H-4155.1

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**SUBSTITUTE HOUSE BILL 2746**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Early Learning & Human Services (originally sponsored by Representatives Walkinshaw, Walsh, Kagi, Senn, Frame, Kilduff, Sawyer, McBride, Goodman, Ormsby, and Tarleton)

AN ACT Relating to mental health and chemical dependency treatment for juvenile offenders; amending RCW 13.40.020, 13.40.0357, and 13.40.165; and repealing RCW 13.40.167.

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

**Sec.**  RCW 13.40.020 and 2014 c 110 s 1 are each amended to read as follows:

For the purposes of this chapter:

(1) "Assessment" means an individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse, or co-occurring mental health and substance abuse disorders, and recommendations for treatment. "Assessment" includes, but is not limited to, drug and alcohol evaluations, psychological and psychiatric evaluations, records review, clinical interview, and administration of a formal test or instrument;

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

(3) "Community-based sanctions" may include one or more of the following:

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

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

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

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

(a) Community-based sanctions;

(b) Community-based rehabilitation;

(c) Monitoring and reporting requirements;

(d) Posting of a probation bond;

(e) Residential treatment, where substance abuse, mental health, and/or co-occurring disorders have been identified in an assessment by a qualified mental health professional, psychologist, psychiatrist, or chemical dependency professional. If a child agrees to voluntary placement in a state-funded long-term evaluation and treatment facility, the case must follow the existing placement procedure including consideration of less restrictive treatment options and medical necessity.

(i) A court may order residential treatment after consideration and findings regarding whether:

(A) The referral is necessary to rehabilitate the child;

(B) The referral is necessary to protect the public or the child;

(C) The referral is in the child's best interest;

(D) The child has been given the opportunity to engage in less restrictive treatment and has been unable or unwilling to comply; and

(E) Inpatient treatment is the least restrictive action consistent with the child's needs and circumstances.

(ii) In any case where a court orders a child to inpatient treatment under this section, the court must hold a review hearing no later than sixty days after the youth begins inpatient treatment, and every thirty days thereafter, as long as the youth is in inpatient treatment;

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

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

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

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

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

(9) "Department" means the department of social and health services;

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

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

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

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

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

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

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

(17) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

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

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

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

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

(22) "Physical restraint" means the use of any bodily force or physical intervention to control a juvenile offender or limit a juvenile offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent a juvenile offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive juvenile offender who is unwilling to leave the area voluntarily; or

(c) Guide a juvenile offender from one location to another;

(23) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the youth leaves the hospital, birthing center, or clinic;

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

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

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

(27) "Restorative justice" means practices, policies, and programs informed by and sensitive to the needs of crime victims that are designed to encourage offenders to accept responsibility for repairing the harm caused by their offense by providing safe and supportive opportunities for voluntary participation and communication between the victim, the offender, their families, and relevant community members;

(28) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons;

(29) "Screening" means a process that is designed to identify a child who is at risk of having mental health, substance abuse, or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention, or more comprehensive assessment. A screening may be undertaken with or without the administration of a formal instrument;

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

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

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

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

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

(35) "Transportation" means the conveying, by any means, of an incarcerated pregnant youth from the institution or detention facility to another location from the moment she leaves the institution or detention facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated youth from the institution or detention facility to a transport vehicle and from the vehicle to the other location;

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

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

(38) "Youth court" means a diversion unit under the supervision of the juvenile court.

