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**SUBSTITUTE SENATE BILL 6868**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senator Hargrove)

READ FIRST TIME 02/26/10.

1            AN ACT Relating to the reasons for which a manifest injustice  
2 disposition may be imposed upon a juvenile offender; amending RCW  
3 13.40.150, 13.40.160, and 13.40.165; adding a new section to chapter  
4 13.40 RCW; and providing an effective date.

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

6            **Sec. 1.** RCW 13.40.150 and 1998 c 86 s 1 are each amended to read  
7 as follows:

8            (1) In disposition hearings all relevant and material evidence,  
9 including oral and written reports, may be received by the court and  
10 may be relied upon to the extent of its probative value, even though  
11 such evidence may not be admissible in a hearing on the information.  
12 The youth or the youth's counsel and the prosecuting attorney shall be  
13 afforded an opportunity to examine and controvert written reports so  
14 received and to cross-examine individuals making reports when such  
15 individuals are reasonably available, but sources of confidential  
16 information need not be disclosed. The prosecutor and counsel for the  
17 juvenile may submit recommendations for disposition.

18            (2) For purposes of disposition:

19            (a) Violations which are current offenses count as misdemeanors;

1 (b) Violations may not count as part of the offender's criminal  
2 history;

3 (c) In no event may a disposition for a violation include  
4 confinement.

5 (3) Before entering a dispositional order as to a respondent found  
6 to have committed an offense, the court shall hold a disposition  
7 hearing, at which the court shall:

8 (a) Consider the facts supporting the allegations of criminal  
9 conduct by the respondent;

10 (b) Consider information and arguments offered by parties and their  
11 counsel;

12 (c) Consider any predisposition reports;

13 (d) Consult with the respondent's parent, guardian, or custodian on  
14 the appropriateness of dispositional options under consideration and  
15 afford the respondent and the respondent's parent, guardian, or  
16 custodian an opportunity to speak in the respondent's behalf;

17 (e) Allow the victim or a representative of the victim and an  
18 investigative law enforcement officer to speak;

19 (f) Determine the amount of restitution owing to the victim, if  
20 any, or set a hearing for a later date not to exceed one hundred eighty  
21 days from the date of the disposition hearing to determine the amount,  
22 except that the court may continue the hearing beyond the one hundred  
23 eighty days for good cause;

24 (g) Determine the respondent's offender score;

25 (h) Consider whether or not any of the following mitigating factors  
26 exist:

27 (i) The respondent's conduct neither caused nor threatened serious  
28 bodily injury or the respondent did not contemplate that his or her  
29 conduct would cause or threaten serious bodily injury;

30 (ii) The respondent acted under strong and immediate provocation;

31 (iii) The respondent was suffering from a mental or physical  
32 condition that significantly reduced his or her culpability for the  
33 offense though failing to establish a defense;

34 (iv) Prior to his or her detection, the respondent compensated or  
35 made a good faith attempt to compensate the victim for the injury or  
36 loss sustained; and

37 (v) There has been at least one year between the respondent's  
38 current offense and any prior criminal offense;

1 (i) Consider whether or not any of the following aggravating  
2 factors exist:

3 (i) In the commission of the offense, or in flight therefrom, the  
4 respondent inflicted or attempted to inflict serious bodily injury to  
5 another;

6 (ii) The offense was committed in an especially heinous, cruel, or  
7 depraved manner;

8 (iii) The victim or victims were particularly vulnerable;

9 (iv) The respondent has a recent criminal history or has failed to  
10 comply with conditions of a recent dispositional order or diversion  
11 agreement;

12 (v) The current offense included a finding of sexual motivation  
13 pursuant to RCW 13.40.135;

14 (vi) The respondent was the leader of a criminal enterprise  
15 involving several persons;

16 (vii) There are other complaints which have resulted in diversion  
17 or a finding or plea of guilty but which are not included as criminal  
18 history; and

19 (viii) The standard range disposition is clearly too lenient  
20 considering the seriousness of the juvenile's prior adjudications.

