
HOUSE BILL 1332

State of Washington

55th Legislature

1997 Regular Session

By Representatives Sheahan, Costa, Dickerson, Blalock, O'Brien, Kenney, Linville, Wood, Benson, Ballasiotes, Ogden, Murray, Cody, Dunshee, Conway, Lantz, Carrell and Mason

Read first time 01/22/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to diversion; and amending RCW 13.40.080 and
2 13.40.160.

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

4 **Sec. 1.** RCW 13.40.080 and 1996 c 124 s 1 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 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;

18 (b) Restitution limited to the amount of actual loss incurred by
19 the victim;

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; and

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

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

33 (4)(a) A diversion agreement may not exceed a period of six months
34 and may include a period extending beyond the eighteenth birthday of
35 the divertee.

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

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

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

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

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

29 (b) Violation of the terms of the agreement shall be the only
30 grounds for termination;

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

33 (i) Written notice of alleged violations of the conditions of the
34 diversion program; and

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

36 (d) The hearing shall be conducted by the juvenile court and shall
37 include:

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

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

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

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

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

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

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

11 (7) The diversion unit shall, subject to available funds, be
12 responsible for providing interpreters when juveniles need interpreters
13 to effectively communicate during diversion unit hearings or
14 negotiations.

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

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

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

29 The juvenile shall be advised that a diversion agreement shall
30 constitute a part of the juvenile's criminal history as defined by RCW
31 13.40.020(9). A signed acknowledgment of such advisement shall be
32 obtained from the juvenile, and the document shall be maintained by the
33 diversionary unit together with the diversion agreement, and a copy of
34 both documents shall be delivered to the prosecutor if requested by the
35 prosecutor. The supreme court shall promulgate rules setting forth the
36 content of such advisement in simple language.

37 (11) When a juvenile enters into a diversion agreement, the
38 juvenile court may receive only the following information for
39 dispositional purposes:

- 1 (a) The fact that a charge or charges were made;
- 2 (b) The fact that a diversion agreement was entered into;
- 3 (c) The juvenile's obligations under such agreement;
- 4 (d) Whether the alleged offender performed his or her obligations
- 5 under such agreement; and
- 6 (e) The facts of the alleged offense.

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

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

1 (14) A diversion unit may supervise the fulfillment of a diversion
2 agreement entered into before the juvenile's eighteenth birthday and
3 which includes a period extending beyond the diverttee's eighteenth
4 birthday.

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

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

20 **Sec. 2.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to read
21 as follows:

22 (1) When the respondent is found to be a serious offender, the
23 court shall commit the offender to the department for the standard
24 range of disposition for the offense, as indicated in option A of
25 schedule D-3, RCW 13.40.0357 except as provided in subsections (~~((+5))~~)
26 (4) and (~~((+6))~~) (5) of this section.

27 If the court concludes, and enters reasons for its conclusion, that
28 disposition within the standard range would effectuate a manifest
29 injustice the court shall impose a disposition outside the standard
30 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
31 court's finding of manifest injustice shall be supported by clear and
32 convincing evidence.

33 A disposition outside the standard range shall be determinate and
34 shall be comprised of confinement or community supervision, or a
35 combination thereof. When a judge finds a manifest injustice and
36 imposes a sentence of confinement exceeding thirty days, the court
37 shall sentence the juvenile to a maximum term, and the provisions of
38 RCW 13.40.030(2) shall be used to determine the range. A disposition

1 outside the standard range is appealable under RCW 13.40.230 by the
2 state or the respondent. A disposition within the standard range is
3 not appealable under RCW 13.40.230.

