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STATE OF WASHINGTON
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CLERK

NO. 94393-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

EVAN BACON,

Petitioner.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JOHN P. ERLICK AND
THE HONORABLE ROGER ROGOFF

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES

1. Under the Juvenile Justice Act (JJA), suspended dispositions are authorized under limited circumstances and are expressly forbidden as to an offender adjudicated of robbery in the second degree, and as to manifest injustice sentences. The court suspended a manifest injustice disposition on Bacon's offense of robbery in the second degree. Was the suspended disposition precluded by statute as a matter of law?

2. Does the prohibition on cruel and unusual punishments in the 8th Amendment preclude the Legislature from restricting suspended dispositions to a limited class of juvenile offenders?

B. STATEMENT OF THE CASE

A woman laid her purse on the floor at a public library while making copies. Evan Bacon came up behind the woman, grabbed her purse, and fled. The woman chased Bacon, caught him near an elevator, and took hold of his backpack and her purse to prevent his escape. Bacon dragged the woman towards an exit door. In the struggle, the woman fell to one knee. Bacon then struck the side of her head with his fist, took the purse, and fled. He was

caught and detained by a witness just outside the library. Police arrested Bacon after he was positively identified by the woman and the witness. He admitted that he had taken the woman's purse. CP 4-6.

The woman robbed and assaulted by Bacon spoke very little English but she was accompanied by her daughter who translated for her. CP 5. She commented after the robbery that her head was hurting "like it was too full." CP 5; RP (10/14) 21. She told medical providers that she had been struck in the right side of her head by a fist and she fell to the ground. Her legs and arms ached and felt "tingly." Exhibit 2 at 2. She was diagnosed with a sprain of the regions around her neck, shoulder and upper arm, a head injury, and abrasions or friction burns to the hip, thigh, leg, and ankle. Id. at 1.

Bacon pled guilty as charged to robbery in the second degree. CP 3 (Information); CP 31-39 (guilty plea); RP (10/14) 20. Based on his criminal history, a standard range disposition was 52-65 weeks.¹ The State and the juvenile probation officer recommended a standard range disposition. RP (10/14) 20-24.

¹ At that point, Bacon had multiple dispositions for assault, malicious mischief and, most recently, first degree robbery. See Brief of Appellant, at 7-8 (citing exhibits 3, 4, 5, 6.)

Bacon's counsel asked the court impose only local sanctions as a manifest injustice departure from the standard range. CP 10-21; RP (10/14) 25-32.

The court orally ruled that Bacon should serve 52-65 weeks at the Juvenile Rehabilitation Authority (JRA), but that the sentence could be suspended for one year. RP (10/14) 46. The State and the probation officer pointed out that a manifest injustice sentence must be determinate. RP (10/14) 47. The court acknowledged that the sentence "was not expressly authorized by the statute." RP (10/14) 48. It said, however, that a manifest injustice sentence was appropriate because "I don't think [Bacon] intended on committing bodily injury." RP (10/14) 48. The probation officer also noted that a manifest injustice sentence must be outside the standard range. The court (at defense counsel's urging) decided to impose a "range" of 65-65 weeks, and suspended the sentence. RP (10/14) 49-50; CP 71. Thus, the court imposed a "mitigated" sentence in the sense that it was suspended, but "aggravated" in the sense that the ultimate term of confinement was longer than usual. The court believed that a longer term of potential confinement would give Bacon greater incentive to abide by the terms of probation.

RP (10/14) 50; CP 80 (Conclusions of Law 6 and 7). The State filed a timely notice of appeal.

While the case was on appeal, Bacon violated conditions of the suspended sentence and the suspended sentence was ultimately revoked by a different juvenile court judge. CP 82-116. That judge *sua sponte* and without explanation ordered that Bacon be held at JRA for "40-40" weeks instead of "65-65" weeks. CP 101.

By this time, briefing had been filed in the Court of Appeals that attacked and defended the sentence on two bases: 1) whether a suspended sentence was available as a matter of law, and 2) whether the sentence was appropriate under the facts. Both arguments were moot after the suspended sentence was revoked, but the parties and the commissioner agreed to litigate the purely legal issue of a trial court's authority to suspend a sentence, because the issue was important and an appellate decision was needed.

