
ENGROSSED SUBSTITUTE HOUSE BILL 2164

State of Washington

63rd Legislature

2014 Regular Session

By House Judiciary (originally sponsored by Representatives Orwall, Appleton, Carlyle, and Ryu)

READ FIRST TIME 01/23/14.

1 AN ACT Relating to evidence-based and research-based interventions
2 for juvenile firearm offenders; and amending RCW 13.40.193, 13.40.127,
3 and 13.40.210; and adding a new section to chapter 13.40 RCW.

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

5 **Sec. 1.** RCW 13.40.193 and 2003 c 53 s 100 are each amended to read
6 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(2)(a)(iii), the court shall impose
9 a minimum disposition of ten days of confinement. If the offender's
10 standard range of disposition for the offense as indicated in RCW
11 13.40.0357 is more than thirty days of confinement, the court shall
12 commit the offender to the department for the standard range
13 disposition. The offender shall not be released until the offender has
14 served a minimum of ten days in confinement.

15 (2)(a) If a respondent is found to have been in possession of a
16 firearm in violation of RCW 9.41.040, the disposition must include a
17 requirement that the respondent participate in a qualifying program as
18 described in (b) of this subsection, when available, unless the court
19 makes a written finding based on the outcome of the juvenile court risk

1 assessment that participation in a qualifying program would not be
2 appropriate. The finding must be based on factors other than the
3 respondent's overall risk level classification.

4 (b) For purposes of this section, "qualifying program" means an
5 aggression replacement training program, a functional family therapy
6 program, or another program applicable to the juvenile firearm offender
7 population that has been identified as evidence-based or research-based
8 and cost-beneficial in the current list prepared at the direction of
9 the legislature by the Washington state institute for public policy.

10 (3) If the court finds that the respondent or an accomplice was
11 armed with a firearm, the court shall determine the standard range
12 disposition for the offense pursuant to RCW 13.40.160. If the offender
13 or an accomplice was armed with a firearm when the offender committed
14 any felony other than possession of a machine gun, possession of a
15 stolen firearm, drive-by shooting, theft of a firearm, unlawful
16 possession of a firearm in the first and second degree, or use of a
17 machine gun in a felony, the following periods of total confinement
18 must be added to the sentence: For a class A felony, six months; for
19 a class B felony, four months; and for a class C felony, two months.
20 The additional time shall be imposed regardless of the offense's
21 juvenile disposition offense category as designated in RCW 13.40.0357.

22 ~~((3))~~ (4) When a disposition under this section would effectuate
23 a manifest injustice, the court may impose another disposition. When
24 a judge finds a manifest injustice and imposes a disposition of
25 confinement exceeding thirty days, the court shall commit the juvenile
26 to a maximum term, and the provisions of RCW 13.40.030(2) shall be used
27 to determine the range. When a judge finds a manifest injustice and
28 imposes a disposition of confinement less than thirty days, the
29 disposition shall be comprised of confinement or community supervision
30 or both.

31 ~~((4))~~ (5) Any term of confinement ordered pursuant to this
32 section shall run consecutively to any term of confinement imposed in
33 the same disposition for other offenses.

34 **Sec. 2.** RCW 13.40.127 and 2013 c 179 s 5 are each amended to read
35 as follows:

36 (1) A juvenile is eligible for deferred disposition unless he or
37 she:

- 1 (a) Is charged with a sex or violent offense;
- 2 (b) Has a criminal history which includes any felony;
- 3 (c) Has a prior deferred disposition or deferred adjudication; or
- 4 (d) Has two or more adjudications.

5 (2) The juvenile court may, upon motion at least fourteen days
6 before commencement of trial and, after consulting the juvenile's
7 custodial parent or parents or guardian and with the consent of the
8 juvenile, continue the case for disposition for a period not to exceed
9 one year from the date the juvenile is found guilty. The court shall
10 consider whether the offender and the community will benefit from a
11 deferred disposition before deferring the disposition. The court may
12 waive the fourteen-day period anytime before the commencement of trial
13 for good cause.

