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HOUSE BILL 1894

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State of Washington

67th Legislature

2022 Regular Session

**By** Representatives Harris-Talley, Frame, Leavitt, Simmons, J. Johnson, Goodman, Walen, Dolan, Ryu, Taylor, Fey, Fitzgibbon, Davis, Bateman, Macri, Valdez, and Pollet; by request of Administrative Office of the Courts

Read first time 01/11/22. Referred to Committee on Children, Youth & Families.

1 AN ACT Relating to expanding the period for juvenile diversion  
2 agreements; and amending RCW 13.40.080.

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

4 **Sec. 1.** RCW 13.40.080 and 2018 c 82 s 4 are each amended to read  
5 as follows:

6 (1) A diversion agreement shall be a contract between a juvenile  
7 accused of an offense and a diversion unit whereby the juvenile  
8 agrees to fulfill certain conditions in lieu of prosecution. Such  
9 agreements may be entered into only after the prosecutor, or  
10 probation counselor pursuant to this chapter, has determined that  
11 probable cause exists to believe that a crime has been committed and  
12 that the juvenile committed it. Such agreements shall be entered into  
13 as expeditiously as possible.

14 (2) A diversion agreement shall be limited to one or more of the  
15 following:

16 (a) Community restitution not to exceed one hundred fifty hours,  
17 not to be performed during school hours if the juvenile is attending  
18 school;

19 (b) Restitution limited to the amount of actual loss incurred by  
20 any victim, excluding restitution owed to any insurance provider  
21 under Title 48 RCW;

1 (c) Attendance at up to ten hours of counseling and/or up to  
2 twenty hours of positive youth development, educational or  
3 informational sessions at a community agency. The educational or  
4 informational sessions may include sessions relating to respect for  
5 self, others, and authority; victim awareness; accountability; self-  
6 worth; responsibility; work ethics; good citizenship; literacy; and  
7 life skills. If an assessment identifies mental health or chemical  
8 dependency needs, a youth may access up to thirty hours of  
9 counseling. The counseling sessions may include services demonstrated  
10 to improve behavioral health and reduce recidivism. For purposes of  
11 this section, "community agency" may also mean a community-based  
12 nonprofit organization, a physician, a counselor, a school, or a  
13 treatment provider, if approved by the diversion unit. The state  
14 shall not be liable for costs resulting from the diversion unit  
15 exercising the option to permit diversion agreements to mandate  
16 attendance at up to thirty hours of counseling and/or up to twenty  
17 hours of educational or informational sessions;

18 (d) Requirements to remain during specified hours at home,  
19 school, or work, and restrictions on leaving or entering specified  
20 geographical areas; and

21 (e) Upon request of any victim or witness, requirements to  
22 refrain from any contact with victims or witnesses of offenses  
23 committed by the juvenile.

24 (3) Notwithstanding the provisions of subsection (2) of this  
25 section, youth courts are not limited to the conditions imposed by  
26 subsection (2) of this section in imposing sanctions on juveniles  
27 pursuant to RCW 13.40.630.

28 (4) In assessing periods of community restitution to be performed  
29 and restitution to be paid by a juvenile who has entered into a  
30 diversion agreement, the court officer to whom this task is assigned  
31 shall consult with the juvenile's custodial parent or parents or  
32 guardian. To the extent possible, the court officer shall advise the  
33 victims of the juvenile offender of the diversion process, offer  
34 victim impact letter forms and restitution claim forms, and involve  
35 members of the community. Such members of the community may meet with  
36 the juvenile and may advise the court officer as to the terms of the  
37 diversion agreement and may supervise the juvenile in carrying out  
38 its terms.

1 (5) (a) A diversion agreement may not exceed a period of six  
2 months and may include a period extending beyond the eighteenth  
3 birthday of the diverttee.

4 (b) If additional time is necessary for the juvenile to complete  
5 the terms of the agreement or restitution to a victim, the time  
6 period limitations of this subsection may be extended by an  
7 additional six months at the request of the juvenile.

8 (c) If the juvenile has not paid the full amount of restitution  
9 by the end of the additional six-month period, then the juvenile  
10 shall be referred to the juvenile court for entry of a civil order  
11 establishing the amount of restitution still owed to the victim. In  
12 this order, the court shall also determine the terms and conditions  
13 of the restitution, including a payment plan extending up to ten  
14 years if the court determines that the juvenile does not have the  
15 means to make full restitution over a shorter period. For the  
16 purposes of this subsection (5)(c), the juvenile shall remain under  
17 the court's jurisdiction for a maximum term of ten years after the  
18 juvenile's eighteenth birthday. Prior to the expiration of the  
19 initial ten-year period, the juvenile court may extend the judgment  
20 for restitution an additional ten years. The court may relieve the  
21 juvenile of the requirement to pay full or partial restitution if the  
22 juvenile reasonably satisfies the court that he or she does not have  
23 the means to make full or partial restitution and could not  
24 reasonably acquire the means to pay the restitution over a ten-year  
25 period. If the court relieves the juvenile of the requirement to pay  
26 full or partial restitution, the court may order an amount of  
27 community restitution that the court deems appropriate. The county  
28 clerk shall make disbursements to victims named in the order. The  
29 restitution to victims named in the order shall be paid prior to any  
30 payment for other penalties or monetary assessments. A juvenile under  
31 obligation to pay restitution may petition the court for modification  
32 of the restitution order.