**Sec.**  RCW 13.40.0357 and 2013 c 20 s 2 are each amended to read as follows:

|  |
| --- |
| **DESCRIPTION AND OFFENSE CATEGORY** |
| juveniledispositionoffensecategory | description (rcw citation) | juvenile dispositioncategory forattempt, bailjump,conspiracy, orsolicitation |
|   |
|  | **Arson and Malicious Mischief** |
|  | A | Arson 1 (9A.48.020) | B+ |
|  | B | Arson 2 (9A.48.030) | C |
|  | C | Reckless Burning 1 (9A.48.040) | D |
|  | D | Reckless Burning 2 (9A.48.050) | E |
|  | B | Malicious Mischief 1 (9A.48.070) | C |
|  | C | Malicious Mischief 2 (9A.48.080) | D |
|  | D | Malicious Mischief 3 (9A.48.090) | E |
|  |  |  |  |
|  | E | Tampering with Fire Alarm Apparatus (9.40.100) | E |
|  | E | Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105) | E |
|  | A | Possession of Incendiary Device (9.40.120) | B+ |
|  |  | **Assault and Other Crimes Involving Physical Harm** |  |
|  | A | Assault 1 (9A.36.011) | B+ |
|  | B+ | Assault 2 (9A.36.021) | C+ |
|  | C+ | Assault 3 (9A.36.031) | D+ |
|  | D+ | Assault 4 (9A.36.041) | E |
|  | B+ | Drive-By Shooting (9A.36.045) | C+ |
|  | D+ | Reckless Endangerment (9A.36.050) | E |
|  | C+ | Promoting Suicide Attempt (9A.36.060) | D+ |
|  | D+ | Coercion (9A.36.070) | E |
|  | C+ | Custodial Assault (9A.36.100) | D+ |
|  |  | **Burglary and Trespass** |  |
|  | B+ | Burglary 1 (9A.52.020) | C+ |
|  | B | Residential Burglary (9A.52.025) | C |
|  | B | Burglary 2 (9A.52.030) | C |
|  | D | Burglary Tools (Possession of) (9A.52.060) | E |
|  | D | Criminal Trespass 1 (9A.52.070) | E |
|  | E | Criminal Trespass 2 (9A.52.080) | E |
|  | C | Mineral Trespass (78.44.330) | C |
|  | C | Vehicle Prowling 1 (9A.52.095) | D |
|  | D | Vehicle Prowling 2 (9A.52.100) | E |
|  |  | **Drugs** |  |
|  | E | Possession/Consumption of Alcohol (66.44.270) | E |
|  | C | Illegally Obtaining Legend Drug (69.41.020) | D |
|  | C+ | Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a)) | D+ |
|  | E | Possession of Legend Drug (69.41.030(2)(b)) | E |
|  | B+ | Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b)) | B+ |
|  | C | Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c)) | C |
|  | E | Possession of Marihuana &lt;40 grams (69.50.4014) | E |
|  | C | Fraudulently Obtaining Controlled Substance (69.50.403) | C |
|  | C+ | Sale of Controlled Substance for Profit (69.50.410) | C+ |
|  | E | Unlawful Inhalation (9.47A.020) | E |
|  | B | Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b)) | B |
|  | C | Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e)) | C |
|  | C | Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013) | C |
|  | C | Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012) | C |
|  |  | **Firearms and Weapons** |  |
|  | B | Theft of Firearm (9A.56.300) | C |
|  | B | Possession of Stolen Firearm (9A.56.310) | C |
|  | E | Carrying Loaded Pistol Without Permit (9.41.050) | E |
|  | C | Possession of Firearms by Minor (&lt;18) (9.41.040(2)(a)((~~(iii)~~)) (iv)) | C |
|  | D+ | Possession of Dangerous Weapon (9.41.250) | E |
|  | D | Intimidating Another Person by use of Weapon (9.41.270) | E |
|  |  | **Homicide** |  |
|  | A+ | Murder 1 (9A.32.030) | A |
|  | A+ | Murder 2 (9A.32.050) | B+ |
|  | B+ | Manslaughter 1 (9A.32.060) | C+ |
|  | C+ | Manslaughter 2 (9A.32.070) | D+ |
|  | B+ | Vehicular Homicide (46.61.520) | C+ |
|  |  | **Kidnapping** |  |
|  | A | Kidnap 1 (9A.40.020) | B+ |
|  | B+ | Kidnap 2 (9A.40.030) | C+ |
|  | C+ | Unlawful Imprisonment (9A.40.040) | D+ |
|  |  | **Obstructing Governmental Operation** |  |
|  | D | Obstructing a Law Enforcement Officer (9A.76.020) | E |
|  | E | Resisting Arrest (9A.76.040) | E |
|  | B | Introducing Contraband 1 (9A.76.140) | C |
|  | C | Introducing Contraband 2 (9A.76.150) | D |
|  | E | Introducing Contraband 3 (9A.76.160) | E |
|  | B+ | Intimidating a Public Servant (9A.76.180) | C+ |
|  | B+ | Intimidating a Witness (9A.72.110) | C+ |
|  |  | **Public Disturbance** |  |
|  | C+ |  Criminal Mischief with Weapon (9A.84.010(2)(b)) | D+ |
|  | D+ |  Criminal Mischief Without Weapon (9A.84.010(2)(a)) | E |
|  | E | Failure to Disperse (9A.84.020) | E |
|  | E | Disorderly Conduct (9A.84.030) | E |
|  |  | **Sex Crimes** |  |
|  | A | Rape 1 (9A.44.040) | B+ |
|  | A- | Rape 2 (9A.44.050) | B+ |
|  | C+ | Rape 3 (9A.44.060) | D+ |
|  | A- | Rape of a Child 1 (9A.44.073) | B+ |
|  | B+ | Rape of a Child 2 (9A.44.076) | C+ |
|  | B | Incest 1 (9A.64.020(1)) | C |
|  | C | Incest 2 (9A.64.020(2)) | D |
|  | D+ | Indecent Exposure (Victim &lt;14) (9A.88.010) | E |
|  | E | Indecent Exposure (Victim 14 or over) (9A.88.010) | E |
|  | B+ | Promoting Prostitution 1 (9A.88.070) | C+ |
|  | C+ | Promoting Prostitution 2 (9A.88.080) | D+ |
|  | E | O & A (Prostitution) (9A.88.030) | E |
|  | B+ | Indecent Liberties (9A.44.100) | C+ |
|  | A- | Child Molestation 1 (9A.44.083) | B+ |
|  | B | Child Molestation 2 (9A.44.086) | C+ |
|  | C | Failure to Register as a Sex Offender (9A.44.132) | D |
|  |  | **Theft, Robbery, Extortion, and Forgery** |  |
|  | B | Theft 1 (9A.56.030) | C |
|  | C | Theft 2 (9A.56.040) | D |
|  | D | Theft 3 (9A.56.050) | E |
|  | B | Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083) | C |
|  | C | Forgery (9A.60.020) | D |
|  | A | Robbery 1 (9A.56.200) | B+ |
|  | B+ | Robbery 2 (9A.56.210) | C+ |
|  | B+ | Extortion 1 (9A.56.120) | C+ |
|  | C+ | Extortion 2 (9A.56.130) | D+ |
|  | C | Identity Theft 1 (9.35.020(2)) | D |
|  | D | Identity Theft 2 (9.35.020(3)) | E |
|  | D | Improperly Obtaining Financial Information (9.35.010) | E |
|  | B | Possession of a Stolen Vehicle (9A.56.068) | C |
|  | B | Possession of Stolen Property 1 (9A.56.150) | C |
|  | C | Possession of Stolen Property 2 (9A.56.160) | D |
|  | D | Possession of Stolen Property 3 (9A.56.170) | E |
|  | B | Taking Motor Vehicle Without Permission 1 (9A.56.070) | C |
|  | C | Taking Motor Vehicle Without Permission 2 (9A.56.075) | D |
|  | B | Theft of a Motor Vehicle (9A.56.065) | C |
|  |  | **Motor Vehicle Related Crimes** |  |
|  | E | Driving Without a License (46.20.005) | E |
|  | B+ | Hit and Run - Death (46.52.020(4)(a)) | C+ |
|  | C | Hit and Run - Injury (46.52.020(4)(b)) | D |
|  | D | Hit and Run-Attended (46.52.020(5)) | E |
|  | E | Hit and Run-Unattended (46.52.010) | E |
|  | C | Vehicular Assault (46.61.522) | D |
|  | C | Attempting to Elude Pursuing Police Vehicle (46.61.024) | D |
|  | E | Reckless Driving (46.61.500) | E |
|  | D | Driving While Under the Influence (46.61.502 and 46.61.504) | E |
|  | B+ | Felony Driving While Under the Influence (46.61.502(6)) | B |
|  | B+ | Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6)) | B |
|  |  | **Other** |  |
|  | B | Animal Cruelty 1 (16.52.205) | C |
|  | B | Bomb Threat (9.61.160) | C |
|  | C | Escape 11  (9A.76.110) | C |
|  | C | Escape 21  (9A.76.120) | C |
|  | D | Escape 3 (9A.76.130) | E |
|  | E | Obscene, Harassing, Etc., Phone Calls (9.61.230) | E |
|  | A | Other Offense Equivalent to an Adult Class A Felony | B+ |
|  | B | Other Offense Equivalent to an Adult Class B Felony | C |
|  | C | Other Offense Equivalent to an Adult Class C Felony | D |
|  | D | Other Offense Equivalent to an Adult Gross Misdemeanor | E |
|  | E | Other Offense Equivalent to an Adult Misdemeanor | E |
|  | V | Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200)2  | V |

1Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

2If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

**JUVENILE SENTENCING STANDARDS**

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, or D((~~, or RCW 13.40.167~~)).

|  |  |  |
| --- | --- | --- |
|  |  | OPTION AJUVENILE OFFENDER SENTENCING GRIDSTANDARD RANGE |
|  | A+ | 180 weeks to age 21 for all category A+ offenses |
|  | A | 103-129 weeks for all category A offenses |
|  | A- | 15-36 weeksExcept 30-40 weeksfor 15 to 17 year olds | 52-65 weeks | 80-100 weeks | 103-129 weeks | 103-129 weeks |
| CURRENT | B+ | 15-36 weeks | 15-36 weeks | 52-65 weeks | 80-100 weeks | 103-129 weeks |
| OFFENSE | B | LS | LS | 15-36 weeks | 15-36 weeks | 52-65 weeks |
| CATEGORY | C+ | LS | LS | LS | 15-36 weeks | 15-36 weeks |
|  | C | LS | LS | LS | LS | 15-36 weeks |
|  | D+ | LS | LS | LS | LS | LS |
|  | D | LS | LS | LS | LS | LS |
|  | E | LS | LS | LS | LS | LS |
|  |  |  |
| PRIOR | 0 | 1 | 2 | 3 | 4 or more |
| ADJUDICATIONS |  |  |  |