The Court of Appeals held that the juvenile court's authority to suspend sentences was limited to authority granted in the statute and that a suspended sentence was not authorized for a juvenile convicted of robbery in the second degree. State v. Bacon, 197

Wn. App. 772, 391 P.3d 556 (2017). Bacon moved to reconsider based on this Court's decision in State v. Houston-Sconiers,² arguing that the 8th Amendment requires that the juvenile court have the option to grant a suspended sentence. The motion was denied. This Court subsequently granted review of both the statutory construction and constitutional issues. State v. Bacon, 189 Wn.2d 1008 (2017).

C. ARGUMENT

The Washington Legislature has established a determinate disposition scheme specific to juvenile offenders. Suspended dispositions are authorized in limited circumstances. None of those circumstances applied to Bacon; indeed, a suspended disposition was expressly forbidden as to offenders convicted of robbery. The Court of Appeals correctly held that the trial court erred in suspending Bacon's sentence.

Moreover, recent 8th Amendment jurisprudence as applied to juveniles precludes the death penalty and restricts life imprisonment, but it does not divest Legislatures of the authority to

² 188 Wn.2d 1, 391 P.3d 409 (2017).

define punishment for juvenile offenders, especially in courts created specifically to manage juveniles.

1. A JUVENILE WHO HAS COMMITTED ROBBERY IN THE SECOND DEGREE MAY NOT RECEIVE A SUSPENDED SENTENCE.

RCW 13.40.160(1) provides that “[t]he standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.” RCW 13.40.0357 establishes “juvenile offender sentencing standards” and the section begins by dividing crimes in the criminal code into offense categories. Appendix A. Robbery in the second degree is placed in category B+ of the “juvenile disposition offense category.”

The next part of the section is entitled “Juvenile Sentencing Standards” and it contains a grid much like the grid in the Sentencing Reform Act. The section provides: “This schedule *must* be used for juvenile offenders. The court may select sentencing option A, B, C, D, *or* RCW 13.40.167.” RCW 13.40.0357 (italics added). By directing the court to “select” among “options,” and by use of the word “or,” the legislature clearly intends the items to be read in the disjunctive, so that courts will choose one of the listed options.

Under option A—imposition of confinement—a juvenile with two prior adjudications who is facing disposition on a robbery in the second degree (B+ category) will have a standard disposition range of 52-65 weeks. “When the court sentences an offender to a term of confinement exceeding thirty days, commitment *shall* be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.” RCW 13.40.160(1)(b) (*italics added*).³

“Trial courts lack inherent authority to suspend a sentence, [so] a trial court’s authority to suspend a sentence is limited to the manner provided by the legislature.” State v. Rodriguez, 183 Wn. App. 947, 958-59, 335 P.3d 448 (2014), review denied, 182 Wn.2d 1022 (2015).⁴

Suspended sentences are available, but limited in several respects. A disposition court may impose a suspended sentence under option B. RCW 13.40.0357 (option B (1)). However, a suspended sentence is forbidden if the juvenile was over the age of

³ Subsection (3) pertains to sex offenses, subsection (4) pertains to chemical dependency, subsection (5) pertains to mentally ill offenders. There is no argument that Bacon falls into any of those categories.

⁴ Rodriguez dealt with a sentencing under the Sentencing Reform Act. However, in the absence of conflicting juvenile authority, interpretation of chapter 9.94A RCW is instructive when interpreting the JJA. State v. Ashbaker, 82 Wn. App. 630, 632, 919 P.2d 619 (1996); State v. Donahoe, 105 Wn. App. 97, 103, 18 P.3d 618, 621 (2001).

fourteen and adjudicated of robbery in the second degree and the victim was injured. RCW 13.40.0357 (option B (3)(b)(iii)).

The disposition court recognized this limit, RP (11/3) 75-76, but believed the restriction could be circumvented by imposing a manifest injustice sentence. The court was mistaken.

The JJA contains a broad limit on the use of suspended sentences. It provides:

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

RCW 13.40.160(10). Subsection (10) is a clear mandate that suspended sentences not be allowed except under specific provisions. Subsection (2), pertaining to manifest injustice dispositions, is not included on the list of approved circumstances. Thus, by the plain language of the statute, a suspended disposition may not be imposed as part of a manifest injustice disposition.

