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**SUBSTITUTE HOUSE BILL 2580**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** House Committee on Corrections (originally sponsored by Representatives Costa, Ballasiotes, Sheahan, Murray, Hickel, Cooke, Conway and Boldt)

Read first time 01/30/96.

1 AN ACT Relating to restitution; and amending RCW 13.40.080.

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

3 **Sec. 1.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended to  
4 read as follows:

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

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

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

17 (b) Restitution limited to the amount of actual loss incurred by  
18 the victim(~~(, and to an amount the juvenile has the means or potential~~  
19 ~~means to pay))~~);

1 (c) Attendance at up to ten hours of counseling and/or up to twenty  
2 hours of educational or informational sessions at a community agency.  
3 The educational or informational sessions may include sessions relating  
4 to respect for self, others, and authority; victim awareness;  
5 accountability; self-worth; responsibility; work ethics; good  
6 citizenship; and life skills. For purposes of this section, "community  
7 agency" may also mean a community-based nonprofit organization, if  
8 approved by the diversion unit. The state shall not be liable for  
9 costs resulting from the diversionary unit exercising the option to  
10 permit diversion agreements to mandate attendance at up to ten hours of  
11 counseling and/or up to twenty hours of educational or informational  
12 sessions;

13 (d) A fine, not to exceed one hundred dollars. In determining the  
14 amount of the fine, the diversion unit shall consider only the  
15 juvenile's financial resources and whether the juvenile has the means  
16 to pay the fine. The diversion unit shall not consider the financial  
17 resources of the juvenile's parents, guardian, or custodian in  
18 determining the fine to be imposed; and

19 (e) Requirements to remain during specified hours at home, school,  
20 or work, and restrictions on leaving or entering specified geographical  
21 areas.

22 (3) In assessing periods of community service to be performed and  
23 restitution to be paid by a juvenile who has entered into a diversion  
24 agreement, the court officer to whom this task is assigned shall  
25 consult with the juvenile's custodial parent or parents or guardian and  
26 victims who have contacted the diversionary unit and, to the extent  
27 possible, involve members of the community. Such members of the  
28 community shall meet with the juvenile and advise the court officer as  
29 to the terms of the diversion agreement and shall supervise the  
30 juvenile in carrying out its terms.

31 (4) A diversion agreement may not exceed a period of six months and  
32 may include a period extending beyond the eighteenth birthday of the  
33 divertee. (~~Any restitution assessed during its term may not exceed an~~  
34 ~~amount which the juvenile could be reasonably expected to pay during~~  
35 ~~this period.)) If additional time is necessary for the juvenile to  
36 complete restitution to the victim, the time period limitations of this  
37 subsection may be extended by an additional six months. If additional  
38 time is needed to make restitution after the additional six months  
39 extension, the remaining restitution may be collected by a collection~~

1 agency licensed under chapter 19.16 RCW, if the victim consents. The  
2 collection agency may impose a reasonable collection fee, as provided  
3 in chapter 19.16 RCW. The juvenile must bear the cost of the  
4 collection fees.

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

7 (6) Divertees and potential divertees shall be afforded due process  
8 in all contacts with a diversionary unit regardless of whether the  
9 juveniles are accepted for diversion or whether the diversion program  
10 is successfully completed. Such due process shall include, but not be  
11 limited to, the following:

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

14 (b) Violation of the terms of the agreement shall be the only  
15 grounds for termination;

16 (c) No diverttee may be terminated from a diversion program without  
17 being given a court hearing, which hearing shall be preceded by:

18 (i) Written notice of alleged violations of the conditions of the  
19 diversion program; and

20 (ii) Disclosure of all evidence to be offered against the diverttee;

21 (d) The hearing shall be conducted by the juvenile court and shall  
22 include:

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

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

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

27 (iv) Demonstration by evidence that the diverttee has substantially  
28 violated the terms of his or her diversion agreement.

29 (e) The prosecutor may file an information on the offense for which  
30 the diverttee was diverted:

31 (i) In juvenile court if the diverttee is under eighteen years of  
32 age; or

33 (ii) In superior court or the appropriate court of limited  
34 jurisdiction if the diverttee is eighteen years of age or older.

35 (7) The diversion unit shall, subject to available funds, be  
36 responsible for providing interpreters when juveniles need interpreters  
37 to effectively communicate during diversion unit hearings or  
38 negotiations.

