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**HOUSE BILL 2633**

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**State of Washington****53rd Legislature****1994 Regular Session****By Representative J. Kohl**

Read first time 01/19/94. Referred to Committee on Judiciary.

1       AN ACT Relating to schools; and amending RCW 9.41.280 and  
2 13.40.080.

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

4       **Sec. 1.** RCW 9.41.280 and 1993 c 347 s 1 are each amended to read  
5 as follows:

6           (1) It is unlawful for a person to carry onto public or private  
7 elementary or secondary school premises, school-provided  
8 transportation, or areas of facilities while being used exclusively by  
9 public or private schools:

10           (a) Any firearm; or

11           (b) Any dangerous weapon as defined in RCW 9.41.250; or

12           (c) Any device commonly known as "nun-chu-ka sticks", consisting of  
13 two or more lengths of wood, metal, plastic, or similar substance  
14 connected with wire, rope, or other means; or

15           (d) Any device, commonly known as "throwing stars", which are  
16 multi-pointed, metal objects designed to embed upon impact from any  
17 aspect; or

1       (e) Any air gun, including any air pistol or air rifle, designed to  
2 propel a BB, pellet, or other projectile by the discharge of compressed  
3 air, carbon dioxide, or other gas; or

4       (f) Any explosive devices such as pipe bombs, dynamite caps, or  
5 illegal fireworks.

6       (2) Any such person violating subsection (1) of this section is  
7 guilty of a gross misdemeanor.

8       Any violation of subsection (1) of this section by elementary or  
9 secondary school students constitutes grounds for expulsion from the  
10 state's public schools in accordance with RCW 28A.600.010. However,  
11 any violation of subsection (1)(a) of this section by an elementary or  
12 secondary school student shall result in expulsion in accordance with  
13 RCW 28A.600.010. An appropriate school authority shall promptly notify  
14 law enforcement and the student's parent or guardian regarding any  
15 allegation or indication of such violation.

16       (3) Subsection (1) of this section does not apply to:

17       (a) Any student or employee of a private military academy when on  
18 the property of the academy;

19       (b) Any person engaged in military, law enforcement, or school  
20 district security activities;

21       (c) Any person who is involved in a convention, showing,  
22 demonstration, lecture, or firearms safety course authorized by school  
23 authorities in which the firearms of collectors or instructors are  
24 handled or displayed;

25       (d) Any person who possesses nun-chu-ka sticks, throwing stars, or  
26 other dangerous weapons to be used in martial arts classes authorized  
27 to be conducted on the school premises;

28       (e) Any person while the person is participating in a firearms or  
29 air gun competition approved by the school or school district;

30       (f) Any person who has been issued a license under RCW 9.41.070,  
31 while picking up or dropping off a student;

32       (g) Any person legally in possession of a firearm or dangerous  
33 weapon that is secured within an attended vehicle or concealed from  
34 view within a locked unattended vehicle while conducting legitimate  
35 business at the school;

36       (h) Any person who is in lawful possession of an unloaded firearm,  
37 secured in a vehicle while conducting legitimate business at the  
38 school; or

1       (i) Any law enforcement officer of the federal, state, or local  
2 government agency.

3       (4) Chemical devices such as mace, pepper spray, or other sprays  
4 used for debilitating purposes may be carried onto public or private  
5 elementary school premises, school-provided transportation, or areas of  
6 facilities while being used exclusively by public or private schools,  
7 however, the above-named devices shall be used solely for the purposes  
8 of self-defense or the defense of others.

9       (5) Except as provided in subsection (3)(b), (c), (e), and (i) of  
10 this section, firearms are not permitted in a public or private school  
11 building.

12      ((+5)) (6) "GUN-FREE ZONE" signs shall be posted around school  
13 facilities giving warning of the prohibition of the possession of  
14 firearms on school grounds.

15      **Sec. 2.** RCW 13.40.080 and 1992 c 205 s 108 are each amended to  
16 read as follows:

17      (1) A diversion agreement shall be a contract between a juvenile  
18 accused of an offense and a diversionary unit whereby the juvenile  
19 agrees to fulfill certain conditions in lieu of prosecution. Such  
20 agreements may be entered into only after the prosecutor, or probation  
21 counselor pursuant to this chapter, has determined that probable cause  
22 exists to believe that a crime has been committed and that the juvenile  
23 committed it. Such agreements shall be entered into as expeditiously  
24 as possible. When a juvenile is released under a diversion agreement  
25 and placed in a public school program, such agreement must contain  
26 provisions describing required conduct and behavior of the juvenile  
27 while under the supervision of the school or school district. School  
28 officials shall be included in the development of the school program  
29 portion of the diversion agreement.

