
ENGROSSED SUBSTITUTE HOUSE BILL 2164

AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

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; amending RCW 13.40.193, 13.40.127,
3 13.40.210, and 13.50.010; and adding a new section to chapter 13.40
4 RCW.

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

6 **Sec. 1.** RCW 13.40.193 and 2003 c 53 s 100 are each amended to read
7 as follows:

8 (1) If a respondent is found to have been in possession of a
9 firearm in violation of RCW 9.41.040(2)(a)(iii), the court shall impose
10 a minimum disposition of ten days of confinement. If the offender's
11 standard range of disposition for the offense as indicated in RCW
12 13.40.0357 is more than thirty days of confinement, the court shall
13 commit the offender to the department for the standard range
14 disposition. The offender shall not be released until the offender has
15 served a minimum of ten days in confinement.

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

1 makes a written finding based on the outcome of the juvenile court risk
2 assessment that participation in a qualifying program would not be
3 appropriate.

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.

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

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

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

32 (i) Revoke the deferred disposition and enter an order of
33 disposition; or

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

35 (8) At any time following deferral of disposition the court may,
36 following a hearing, continue supervision for an additional one-year
37 period for good cause.

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

4 (i) The deferred disposition has not been previously revoked;

5 (ii) The juvenile has completed the terms of supervision;

6 (iii) There are no pending motions concerning lack of compliance
7 pursuant to subsection (7) of this section; and

8 (iv) The juvenile has either paid the full amount of restitution,
9 or, made a good faith effort to pay the full amount of restitution
10 during the period of supervision.

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

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

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

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

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

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

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

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

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

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

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

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

35 (b) The secretary shall, for the period of parole, facilitate the
36 juvenile's reintegration into his or her community and to further this
37 goal shall require the juvenile to refrain from possessing a firearm or
38 using a deadly weapon and refrain from committing new offenses and may

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

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

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

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

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

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

1 confinement for each parole violation. The department is authorized to
2 engage in rule making pursuant to chapter 34.05 RCW, to implement this
3 subsection, including narrowly defining the behaviors that could lead
4 to this higher level intervention.

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

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

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

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

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

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

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

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

33 (b) The department of corrections and the caseload forecast council
34 must provide any information necessary to assist the juvenile
35 rehabilitation administration in compiling the data required for this
36 purpose. Information provided may include individual identifier level

1 data, however such data must remain confidential and must not be
2 disseminated for purposes other than as identified in this section or
3 otherwise permitted by law.

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

7 **Sec. 5.** RCW 13.50.010 and 2013 c 23 s 6 are each amended to read
8 as follows:

9 (1) For purposes of this chapter:

10 (a) "Juvenile justice or care agency" means any of the following:
11 Police, diversion units, court, prosecuting attorney, defense attorney,
12 detention center, attorney general, the legislative children's
13 oversight committee, the office of the family and children's ombuds,
14 the department of social and health services and its contracting
15 agencies, schools; persons or public or private agencies having
16 children committed to their custody; and any placement oversight
17 committee created under RCW 72.05.415;

18 (b) "Official juvenile court file" means the legal file of the
19 juvenile court containing the petition or information, motions,
20 memorandums, briefs, findings of the court, and court orders;

21 (c) "Records" means the official juvenile court file, the social
22 file, and records of any other juvenile justice or care agency in the
23 case;

24 (d) "Social file" means the juvenile court file containing the
25 records and reports of the probation counselor.

26 (2) Each petition or information filed with the court may include
27 only one juvenile and each petition or information shall be filed under
28 a separate docket number. The social file shall be filed separately
29 from the official juvenile court file.