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

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

5 (10) The right to counsel shall inure prior to the initial  
6 interview for purposes of advising the juvenile as to whether he or she  
7 desires to participate in the diversion process or to appear in the  
8 juvenile court. The juvenile may be represented by counsel at any  
9 critical stage of the diversion process, including intake interviews  
10 and termination hearings. The juvenile shall be fully advised at the  
11 intake of his or her right to an attorney and of the relevant services  
12 an attorney can provide. For the purpose of this section, intake  
13 interviews mean all interviews regarding the diversion agreement  
14 process.

15 The juvenile shall be advised that a diversion agreement shall  
16 constitute a part of the juvenile's criminal history as defined by RCW  
17 13.40.020(9). A signed acknowledgment of such advisement shall be  
18 obtained from the juvenile, and the document shall be maintained by the  
19 diversionary unit together with the diversion agreement, and a copy of  
20 both documents shall be delivered to the prosecutor if requested by the  
21 prosecutor. The supreme court shall promulgate rules setting forth the  
22 content of such advisement in simple language.

23 (11) When a juvenile enters into a diversion agreement, the  
24 juvenile court may receive only the following information for  
25 dispositional purposes:

- 26 (a) The fact that a charge or charges were made;
- 27 (b) The fact that a diversion agreement was entered into;
- 28 (c) The juvenile's obligations under such agreement;
- 29 (d) Whether the alleged offender performed his or her obligations  
30 under such agreement; and
- 31 (e) The facts of the alleged offense.

32 (12) A diversionary unit may refuse to enter into a diversion  
33 agreement with a juvenile. When a diversionary unit refuses to enter  
34 a diversion agreement with a juvenile, it shall immediately refer such  
35 juvenile to the court for action and shall forward to the court the  
36 criminal complaint and a detailed statement of its reasons for refusing  
37 to enter into a diversion agreement. The diversionary unit shall also  
38 immediately refer the case to the prosecuting attorney for action if  
39 such juvenile violates the terms of the diversion agreement.

1 (13) A diversionary unit may, in instances where it determines that  
2 the act or omission of an act for which a juvenile has been referred to  
3 it involved no victim, or where it determines that the juvenile  
4 referred to it has no prior criminal history and is alleged to have  
5 committed an illegal act involving no threat of or instance of actual  
6 physical harm and involving not more than fifty dollars in property  
7 loss or damage and that there is no loss outstanding to the person or  
8 firm suffering such damage or loss, counsel and release or release such  
9 a juvenile without entering into a diversion agreement. A diversion  
10 unit's authority to counsel and release a juvenile under this  
11 subsection shall include the authority to refer the juvenile to  
12 community-based counseling or treatment programs. Any juvenile  
13 released under this subsection shall be advised that the act or  
14 omission of any act for which he or she had been referred shall  
15 constitute a part of the juvenile's criminal history as defined by RCW  
16 13.40.020(9). A signed acknowledgment of such advisement shall be  
17 obtained from the juvenile, and the document shall be maintained by the  
18 unit, and a copy of the document shall be delivered to the prosecutor  
19 if requested by the prosecutor. The supreme court shall promulgate  
20 rules setting forth the content of such advisement in simple language.  
21 A juvenile determined to be eligible by a diversionary unit for release  
22 as provided in this subsection shall retain the same right to counsel  
23 and right to have his or her case referred to the court for formal  
24 action as any other juvenile referred to the unit.

25 (14) A diversion unit may supervise the fulfillment of a diversion  
26 agreement entered into before the juvenile's eighteenth birthday and  
27 which includes a period extending beyond the diverttee's eighteenth  
28 birthday.

29 (15) If a fine required by a diversion agreement cannot reasonably  
30 be paid due to a change of circumstance, the diversion agreement may be  
31 modified at the request of the diverttee and with the concurrence of the  
32 diversion unit to convert an unpaid fine into community service. The  
33 modification of the diversion agreement shall be in writing and signed  
34 by the diverttee and the diversion unit. The number of hours of  
35 community service in lieu of a monetary penalty shall be converted at  
36 the rate of the prevailing state minimum wage per hour.

37 (16) Fines imposed under this section shall be collected and paid  
38 into the county general fund in accordance with procedures established  
39 by the juvenile court administrator under RCW 13.04.040 and may be used

1 only for juvenile services. In the expenditure of funds for juvenile  
2 services, there shall be a maintenance of effort whereby counties  
3 exhaust existing resources before using amounts collected under this  
4 section.

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