21 (4) The following factors may not be considered in determining the  
22 punishment to be imposed:

23 (a) The sex of the respondent;

24 (b) The race or color of the respondent or the respondent's family;

25 (c) The creed or religion of the respondent or the respondent's  
26 family;

27 (d) The economic or social class of the respondent or the  
28 respondent's family; (~~and~~)

29 (e) Factors indicating that the respondent may be or is a dependent  
30 child within the meaning of this chapter; and

31 (f) The offender's primary need for inpatient or structured mental  
32 health or chemical dependency treatment, other than for sex offender  
33 treatment.

34 (5) A court may not commit a juvenile to a state institution solely  
35 because of the lack of facilities, including treatment facilities,  
36 existing in the community.

1       **Sec. 2.** RCW 13.40.160 and 2007 c 199 s 14 are each amended to read  
2 as follows:

3       (1) The standard range disposition for a juvenile adjudicated of an  
4 offense is determined according to RCW 13.40.0357.

5       (a) When the court sentences an offender to a local sanction as  
6 provided in RCW 13.40.0357 option A, the court shall impose a  
7 determinate disposition within the standard ranges, except as provided  
8 in subsection (2), (3), (4), or (5)((~~, or (6)~~)) of this section. The  
9 disposition may be comprised of one or more local sanctions.

10       (b) When the court sentences an offender to a standard range as  
11 provided in RCW 13.40.0357 option A that includes a term of confinement  
12 exceeding thirty days, commitment shall be to the department for the  
13 standard range of confinement, except as provided in subsection (2),  
14 (3), (4), or (5)((~~, or (6)~~)) of this section.

15       (2) If the court concludes, and enters reasons for its conclusion,  
16 that disposition within the standard range would effectuate a manifest  
17 injustice the court shall impose a disposition outside the standard  
18 range, as indicated in option D of RCW 13.40.0357. The court's finding  
19 of manifest injustice shall be supported by clear and convincing  
20 evidence and cannot be based solely upon the offender's need for  
21 inpatient, structured mental health or chemical dependency treatment,  
22 other than sex offender treatment, unless the juvenile is being  
23 sentenced in a rural area of the state in which there are no available  
24 mental health or chemical dependency treatment resources.

25       A disposition outside the standard range shall be determinate and  
26 shall be comprised of confinement or community supervision, or a  
27 combination thereof. When a judge finds a manifest injustice and  
28 imposes a sentence of confinement exceeding thirty days, the court  
29 shall sentence the juvenile to a maximum term, and the provisions of  
30 RCW 13.40.030(2) shall be used to determine the range. A disposition  
31 outside the standard range is appealable under RCW 13.40.230 by the  
32 state or the respondent. A disposition within the standard range is  
33 not appealable under RCW 13.40.230.

34       (3) When a juvenile offender is found to have committed a sex  
35 offense, other than a sex offense that is also a serious violent  
36 offense as defined by RCW 9.94A.030, and has no history of a prior sex  
37 offense, the court, on its own motion or the motion of the state or the

1 respondent, may order an examination to determine whether the  
2 respondent is amenable to treatment.

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

10 The examiner shall assess and report regarding the respondent's  
11 amenability to treatment and relative risk to the community. A  
12 proposed treatment plan shall be provided and shall include, at a  
13 minimum:

14 (a)(i) Frequency and type of contact between the offender and  
15 therapist;

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

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

21 (iv) Anticipated length of treatment; and

22 (v) Recommended crime-related prohibitions.

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

29 After receipt of reports of the examination, the court shall then  
30 consider whether the offender and the community will benefit from use  
31 of this special sex offender disposition alternative and consider the  
32 victim's opinion whether the offender should receive a treatment  
33 disposition under this section. If the court determines that this  
34 special sex offender disposition alternative is appropriate, then the  
35 court shall impose a determinate disposition within the standard range  
36 for the offense, or if the court concludes, and enters reasons for its  
37 conclusions, that such disposition would cause a manifest injustice,  
38 the court shall impose a disposition under option D, and the court may

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

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

30 (viii) Comply with the conditions of any court-ordered probation  
31 bond; or

