

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6550

Chapter 82, Laws of 2018

65th Legislature
2018 Regular Session

JUVENILE OFFENSES--DIVERSION

EFFECTIVE DATE: June 7, 2018—Except for section 3, which becomes effective July 1, 2019.

Passed by the Senate February 12, 2018
Yeas 35 Nays 11

CYRUS HABIB

President of the Senate

Passed by the House February 27, 2018
Yeas 55 Nays 43

FRANK CHOPP

Speaker of the House of Representatives

Approved March 15, 2018 11:46 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6550** as passed by Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

March 16, 2018

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6550

Passed Legislature - 2018 Regular Session

State of Washington

65th Legislature

2018 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Darneille and Saldaña)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to diversion of juvenile offenses; amending RCW
2 13.40.070, 13.40.020, 13.40.080, and 13.50.270; reenacting and
3 amending RCW 13.40.020; providing an effective date; and providing an
4 expiration date.

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

6 **Sec. 1.** RCW 13.40.070 and 2017 c 292 s 2 are each amended to
7 read as follows:

8 (1) Complaints referred to the juvenile court alleging the
9 commission of an offense shall be referred directly to the
10 prosecutor. The prosecutor, upon receipt of a complaint, shall screen
11 the complaint to determine whether:

12 (a) The alleged facts bring the case within the jurisdiction of
13 the court; and

14 (b) On a basis of available evidence there is probable cause to
15 believe that the juvenile did commit the offense.

16 (2) If the identical alleged acts constitute an offense under
17 both the law of this state and an ordinance of any city or county of
18 this state, state law shall govern the prosecutor's screening and
19 charging decision for both filed and diverted cases.

20 (3) If the requirements of subsection((s)) (1)(a) and (b) of this
21 section are met, the prosecutor shall either file an information in

1 juvenile court or divert the case, as set forth in subsections (5),
2 (6), and (8) of this section. If the prosecutor finds that the
3 requirements of subsection (1)(a) and (b) of this section are not
4 met, the prosecutor shall maintain a record, for one year, of such
5 decision and the reasons therefor. In lieu of filing an information
6 or diverting an offense a prosecutor may file a motion to modify
7 community supervision where such offense constitutes a violation of
8 community supervision.

9 (4) An information shall be a plain, concise, and definite
10 written statement of the essential facts constituting the offense
11 charged. It shall be signed by the prosecuting attorney and conform
12 to chapter 10.37 RCW.

13 ~~((Except as provided in RCW 13.40.213 and subsection (7) of~~
14 ~~this section, where a case is legally sufficient,))~~ The prosecutor
15 shall file an information with the juvenile court if(~~(+~~

16 ~~(a) An alleged offender is accused of a class A felony, a class B~~
17 ~~felony, an attempt to commit a class B felony, a class C felony~~
18 ~~listed in RCW 9.94A.411(2) as a crime against persons or listed in~~
19 ~~RCW 9A.46.060 as a crime of harassment, or a class C felony that is a~~
20 ~~violation of RCW 9.41.080 or 9.41.040(2)(a)(iv); or~~

21 ~~(b) An alleged offender is accused of a felony and has a criminal~~
22 ~~history of any felony, or at least two gross misdemeanors, or at~~
23 ~~least two misdemeanors; or~~

24 ~~(c) An alleged offender has previously been committed to the~~
25 ~~department; or~~

26 ~~(d))~~ (a) an alleged offender is accused of an offense that is
27 defined as a sex offense or violent offense under RCW 9.94A.030,
28 other than assault in the second degree or robbery in the second
29 degree; or (b) an alleged offender has been referred by a diversion
30 unit for prosecution or desires prosecution instead of diversion(~~(+~~
31 or

32 ~~(e) An alleged offender has three or more diversion agreements on~~
33 ~~the alleged offender's criminal history; or~~

34 ~~(f) A special allegation has been filed that the offender or an~~
35 ~~accomplice was armed with a firearm when the offense was committed)).~~

36 (6) Where a case is legally sufficient the prosecutor shall
37 divert the case if the alleged offense is a misdemeanor or gross
38 misdemeanor or violation and the alleged offense is the offender's
39 first offense or violation. If the alleged offender is charged with a
40 related offense that (~~must or~~) may be filed under subsections (5)

1 and (8) of this section, a case under this subsection may also be
2 filed.

3 (7) Where a case is legally sufficient to charge an alleged
4 offender with:

5 (a) Either prostitution or prostitution loitering and the alleged
6 offense is the offender's first prostitution or prostitution
7 loitering offense, the prosecutor shall divert the case; or

8 (b) Voyeurism in the second degree, the offender is under
9 seventeen years of age, and the alleged offense is the offender's
10 first voyeurism in the second degree offense, the prosecutor shall
11 divert the case, unless the offender has received two diversions for
12 any offense in the previous two years.

