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**SUBSTITUTE HOUSE BILL 2857**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Early Learning & Human Services (originally sponsored by Representatives Orwall, Kraft, Goodman, Pettigrew, Kagi, Wylie, Frame, and Slatter)

AN ACT Relating to therapeutic responses to commercially sexually exploited youth; amending RCW 9A.88.030, 13.40.070, and 13.40.213; adding a new section to chapter 71.34 RCW; creating new sections; and providing expiration dates.

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

NEW SECTION. **Sec.**  The legislature finds that child prostitution is a form of commercial sexual exploitation of children. The children who are exploited in this manner should be treated as the victims that they are and should be immune from prosecution. In making this shift in response to these children, law enforcement shall retain the authority to detain children who are or are attempting to engage in sexual conduct with another person for money or anything of value for purposes of investigating the individual or individuals who may be exploiting that child and performing other necessary investigative functions to gather evidence regarding that exploitation.

It is the intent of the legislature to expand the capacity to serve the behavioral health needs of commercially sexually exploited youth instead of labeling these youth as criminals through processing in the juvenile justice system. In April 2018, involuntary substance use disorder treatment for minors will be combined with involuntary mental health treatment for minors. Because commercially sexually exploited youth are at high risk for substance use disorder, the combination of involuntary treatment provisions that are effective later this year should provide a tool for meeting the unique needs of commercially sexually exploited youth when appropriate and necessary.

**Sec.**  RCW 9A.88.030 and 1988 c 145 s 16 are each amended to read as follows:

(1) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) For purposes of this section, "sexual conduct" means "sexual intercourse" or "sexual contact," both as defined in chapter 9A.44 RCW.

(3) Prostitution is a misdemeanor.

(4) A person under age eighteen suspected of violating this section shall not be:

(a) Charged or prosecuted for a prostitution offense under this section; or

(b) Booked into detention for a prostitution offense under this section.

(5) Before completing a law enforcement contact with an individual under eighteen years of age suspected of violating this section, law enforcement shall make a child abuse or neglect report pursuant to chapter 26.44 RCW, deliver the youth to an evaluation and treatment facility for evaluation for immediate mental health or substance use disorder inpatient treatment pursuant to chapter 71.34 RCW, or refer the individual to any other appropriate services.

**Sec.**  RCW 13.40.070 and 2017 c 292 s 2 are each amended to read as follows:

(1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (8) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)(iv); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has three or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with:

(a) ((~~Either prostitution or~~)) Prostitution loitering and the alleged offense is the offender's first ((~~prostitution or~~)) prostitution loitering offense, the prosecutor shall divert the case; or

(b) Voyeurism in the second degree, the offender is under seventeen years of age, and the alleged offense is the offender's first voyeurism in the second degree offense, the prosecutor shall divert the case, unless the offender has received two diversions for any offense in the previous two years.

(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(9) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(10) The responsibilities of the prosecutor under subsections (1) through (9) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(11) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims.

**Sec.**  RCW 13.40.213 and 2010 c 289 s 8 are each amended to read as follows:

(1) When a juvenile is alleged to have committed ((~~the offenses of prostitution or~~)) a prostitution loitering offense, and the allegation, if proved, would not be the juvenile's first offense, a prosecutor may divert the offense if the county in which the offense is alleged to have been committed has a comprehensive program that provides:

(a) Safe and stable housing;

(b) Comprehensive on-site case management;

(c) Integrated mental health and chemical dependency services, including specialized trauma recovery services;

(d) Education and employment training delivered on-site; and

(e) Referrals to off-site specialized services, as appropriate.

(2) A prosecutor may divert a case for ((~~prostitution or~~)) prostitution loitering into the comprehensive program described in this section, notwithstanding the filing criteria set forth in RCW 13.40.070(5).

(3) A diversion agreement under this section may extend to twelve months.

(4)(a) The administrative office of the courts shall compile data regarding:

(i) The number of juveniles whose cases are diverted into the comprehensive program described in this section;

(ii) Whether the juveniles complete their diversion agreements under this section; and

(iii) Whether juveniles whose cases have been diverted under this section have been subsequently arrested or committed subsequent offenses.

(b) An annual report of the data compiled shall be provided to the governor and the appropriate committee of the legislature. ((~~The first report is due by November 1, 2010.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 71.34 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department shall utilize existing behavioral health organizations or other qualified and appropriate entities to increase access to behavioral health treatment for commercially sexually exploited youth. These amounts may be used:

(a) To facilitate access to treatment;

(b) To enhance and expand other services for which these individuals are eligible; and

(c) For outreach, engagement, and any other services that the secretary deems necessary to support the unique needs of these individuals.

(2) The legislature intends that any expansion or enhancement of services pursuant to this section is to supplement and not supplant general funding.

(3) This section expires June 30, 2021.

NEW SECTION. **Sec.**  (1) The Washington state institute for public policy shall complete an evaluation of this act and the effects of this act on the availability of treatment options for commercially sexually exploited youth, the effectiveness of serving commercially sexually exploited youth, and other effects of this act, and provide a report, in compliance with RCW 43.01.036, to the appropriate committees of the legislature by December 1, 2020.

(2) This section expires July 1, 2021.

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