32 (ix) The court shall order that the offender shall not attend the  
33 public or approved private elementary, middle, or high school attended  
34 by the victim or the victim's siblings. The parents or legal guardians  
35 of the offender are responsible for transportation or other costs  
36 associated with the offender's change of school that would otherwise be  
37 paid by the school district. The court shall send notice of the  
38 disposition and restriction on attending the same school as the victim

1 or victim's siblings to the public or approved private school the  
2 juvenile will attend, if known, or if unknown, to the approved private  
3 schools and the public school district board of directors of the  
4 district in which the juvenile resides or intends to reside. This  
5 notice must be sent at the earliest possible date but not later than  
6 ten calendar days after entry of the disposition.

7 The sex offender treatment provider shall submit quarterly reports  
8 on the respondent's progress in treatment to the court and the parties.  
9 The reports shall reference the treatment plan and include at a minimum  
10 the following: Dates of attendance, respondent's compliance with  
11 requirements, treatment activities, the respondent's relative progress  
12 in treatment, and any other material specified by the court at the time  
13 of the disposition.

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

16 Except as provided in this subsection (3), after July 1, 1991,  
17 examinations and treatment ordered pursuant to this subsection shall  
18 only be conducted by certified sex offender treatment providers or  
19 certified affiliate sex offender treatment providers under chapter  
20 18.155 RCW. A sex offender therapist who examines or treats a juvenile  
21 sex offender pursuant to this subsection does not have to be certified  
22 by the department of health pursuant to chapter 18.155 RCW if the court  
23 finds that: (A) The offender has already moved to another state or  
24 plans to move to another state for reasons other than circumventing the  
25 certification requirements; (B) no certified sex offender treatment  
26 providers or certified affiliate sex offender treatment providers are  
27 available for treatment within a reasonable geographical distance of  
28 the offender's home; and (C) the evaluation and treatment plan comply  
29 with this subsection (3) and the rules adopted by the department of  
30 health.

31 If the offender violates any condition of the disposition or the  
32 court finds that the respondent is failing to make satisfactory  
33 progress in treatment, the court may revoke the suspension and order  
34 execution of the disposition or the court may impose a penalty of up to  
35 thirty days' confinement for violating conditions of the disposition.  
36 The court may order both execution of the disposition and up to thirty  
37 days' confinement for the violation of the conditions of the

1 disposition. The court shall give credit for any confinement time  
2 previously served if that confinement was for the offense for which the  
3 suspension is being revoked.

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

9 A disposition entered under this subsection (3) is not appealable  
10 under RCW 13.40.230.

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

15 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of  
16 confinement, the court may impose the disposition alternative under RCW  
17 13.40.167.

18 ~~(6) ((When the offender is subject to a standard range commitment  
19 of 15 to 36 weeks and is ineligible for a suspended disposition  
20 alternative, a manifest injustice disposition below the standard range,  
21 special sex offender disposition alternative, chemical dependency  
22 disposition alternative, or mental health disposition alternative, the  
23 court in a county with a pilot program under RCW 13.40.169 may impose  
24 the disposition alternative under RCW 13.40.169.~~

25 ~~(7))~~ RCW 13.40.193 shall govern the disposition of any juvenile  
26 adjudicated of possessing a firearm in violation of RCW  
27 9.41.040(2)(a)(iii) or any crime in which a special finding is entered  
28 that the juvenile was armed with a firearm.

29 ~~((8))~~ (7) RCW 13.40.308 shall govern the disposition of any  
30 juvenile adjudicated of theft of a motor vehicle as defined under RCW  
31 9A.56.065, possession of a stolen motor vehicle as defined under RCW  
32 9A.56.068, taking a motor vehicle without permission in the first  
33 degree under RCW 9A.56.070, and taking a motor vehicle without  
34 permission in the second degree under RCW 9A.56.075.

35 ~~((9))~~ (8) Whenever a juvenile offender is entitled to credit for  
36 time spent in detention prior to a dispositional order, the  
37 dispositional order shall specifically state the number of days of  
38 credit for time served.