33 (d) A diversion agreement may be completed by the juvenile any  
34 time prior to an order terminating the agreement.

35 (6) The juvenile shall retain the right to be referred to the  
36 court at any time prior to the signing of the diversion agreement.

37 (7) Diverttees and potential diverttees shall be afforded due  
38 process in all contacts with a diversion unit regardless of whether  
39 the juveniles are accepted for diversion or whether the diversion

1 program is successfully completed. Such due process shall include,  
2 but not be limited to, the following:

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

5 (b) Violation of the terms of the agreement shall be the only  
6 grounds for termination;

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

10 (i) Written notice of alleged violations of the conditions of the  
11 diversion program; and

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

14 (d) The hearing shall be conducted by the juvenile court and  
15 shall include:

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

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

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

21 (iv) Demonstration by evidence that the divertee has  
22 substantially violated the terms of his or her diversion agreement;

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

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

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

29 (8) The diversion unit shall, subject to available funds, be  
30 responsible for providing interpreters when juveniles need  
31 interpreters to effectively communicate during diversion unit  
32 hearings or negotiations.

33 (9) The diversion unit shall be responsible for advising a  
34 divertee of his or her rights as provided in this chapter.

35 (10) The diversion unit may refer a juvenile to a restorative  
36 justice program, community-based counseling, or treatment programs.

37 (11) The right to counsel shall inure prior to the initial  
38 interview for purposes of advising the juvenile as to whether he or  
39 she desires to participate in the diversion process or to appear in  
40 the juvenile court. The juvenile may be represented by counsel at any

1 critical stage of the diversion process, including intake interviews  
2 and termination hearings. The juvenile shall be fully advised at the  
3 intake of his or her right to an attorney and of the relevant  
4 services an attorney can provide. For the purpose of this section,  
5 intake interviews mean all interviews regarding the diversion  
6 agreement process.

7 The juvenile shall be advised that a diversion agreement shall  
8 constitute a part of the juvenile's criminal history as defined by  
9 RCW 13.40.020(8). A signed acknowledgment of such advisement shall be  
10 obtained from the juvenile, and the document shall be maintained by  
11 the diversion unit together with the diversion agreement, and a copy  
12 of both documents shall be delivered to the prosecutor if requested  
13 by the prosecutor. The supreme court shall promulgate rules setting  
14 forth the content of such advisement in simple language.

15 (12) When a juvenile enters into a diversion agreement, the  
16 juvenile court may receive only the following information for  
17 dispositional purposes:

- 18 (a) The fact that a charge or charges were made;
- 19 (b) The fact that a diversion agreement was entered into;
- 20 (c) The juvenile's obligations under such agreement;
- 21 (d) Whether the alleged offender performed his or her obligations  
22 under such agreement; and
- 23 (e) The facts of the alleged offense.

24 (13) A diversion unit may refuse to enter into a diversion  
25 agreement with a juvenile. When a diversion unit refuses to enter a  
26 diversion agreement with a juvenile, it shall immediately refer such  
27 juvenile to the court for action and shall forward to the court the  
28 criminal complaint and a detailed statement of its reasons for  
29 refusing to enter into a diversion agreement. The diversion unit  
30 shall also immediately refer the case to the prosecuting attorney for  
31 action if such juvenile violates the terms of the diversion  
32 agreement.

33 (14) A diversion unit may, in instances where it determines that  
34 the act or omission of an act for which a juvenile has been referred  
35 to it involved no victim, or where it determines that the juvenile  
36 referred to it has no prior criminal history and is alleged to have  
37 committed an illegal act involving no threat of or instance of actual  
38 physical harm and involving not more than fifty dollars in property  
39 loss or damage and that there is no loss outstanding to the person or  
40 firm suffering such damage or loss, counsel and release or release

1 such a juvenile without entering into a diversion agreement. A  
2 diversion unit's authority to counsel and release a juvenile under  
3 this subsection includes the authority to refer the juvenile to  
4 community-based counseling or treatment programs or a restorative  
5 justice program. Any juvenile released under this subsection shall be  
6 advised that the act or omission of any act for which he or she had  
7 been referred shall constitute a part of the juvenile's criminal  
8 history as defined by RCW 13.40.020(8). A signed acknowledgment of  
9 such advisement shall be obtained from the juvenile, and the document  
10 shall be maintained by the unit, and a copy of the document shall be  
11 delivered to the prosecutor if requested by the prosecutor. The  
12 supreme court shall promulgate rules setting forth the content of  
13 such advisement in simple language. A juvenile determined to be  
14 eligible by a diversion unit for release as provided in this  
15 subsection shall retain the same right to counsel and right to have  
16 his or her case referred to the court for formal action as any other  
17 juvenile referred to the unit.

18 (15) A diversion unit may supervise the fulfillment of a  
19 diversion agreement entered into before the juvenile's eighteenth  
20 birthday and which includes a period extending beyond the divertee's  
21 eighteenth birthday.

22 (16) If restitution required by a diversion agreement cannot  
23 reasonably be paid due to a change of circumstance, the diversion  
24 agreement may be modified at the request of the divertee and with the  
25 concurrence of the diversion unit to convert unpaid restitution into  
26 community restitution. The modification of the diversion agreement  
27 shall be in writing and signed by the divertee and the diversion  
28 unit. The number of hours of community restitution in lieu of a  
29 monetary penalty shall be converted at the rate of the prevailing  
30 state minimum wage per hour.

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