

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2580

54th Legislature
1996 Regular Session

Passed by the House March 4, 1996
Yeas 94 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate February 29, 1996
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2580** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2580

AS AMENDED BY THE SENATE

Passed Legislature - 1996 Regular Session

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 and
2 13.40.190.

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

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

6 (1) A diversion agreement shall be a contract between a juvenile
7 accused of an offense and a diversionary 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 probation
10 counselor pursuant to this chapter, has determined that probable cause
11 exists to believe that a crime has been committed and that the juvenile
12 committed it. Such agreements shall be entered into as expeditiously
13 as possible.

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

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

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

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

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

22 (e) Requirements to remain during specified hours at home, school,
23 or work, and restrictions on leaving or entering specified geographical
24 areas.

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

34 (4)(a) A diversion agreement may not exceed a period of six months
35 and may include a period extending beyond the eighteenth birthday of
36 the divertee. (~~(Any restitution assessed during its term may not~~
37 ~~exceed an amount which the juvenile could be reasonably expected to pay~~
38 ~~during this period.)~~)

1 (b) If additional time is necessary for the juvenile to complete
2 restitution to the victim, the time period limitations of this
3 subsection may be extended by an additional six months.

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

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

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

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

32 (b) Violation of the terms of the agreement shall be the only
33 grounds for termination;

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

36 (i) Written notice of alleged violations of the conditions of the
37 diversion program; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) The fact that a charge or charges were made;

7 (b) The fact that a diversion agreement was entered into;

8 (c) The juvenile's obligations under such agreement;

9 (d) Whether the alleged offender performed his or her obligations
10 under such agreement; and

11 (e) The facts of the alleged offense.

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

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

1 A juvenile determined to be eligible by a diversionary unit for release
2 as provided in this subsection shall retain the same right to counsel
3 and right to have his or her case referred to the court for formal
4 action as any other juvenile referred to the unit.

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

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

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

24 **Sec. 2.** RCW 13.40.190 and 1995 c 33 s 5 are each amended to read
25 as follows:

26 (1) In its dispositional order, the court shall require the
27 respondent to make restitution to any persons who have suffered loss or
28 damage as a result of the offense committed by the respondent. In
29 addition, restitution may be ordered for loss or damage if the offender
30 pleads guilty to a lesser offense or fewer offenses and agrees with the
31 prosecutor's recommendation that the offender be required to pay
32 restitution to a victim of an offense or offenses which, pursuant to a
33 plea agreement, are not prosecuted. The payment of restitution shall
34 be in addition to any punishment which is imposed pursuant to the other
35 provisions of this chapter. The court may determine the amount, terms,
36 and conditions of the restitution including a payment plan extending up
37 to ten years if the court determines that the respondent does not have
38 the means to make full restitution over a shorter period. Restitution

1 may include the costs of counseling reasonably related to the offense.
2 If the respondent participated in the crime with another person or
3 other persons, all such participants shall be jointly and severally
4 responsible for the payment of restitution. For the purposes of this
5 section, the respondent shall remain under the court's jurisdiction for
6 a maximum term of ten years after the respondent's eighteenth birthday.
7 The court may not require the respondent to pay full or partial
8 restitution if the respondent reasonably satisfies the court that he or
9 she does not have the means to make full or partial restitution and
10 could not reasonably acquire the means to pay such restitution over a
11 ten-year period. (~~In cases where an offender has been committed to~~
12 ~~the department for a period of confinement exceeding fifteen weeks,~~
13 ~~restitution may be waived.))~~

14 (2) Regardless of the provisions of subsection (1) of this section,
15 the court shall order restitution in all cases where the victim is
16 entitled to benefits under the crime victims' compensation act, chapter
17 7.68 RCW. If the court does not order restitution and the victim of
18 the crime has been determined to be entitled to benefits under the
19 crime victims' compensation act, the department of labor and
20 industries, as administrator of the crime victims' compensation
21 program, may petition the court within one year of entry of the
22 disposition order for entry of a restitution order. Upon receipt of a
23 petition from the department of labor and industries, the court shall
24 hold a restitution hearing and shall enter a restitution order.

25 (3) If an order includes restitution as one of the monetary
26 assessments, the county clerk shall make disbursements to victims named
27 in the order. The restitution to victims named in the order shall be
28 paid prior to any payment for other penalties or monetary assessments.

29 (4) A respondent under obligation to pay restitution may petition
30 the court for modification of the restitution order.

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