30      (2) A diversion agreement shall be limited to:

31       (a) Community service not to exceed one hundred fifty hours, not to  
32 be performed during school hours if the juvenile is attending school;

33       (b) Restitution limited to the amount of actual loss incurred by  
34 the victim, and to an amount the juvenile has the means or potential  
35 means to pay;

36       (c) Attendance at up to ten hours of counseling and/or up to twenty  
37 hours of educational or informational sessions at a community agency:  
38 PROVIDED, That the state shall not be liable for costs resulting from

1 the diversionary unit exercising the option to permit diversion  
2 agreements to mandate attendance at up to ten hours of counseling and/  
3 or up to twenty hours of educational or informational sessions; and

4 (d) A fine, not to exceed one hundred dollars. In determining the  
5 amount of the fine, the diversion unit shall consider only the  
6 juvenile's financial resources and whether the juvenile has the means  
7 to pay the fine. The diversion unit shall not consider the financial  
8 resources of the juvenile's parents, guardian, or custodian in  
9 determining the fine to be imposed.

10 (3) In assessing periods of community service to be performed and  
11 restitution to be paid by a juvenile who has entered into a diversion  
12 agreement, the court officer to whom this task is assigned shall  
13 consult with victims who have contacted the diversionary unit and, to  
14 the extent possible, involve members of the community. Such members of  
15 the community shall meet with the juvenile and advise the court officer  
16 as to the terms of the diversion agreement and shall supervise the  
17 juvenile in carrying out its terms.

18 (4) A diversion agreement may not exceed a period of six months and  
19 may include a period extending beyond the eighteenth birthday of the  
20 divertee. Any restitution assessed during its term may not exceed an  
21 amount which the juvenile could be reasonably expected to pay during  
22 this period. If additional time is necessary for the juvenile to  
23 complete restitution to the victim, the time period limitations of this  
24 subsection may be extended by an additional six months.

25 (5) The juvenile shall retain the right to be referred to the court  
26 at any time prior to the signing of the diversion agreement.

27 (6) Divertees and potential divorcees shall be afforded due process  
28 in all contacts with a diversionary unit regardless of whether the  
29 juveniles are accepted for diversion or whether the diversion program  
30 is successfully completed. Such due process shall include, but not be  
31 limited to, the following:

32 (a) A written diversion agreement shall be executed stating all  
33 conditions in clearly understandable language;

34 (b) Violation of the terms of the agreement shall be the only  
35 grounds for termination;

36 (c) No divertee may be terminated from a diversion program without  
37 being given a court hearing, which hearing shall be preceded by:

38 (i) Written notice of alleged violations of the conditions of the  
39 diversion program; and

1               (ii) Disclosure of all evidence to be offered against the divertee;

2               (d) The hearing shall be conducted by the juvenile court and shall  
3 include:

4               (i) Opportunity to be heard in person and to present evidence;

5               (ii) The right to confront and cross-examine all adverse witnesses;

6               (iii) A written statement by the court as to the evidence relied on  
7 and the reasons for termination, should that be the decision; and

8               (iv) Demonstration by evidence that the divertee has substantially  
9 violated the terms of his or her diversion agreement.

10              (e) The prosecutor may file an information on the offense for which  
11 the divertee was diverted:

12              (i) In juvenile court if the divertee is under eighteen years of  
13 age; or

14              (ii) In superior court or the appropriate court of limited  
15 jurisdiction if the divertee is eighteen years of age or older.

16              (7) The diversion unit shall, subject to available funds, be  
17 responsible for providing interpreters when juveniles need interpreters  
18 to effectively communicate during diversion unit hearings or  
19 negotiations.

20              (8) The diversion unit shall be responsible for advising a divertee  
21 of his or her rights as provided in this chapter.

22              (9) The diversion unit may refer a juvenile to community-based  
23 counseling or treatment programs.