There is still another indication that the legislature did not intend for manifest injustice sentences be suspended. Option D creates the manifest injustice alternative. It provides: "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).” RCW 13.40.0357. However, the legislature also expressly said that “[a] disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof.” RCW 13.40.160(2). A suspended disposition is necessarily *indeterminate* as there is no fixed time of confinement; indeed, it is possible that no time will be served at all. Thus, under options A, or B, or D of this statutory scheme, Bacon was definitively forbidden from obtaining a suspended disposition.

Bacon argues that State v. Crabtree, 116 Wn. App. 536, 66 P.3d 695 (2003), supports the court’s disposition. This argument was properly rejected by the Court of Appeals.

Division One of the Court of Appeals previously explored a juvenile court’s authority to suspend sentences in State v. A.S., 116 Wn. App. 309, 65 P.3d 676 (2003). A.S. pleaded guilty to a misdemeanor sex offense. A.S., 116 Wn. App. at 310-11. Under the JJA, a juvenile court could suspend disposition and impose a special sex offender disposition alternative (SSODA) when a juvenile committed a felony sex offense, but not when the juvenile committed a misdemeanor. A.S., 116 Wn. App. at 312-13. The juvenile court imposed a 52-week manifest injustice disposition on

A.S., suspended the sentence, and imposed a SSODA. A.S., 116 Wn. App. at 311.

The Court of Appeals reversed the sentence, holding that the JJA “unambiguously forbids the court” to suspend a disposition unless a statutory exception applies. A.S., 116 Wn. App. at 312. It held that the juvenile court lacked the authority to suspend A.S.’s disposition because the sex offense was a misdemeanor.

Crabtree held that a disposition court was permitted to impose a chemical dependency disposition alternative (RCW 13.40.165) even though such a sentence was ordinarily limited to standard range dispositions. The court held that

once a manifest injustice is declared, and the court elects to depart from the standard range, the sentencing scheme of the juvenile justice act no longer applies. The court is vested with ‘broad discretion’ to craft a disposition that will meet the needs both of the juvenile and of the community.

Crabtree, 116 Wn. App. at 545 (citing State v. Duncan, 90 Wn. App. 808, 815, 960 P.2d 941 (1998) and State v. Taulala, 54 Wn. App. 81, 86, 771 P.2d 1188 (1989)). The cases cited in Crabtree do not support the court’s broad assertion.

In State v. Duncan, the court held that “[o]nce a trial court has legitimately decided to depart from the standard range, it has broad discretion to determine the *length* of a manifest injustice

disposition.” Duncan, 90 Wn. App. at 815. Similarly, the only issue in State v. Tauala was whether a four-year disposition above the standard range was clearly excessive. Tauala, 54 Wn. App. at 86. The holdings in Duncan and Tauala are consistent with the JJA and the State does not challenge them. The whole point of granting a manifest injustice sentence is to alter the length of the sentence. Thus, it stands to reason that a judge altering the *length* would have broad discretion to do so.

However, a suspended disposition differs in *kind*, not just in *length*. Neither Duncan nor Tauala support the assertion that once a court decides to impose a manifest injustice disposition, the court can impose any type of sentence it sees fit. Thus, the reasoning in Crabtree does not follow from the authority it relies upon.

Moreover, Crabtree did not address the plain statutory language that expressly requires imposition of a determinate disposition and forbids suspended dispositions except for several listed alternatives; an option D manifest injustice disposition is not listed. RCW 13.40.160(2), (10). The reliance on inapposite authority and the failure to address plain language in the statute undermines the decision in Crabtree. The reasoning and holding of that case should be overruled.

In short, a juvenile court does not have authority to ignore all provisions in the juvenile justice act simply because it has elected to impose a manifest injustice disposition. More particularly, it may not ignore language expressly restricting suspended dispositions. To hold otherwise would be to undermine the statutory scheme that limits suspended dispositions in juvenile cases to certain types of cases. For these reasons, the disposition court erred by suspending disposition.

2. IT IS NOT CRUEL AND UNUSUAL PUNISHMENT TO PRECLUDE A SUSPENDED SENTENCE IN JUVENILE COURT ON THE OFFENSE OF ROBBERY IN THE SECOND DEGREE.

Bacon argues that the 8th Amendment prevents the Legislature from restricting suspended sentences in juvenile court. He argues that this Court's recent decision in State v. Houston-Sconiers authorizes the juvenile court to impose a suspended disposition in spite of statutory provisions in the JJA that forbid such a sentence. His argument should be rejected.

