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5 Strike everything after the enacting clause and insert the
6 following:

7 **"Sec. 1.** RCW 13.40.080 and 1997 c 338 s 70 are each amended to
8 read as follows:

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

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

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

21 (b) Restitution limited to the amount of actual loss incurred by
22 the victim;

23 (c) Attendance at up to ten hours of counseling and/or up to twenty
24 hours of educational or informational sessions at a community agency.
25 The educational or informational sessions may include sessions relating
26 to respect for self, others, and authority; victim awareness;
27 accountability; self-worth; responsibility; work ethics; good
28 citizenship; literacy; and life skills. For purposes of this section,
29 "community agency" may also mean a community-based nonprofit
30 organization, if approved by the diversion unit. The state shall not
31 be liable for costs resulting from the diversionary unit exercising the
32 option to permit diversion agreements to mandate attendance at up to
33 ten hours of counseling and/or up to twenty hours of educational or
34 informational sessions;

35 (d) A fine, not to exceed one hundred dollars. In determining the
36 amount of the fine, the diversion unit shall consider only the

1 juvenile's financial resources and whether the juvenile has the means
2 to pay the fine. The diversion unit shall not consider the financial
3 resources of the juvenile's parents, guardian, or custodian in
4 determining the fine to be imposed; ((and))

5 (e) Requirements to remain during specified hours at home, school,
6 or work, and restrictions on leaving or entering specified geographical
7 areas; and

8 (f) Requirements to refrain from any contact with victims or
9 witnesses of offenses committed by the juvenile.

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 the juvenile's custodial parent or parents or guardian and
14 victims who have contacted the diversionary unit and, to the extent
15 possible, involve members of the community. Such members of the
16 community shall meet with the juvenile and advise the court officer as
17 to the terms of the diversion agreement and shall supervise the
18 juvenile in carrying out its terms.

19 (4)(a) A diversion agreement may not exceed a period of six months
20 and may include a period extending beyond the eighteenth birthday of
21 the divertee.

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

25 (c) If the juvenile has not paid the full amount of restitution by
26 the end of the additional six-month period, then the juvenile shall be
27 referred to the juvenile court for entry of an order establishing the
28 amount of restitution still owed to the victim. In this order, the
29 court shall also determine the terms and conditions of the restitution,
30 including a payment plan extending up to ten years if the court
31 determines that the juvenile does not have the means to make full
32 restitution over a shorter period. For the purposes of this subsection
33 (4)(c), the juvenile shall remain under the court's jurisdiction for a
34 maximum term of ten years after the juvenile's eighteenth birthday.
35 Prior to the expiration of the initial ten-year period, the juvenile
36 court may extend the judgment for restitution an additional ten years.
37 The court may not require the juvenile to pay full or partial
38 restitution if the juvenile reasonably satisfies the court that he or
39 she does not have the means to make full or partial restitution and

1 could not reasonably acquire the means to pay the restitution over a
2 ten-year period. The county clerk shall make disbursements to victims
3 named in the order. The restitution to victims named in the order
4 shall be paid prior to any payment for other penalties or monetary
5 assessments. A juvenile under obligation to pay restitution may
6 petition the court for modification of the restitution order.

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

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

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

16 (b) Violation of the terms of the agreement shall be the only
17 grounds for termination;

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

20 (i) Written notice of alleged violations of the conditions of the
21 diversion program; and

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

23 (d) The hearing shall be conducted by the juvenile court and shall
24 include:

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

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

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

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

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

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

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

37 (7) The diversion unit shall, subject to available funds, be
38 responsible for providing interpreters when juveniles need interpreters

1 to effectively communicate during diversion unit hearings or
2 negotiations.

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

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

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

17 The juvenile shall be advised that a diversion agreement shall
18 constitute a part of the juvenile's criminal history as defined by RCW
19 13.40.020(~~(+9)~~) (7). A signed acknowledgment of such advisement shall
20 be obtained from the juvenile, and the document shall be maintained by
21 the diversionary unit together with the diversion agreement, and a copy
22 of both documents shall be delivered to the prosecutor if requested by
23 the prosecutor. The supreme court shall promulgate rules setting forth
24 the content of such advisement in simple language.

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

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

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

1 immediately refer the case to the prosecuting attorney for action if
2 such juvenile violates the terms of the diversion agreement.

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

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

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

1 (16) Fines imposed under this section shall be collected and paid
2 into the county general fund in accordance with procedures established
3 by the juvenile court administrator under RCW 13.04.040 and may be used
4 only for juvenile services. In the expenditure of funds for juvenile
5 services, there shall be a maintenance of effort whereby counties
6 exhaust existing resources before using amounts collected under this
7 section.