13 (8) Where a case is legally sufficient and falls into neither
14 subsection (5) nor (6) of this section, it may be filed or diverted.
15 In deciding whether to file or divert an offense under this section
16 the prosecutor (~~shall~~) may be guided (~~only~~) by the length,
17 seriousness, and recency of the alleged offender's criminal history
18 and the circumstances surrounding the commission of the alleged
19 offense.

20 (9) Whenever a juvenile is placed in custody or, where not placed
21 in custody, referred to a diversion interview, the parent or legal
22 guardian of the juvenile shall be notified as soon as possible
23 concerning the allegation made against the juvenile and the current
24 status of the juvenile. Where a case involves victims of crimes
25 against persons or victims whose property has not been recovered at
26 the time a juvenile is referred to a diversion unit, the victim shall
27 be notified of the referral and informed how to contact the unit.

28 (10) The responsibilities of the prosecutor under subsections (1)
29 through (9) of this section may be performed by a juvenile court
30 probation counselor for any complaint referred to the court alleging
31 the commission of an offense which would not be a felony if committed
32 by an adult, if the prosecutor has given sufficient written notice to
33 the juvenile court that the prosecutor will not review such
34 complaints.

35 (11) The prosecutor, juvenile court probation counselor, or
36 diversion unit may, in exercising their authority under this section
37 or RCW 13.40.080, refer juveniles to community-based programs,
38 restorative justice programs, mediation, or victim offender
39 reconciliation programs. Such mediation or victim offender
40 reconciliation programs shall be voluntary for victims.

1 (12) Prosecutors and juvenile courts are encouraged to engage
2 with and partner with community-based programs to expand, improve,
3 and increase options to divert youth from formal processing in
4 juvenile court. Nothing in this chapter should be read to limit
5 partnership with community-based programs to create diversion
6 opportunities for juveniles.

7 **Sec. 2.** RCW 13.40.020 and 2016 c 136 s 2 and 2016 c 106 s 1 are
8 each reenacted and amended to read as follows:

9 For the purposes of this chapter:

10 (1) "Assessment" means an individualized examination of a child
11 to determine the child's psychosocial needs and problems, including
12 the type and extent of any mental health, substance abuse, or co-
13 occurring mental health and substance abuse disorders, and
14 recommendations for treatment. "Assessment" includes, but is not
15 limited to, drug and alcohol evaluations, psychological and
16 psychiatric evaluations, records review, clinical interview, and
17 administration of a formal test or instrument;

18 (2) "Community-based rehabilitation" means one or more of the
19 following: Employment; attendance of information classes; literacy
20 classes; counseling, outpatient substance abuse treatment programs,
21 outpatient mental health programs, anger management classes,
22 education or outpatient treatment programs to prevent animal cruelty,
23 or other services including, when appropriate, restorative justice
24 programs; or attendance at school or other educational programs
25 appropriate for the juvenile as determined by the school district.
26 Placement in community-based rehabilitation programs is subject to
27 available funds;

28 (3) "Community-based sanctions" may include one or more of the
29 following:

30 (a) A fine, not to exceed five hundred dollars;

31 (b) Community restitution not to exceed one hundred fifty hours
32 of community restitution;

33 (4) "Community restitution" means compulsory service, without
34 compensation, performed for the benefit of the community by the
35 offender as punishment for committing an offense. Community
36 restitution may be performed through public or private organizations
37 or through work crews;

38 (5) "Community supervision" means an order of disposition by the
39 court of an adjudicated youth not committed to the department or an

1 order granting a deferred disposition. A community supervision order
2 for a single offense may be for a period of up to two years for a sex
3 offense as defined by RCW 9.94A.030 and up to one year for other
4 offenses. As a mandatory condition of any term of community
5 supervision, the court shall order the juvenile to refrain from
6 committing new offenses. As a mandatory condition of community
7 supervision, the court shall order the juvenile to comply with the
8 mandatory school attendance provisions of chapter 28A.225 RCW and to
9 inform the school of the existence of this requirement. Community
10 supervision is an individualized program comprised of one or more of
11 the following:

12 (a) Community-based sanctions;

13 (b) Community-based rehabilitation;

14 (c) Monitoring and reporting requirements;

15 (d) Posting of a probation bond;

16 (e) Residential treatment, where substance abuse, mental health,
17 and/or co-occurring disorders have been identified in an assessment
18 by a qualified mental health professional, psychologist,
19 psychiatrist, or chemical dependency professional and a funded bed is
20 available. If a child agrees to voluntary placement in a state-funded
21 long-term evaluation and treatment facility, the case must follow the
22 existing placement procedure including consideration of less
23 restrictive treatment options and medical necessity.

