed as part of a disposition or modification order may be served
14 consecutively or intermittently, in the discretion of the court and may
15 be served in a detention group home, detention foster home, or with
16 electronic monitoring. (~~Detention group homes and detention foster~~
17 ~~homes used for confinement shall not also be used for the placement of~~
18 ~~dependent children.~~) Confinement in detention group homes and
19 detention foster homes and electronic monitoring are subject to
20 available funds;

21 (8) "Court", when used without further qualification, means the
22 juvenile court judge(s) or commissioner(s);

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

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

29 (b) The criminal complaint was diverted by a prosecutor pursuant to
30 the provisions of this chapter on agreement of the respondent and after
31 an advisement to the respondent that the criminal complaint would be
32 considered as part of the respondent's criminal history;

33 (10) "Department" means the department of social and health
34 services;

35 (11) "Detention facility" means a county facility for the physical
36 confinement of a juvenile alleged to have committed an offense or an
37 adjudicated offender subject to a disposition or modification order and
38 includes county group homes, foster care homes, inpatient substance

1 abuse treatment programs, juvenile boot camps, and electronic
2 monitoring;

3 (12) "Diversion unit" means any probation counselor who enters into
4 a diversion agreement with an alleged youthful offender, or any other
5 person or entity except a law enforcement official or entity, with whom
6 the juvenile court administrator has contracted to arrange and
7 supervise such agreements pursuant to RCW 13.40.080, or any person or
8 entity specially funded by the legislature to arrange and supervise
9 diversion agreements in accordance with the requirements of this
10 chapter;

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

13 (14) "Juvenile," "youth," and "child" mean any individual who is
14 under the chronological age of eighteen years and who has not been
15 previously transferred to adult court;

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

20 (16) "Manifest injustice" means a disposition that would either
21 impose an excessive penalty on the juvenile ((~~or~~)), would impose a
22 serious, and clear danger to society in light of the purposes of this
23 chapter, or would fail to promote the juvenile's best rehabilitative
24 interests;

25 (17) "Middle offender" means a person who has committed an offense
26 and who is neither a minor or first offender nor a serious offender;

27 (18) "Minor or first offender" means a person sixteen years of age
28 or younger whose current offense(s) and criminal history fall entirely
29 within one of the following categories:

30 (a) Four misdemeanors;

31 (b) Two misdemeanors and one gross misdemeanor;

32 (c) One misdemeanor and two gross misdemeanors;

33 (d) Three gross misdemeanors;

34 (e) One class C felony except manslaughter in the second degree and
35 one misdemeanor or gross misdemeanor;

36 (f) One class B felony except: Any felony which constitutes an
37 attempt to commit a class A felony; manslaughter in the first degree;
38 assault in the second degree; extortion in the first degree; indecent
39 liberties; kidnapping in the second degree; robbery in the second

1 degree; burglary in the second degree; residential burglary; vehicular
2 homicide; or arson in the second degree.

3 For purposes of this definition, current violations shall be
4 counted as misdemeanors;

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

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

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

21 (22) "Secretary" means the secretary of the department of social
22 and health services;

23 (23) "Services" mean services which provide alternatives to
24 incarceration for those juveniles who have pleaded or been adjudicated
25 guilty of an offense or have signed a diversion agreement pursuant to
26 this chapter;

27 (24) "Sex offense" means an offense defined as a sex offense in RCW
28 9.94A.030;

29 (25) "Sexual motivation" means that one of the purposes for which
30 the respondent committed the offense was for the purpose of his or her
31 sexual gratification;

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

35 (27) "Violation" means an act or omission, which if committed by an
36 adult, must be proven beyond a reasonable doubt, and is punishable by
37 sanctions which do not include incarceration.

1 **Sec. 3.** RCW 13.40.160 and 1992 c 45 s 6 are each amended to read
2 as follows:

3 (1) When the respondent is found to be a serious offender, the
4 court shall commit the offender to the department for the standard
5 range of disposition for the offense, as indicated in option A of
6 schedule D-3, RCW 13.40.0357 except as provided in subsection (5) or
7 (6) of this section.

8 If the court concludes, and enters reasons for its conclusion, that
9 disposition within the standard range would effectuate a manifest
10 injustice the court shall impose a disposition outside the standard
11 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
12 court's finding of manifest injustice shall be supported by clear and
13 convincing evidence.

14 A disposition outside the standard range shall be determinate and
15 shall be comprised of confinement or community supervision, or a
16 combination thereof. When a judge finds a manifest injustice and
17 imposes a sentence of confinement exceeding thirty days, the court
18 shall sentence the juvenile to a maximum term, and the provisions of
19 RCW 13.40.030(2), as now or hereafter amended, shall be used to
20 determine the range. A disposition outside the standard range is
21 appealable under RCW 13.40.230, as now or hereafter amended, by the
22 state or the respondent. A disposition within the standard range is
23 not appealable under RCW 13.40.230 as now or hereafter amended.