30 (3) It is the duty of any juvenile justice or care agency to
31 maintain accurate records. To this end:

32 (a) The agency may never knowingly record inaccurate information.
33 Any information in records maintained by the department of social and
34 health services relating to a petition filed pursuant to chapter 13.34
35 RCW that is found by the court to be false or inaccurate shall be
36 corrected or expunged from such records by the agency;

1 (b) An agency shall take reasonable steps to assure the security of
2 its records and prevent tampering with them; and

3 (c) An agency shall make reasonable efforts to insure the
4 completeness of its records, including action taken by other agencies
5 with respect to matters in its files.

6 (4) Each juvenile justice or care agency shall implement procedures
7 consistent with the provisions of this chapter to facilitate inquiries
8 concerning records.

9 (5) Any person who has reasonable cause to believe information
10 concerning that person is included in the records of a juvenile justice
11 or care agency and who has been denied access to those records by the
12 agency may make a motion to the court for an order authorizing that
13 person to inspect the juvenile justice or care agency record concerning
14 that person. The court shall grant the motion to examine records
15 unless it finds that in the interests of justice or in the best
16 interests of the juvenile the records or parts of them should remain
17 confidential.

18 (6) A juvenile, or his or her parents, or any person who has
19 reasonable cause to believe information concerning that person is
20 included in the records of a juvenile justice or care agency may make
21 a motion to the court challenging the accuracy of any information
22 concerning the moving party in the record or challenging the continued
23 possession of the record by the agency. If the court grants the
24 motion, it shall order the record or information to be corrected or
25 destroyed.

26 (7) The person making a motion under subsection (5) or (6) of this
27 section shall give reasonable notice of the motion to all parties to
28 the original action and to any agency whose records will be affected by
29 the motion.

30 (8) The court may permit inspection of records by, or release of
31 information to, any clinic, hospital, or agency which has the subject
32 person under care or treatment. The court may also permit inspection
33 by or release to individuals or agencies, including juvenile justice
34 advisory committees of county law and justice councils, engaged in
35 legitimate research for educational, scientific, or public purposes.

36 ~~((The court shall release to the caseload forecast council records
37 needed for its research and data gathering functions. Access to
38 records or information for research purposes shall be permitted only if~~

1 ~~the anonymity of all persons mentioned in the records or information~~
2 ~~will be preserved.))~~ Each person granted permission to inspect
3 juvenile justice or care agency records for research purposes shall
4 present a notarized statement to the court stating that the names of
5 juveniles and parents will remain confidential.

6 (9) The court shall release to the caseload forecast council the
7 records needed for its research and data-gathering functions. Access
8 to caseload forecast data may be permitted by the council for research
9 purposes only if the anonymity of all persons mentioned in the records
10 or information will be preserved.

11 (10) Juvenile detention facilities shall release records to the
12 caseload forecast council upon request. The commission shall not
13 disclose the names of any juveniles or parents mentioned in the records
14 without the named individual's written permission.

15 ((+10+)) (11) Requirements in this chapter relating to the court's
16 authority to compel disclosure shall not apply to the legislative
17 children's oversight committee or the office of the family and
18 children's ombuds.

19 ((+11+)) (12) For the purpose of research only, the administrative
20 office of the courts shall maintain an electronic research copy of all
21 records in the judicial information system related to juveniles.
22 Access to the research copy is restricted to the Washington state
23 center for court research. The Washington state center for court
24 research shall maintain the confidentiality of all confidential records
25 and shall preserve the anonymity of all persons identified in the
26 research copy. The research copy may not be subject to any records
27 retention schedule and must include records destroyed or removed from
28 the judicial information system pursuant to RCW 13.50.050 (17) and (18)
29 and 13.50.100(3).

30 ((+12+)) (13) The court shall release to the Washington state
31 office of public defense records needed to implement the agency's
32 oversight, technical assistance, and other functions as required by RCW
33 2.70.020. Access to the records used as a basis for oversight,
34 technical assistance, or other agency functions is restricted to the
35 Washington state office of public defense. The Washington state office
36 of public defense shall maintain the confidentiality of all

1 confidential information included in the records.

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