14 (3) Any juvenile who agrees to a deferral of disposition shall:

15 (a) Stipulate to the admissibility of the facts contained in the
16 written police report;

17 (b) Acknowledge that the report will be entered and used to support
18 a finding of guilt and to impose a disposition if the juvenile fails to
19 comply with terms of supervision;

20 (c) Waive the following rights to: (i) A speedy disposition; and
21 (ii) call and confront witnesses; and

22 (d) Acknowledge the direct consequences of being found guilty and
23 the direct consequences that will happen if an order of disposition is
24 entered.

25 The adjudicatory hearing shall be limited to a reading of the
26 court's record.

27 (4) Following the stipulation, acknowledgment, waiver, and entry of
28 a finding or plea of guilt, the court shall defer entry of an order of
29 disposition of the juvenile.

30 (5) Any juvenile granted a deferral of disposition under this
31 section shall be placed under community supervision. The court may
32 impose any conditions of supervision that it deems appropriate
33 including posting a probation bond. Payment of restitution under RCW
34 13.40.190 shall be a condition of community supervision under this
35 section.

36 The court may require a juvenile offender convicted of animal
37 cruelty in the first degree to submit to a mental health evaluation to
38 determine if the offender would benefit from treatment and such

1 intervention would promote the safety of the community. After
2 consideration of the results of the evaluation, as a condition of
3 community supervision, the court may order the offender to attend
4 treatment to address issues pertinent to the offense.

5 The court may require the juvenile to undergo a mental health or
6 substance abuse assessment, or both. If the assessment identifies a
7 need for treatment, conditions of supervision may include treatment for
8 the assessed need that has been demonstrated to improve behavioral
9 health and reduce recidivism.

10 The court shall require a juvenile granted a deferral of
11 disposition for unlawful possession of a firearm in violation of RCW
12 9.41.040 to participate in a qualifying program as described in RCW
13 13.40.193(2)(b), when available, unless the court makes a written
14 finding based on the outcome of the juvenile court risk assessment that
15 participation in a qualifying program would not be appropriate. The
16 finding must be based on factors other than the juvenile's overall risk
17 level classification.

18 (6) A parent who signed for a probation bond has the right to
19 notify the counselor if the juvenile fails to comply with the bond or
20 conditions of supervision. The counselor shall notify the court and
21 surety of any failure to comply. A surety shall notify the court of
22 the juvenile's failure to comply with the probation bond. The state
23 shall bear the burden to prove, by a preponderance of the evidence,
24 that the juvenile has failed to comply with the terms of community
25 supervision.

26 (7)(a) Anytime prior to the conclusion of the period of
27 supervision, the prosecutor or the juvenile's juvenile court community
28 supervision counselor may file a motion with the court requesting the
29 court revoke the deferred disposition based on the juvenile's lack of
30 compliance or treat the juvenile's lack of compliance as a violation
31 pursuant to RCW 13.40.200.

32 (b) If the court finds the juvenile failed to comply with the terms
33 of the deferred disposition, the court may:

34 (i) Revoke the deferred disposition and enter an order of
35 disposition; or

36 (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

37 (8) At any time following deferral of disposition the court may,

1 following a hearing, continue supervision for an additional one-year
2 period for good cause.

3 (9)(a) At the conclusion of the period of supervision, the court
4 shall determine whether the juvenile is entitled to dismissal of the
5 deferred disposition only when the court finds:

- 6 (i) The deferred disposition has not been previously revoked;
- 7 (ii) The juvenile has completed the terms of supervision;
- 8 (iii) There are no pending motions concerning lack of compliance
9 pursuant to subsection (7) of this section; and
- 10 (iv) The juvenile has either paid the full amount of restitution,
11 or, made a good faith effort to pay the full amount of restitution
12 during the period of supervision.