NOTE: References in the grid to days or weeks mean periods of confinement. "LS" means "local sanctions" as defined in RCW 13.40.020.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

**OR**

**OPTION B**

**SUSPENDED DISPOSITION ALTERNATIVE**

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

(a) Adjudicated of an A+ offense;

(b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060); or

(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

**OR**

**OPTION C**

**CHEMICAL DEPENDENCY/MENTAL HEALTH DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

**OR**

**OPTION D**

**MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

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

(1) The purpose of this disposition alternative is to ensure that successful treatment options to reduce recidivism are available to eligible youth, pursuant to RCW 70.96A.520. It is also the purpose of the disposition alternative to assure that minors in need of chemical dependency, mental health, and/or co-occurring disorder treatment receive an appropriate continuum of culturally relevant care and treatment, including prevention and early intervention, self-directed care, parent-directed care, and residential treatment. To facilitate the continuum of care and treatment to minors in out-of-home placements, all divisions of the department that provide these services to minors shall jointly plan and deliver these services. It is also the purpose of the disposition alternative to protect the rights of minors against needless hospitalization and deprivations of liberty and to enable treatment decisions to be made in response to clinical needs and in accordance with sound professional judgment. The mental health, substance abuse, and co-occurring disorder treatment providers shall, to the extent possible, offer services that involve minors' parents, guardians, and family.

(2) The court must consider eligibility for the chemical dependency or mental health disposition alternative when a juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, other than a first time B+ offense under chapter 69.50 RCW. The court, on its own motion or the motion of the state or the respondent if the evidence shows that the offender may be chemically dependent ((~~or~~)), substance abusing, or has significant mental health or co-occurring disorders may order an examination by a chemical dependency counselor from a chemical dependency treatment facility approved under chapter 70.96A RCW or a mental health professional as defined in chapter 71.34 RCW to determine if the youth is chemically dependent ((~~or~~)), substance abusing, or suffers from significant mental health or co-occurring disorders. The offender shall pay the cost of any examination ordered under this subsection unless the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

((~~(2)~~)) (3) The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of drug-alcohol problems ((~~and~~)), mental health diagnoses, previous treatment attempts, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the examiner's information.

((~~(3)~~)) (4) The examiner shall assess and report regarding the respondent's relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(a) Whether inpatient and/or outpatient treatment is recommended;

(b) Availability of appropriate treatment;

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

(d) Anticipated length of treatment; and

(e) Recommended crime-related prohibitions.

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

((~~(5)~~)) (6)(a) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this ((~~chemical dependency~~)) disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

(b) If the court determines that this ((~~chemical dependency~~)) disposition alternative is appropriate, then the court shall impose the standard range for the offense, or if the court concludes, and enters reasons for its conclusion, that such disposition would effectuate a manifest injustice, the court shall impose a disposition above the standard range as indicated in option D of RCW 13.40.0357 if the disposition is an increase from the standard range and the confinement of the offender does not exceed a maximum of fifty-two weeks, suspend execution of the disposition, and place the offender on community supervision for up to one year. As a condition of the suspended disposition, the court shall require the offender to undergo available outpatient drug/alcohol, mental health, or co-occurring disorder treatment and/or inpatient mental health or drug/alcohol treatment. ((~~For purposes of this section,~~)) If the inpatient treatment ((~~may not exceed~~)) is longer than ninety days, the court shall hold a review hearing every thirty days beyond the initial ninety days. The respondent may appear telephonically at these review hearings if in compliance with treatment. As a condition of the suspended disposition, the court may impose conditions of community supervision and other sanctions, including up to thirty days of confinement, one hundred fifty hours of community restitution, and payment of legal financial obligations and restitution.

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

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

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

((~~(7)~~)) (8) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

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

((~~(9)~~)) (10) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

((~~(10)~~)) (11) A disposition under this section is not appealable under RCW 13.40.230.

(12) Subject to funds appropriated for this specific purpose, the costs incurred by the juvenile courts for the mental health, chemical dependency, and/or co-occurring disorder evaluations, treatment, and costs of supervision required under this section shall be paid by the department.

NEW SECTION. **Sec.**  RCW 13.40.167 (Mental health disposition alternative) and 2005 c 508 s 1 & 2003 c 378 s 4 are each repealed.

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