24 (i) A court may order residential treatment after consideration
25 and findings regarding whether:

26 (A) The referral is necessary to rehabilitate the child;

27 (B) The referral is necessary to protect the public or the child;

28 (C) The referral is in the child's best interest;

29 (D) The child has been given the opportunity to engage in less
30 restrictive treatment and has been unable or unwilling to comply; and

31 (E) Inpatient treatment is the least restrictive action
32 consistent with the child's needs and circumstances.

33 (ii) In any case where a court orders a child to inpatient
34 treatment under this section, the court must hold a review hearing no
35 later than sixty days after the youth begins inpatient treatment, and
36 every thirty days thereafter, as long as the youth is in inpatient
37 treatment;

38 (6) "Confinement" means physical custody by the department of
39 social and health services in a facility operated by or pursuant to a
40 contract with the state, or physical custody in a detention facility

1 operated by or pursuant to a contract with any county. The county may
2 operate or contract with vendors to operate county detention
3 facilities. The department may operate or contract to operate
4 detention facilities for juveniles committed to the department.
5 Pretrial confinement or confinement of less than thirty-one days
6 imposed as part of a disposition or modification order may be served
7 consecutively or intermittently, in the discretion of the court;

8 (7) "Court," when used without further qualification, means the
9 juvenile court judge(s) or commissioner(s);

10 (8) "Criminal history" includes all criminal complaints against
11 the respondent for which, prior to the commission of a current
12 offense:

13 (a) The allegations were found correct by a court. If a
14 respondent is convicted of two or more charges arising out of the
15 same course of conduct, only the highest charge from among these
16 shall count as an offense for the purposes of this chapter; or

17 (b) The criminal complaint was diverted by a prosecutor pursuant
18 to the provisions of this chapter on agreement of the respondent and
19 after an advisement to the respondent that the criminal complaint
20 would be considered as part of the respondent's criminal history. A
21 successfully completed deferred adjudication that was entered before
22 July 1, 1998, or a deferred disposition shall not be considered part
23 of the respondent's criminal history;

24 (9) "Department" means the department of social and health
25 services;

26 (10) "Detention facility" means a county facility, paid for by
27 the county, for the physical confinement of a juvenile alleged to
28 have committed an offense or an adjudicated offender subject to a
29 disposition or modification order. "Detention facility" includes
30 county group homes, inpatient substance abuse programs, juvenile
31 basic training camps, and electronic monitoring;

32 (11) "Diversion unit" means any probation counselor who enters
33 into a diversion agreement with an alleged youthful offender, or any
34 other person, community accountability board, youth court under the
35 supervision of the juvenile court, or other entity (~~except a law~~
36 ~~enforcement official or entity,~~) with whom the juvenile court
37 administrator has contracted to arrange and supervise such agreements
38 pursuant to RCW 13.40.080, or any person, community accountability
39 board, or other entity specially funded by the legislature to arrange
40 and supervise diversion agreements in accordance with the

1 requirements of this chapter. For purposes of this subsection,
2 "community accountability board" means a board comprised of members
3 of the local community in which the juvenile offender resides. The
4 superior court shall appoint the members. The boards shall consist of
5 at least three and not more than seven members. If possible, the
6 board should include a variety of representatives from the community,
7 such as a law enforcement officer, teacher or school administrator,
8 high school student, parent, and business owner, and should represent
9 the cultural diversity of the local community;

10 (12) "Foster care" means temporary physical care in a foster
11 family home or group care facility as defined in RCW 74.15.020 and
12 licensed by the department, or other legally authorized care;

13 (13) "Institution" means a juvenile facility established pursuant
14 to chapters 72.05 and 72.16 through 72.20 RCW;

15 (14) "Intensive supervision program" means a parole program that
16 requires intensive supervision and monitoring, offers an array of
17 individualized treatment and transitional services, and emphasizes
18 community involvement and support in order to reduce the likelihood a
19 juvenile offender will commit further offenses;

20 (15) "Juvenile," "youth," and "child" mean any individual who is
21 under the chronological age of eighteen years and who has not been
22 previously transferred to adult court pursuant to RCW 13.40.110,
23 unless the individual was convicted of a lesser charge or acquitted
24 of the charge for which he or she was previously transferred pursuant
25 to RCW 13.40.110 or who is not otherwise under adult court
26 jurisdiction;

27 (16) "Juvenile offender" means any juvenile who has been found by
28 the juvenile court to have committed an offense, including a person
29 eighteen years of age or older over whom jurisdiction has been
30 extended under RCW 13.40.300;

31 (17) "Labor" means the period of time before a birth during which
32 contractions are of sufficient frequency, intensity, and duration to
33 bring about effacement and progressive dilation of the cervix;

34 (18) "Local sanctions" means one or more of the following: (a)
35 0-30 days of confinement; (b) 0-12 months of community supervision;
36 (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

37 (19) "Manifest injustice" means a disposition that would either
38 impose an excessive penalty on the juvenile or would impose a
39 serious, and clear danger to society in light of the purposes of this
40 chapter;