1       (~~(10)~~) (9) Except as provided under subsection (3), (4), or  
2       (5)(~~, or (6)~~) of this section, or option B of RCW 13.40.0357, or RCW  
3       13.40.127, the court shall not suspend or defer the imposition or the  
4       execution of the disposition.

5       (~~(11)~~) (10) In no case shall the term of confinement imposed by  
6       the court at disposition exceed that to which an adult could be  
7       subjected for the same offense.

8       **Sec. 3.** RCW 13.40.165 and 2004 c 120 s 5 are each amended to read  
9       as follows:

10       (1) The purpose of this disposition alternative is to ensure that  
11       successful treatment options to reduce recidivism are available to  
12       eligible youth, pursuant to RCW 70.96A.520. The court must consider  
13       eligibility for the chemical dependency disposition alternative when a  
14       juvenile offender is subject to a standard range disposition of local  
15       sanctions or 15 to 36 weeks of confinement and has not committed an A-  
16       or B+ offense, other than a first time B+ offense under chapter 69.50  
17       RCW. The court, on its own motion or the motion of the state or the  
18       respondent if the evidence shows that the offender may be chemically  
19       dependent or substance abusing, may order an examination by a chemical  
20       dependency counselor from a chemical dependency treatment facility  
21       approved under chapter 70.96A RCW to determine if the youth is  
22       chemically dependent or substance abusing. The offender shall pay the  
23       cost of any examination ordered under this subsection unless the court  
24       finds that the offender is indigent and no third party insurance  
25       coverage is available, in which case the state shall pay the cost.

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

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

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

37       (b) Availability of appropriate treatment;

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

4 (d) Anticipated length of treatment; and

5 (e) Recommended crime-related prohibitions.

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

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

18 (b) If the court determines that this chemical dependency  
19 disposition alternative is appropriate, then the court shall impose the  
20 standard range for the offense, or if the court concludes, and enters  
21 reasons for its conclusion, that such disposition would effectuate a  
22 manifest injustice, the court shall impose a disposition above the  
23 standard range as indicated in option D of RCW 13.40.0357 if the  
24 disposition is an increase from the standard range and the confinement  
25 of the offender does not exceed a maximum of fifty-two weeks, suspend  
26 execution of the disposition, and place the offender on community  
27 supervision for up to one year. The manifest injustice disposition  
28 under this section shall not be based solely upon the likelihood that  
29 the offender will not be successful under this disposition alternative  
30 or upon the offender's need or continued need for inpatient or  
31 structured substance abuse treatment, unless the juvenile is being  
32 sentenced in a rural area of the state in which there are no available  
33 mental health or chemical dependency treatment resources. As a  
34 condition of the suspended disposition, the court shall require the  
35 offender to undergo available outpatient drug/alcohol treatment and/or  
36 inpatient drug/alcohol treatment. For purposes of this section,  
37 inpatient treatment may not exceed ninety days. As a condition of the  
38 suspended disposition, the court may impose conditions of community

1 supervision and other sanctions, including up to thirty days of  
2 confinement, one hundred fifty hours of community restitution, and  
3 payment of legal financial obligations and restitution.

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

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

13 If the offender violates any condition of the disposition or the  
14 court finds that the respondent is failing to make satisfactory  
15 progress in treatment, the court may impose sanctions pursuant to RCW  
16 13.40.200 or revoke the suspension and order execution of the  
17 disposition. The court shall give credit for any confinement time  
18 previously served if that confinement was for the offense for which the  
19 suspension is being revoked.

20 (7) 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 offense charged. "Victim"  
23 may also include a known parent or guardian of a victim who is a minor  
24 child or is not a minor child but is incapacitated, incompetent,  
25 disabled, or deceased.

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

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

33 (10) A disposition under this section is not appealable under RCW  
34 13.40.230.

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

37 All offenders incarcerated in a facility operated by the department

1 who would not have been incarcerated but for a manifest injustice  
2 finding based solely upon the juvenile's need for structured, inpatient  
3 mental health or chemical dependency treatment shall be paroled as of  
4 the effective date of this act if the juvenile has completed his or her  
5 treatment.

6 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2010.

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