4 (2) Where the respondent is found to be a minor or first offender,
5 the court shall order that the respondent serve a term of community
6 supervision as indicated in option A or option B of schedule D-1, RCW
7 13.40.0357 except as provided in subsections ~~((+5+))~~ (4) and ~~((+6+))~~
8 (5) of this section. If the court determines that a disposition of
9 community supervision would effectuate a manifest injustice the court
10 may impose another disposition under option C of schedule D-1, RCW
11 13.40.0357. Except as provided in subsection ~~((+5+))~~ (4) of this
12 section, a disposition other than a community supervision may be
13 imposed only after the court enters reasons upon which it bases its
14 conclusions that imposition of community supervision would effectuate
15 a manifest injustice. When a judge finds a manifest injustice and
16 imposes a sentence of confinement exceeding thirty days, the court
17 shall sentence the juvenile to a maximum term, and the provisions of
18 RCW 13.40.030(2) shall be used to determine the range. The court's
19 finding of manifest injustice shall be supported by clear and
20 convincing evidence.

21 Except for disposition of community supervision or a disposition
22 imposed pursuant to subsection ~~((+5+))~~ (4) of this section, a
23 disposition may be appealed as provided in RCW 13.40.230 by the state
24 or the respondent. A disposition of community supervision or a
25 disposition imposed pursuant to subsection ~~((+5+))~~ (4) of this section
26 may not be appealed under RCW 13.40.230.

27 ~~(3) ((Where a respondent is found to have committed an offense for
28 which the respondent declined to enter into a diversion agreement, the
29 court shall impose a term of community supervision limited to the
30 conditions allowed in a diversion agreement as provided in RCW
31 13.40.080(2)).~~

32 ~~(4+))~~ If a respondent is found to be a middle offender:

33 (a) The court shall impose a determinate disposition within the
34 standard range(s) for such offense, as indicated in option A of
35 schedule D-2, RCW 13.40.0357 except as provided in subsections ~~((+5+))~~
36 (4) and ~~((+6+))~~ (5) of this section. If the standard range includes a
37 term of confinement exceeding thirty days, commitment shall be to the
38 department for the standard range of confinement; or

1 (b) If the middle offender has less than 110 points, the court
2 shall impose a determinate disposition of community supervision and/or
3 up to thirty days confinement, as indicated in option B of schedule D-
4 2, RCW 13.40.0357 in which case, if confinement has been imposed, the
5 court shall state either aggravating or mitigating factors as set forth
6 in RCW 13.40.150. If the middle offender has 110 points or more, the
7 court may impose a disposition under option A and may suspend the
8 disposition on the condition that the offender serve up to thirty days
9 of confinement and follow all conditions of community supervision. If
10 the offender violates any condition of the disposition including
11 conditions of a probation bond, the court may impose sanctions pursuant
12 to RCW 13.40.200 or may revoke the suspension and order execution of
13 the disposition. The court shall give credit for any confinement time
14 previously served if that confinement was for the offense for which the
15 suspension is being revoked.

16 (c) Only if the court concludes, and enters reasons for its
17 conclusions, that disposition as provided in subsection (~~((4))~~) (3) (a)
18 or (b) of this section would effectuate a manifest injustice, the court
19 shall sentence the juvenile to a maximum term, and the provisions of
20 RCW 13.40.030(2) shall be used to determine the range. The court's
21 finding of manifest injustice shall be supported by clear and
22 convincing evidence.

23 (d) A disposition pursuant to subsection (~~((4))~~) (3)(c) of this
24 section is appealable under RCW 13.40.230 by the state or the
25 respondent. A disposition pursuant to subsection (~~((4))~~) (3) (a) or
26 (b) of this section is not appealable under RCW 13.40.230.

27 (~~((5))~~) (4) When a serious, middle, or minor first offender is
28 found to have committed a sex offense, other than a sex offense that is
29 also a serious violent offense as defined by RCW 9.94A.030, and has no
30 history of a prior sex offense, the court, on its own motion or the
31 motion of the state or the respondent, may order an examination to
32 determine whether the respondent is amenable to treatment.

33 The report of the examination shall include at a minimum the
34 following: The respondent's version of the facts and the official
35 version of the facts, the respondent's offense history, an assessment
36 of problems in addition to alleged deviant behaviors, the respondent's
37 social, educational, and employment situation, and other evaluation
38 measures used. The report shall set forth the sources of the
39 evaluator's information.