1 (20) "Monitoring and reporting requirements" means one or more of
2 the following: Curfews; requirements to remain at home, school, work,
3 or court-ordered treatment programs during specified hours;
4 restrictions from leaving or entering specified geographical areas;
5 requirements to report to the probation officer as directed and to
6 remain under the probation officer's supervision; and other
7 conditions or limitations as the court may require which may not
8 include confinement;

9 (21) "Offense" means an act designated a violation or a crime if
10 committed by an adult under the law of this state, under any
11 ordinance of any city or county of this state, under any federal law,
12 or under the law of another state if the act occurred in that state;

13 (22) "Physical restraint" means the use of any bodily force or
14 physical intervention to control a juvenile offender or limit a
15 juvenile offender's freedom of movement in a way that does not
16 involve a mechanical restraint. Physical restraint does not include
17 momentary periods of minimal physical restriction by direct person-
18 to-person contact, without the aid of mechanical restraint,
19 accomplished with limited force and designed to:

20 (a) Prevent a juvenile offender from completing an act that would
21 result in potential bodily harm to self or others or damage property;

22 (b) Remove a disruptive juvenile offender who is unwilling to
23 leave the area voluntarily; or

24 (c) Guide a juvenile offender from one location to another;

25 (23) "Postpartum recovery" means (a) the entire period a woman or
26 youth is in the hospital, birthing center, or clinic after giving
27 birth and (b) an additional time period, if any, a treating physician
28 determines is necessary for healing after the youth leaves the
29 hospital, birthing center, or clinic;

30 (24) "Probation bond" means a bond, posted with sufficient
31 security by a surety justified and approved by the court, to secure
32 the offender's appearance at required court proceedings and
33 compliance with court-ordered community supervision or conditions of
34 release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means
35 a deposit of cash or posting of other collateral in lieu of a bond if
36 approved by the court;

37 (25) "Respondent" means a juvenile who is alleged or proven to
38 have committed an offense;

39 (26) "Restitution" means financial reimbursement by the offender
40 to the victim, and shall be limited to easily ascertainable damages

1 for injury to or loss of property, actual expenses incurred for
2 medical treatment for physical injury to persons, lost wages
3 resulting from physical injury, and costs of the victim's counseling
4 reasonably related to the offense. Restitution shall not include
5 reimbursement for damages for mental anguish, pain and suffering, or
6 other intangible losses. Nothing in this chapter shall limit or
7 replace civil remedies or defenses available to the victim or
8 offender;

9 (27) "Restorative justice" means practices, policies, and
10 programs informed by and sensitive to the needs of crime victims that
11 are designed to encourage offenders to accept responsibility for
12 repairing the harm caused by their offense by providing safe and
13 supportive opportunities for voluntary participation and
14 communication between the victim, the offender, their families, and
15 relevant community members;

16 (28) "Restraints" means anything used to control the movement of
17 a person's body or limbs and includes:

18 (a) Physical restraint; or

19 (b) Mechanical device including but not limited to: Metal
20 handcuffs, plastic ties, ankle restraints, leather cuffs, other
21 hospital-type restraints, tasers, or batons;

22 (29) "Screening" means a process that is designed to identify a
23 child who is at risk of having mental health, substance abuse, or co-
24 occurring mental health and substance abuse disorders that warrant
25 immediate attention, intervention, or more comprehensive assessment.
26 A screening may be undertaken with or without the administration of a
27 formal instrument;

28 (30) "Secretary" means the secretary of the department of social
29 and health services. "Assistant secretary" means the assistant
30 secretary for juvenile rehabilitation for the department;

31 (31) "Services" means services which provide alternatives to
32 incarceration for those juveniles who have pleaded or been
33 adjudicated guilty of an offense or have signed a diversion agreement
34 pursuant to this chapter;

35 (32) "Sex offense" means an offense defined as a sex offense in
36 RCW 9.94A.030;

37 (33) "Sexual motivation" means that one of the purposes for which
38 the respondent committed the offense was for the purpose of his or
39 her sexual gratification;

1 (34) "Surety" means an entity licensed under state insurance laws
2 or by the state department of licensing, to write corporate,
3 property, or probation bonds within the state, and justified and
4 approved by the superior court of the county having jurisdiction of
5 the case;

6 (35) "Transportation" means the conveying, by any means, of an
7 incarcerated pregnant youth from the institution or detention
8 facility to another location from the moment she leaves the
9 institution or detention facility to the time of arrival at the other
10 location, and includes the escorting of the pregnant incarcerated
11 youth from the institution or detention facility to a transport
12 vehicle and from the vehicle to the other location;

13 (36) "Violation" means an act or omission, which if committed by
14 an adult, must be proven beyond a reasonable doubt, and is punishable
15 by sanctions which do not include incarceration;

16 (37) "Violent offense" means a violent offense as defined in RCW
17 9.94A.030;

18 (38) "Youth court" means a diversion unit under the supervision
19 of the juvenile court.