24 (2) Where the respondent is found to be a minor or first offender,
25 the court shall order that the respondent serve a term of community
26 supervision as indicated in option A or option B of schedule D-1, RCW
27 13.40.0357 except as provided in subsection (5) or (6)(d) of this
28 section. If the court determines that a disposition of community
29 supervision would effectuate a manifest injustice the court may impose
30 another disposition under option C of schedule D-1, RCW 13.40.0357.
31 Except as provided in subsection (5) or (6)(d) of this section, a
32 disposition other than a community supervision may be imposed only
33 after the court enters reasons upon which it bases its conclusions that
34 imposition of community supervision would effectuate a manifest
35 injustice. When a judge finds a manifest injustice and imposes a
36 sentence of confinement exceeding thirty days, the court shall sentence
37 the juvenile to a maximum term, and the provisions of RCW 13.40.030(2),
38 as now or hereafter amended, shall be used to determine the range. The

1 court's finding of manifest injustice shall be supported by clear and
2 convincing evidence.

3 Except for disposition of community supervision or a disposition
4 imposed pursuant to subsection (5) or (6)(d) of this section, a
5 disposition may be appealed as provided in RCW 13.40.230, as now or
6 hereafter amended, by the state or the respondent. A disposition of
7 community supervision or a disposition imposed pursuant to subsection
8 (5) or (6) of this section may not be appealed under RCW 13.40.230 as
9 now or hereafter amended.

10 (3) Where a respondent is found to have committed an offense for
11 which the respondent declined to enter into a diversion agreement, the
12 court shall impose a term of community supervision limited to the
13 conditions allowed in a diversion agreement as provided in RCW
14 13.40.080(2) as now or hereafter amended.

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

16 (a) The court shall impose a determinate disposition within the
17 standard range(s) for such offense, as indicated in option A of
18 schedule D-2, RCW 13.40.0357 except as provided in subsection (5) or
19 (6)(d) of this section: PROVIDED, That if the standard range includes
20 a term of confinement exceeding thirty days, commitment shall be to the
21 department for the standard range of confinement; or

22 (b) The court shall impose a determinate disposition of community
23 supervision and/or up to thirty days confinement, as indicated in
24 option B of schedule D-2, RCW 13.40.0357 in which case, if confinement
25 has been imposed, the court shall state either aggravating or
26 mitigating factors as set forth in RCW 13.40.150 as now or hereafter
27 amended.

28 (c) Only if the court concludes, and enters reasons for its
29 conclusions, that disposition as provided in subsection (4)(a) or (b)
30 of this section would effectuate a manifest injustice, the court shall
31 sentence the juvenile to a maximum term, and the provisions of RCW
32 13.40.030(2), as now or hereafter amended, shall be used to determine
33 the range. The court's finding of manifest injustice shall be
34 supported by clear and convincing evidence.

35 (d) A disposition pursuant to subsection (4)(c) of this section is
36 appealable under RCW 13.40.230, as now or hereafter amended, by the
37 state or the respondent. A disposition pursuant to subsection (4) (a)
38 or (b) of this section is not appealable under RCW 13.40.230 as now or
39 hereafter amended.

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

7 The report of the examination shall include at a minimum the
8 following: The respondent's version of the facts and the official
9 version of the facts, the respondent's offense history, an assessment
10 of problems in addition to alleged deviant behaviors, the respondent's
11 social, educational, and employment situation, and other evaluation
12 measures used. The report shall set forth the sources of the
13 evaluator's information.

14 The examiner shall assess and report regarding the respondent's
15 amenability to treatment and relative risk to the community. A
16 proposed treatment plan shall be provided and shall include, at a
17 minimum:

18 (a)(i) Frequency and type of contact between the offender and
19 therapist;

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

22 (iii) Monitoring plans, including any requirements regarding living
23 conditions, lifestyle requirements, and monitoring by family members,
24 legal guardians, or others;

25 (iv) Anticipated length of treatment; and

26 (v) Recommended crime-related prohibitions.

27 The court on its own motion may order, or on a motion by the state
28 shall order, a second examination regarding the offender's amenability
29 to treatment. The evaluator shall be selected by the party making the
30 motion. The defendant shall pay the cost of any second examination
31 ordered unless the court finds the defendant to be indigent in which
32 case the state shall pay the cost.