1 The examiner shall assess and report regarding the respondent's
2 amenability to treatment and relative risk to the community. A
3 proposed treatment plan shall be provided and shall include, at a
4 minimum:

5 (a)(i) Frequency and type of contact between the offender and
6 therapist;

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

9 (iii) Monitoring plans, including any requirements regarding living
10 conditions, lifestyle requirements, and monitoring by family members,
11 legal guardians, or others;

12 (iv) Anticipated length of treatment; and

13 (v) Recommended crime-related prohibitions.

14 The court on its own motion may order, or on a motion by the state
15 shall order, a second examination regarding the offender's amenability
16 to treatment. The evaluator shall be selected by the party making the
17 motion. The defendant shall pay the cost of any second examination
18 ordered unless the court finds the defendant to be indigent in which
19 case the state shall pay the cost.

20 After receipt of reports of the examination, the court shall then
21 consider whether the offender and the community will benefit from use
22 of this special sex offender disposition alternative and consider the
23 victim's opinion whether the offender should receive a treatment
24 disposition under this section. If the court determines that this
25 special sex offender disposition alternative is appropriate, then the
26 court shall impose a determinate disposition within the standard range
27 for the offense, and the court may suspend the execution of the
28 disposition and place the offender on community supervision for up to
29 two years. As a condition of the suspended disposition, the court may
30 impose the conditions of community supervision and other conditions,
31 including up to thirty days of confinement and requirements that the
32 offender do any one or more of the following:

33 (b)(i) Devote time to a specific education, employment, or
34 occupation;

35 (ii) Undergo available outpatient sex offender treatment for up to
36 two years, or inpatient sex offender treatment not to exceed the
37 standard range of confinement for that offense. A community mental
38 health center may not be used for such treatment unless it has an
39 appropriate program designed for sex offender treatment. The

1 respondent shall not change sex offender treatment providers or
2 treatment conditions without first notifying the prosecutor, the
3 probation counselor, and the court, and shall not change providers
4 without court approval after a hearing if the prosecutor or probation
5 counselor object to the change;

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

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

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

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

15 (vii) Make restitution to the victim for the cost of any counseling
16 reasonably related to the offense; or

17 (viii) Comply with the conditions of any court-ordered probation
18 bond.

19 The sex offender treatment provider shall submit quarterly reports
20 on the respondent's progress in treatment to the court and the parties.
21 The reports shall reference the treatment plan and include at a minimum
22 the following: Dates of attendance, respondent's compliance with
23 requirements, treatment activities, the respondent's relative progress
24 in treatment, and any other material specified by the court at the time
25 of the disposition.

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

28 Except as provided in this subsection (~~((+5))~~) (4), after July 1,
29 1991, examinations and treatment ordered pursuant to this subsection
30 shall only be conducted by sex offender treatment providers certified
31 by the department of health pursuant to chapter 18.155 RCW. A sex
32 offender therapist who examines or treats a juvenile sex offender
33 pursuant to this subsection does not have to be certified by the
34 department of health pursuant to chapter 18.155 RCW if the court finds
35 that: (A) The offender has already moved to another state or plans to
36 move to another state for reasons other than circumventing the
37 certification requirements; (B) no certified providers are available
38 for treatment within a reasonable geographical distance of the
39 offender's home; and (C) the evaluation and treatment plan comply with

1 this subsection (~~(+5+)~~) (4) and the rules adopted by the department of
2 health.

3 If the offender violates any condition of the disposition or the
4 court finds that the respondent is failing to make satisfactory
5 progress in treatment, the court may revoke the suspension and order
6 execution of the disposition or the court may impose a penalty of up to
7 thirty days' confinement for violating conditions of the disposition.
8 The court may order both execution of the disposition and up to thirty
9 days' confinement for the violation of the conditions of the
10 disposition. The court shall give credit for any confinement time
11 previously served if that confinement was for the offense for which the
12 suspension is being revoked.

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

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

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

26 (~~(+8+)~~) (7) Except as provided for in subsection (~~(+4+)~~) (3)(b) or
27 (~~(+5+)~~) (4) of this section or RCW 13.40.125, the court shall not
28 suspend or defer the imposition or the execution of the disposition.

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

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