20 **Sec. 3.** RCW 13.40.020 and 2017 3rd sp.s. c 6 s 605 are each
21 amended to read as follows:

22 For the purposes of this chapter:

23 (1) "Assessment" means an individualized examination of a child
24 to determine the child's psychosocial needs and problems, including
25 the type and extent of any mental health, substance abuse, or co-
26 occurring mental health and substance abuse disorders, and
27 recommendations for treatment. "Assessment" includes, but is not
28 limited to, drug and alcohol evaluations, psychological and
29 psychiatric evaluations, records review, clinical interview, and
30 administration of a formal test or instrument;

31 (2) "Community-based rehabilitation" means one or more of the
32 following: Employment; attendance of information classes; literacy
33 classes; counseling, outpatient substance abuse treatment programs,
34 outpatient mental health programs, anger management classes,
35 education or outpatient treatment programs to prevent animal cruelty,
36 or other services including, when appropriate, restorative justice
37 programs; or attendance at school or other educational programs
38 appropriate for the juvenile as determined by the school district.

1 Placement in community-based rehabilitation programs is subject to
2 available funds;

3 (3) "Community-based sanctions" may include one or more of the
4 following:

5 (a) A fine, not to exceed five hundred dollars;

6 (b) Community restitution not to exceed one hundred fifty hours
7 of community restitution;

8 (4) "Community restitution" means compulsory service, without
9 compensation, performed for the benefit of the community by the
10 offender as punishment for committing an offense. Community
11 restitution may be performed through public or private organizations
12 or through work crews;

13 (5) "Community supervision" means an order of disposition by the
14 court of an adjudicated youth not committed to the department or an
15 order granting a deferred disposition. A community supervision order
16 for a single offense may be for a period of up to two years for a sex
17 offense as defined by RCW 9.94A.030 and up to one year for other
18 offenses. As a mandatory condition of any term of community
19 supervision, the court shall order the juvenile to refrain from
20 committing new offenses. As a mandatory condition of community
21 supervision, the court shall order the juvenile to comply with the
22 mandatory school attendance provisions of chapter 28A.225 RCW and to
23 inform the school of the existence of this requirement. Community
24 supervision is an individualized program comprised of one or more of
25 the following:

26 (a) Community-based sanctions;

27 (b) Community-based rehabilitation;

28 (c) Monitoring and reporting requirements;

29 (d) Posting of a probation bond;

30 (e) Residential treatment, where substance abuse, mental health,
31 and/or co-occurring disorders have been identified in an assessment
32 by a qualified mental health professional, psychologist,
33 psychiatrist, or chemical dependency professional and a funded bed is
34 available. If a child agrees to voluntary placement in a state-funded
35 long-term evaluation and treatment facility, the case must follow the
36 existing placement procedure including consideration of less
37 restrictive treatment options and medical necessity.

38 (i) A court may order residential treatment after consideration
39 and findings regarding whether:

40 (A) The referral is necessary to rehabilitate the child;

1 (B) The referral is necessary to protect the public or the child;

2 (C) The referral is in the child's best interest;

3 (D) The child has been given the opportunity to engage in less
4 restrictive treatment and has been unable or unwilling to comply; and

5 (E) Inpatient treatment is the least restrictive action
6 consistent with the child's needs and circumstances.

7 (ii) In any case where a court orders a child to inpatient
8 treatment under this section, the court must hold a review hearing no
9 later than sixty days after the youth begins inpatient treatment, and
10 every thirty days thereafter, as long as the youth is in inpatient
11 treatment;

12 (6) "Confinement" means physical custody by the department of
13 children, youth, and families in a facility operated by or pursuant
14 to a contract with the state, or physical custody in a detention
15 facility operated by or pursuant to a contract with any county. The
16 county may operate or contract with vendors to operate county
17 detention facilities. The department may operate or contract to
18 operate detention facilities for juveniles committed to the
19 department. Pretrial confinement or confinement of less than thirty-
20 one days imposed as part of a disposition or modification order may
21 be served consecutively or intermittently, in the discretion of the
22 court;

23 (7) "Court," when used without further qualification, means the
24 juvenile court judge(s) or commissioner(s);

25 (8) "Criminal history" includes all criminal complaints against
26 the respondent for which, prior to the commission of a current
27 offense:

28 (a) The allegations were found correct by a court. If a
29 respondent is convicted of two or more charges arising out of the
30 same course of conduct, only the highest charge from among these
31 shall count as an offense for the purposes of this chapter; or

32 (b) The criminal complaint was diverted by a prosecutor pursuant
33 to the provisions of this chapter on agreement of the respondent and
34 after an advisement to the respondent that the criminal complaint
35 would be considered as part of the respondent's criminal history. A
36 successfully completed deferred adjudication that was entered before
37 July 1, 1998, or a deferred disposition shall not be considered part
38 of the respondent's criminal history;