Houston-Sconiers was a juvenile tried and sentenced to 30 years in adult court under adult sentencing laws. This Court held that the 8th Amendment as interpreted in Roper v. Simmons, 543

U.S. 551, 125 S. Ct. 118, 3161 L. Ed. 2d 1 (2005), Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), and Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) requires that adult sentencing courts have complete discretion to consider mitigating circumstances associated with youth, and on that basis may impose sentences otherwise prohibited by adult sentencing laws. Houston-Sconiers, 188 Wn.2d at 18. However, the holding of the case is necessarily limited to a juvenile prosecuted and sentenced in adult court. The holding did not address dispositions imposed in juvenile court. Houston-Sconiers does not compel the holding Bacon seeks.

Nor should the rationale in Houston-Sconiers be extended to restrict legislative authority to tailor punishment for juveniles in juvenile courts. The basic reasoning in Houston-Sconiers rests on the ability of a superior court judge to account for the differences between adults and juveniles in the face of substantially more punitive mandatory adult sentencing guidelines that do not expressly account for characteristics peculiar to juveniles.

Those concerns are not present when a juvenile is adjudicated in juvenile court. The purposes, structure, and disposition ranges in the JJA are tailored to meet the needs of

juveniles. The entire legislative scheme was specifically designed with juveniles in mind. Thus, it cannot be said that the 8th Amendment, is offended by a law that limits suspended sentences to only certain juveniles. C.f. In re Det. of Belcher, 189 Wn.2d 280, 290, 399 P.3d 1179 (2017) (distinguishing Houston-Sconiers because “[t]he degree to which a juvenile’s mind changes as he or she grows into an adult is already contemplated in the [Sexually Violent Predator] statute”).

To adopt Bacon’s argument, this Court would have to conclude that the entire disposition structure of the JJA is unconstitutional. The authorities cited most certainly do not compel such a conclusion. Roper held that evolving standards of decency had made clear that putting juveniles to death was cruel and unusual punishment. Graham and Miller held that juveniles cannot be sent to prison for their entire lives except under unusual circumstances and only after careful consideration of their age at the time of the crime. These decisions together stand for the proposition that it is cruel and unusual punishment to permanently deprive juveniles of all contact with society. Restricting access to a suspended sentence and requiring between 52 and 65 weeks of confinement following a robbery offense is nowhere near the

severity of the punishments at issue in Miller and Graham, it does not offend standards of decency, and it is not a cruel or unusual punishment.

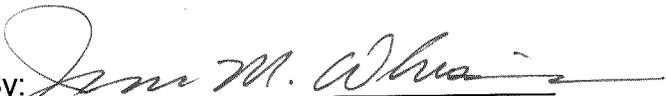
D. CONCLUSION

For these reasons, the court's imposition of a suspended sentence should be reversed and the matter should be remanded to the juvenile court for a standard range disposition.

DATED this 3rd day of November, 2017.

Respectfully submitted,

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APPENDIX A

Juvenile offender sentencing standards.

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
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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	B+

	Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C
E	Possession of Marihuana <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 (<18) (9.41.040(2)(a) (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 <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	E

	(9A.56.170)	
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.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

CURRENT OFFENSE CATEGORY	A+	180 weeks to age 21 for all category A+ offenses				
	A	103-129 weeks for all category A offenses				
	A-	15-36 weeks Except 30-40 weeks for 15 to 17 year olds	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
	B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
	B	LS	LS	15-36 weeks	15-36 weeks	52-65 weeks
	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 ADJUDICATIONS		0	1	2	3	4 or more

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).

[2016 c 106 § 2; 2013 c 20 § 2; 2012 c 177 § 4. Prior: 2008 c 230 § 3; 2008 c 158 § 1; 2007 c 199 § 11; 2006 c 73 § 14; 2004 c 117 § 1; prior: 2003 c 378 § 2; 2003 c 335 § 6; 2003 c 53 § 97; prior: 2002 c 324 § 3; 2002 c 175 § 20; 2001 c 217 § 13; 2000 c 66 § 3; 1998 c 290 § 5; prior: 1997 c 338 § 12; (1997 c 338 § 11 expired July 1, 1998); 1997 c 66 § 6; 1996 c 205 § 6; 1995 c 395 § 3; 1994 sp.s. c 7 § 522; 1989 c 407 § 7.]

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