24              (10) The right to counsel shall inure prior to the initial  
25 interview for purposes of advising the juvenile as to whether he or she  
26 desires to participate in the diversion process or to appear in the  
27 juvenile court. The juvenile may be represented by counsel at any  
28 critical stage of the diversion process, including intake interviews  
29 and termination hearings. The juvenile shall be fully advised at the  
30 intake of his or her right to an attorney and of the relevant services  
31 an attorney can provide. For the purpose of this section, intake  
32 interviews mean all interviews regarding the diversion agreement  
33 process.

34              The juvenile shall be advised that a diversion agreement shall  
35 constitute a part of the juvenile's criminal history as defined by RCW  
36 13.40.020(9) ((as now or hereafter amended)). A signed acknowledgment  
37 of such advisement shall be obtained from the juvenile, and the  
38 document shall be maintained by the diversionary unit together with the  
39 diversion agreement, and a copy of both documents shall be delivered to

1 the prosecutor if requested by the prosecutor. The supreme court shall  
2 promulgate rules setting forth the content of such advisement in simple  
3 language.

4 (11) When a juvenile enters into a diversion agreement, the  
5 juvenile court may receive only the following information for  
6 dispositional purposes:

- 7 (a) The fact that a charge or charges were made;
- 8 (b) The fact that a diversion agreement was entered into;
- 9 (c) The juvenile's obligations under such agreement;
- 10 (d) Whether the alleged offender performed his or her obligations  
11 under such agreement; and
- 12 (e) The facts of the alleged offense.

13 (12) A diversionary unit may refuse to enter into a diversion  
14 agreement with a juvenile. When a diversionary unit refuses to enter  
15 a diversion agreement with a juvenile, it shall immediately refer such  
16 juvenile to the court for action and shall forward to the court the  
17 criminal complaint and a detailed statement of its reasons for refusing  
18 to enter into a diversion agreement. The diversionary unit shall also  
19 immediately refer the case to the prosecuting attorney for action if  
20 such juvenile violates the terms of the diversion agreement.

21 (13) A diversionary unit may, in instances where it determines that  
22 the act or omission of an act for which a juvenile has been referred to  
23 it involved no victim, or where it determines that the juvenile  
24 referred to it has no prior criminal history and is alleged to have  
25 committed an illegal act involving no threat of or instance of actual  
26 physical harm and involving not more than fifty dollars in property  
27 loss or damage and that there is no loss outstanding to the person or  
28 firm suffering such damage or loss, counsel and release or release such  
29 a juvenile without entering into a diversion agreement. A diversion  
30 unit's authority to counsel and release a juvenile under this  
31 subsection shall include the authority to refer the juvenile to  
32 community-based counseling or treatment programs. Any juvenile  
33 released under this subsection shall be advised that the act or  
34 omission of any act for which he or she had been referred shall  
35 constitute a part of the juvenile's criminal history as defined by RCW  
36 13.40.020(9) ((as now or hereafter amended)). A signed acknowledgment  
37 of such advisement shall be obtained from the juvenile, and the  
38 document shall be maintained by the unit, and a copy of the document  
39 shall be delivered to the prosecutor if requested by the prosecutor.

1 The supreme court shall promulgate rules setting forth the content of  
2 such advisement in simple language. A juvenile determined to be  
3 eligible by a diversionary unit for release as provided in this  
4 subsection shall retain the same right to counsel and right to have his  
5 or her case referred to the court for formal action as any other  
6 juvenile referred to the unit.

7 (14) A diversion unit may supervise the fulfillment of a diversion  
8 agreement entered into before the juvenile's eighteenth birthday and  
9 which includes a period extending beyond the divertee's eighteenth  
10 birthday.

11 (15) If a fine required by a diversion agreement cannot reasonably  
12 be paid due to a change of circumstance, the diversion agreement may be  
13 modified at the request of the divertee and with the concurrence of the  
14 diversion unit to convert an unpaid fine into community service. The  
15 modification of the diversion agreement shall be in writing and signed  
16 by the divertee and the diversion unit. The number of hours of  
17 community service in lieu of a monetary penalty shall be converted at  
18 the rate of the prevailing state minimum wage per hour.

19 (16) Fines imposed under this section shall be collected and paid  
20 into the county general fund in accordance with procedures established  
21 by the juvenile court administrator under RCW 13.04.040 and may be used  
22 only for juvenile services. In the expenditure of funds for juvenile  
23 services, there shall be a maintenance of effort whereby counties  
24 exhaust existing resources before using amounts collected under this  
25 section.

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