39 (9) "Department" means the department of children, youth, and
40 families;

1 (10) "Detention facility" means a county facility, paid for by
2 the county, for the physical confinement of a juvenile alleged to
3 have committed an offense or an adjudicated offender subject to a
4 disposition or modification order. "Detention facility" includes
5 county group homes, inpatient substance abuse programs, juvenile
6 basic training camps, and electronic monitoring;

7 (11) "Diversion unit" means any probation counselor who enters
8 into a diversion agreement with an alleged youthful offender, or any
9 other person, community accountability board, youth court under the
10 supervision of the juvenile court, or other entity (~~except a law~~
11 ~~enforcement official or entity,~~) with whom the juvenile court
12 administrator has contracted to arrange and supervise such agreements
13 pursuant to RCW 13.40.080, or any person, community accountability
14 board, or other entity specially funded by the legislature to arrange
15 and supervise diversion agreements in accordance with the
16 requirements of this chapter. For purposes of this subsection,
17 "community accountability board" means a board comprised of members
18 of the local community in which the juvenile offender resides. The
19 superior court shall appoint the members. The boards shall consist of
20 at least three and not more than seven members. If possible, the
21 board should include a variety of representatives from the community,
22 such as a law enforcement officer, teacher or school administrator,
23 high school student, parent, and business owner, and should represent
24 the cultural diversity of the local community;

25 (12) "Foster care" means temporary physical care in a foster
26 family home or group care facility as defined in RCW 74.15.020 and
27 licensed by the department, or other legally authorized care;

28 (13) "Institution" means a juvenile facility established pursuant
29 to chapters 72.05 and 72.16 through 72.20 RCW;

30 (14) "Intensive supervision program" means a parole program that
31 requires intensive supervision and monitoring, offers an array of
32 individualized treatment and transitional services, and emphasizes
33 community involvement and support in order to reduce the likelihood a
34 juvenile offender will commit further offenses;

35 (15) "Juvenile," "youth," and "child" mean any individual who is
36 under the chronological age of eighteen years and who has not been
37 previously transferred to adult court pursuant to RCW 13.40.110,
38 unless the individual was convicted of a lesser charge or acquitted
39 of the charge for which he or she was previously transferred pursuant

1 to RCW 13.40.110 or who is not otherwise under adult court
2 jurisdiction;

3 (16) "Juvenile offender" means any juvenile who has been found by
4 the juvenile court to have committed an offense, including a person
5 eighteen years of age or older over whom jurisdiction has been
6 extended under RCW 13.40.300;

7 (17) "Labor" means the period of time before a birth during which
8 contractions are of sufficient frequency, intensity, and duration to
9 bring about effacement and progressive dilation of the cervix;

10 (18) "Local sanctions" means one or more of the following: (a)
11 0-30 days of confinement; (b) 0-12 months of community supervision;
12 (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

13 (19) "Manifest injustice" means a disposition that would either
14 impose an excessive penalty on the juvenile or would impose a
15 serious, and clear danger to society in light of the purposes of this
16 chapter;

17 (20) "Monitoring and reporting requirements" means one or more of
18 the following: Curfews; requirements to remain at home, school, work,
19 or court-ordered treatment programs during specified hours;
20 restrictions from leaving or entering specified geographical areas;
21 requirements to report to the probation officer as directed and to
22 remain under the probation officer's supervision; and other
23 conditions or limitations as the court may require which may not
24 include confinement;

25 (21) "Offense" means an act designated a violation or a crime if
26 committed by an adult under the law of this state, under any
27 ordinance of any city or county of this state, under any federal law,
28 or under the law of another state if the act occurred in that state;

29 (22) "Physical restraint" means the use of any bodily force or
30 physical intervention to control a juvenile offender or limit a
31 juvenile offender's freedom of movement in a way that does not
32 involve a mechanical restraint. Physical restraint does not include
33 momentary periods of minimal physical restriction by direct person-
34 to-person contact, without the aid of mechanical restraint,
35 accomplished with limited force and designed to:

36 (a) Prevent a juvenile offender from completing an act that would
37 result in potential bodily harm to self or others or damage property;

38 (b) Remove a disruptive juvenile offender who is unwilling to
39 leave the area voluntarily; or

40 (c) Guide a juvenile offender from one location to another;

1 (23) "Postpartum recovery" means (a) the entire period a woman or
2 youth is in the hospital, birthing center, or clinic after giving
3 birth and (b) an additional time period, if any, a treating physician
4 determines is necessary for healing after the youth leaves the
5 hospital, birthing center, or clinic;

6 (24) "Probation bond" means a bond, posted with sufficient
7 security by a surety justified and approved by the court, to secure
8 the offender's appearance at required court proceedings and
9 compliance with court-ordered community supervision or conditions of
10 release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means
11 a deposit of cash or posting of other collateral in lieu of a bond if
12 approved by the court;