13 (b) If the court finds the juvenile is entitled to dismissal of the
14 deferred disposition pursuant to (a) of this subsection, the juvenile's
15 conviction shall be vacated and the court shall dismiss the case with
16 prejudice, except that a conviction under RCW 16.52.205 shall not be
17 vacated. Whenever a case is dismissed with restitution still owing,
18 the court shall enter a restitution order pursuant to RCW 13.40.190 for
19 any unpaid restitution. Jurisdiction to enforce payment and modify
20 terms of the restitution order shall be the same as those set forth in
21 RCW 13.40.190.

22 (c) If the court finds the juvenile is not entitled to dismissal of
23 the deferred disposition pursuant to (a) of this subsection, the court
24 shall revoke the deferred disposition and enter an order of
25 disposition. A deferred disposition shall remain a conviction unless
26 the case is dismissed and the conviction is vacated pursuant to (b) of
27 this subsection or sealed pursuant to RCW 13.50.050.

28 (10)(a)(i) Any time the court vacates a conviction pursuant to
29 subsection (9) of this section, if the juvenile is eighteen years of
30 age or older and the full amount of restitution ordered has been paid,
31 the court shall enter a written order sealing the case.

32 (ii) Any time the court vacates a conviction pursuant to subsection
33 (9) of this section, if the juvenile is not eighteen years of age or
34 older and full restitution ordered has been paid, the court shall
35 schedule an administrative sealing hearing to take place no later than
36 thirty days after the respondent's eighteenth birthday, at which time
37 the court shall enter a written order sealing the case. The

1 respondent's presence at the administrative sealing hearing is not
2 required.

3 (iii) Any deferred disposition vacated prior to June 7, 2012, is
4 not subject to sealing under this subsection.

5 (b) Nothing in this subsection shall preclude a juvenile from
6 petitioning the court to have the records of his or her deferred
7 dispositions sealed under RCW 13.50.050 (11) and (12).

8 (c) Records sealed under this provision shall have the same legal
9 status as records sealed under RCW 13.50.050.

10 **Sec. 3.** RCW 13.40.210 and 2009 c 187 s 1 are each amended to read
11 as follows:

12 (1) The secretary shall set a release date for each juvenile
13 committed to its custody. The release date shall be within the
14 prescribed range to which a juvenile has been committed under RCW
15 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning
16 offenders the department determines are eligible for the juvenile
17 offender basic training camp program. Such dates shall be determined
18 prior to the expiration of sixty percent of a juvenile's minimum term
19 of confinement included within the prescribed range to which the
20 juvenile has been committed. The secretary shall release any juvenile
21 committed to the custody of the department within four calendar days
22 prior to the juvenile's release date or on the release date set under
23 this chapter. Days spent in the custody of the department shall be
24 tolled by any period of time during which a juvenile has absented
25 himself or herself from the department's supervision without the prior
26 approval of the secretary or the secretary's designee.

27 (2) The secretary shall monitor the average daily population of the
28 state's juvenile residential facilities. When the secretary concludes
29 that in-residence population of residential facilities exceeds one
30 hundred five percent of the rated bed capacity specified in statute, or
31 in absence of such specification, as specified by the department in
32 rule, the secretary may recommend reductions to the governor. On
33 certification by the governor that the recommended reductions are
34 necessary, the secretary has authority to administratively release a
35 sufficient number of offenders to reduce in-residence population to one
36 hundred percent of rated bed capacity. The secretary shall release
37 those offenders who have served the greatest proportion of their

1 sentence. However, the secretary may deny release in a particular case
2 at the request of an offender, or if the secretary finds that there is
3 no responsible custodian, as determined by the department, to whom to
4 release the offender, or if the release of the offender would pose a
5 clear danger to society. The department shall notify the committing
6 court of the release at the time of release if any such early releases
7 have occurred as a result of excessive in-residence population. In no
8 event shall an offender adjudicated of a violent offense be granted
9 release under the provisions of this subsection.