8 **Sec. 2.** RCW 13.40.160 and 1997 c 338 s 25 and 1997 c 265 s 1 are
9 each reenacted and amended to read as follows:

10 (1) The standard range disposition for a juvenile adjudicated of an
11 offense is determined according to RCW 13.40.0357.

12 (a) When the court sentences an offender to a local sanction as
13 provided in RCW 13.40.0357 option A, the court shall impose a
14 determinate disposition within the standard ranges, except as provided
15 in subsections (2), ~~((+4))~~ (3), and ~~((+5))~~ (4) of this section. The
16 disposition may be comprised of one or more local sanctions.

17 (b) When the court sentences an offender to a standard range as
18 provided in RCW 13.40.0357 option A that includes a term of confinement
19 exceeding thirty days, commitment shall be to the department for the
20 standard range of confinement, except as provided in subsections (2),
21 ~~((+4))~~ (3), and ~~((+5))~~ (4) of this section.

22 (2) If the court concludes, and enters reasons for its conclusion,
23 that disposition within the standard range would effectuate a manifest
24 injustice the court shall impose a disposition outside the standard
25 range, as indicated in option C of RCW 13.40.0357. The court's finding
26 of manifest injustice shall be supported by clear and convincing
27 evidence.

28 A disposition outside the standard range shall be determinate and
29 shall be comprised of confinement or community supervision, or a
30 combination thereof. When a judge finds a manifest injustice and
31 imposes a sentence of confinement exceeding thirty days, the court
32 shall sentence the juvenile to a maximum term, and the provisions of
33 RCW 13.40.030(2) shall be used to determine the range. A disposition
34 outside the standard range is appealable under RCW 13.40.230 by the
35 state or the respondent. A disposition within the standard range is
36 not appealable under RCW 13.40.230.

37 ~~(3) ((Where a respondent is found to have committed an offense for
38 which the respondent declined to enter into a diversion agreement, the~~

1 ~~court shall impose a term of community supervision limited to the~~
2 ~~conditions allowed in a diversion agreement as provided in RCW~~
3 ~~13.40.080(2).~~

4 (4)) When a juvenile offender is found to have committed a sex
5 offense, other than a sex offense that is also a serious violent
6 offense as defined by RCW 9.94A.030, and has no history of a prior sex
7 offense, the court, on its own motion or the motion of the state or the
8 respondent, may order an examination to determine whether the
9 respondent is amenable to treatment.

10 The report of the examination shall include at a minimum the
11 following: The respondent's version of the facts and the official
12 version of the facts, the respondent's offense history, an assessment
13 of problems in addition to alleged deviant behaviors, the respondent's
14 social, educational, and employment situation, and other evaluation
15 measures used. The report shall set forth the sources of the
16 evaluator's information.

17 The examiner shall assess and report regarding the respondent's
18 amenability to treatment and relative risk to the community. A
19 proposed treatment plan shall be provided and shall include, at a
20 minimum:

21 (a)(i) Frequency and type of contact between the offender and
22 therapist;

23 (ii) Specific issues to be addressed in the treatment and
24 description of planned treatment modalities;

25 (iii) Monitoring plans, including any requirements regarding living
26 conditions, lifestyle requirements, and monitoring by family members,
27 legal guardians, or others;

28 (iv) Anticipated length of treatment; and

29 (v) Recommended crime-related prohibitions.

30 The court on its own motion may order, or on a motion by the state
31 shall order, a second examination regarding the offender's amenability
32 to treatment. The evaluator shall be selected by the party making the
33 motion. The defendant shall pay the cost of any second examination
34 ordered unless the court finds the defendant to be indigent in which
35 case the state shall pay the cost.

36 After receipt of reports of the examination, the court shall then
37 consider whether the offender and the community will benefit from use
38 of this special sex offender disposition alternative and consider the
39 victim's opinion whether the offender should receive a treatment

1 disposition under this section. If the court determines that this
2 special sex offender disposition alternative is appropriate, then the
3 court shall impose a determinate disposition within the standard range
4 for the offense, or if the court concludes, and enters reasons for its
5 conclusions, that such disposition would cause a manifest injustice,
6 the court shall impose a disposition under option C, and the court may
7 suspend the execution of the disposition and place the offender on
8 community supervision for at least two years. As a condition of the
9 suspended disposition, the court may impose the conditions of community
10 supervision and other conditions, including up to thirty days of
11 confinement and requirements that the offender do any one or more of
12 the following:

13 (b)(i) Devote time to a specific education, employment, or
14 occupation;