13 (25) "Respondent" means a juvenile who is alleged or proven to
14 have committed an offense;

15 (26) "Restitution" means financial reimbursement by the offender
16 to the victim, and shall be limited to easily ascertainable damages
17 for injury to or loss of property, actual expenses incurred for
18 medical treatment for physical injury to persons, lost wages
19 resulting from physical injury, and costs of the victim's counseling
20 reasonably related to the offense. Restitution shall not include
21 reimbursement for damages for mental anguish, pain and suffering, or
22 other intangible losses. Nothing in this chapter shall limit or
23 replace civil remedies or defenses available to the victim or
24 offender;

25 (27) "Restorative justice" means practices, policies, and
26 programs informed by and sensitive to the needs of crime victims that
27 are designed to encourage offenders to accept responsibility for
28 repairing the harm caused by their offense by providing safe and
29 supportive opportunities for voluntary participation and
30 communication between the victim, the offender, their families, and
31 relevant community members;

32 (28) "Restraints" means anything used to control the movement of
33 a person's body or limbs and includes:

34 (a) Physical restraint; or

35 (b) Mechanical device including but not limited to: Metal
36 handcuffs, plastic ties, ankle restraints, leather cuffs, other
37 hospital-type restraints, tasers, or batons;

38 (29) "Screening" means a process that is designed to identify a
39 child who is at risk of having mental health, substance abuse, or co-
40 occurring mental health and substance abuse disorders that warrant

1 immediate attention, intervention, or more comprehensive assessment.
2 A screening may be undertaken with or without the administration of a
3 formal instrument;

4 (30) "Secretary" means the secretary of the department;

5 (31) "Services" means services which provide alternatives to
6 incarceration for those juveniles who have pleaded or been
7 adjudicated guilty of an offense or have signed a diversion agreement
8 pursuant to this chapter;

9 (32) "Sex offense" means an offense defined as a sex offense in
10 RCW 9.94A.030;

11 (33) "Sexual motivation" means that one of the purposes for which
12 the respondent committed the offense was for the purpose of his or
13 her sexual gratification;

14 (34) "Surety" means an entity licensed under state insurance laws
15 or by the state department of licensing, to write corporate,
16 property, or probation bonds within the state, and justified and
17 approved by the superior court of the county having jurisdiction of
18 the case;

19 (35) "Transportation" means the conveying, by any means, of an
20 incarcerated pregnant youth from the institution or detention
21 facility to another location from the moment she leaves the
22 institution or detention facility to the time of arrival at the other
23 location, and includes the escorting of the pregnant incarcerated
24 youth from the institution or detention facility to a transport
25 vehicle and from the vehicle to the other location;

26 (36) "Violation" means an act or omission, which if committed by
27 an adult, must be proven beyond a reasonable doubt, and is punishable
28 by sanctions which do not include incarceration;

29 (37) "Violent offense" means a violent offense as defined in RCW
30 9.94A.030;

31 (38) "Youth court" means a diversion unit under the supervision
32 of the juvenile court.

33 **Sec. 4.** RCW 13.40.080 and 2015 c 265 s 25 are each amended to
34 read as follows:

35 (1) A diversion agreement shall be a contract between a juvenile
36 accused of an offense and a diversion unit whereby the juvenile
37 agrees to fulfill certain conditions in lieu of prosecution. Such
38 agreements may be entered into only after the prosecutor, or
39 probation counselor pursuant to this chapter, has determined that

1 probable cause exists to believe that a crime has been committed and
2 that the juvenile committed it. Such agreements shall be entered into
3 as expeditiously as possible.

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

6 (a) Community restitution not to exceed one hundred fifty hours,
7 not to be performed during school hours if the juvenile is attending
8 school;

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

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

29 (d) Requirements to remain during specified hours at home,
30 school, or work, and restrictions on leaving or entering specified
31 geographical areas; and

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

35 (3) Notwithstanding the provisions of subsection (2) of this
36 section, youth courts are not limited to the conditions imposed by
37 subsection (2) of this section in imposing sanctions on juveniles
38 pursuant to RCW 13.40.630.

39 (4) In assessing periods of community restitution to be performed
40 and restitution to be paid by a juvenile who has entered into a

1 diversion agreement, the court officer to whom this task is assigned
2 shall consult with the juvenile's custodial parent or parents or
3 guardian. To the extent possible, the court officer shall advise the
4 victims of the juvenile offender of the diversion process, offer
5 victim impact letter forms and restitution claim forms, and involve
6 members of the community. Such members of the community (~~shall~~) may
7 meet with the juvenile and may advise the court officer as to the
8 terms of the diversion agreement and (~~shall~~) may supervise the
9 juvenile in carrying out its terms.

10 (5)(a) A diversion agreement may not exceed a period of six
11 months and may include a period extending beyond the eighteenth
12 birthday of the diverttee.