33 After receipt of reports of the examination, the court shall then
34 consider whether the offender and the community will benefit from use
35 of this special sex offender disposition alternative and consider the
36 victim's opinion whether the offender should receive a treatment
37 disposition under this section. If the court determines that this
38 special sex offender disposition alternative is appropriate, then the
39 court shall impose a determinate disposition within the standard range

1 for the offense, and the court may suspend the execution of the
2 disposition and place the offender on community supervision for up to
3 two years. As a condition of the suspended disposition, the court may
4 impose the conditions of community supervision and other conditions,
5 including up to thirty days of confinement and requirements that the
6 offender do any one or more of the following:

7 (b)(i) Devote time to a specific education, employment, or
8 occupation;

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

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

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

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

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

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

30 The sex offender treatment provider shall submit quarterly reports
31 on the respondent's progress in treatment to the court and the parties.
32 The reports shall reference the treatment plan and include at a minimum
33 the following: Dates of attendance, respondent's compliance with
34 requirements, treatment activities, the respondent's relative progress
35 in treatment, and any other material specified by the court at the time
36 of the disposition.

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

1 Except as provided in this subsection (5), after July 1, 1991,
2 examinations and treatment ordered pursuant to this subsection shall
3 only be conducted by sex offender treatment providers certified by the
4 department of health pursuant to chapter 18.155 RCW. A sex offender
5 therapist who examines or treats a juvenile sex offender pursuant to
6 this subsection does not have to be certified by the department of
7 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
8 offender has already moved to another state or plans to move to another
9 state for reasons other than circumventing the certification
10 requirements; (B) no certified providers are available for treatment
11 within a reasonable geographical distance of the offender's home; and
12 (C) the evaluation and treatment plan comply with this subsection (5)
13 and the rules adopted by the department of health.

14 If the offender violates any condition of the disposition or the
15 court finds that the respondent is failing to make satisfactory
16 progress in treatment, the court may revoke the suspension and order
17 execution of the sentence. The court shall give credit for any
18 confinement time previously served if that confinement was for the
19 offense for which the suspension is being revoked.

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

25 (6) When the juvenile offender is a minor or middle offender, the
26 court, on its own motion or the motion of the state or the juvenile,
27 may order a professional examination to determine whether the juvenile
28 is a substance abuser and whether the juvenile is amenable to substance
29 abuse treatment.

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

37 The examiner shall assess and report regarding the respondent's
38 amenability to treatment and relative risk to the community. A

1 proposed treatment plan shall be provided and shall include, at a
2 minimum:

3 (i) Frequency and type of contact between the offender and
4 therapist;

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

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

10 (iv) Anticipated length of treatment; and

11 (v) Recommended crime-related prohibitions.

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

18 (b) After receipt of reports of the examination, the court shall
19 then consider whether the offender and the community will benefit from
20 use of substance abuse treatment, either as a part of the juvenile's
21 disposition or as a disposition alternative.

22 (c) If the court concludes that inpatient substance abuse treatment
23 is an appropriate form of rehabilitation, the court may exercise the
24 manifest injustice option of schedule D-1 or D-2 of RCW 13.40.0357 to
25 order a disposition of confinement, all or a portion of which
26 confinement may be served in an inpatient substance abuse treatment
27 program. At the time of the disposition, the court may set treatment
28 review hearings as the court considers appropriate.

29 (d) If the court determines that outpatient substance abuse
30 treatment is an appropriate disposition alternative, then the court
31 shall impose a determinate disposition within the standard range for
32 the offense, and the court may suspend the execution of the disposition
33 and place the offender on community supervision for up to two years.
34 As a condition of the suspended disposition, the court may impose the
35 conditions of community supervision and other conditions, including up
36 to thirty days of confinement and requirements that the offender do any
37 one or more of the following:

38 (i) Devote time to a specific education, employment, or occupation;

1 (ii) Undergo available outpatient substance abuse treatment for up
2 to one year. The respondent shall not change treatment providers or
3 treatment conditions without first notifying the prosecutor, the
4 probation counselor, and the court, and shall not change providers
5 without court approval after a hearing if the prosecutor or probation
6 counselor object to the change;

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

10 (iv) Report to the prosecutor and the probation counselor prior to
11 any change in treatment providers. This change shall have prior
12 approval by the court;

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

14 (vi) Pay all court-ordered legal financial obligations, perform
15 community service, or any combination thereof.

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

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

25 If the offender violates any condition of the disposition or the
26 court finds that the respondent is failing to make satisfactory
27 progress in treatment, the court may revoke the suspension and order
28 execution of the sentence. The court shall give credit for any
29 confinement time previously served if that confinement was for the
30 offense for which the suspension is being revoked.

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

35 ~~((7))~~ (8) Except as provided for in subsection (5) or (6) of this
36 section, the court shall not suspend or defer the imposition or the
37 execution of the disposition.

1 (~~(8)~~) (9) In no case shall the term of confinement imposed by the
2 court at disposition exceed that to which an adult could be subjected
3 for the same offense.

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