10 (3)(a) Following the release of any juvenile under subsection (1)
11 of this section, the secretary may require the juvenile to comply with
12 a program of parole to be administered by the department in his or her
13 community which shall last no longer than eighteen months, except that
14 in the case of a juvenile sentenced for rape in the first or second
15 degree, rape of a child in the first or second degree, child
16 molestation in the first degree, or indecent liberties with forcible
17 compulsion, the period of parole shall be twenty-four months and, in
18 the discretion of the secretary, may be up to thirty-six months when
19 the secretary finds that an additional period of parole is necessary
20 and appropriate in the interests of public safety or to meet the
21 ongoing needs of the juvenile. A parole program is mandatory for
22 offenders released under subsection (2) of this section and for
23 offenders who receive a juvenile residential commitment sentence of
24 theft of a motor vehicle, possession of a stolen motor vehicle, or
25 taking a motor vehicle without permission 1. A juvenile adjudicated of
26 unlawful possession of a firearm, possession of a stolen firearm, theft
27 of a firearm, or drive-by shooting may participate in aggression
28 replacement training, functional family therapy, or functional family
29 parole aftercare if the juvenile meets eligibility requirements for
30 these services. The decision to place an offender ((~~on~~)) in an
31 evidence-based parole program shall be based on an assessment by the
32 department of the offender's risk for reoffending upon release and an
33 assessment of the ongoing treatment needs of the juvenile. The
34 department shall prioritize available parole resources to provide
35 supervision and services to offenders at moderate to high risk for
36 reoffending.

37 (b) The secretary shall, for the period of parole, facilitate the
38 juvenile's reintegration into his or her community and to further this

1 goal shall require the juvenile to refrain from possessing a firearm or
2 using a deadly weapon and refrain from committing new offenses and may
3 require the juvenile to: (i) Undergo available medical, psychiatric,
4 drug and alcohol, sex offender, mental health, and other offense-
5 related treatment services; (ii) report as directed to a parole officer
6 and/or designee; (iii) pursue a course of study, vocational training,
7 or employment; (iv) notify the parole officer of the current address
8 where he or she resides; (v) be present at a particular address during
9 specified hours; (vi) remain within prescribed geographical boundaries;
10 (vii) submit to electronic monitoring; (viii) refrain from using
11 illegal drugs and alcohol, and submit to random urinalysis when
12 requested by the assigned parole officer; (ix) refrain from contact
13 with specific individuals or a specified class of individuals; (x) meet
14 other conditions determined by the parole officer to further enhance
15 the juvenile's reintegration into the community; (xi) pay any court-
16 ordered fines or restitution; and (xii) perform community restitution.
17 Community restitution for the purpose of this section means compulsory
18 service, without compensation, performed for the benefit of the
19 community by the offender. Community restitution may be performed
20 through public or private organizations or through work crews.

21 (c) The secretary may further require up to twenty-five percent of
22 the highest risk juvenile offenders who are placed on parole to
23 participate in an intensive supervision program. Offenders
24 participating in an intensive supervision program shall be required to
25 comply with all terms and conditions listed in (b) of this subsection
26 and shall also be required to comply with the following additional
27 terms and conditions: (i) Obey all laws and refrain from any conduct
28 that threatens public safety; (ii) report at least once a week to an
29 assigned community case manager; and (iii) meet all other requirements
30 imposed by the community case manager related to participating in the
31 intensive supervision program. As a part of the intensive supervision
32 program, the secretary may require day reporting.

33 (d) After termination of the parole period, the juvenile shall be
34 discharged from the department's supervision.

35 (4)(a) The department may also modify parole for violation thereof.
36 If, after affording a juvenile all of the due process rights to which
37 he or she would be entitled if the juvenile were an adult, the
38 secretary finds that a juvenile has violated a condition of his or her