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

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

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

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

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

10 (b) Violation of the terms of the agreement shall be the only
11 grounds for termination;

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

15 (i) Written notice of alleged violations of the conditions of the
16 diversion program; and

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

19 (d) The hearing shall be conducted by the juvenile court and
20 shall include:

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

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

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

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

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

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

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

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

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

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

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

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

21 (12) When a juvenile enters into a diversion agreement, the
22 juvenile court may receive only the following information for
23 dispositional purposes:

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

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

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

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

29 (e) The facts of the alleged offense.

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

39 (14) A diversion unit may, in instances where it determines that
40 the act or omission of an act for which a juvenile has been referred

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

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

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

37 **Sec. 5.** RCW 13.50.270 and 2014 c 175 s 5 are each amended to
38 read as follows:

1 (1)(a) Subject to RCW 13.50.050(13), all records maintained by
2 any court or law enforcement agency, including the juvenile court,
3 local law enforcement, the Washington state patrol, and the
4 prosecutor's office, shall be automatically destroyed within ninety
5 days of becoming eligible for destruction. Juvenile records are
6 eligible for destruction when:

7 (i) The person who is the subject of the information or complaint
8 is at least eighteen years of age;

9 (ii) ~~The ((person's criminal history consists entirely of one~~
10 ~~diversion agreement or counsel and release entered on or after June~~
11 ~~12, 2008)) records in question consist of successfully completed~~
12 ~~diversion agreements and counsel and release agreements, or both,~~
13 ~~which were completed on or after the effective date of this section;~~
14 ~~and~~

15 ~~((Two years have elapsed since completion of the agreement~~
16 ~~or counsel and release;~~

17 ~~(iv) No proceeding is pending against the person seeking the~~
18 ~~conviction of a criminal offense; and~~

19 ~~(v)) There is no restitution owing in the case.~~

20 (b) Notwithstanding this subsection (1), records of successfully
21 completed diversion agreements and counsel and release agreements
22 remain subject to destruction under the terms set forth in
23 subsections (2) through (4) of this section, as well as sealing under
24 RCW 13.50.260.

25 (c) No less than quarterly, the administrative office of the
26 courts shall provide a report to the juvenile courts of those
27 individuals whose records may be eligible for destruction. The
28 juvenile court shall verify eligibility and notify the Washington
29 state patrol and the appropriate local law enforcement agency and
30 prosecutor's office of the records to be destroyed. The requirement
31 to destroy records under this subsection is not dependent on a court
32 hearing or the issuance of a court order to destroy records.

33 ~~((e))~~ (d) The state and local governments and their officers
34 and employees are not liable for civil damages for the failure to
35 destroy records pursuant to this section.

36 (2) All records maintained by any court or law enforcement
37 agency, including the juvenile court, local law enforcement, the
38 Washington state patrol, and the prosecutor's office, shall be
39 automatically destroyed within thirty days of being notified by the

1 governor's office that the subject of those records received a full
2 and unconditional pardon by the governor.

3 (3)(a) A person may request that the court order the records in
4 his or her case destroyed as follows:

5 (i) A person eighteen years of age or older whose criminal
6 history consists entirely of one diversion agreement or counsel and
7 release entered prior to June 12, 2008. The request shall be granted
8 if the court finds that two years have elapsed since completion of
9 the agreement or counsel and release.

10 (ii) A person twenty-three years of age or older whose criminal
11 history consists of only referrals for diversion. The request shall
12 be granted if the court finds that all diversion agreements have been
13 successfully completed and no proceeding is pending against the
14 person seeking the conviction of a criminal offense.

15 (b) If the court grants the motion to destroy records made
16 pursuant to this subsection, it shall, subject to RCW 13.50.050(13),
17 order the official juvenile court record, the social file, and any
18 other records named in the order to be destroyed.

19 (c) The person making the motion pursuant to this subsection must
20 give reasonable notice of the motion to the prosecuting attorney and
21 to any agency whose records are sought to be destroyed.

22 (4) Any juvenile justice or care agency may, subject to the
23 limitations in RCW 13.50.050(13) and this section, develop procedures
24 for the routine destruction of records relating to juvenile offenses
25 and diversions.

26 (a) Records may be routinely destroyed only when the person the
27 subject of the information or complaint has attained twenty-three
28 years of age or older or pursuant to subsection (1) of this section.

29 (b) The court may not routinely destroy the official juvenile
30 court record or recordings or transcripts of any proceedings.

31 NEW SECTION. **Sec. 6.** Section 2 of this act expires July 1,
32 2019.

33 NEW SECTION. **Sec. 7.** Section 3 of this act takes effect July 1,
34 2019.

Passed by the Senate February 12, 2018.
Passed by the House February 27, 2018.
Approved by the Governor March 15, 2018.

Filed in Office of Secretary of State March 16, 2018.

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