15 (ii) Undergo available outpatient sex offender treatment for up to
16 two years, or inpatient sex offender treatment not to exceed the
17 standard range of confinement for that offense. A community mental
18 health center may not be used for such treatment unless it has an
19 appropriate program designed for sex offender treatment. The
20 respondent shall not change sex offender treatment providers or
21 treatment conditions without first notifying the prosecutor, the
22 probation counselor, and the court, and shall not change providers
23 without court approval after a hearing if the prosecutor or probation
24 counselor object to the change;

25 (iii) Remain within prescribed geographical boundaries and notify
26 the court or the probation counselor prior to any change in the
27 offender's address, educational program, or employment;

28 (iv) Report to the prosecutor and the probation counselor prior to
29 any change in a sex offender treatment provider. This change shall
30 have prior approval by the court;

31 (v) Report as directed to the court and a probation counselor;

32 (vi) Pay all court-ordered legal financial obligations, perform
33 community service, or any combination thereof;

34 (vii) Make restitution to the victim for the cost of any counseling
35 reasonably related to the offense;

36 (viii) Comply with the conditions of any court-ordered probation
37 bond; or

38 (ix) The court shall order that the offender may not attend the
39 public or approved private elementary, middle, or high school attended

1 by the victim or the victim's siblings. The parents or legal guardians
2 of the offender are responsible for transportation or other costs
3 associated with the offender's change of school that would otherwise be
4 paid by the school district. The court shall send notice of the
5 disposition and restriction on attending the same school as the victim
6 or victim's siblings to the public or approved private school the
7 juvenile will attend, if known, or if unknown, to the approved private
8 schools and the public school district board of directors of the
9 district in which the juvenile resides or intends to reside. This
10 notice must be sent at the earliest possible date but not later than
11 ten calendar days after entry of the disposition.

12 The sex offender treatment provider shall submit quarterly reports
13 on the respondent's progress in treatment to the court and the parties.
14 The reports shall reference the treatment plan and include at a minimum
15 the following: Dates of attendance, respondent's compliance with
16 requirements, treatment activities, the respondent's relative progress
17 in treatment, and any other material specified by the court at the time
18 of the disposition.

19 At the time of the disposition, the court may set treatment review
20 hearings as the court considers appropriate.

21 Except as provided in this subsection (~~((4))~~) (3), after July 1,
22 1991, examinations and treatment ordered pursuant to this subsection
23 shall only be conducted by sex offender treatment providers certified
24 by the department of health pursuant to chapter 18.155 RCW. A sex
25 offender therapist who examines or treats a juvenile sex offender
26 pursuant to this subsection does not have to be certified by the
27 department of health pursuant to chapter 18.155 RCW if the court finds
28 that: (A) The offender has already moved to another state or plans to
29 move to another state for reasons other than circumventing the
30 certification requirements; (B) no certified providers are available
31 for treatment within a reasonable geographical distance of the
32 offender's home; and (C) the evaluation and treatment plan comply with
33 this subsection (~~((4))~~) (3) and the rules adopted by the department of
34 health.

35 If the offender violates any condition of the disposition or the
36 court finds that the respondent is failing to make satisfactory
37 progress in treatment, the court may revoke the suspension and order
38 execution of the disposition or the court may impose a penalty of up to
39 thirty days' confinement for violating conditions of the disposition.

1 The court may order both execution of the disposition and up to thirty
2 days' confinement for the violation of the conditions of the
3 disposition. The court shall give credit for any confinement time
4 previously served if that confinement was for the offense for which the
5 suspension is being revoked.

6 For purposes of this section, "victim" means any person who has
7 sustained emotional, psychological, physical, or financial injury to
8 person or property as a direct result of the crime charged. "Victim"
9 may also include a known parent or guardian of a victim who is a minor
10 child unless the parent or guardian is the perpetrator of the offense.

11 A disposition entered under this subsection (~~((+4))~~) (3) is not
12 appealable under RCW 13.40.230.

13 (~~((+5))~~) (4) If the juvenile offender is subject to a standard range
14 disposition of local sanctions or 15 to 36 weeks of confinement and has
15 not committed an A- or B+ offense, the court may impose the disposition
16 alternative under RCW 13.40.165.

17 (~~((+6))~~) (5) RCW 13.40.193 shall govern the disposition of any
18 juvenile adjudicated of possessing a firearm in violation of RCW
19 9.41.040(1)(b)(iii) or any crime in which a special finding is entered
20 that the juvenile was armed with a firearm.

21 (~~((+7))~~) (6) Whenever a juvenile offender is entitled to credit for
22 time spent in detention prior to a dispositional order, the
23 dispositional order shall specifically state the number of days of
24 credit for time served.

25 (~~((+8))~~) (7) Except as provided under subsection (~~((+4))~~) (3) or
26 (~~((+5))~~) (4) of this section or RCW 13.40.127, the court shall not
27 suspend or defer the imposition or the execution of the disposition.