1 parole, the secretary shall order one of the following which is
2 reasonably likely to effectuate the purpose of the parole and to
3 protect the public: (i) Continued supervision under the same
4 conditions previously imposed; (ii) intensified supervision with
5 increased reporting requirements; (iii) additional conditions of
6 supervision authorized by this chapter; (iv) except as provided in
7 (a)(v) and (vi) of this subsection, imposition of a period of
8 confinement not to exceed thirty days in a facility operated by or
9 pursuant to a contract with the state of Washington or any city or
10 county for a portion of each day or for a certain number of days each
11 week with the balance of the days or weeks spent under supervision; (v)
12 the secretary may order any of the conditions or may return the
13 offender to confinement for the remainder of the sentence range if the
14 offense for which the offender was sentenced is rape in the first or
15 second degree, rape of a child in the first or second degree, child
16 molestation in the first degree, indecent liberties with forcible
17 compulsion, or a sex offense that is also a serious violent offense as
18 defined by RCW 9.94A.030; and (vi) the secretary may order any of the
19 conditions or may return the offender to confinement for the remainder
20 of the sentence range if the youth has completed the basic training
21 camp program as described in RCW 13.40.320.

22 (b) The secretary may modify parole and order any of the conditions
23 or may return the offender to confinement for up to twenty-four weeks
24 if the offender was sentenced for a sex offense as defined under RCW
25 9A.44.130 and is known to have violated the terms of parole.
26 Confinement beyond thirty days is intended to only be used for a small
27 and limited number of sex offenders. It shall only be used when other
28 graduated sanctions or interventions have not been effective or the
29 behavior is so egregious it warrants the use of the higher level
30 intervention and the violation: (i) Is a known pattern of behavior
31 consistent with a previous sex offense that puts the youth at high risk
32 for reoffending sexually; (ii) consists of sexual behavior that is
33 determined to be predatory as defined in RCW 71.09.020; or (iii)
34 requires a review under chapter 71.09 RCW, due to a recent overt act.
35 The total number of days of confinement for violations of parole
36 conditions during the parole period shall not exceed the number of days
37 provided by the maximum sentence imposed by the disposition for the
38 underlying offense pursuant to RCW 13.40.0357. The department shall

1 not aggregate multiple parole violations that occur prior to the parole
2 revocation hearing and impose consecutive twenty-four week periods of
3 confinement for each parole violation. The department is authorized to
4 engage in rule making pursuant to chapter 34.05 RCW, to implement this
5 subsection, including narrowly defining the behaviors that could lead
6 to this higher level intervention.

7 (c) If the department finds that any juvenile in a program of
8 parole has possessed a firearm or used a deadly weapon during the
9 program of parole, the department shall modify the parole under (a) of
10 this subsection and confine the juvenile for at least thirty days.
11 Confinement shall be in a facility operated by or pursuant to a
12 contract with the state or any county.

13 (5) A parole officer of the department of social and health
14 services shall have the power to arrest a juvenile under his or her
15 supervision on the same grounds as a law enforcement officer would be
16 authorized to arrest the person.

17 (6) If so requested and approved under chapter 13.06 RCW, the
18 secretary shall permit a county or group of counties to perform
19 functions under subsections (3) through (5) of this section.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 13.40 RCW
21 to read as follows:

22 (1)(a) The juvenile rehabilitation administration of the department
23 of social and health services must compile and analyze data regarding
24 juvenile offenders who have been found to have committed the offense of
25 unlawful possession of a firearm under RCW 9.41.040 and made their
26 initial contact with the criminal justice system between January 1,
27 2005, and December 31, 2013. Information compiled and analyzed must
28 include:

29 (i) Previous and subsequent criminal offenses committed by the
30 offenders as juveniles or adults;

31 (ii) Where applicable, treatment interventions provided to the
32 offenders as juveniles, including the nature of provided interventions
33 and whether the offenders completed the interventions, if known; and

34 (iii) Gang association of the offenders, if known.

35 (b) The department of corrections and the caseload forecast council
36 must provide any information necessary to assist the juvenile
37 rehabilitation administration in compiling the data required for this

1 purpose. Information provided may include individual identifier level
2 data, however such data must remain confidential and must not be
3 disseminated for purposes other than as identified in this section or
4 otherwise permitted by law.

5 (2) The juvenile rehabilitation administration shall report its
6 findings to the appropriate committees of the legislature no later than
7 October 1, 2014.

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