28 (~~((+9))~~) (8) In no case shall the term of confinement imposed by the
29 court at disposition exceed that to which an adult could be subjected
30 for the same offense.

31 **Sec. 3.** RCW 9.68A.105 and 1995 c 353 s 12 are each amended to read
32 as follows:

33 (1)(a) In addition to penalties set forth in RCW 9.68A.100, a
34 person who is either convicted or given a deferred sentence or a
35 deferred prosecution or who has entered into a diversion agreement as
36 a result of an arrest for violating RCW 9.68A.100 or a comparable
37 county or municipal ordinance shall be assessed a two hundred fifty
38 dollar fee.

1 (b) The court may not suspend payment of all or part of the fee
2 unless it finds that the person does not have the ability to pay.

3 (c) When a minor has been adjudicated a juvenile offender or has
4 entered into a diversion agreement for an offense which, if committed
5 by an adult, would constitute a violation of RCW 9.68A.100 or a
6 comparable county or municipal ordinance, the court shall assess the
7 fee under (a) of this subsection. The court may not suspend payment of
8 all or part of the fee unless it finds that the minor does not have the
9 ability to pay the fee.

10 (2) The fee assessed under subsection (1) of this section shall be
11 collected by the clerk of the court and distributed each month to the
12 state treasurer for deposit in the prostitution prevention and
13 intervention account under RCW 43.63A.740 for the purpose of funding
14 prostitution prevention and intervention activities.

15 (3) For the purposes of this section, "diversion agreement" means
16 an agreement under RCW 13.40.080 or any written agreement between a
17 person accused of an offense listed in subsection (1) of this section
18 and a court or a county or city prosecutor, or a designee thereof,
19 whereby the person agrees to fulfill certain conditions in lieu of
20 prosecution.

21 **Sec. 4.** RCW 9A.88.120 and 1995 c 353 s 13 are each amended to read
22 as follows:

23 (1)(a) In addition to penalties set forth in RCW 9A.88.010,
24 9A.88.030, and 9A.88.090, a person who is either convicted or given a
25 deferred sentence or a deferred prosecution or who has entered into a
26 diversion agreement as a result of an arrest for violating RCW
27 9A.88.010, 9A.88.030, 9A.88.090, or comparable county or municipal
28 ordinances shall be assessed a fifty dollar fee.

29 (b) In addition to penalties set forth in RCW 9A.88.110, a person
30 who is either convicted or given a deferred sentence or a deferred
31 prosecution or who has entered into a diversion agreement as a result
32 of an arrest for violating RCW 9A.88.110 or a comparable county or
33 municipal ordinance shall be assessed a one hundred fifty dollar fee.

34 (c) In addition to penalties set forth in RCW 9A.88.070 and
35 9A.88.080, a person who is either convicted or given a deferred
36 sentence or a deferred prosecution or who has entered into a diversion
37 agreement as a result of an arrest for violating RCW 9A.88.070,

1 9A.88.080, or comparable county or municipal ordinances shall be
2 assessed a three hundred dollar fee.

3 (2) The court may not suspend payment of all or part of the fee
4 unless it finds that the person does not have the ability to pay.

5 (3) When a minor has been adjudicated a juvenile offender or has
6 entered into a diversion agreement for an offense which, if committed
7 by an adult, would constitute a violation under this chapter or
8 comparable county or municipal ordinances, the court shall assess the
9 fee as specified under subsection (1) of this section. The court may
10 not suspend payment of all or part of the fee unless it finds that the
11 minor does not have the ability to pay the fee.

12 (4) Any fee assessed under this section shall be collected by the
13 clerk of the court and distributed each month to the state treasurer
14 for deposit in the prostitution prevention and intervention account
15 under RCW 43.63A.740 for the purpose of funding prostitution prevention
16 and intervention activities.

17 (5) For the purposes of this section, "diversion agreement" means
18 an agreement under RCW 13.40.080 or any written agreement between a
19 person accused of an offense listed in subsection (1) of this section
20 and a court or a county or city prosecutor, or a designee thereof,
21 whereby the person agrees to fulfill certain conditions in lieu of
22 prosecution.

23 NEW SECTION. Sec. 5. Section 2 of this act takes effect July 1,
24 1998."

25 **HB 1332** - S COMM AMD
26 By Committee on Human Services & Corrections

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28 On page 1, line 1 of the title, after "diversion;" strike the
29 remainder of the title and insert "amending RCW 13.40.080, 9.68A.105,
30 and 9A.88.120; reenacting and amending RCW 13.40.160; and providing an
31 effective date."

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