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1995 Regular Session

By Representatives Sherstad, Tokuda, Goldsmith, Blanton, Koster, Ballasiotes, Hymes and Costa

Read first time 02/21/95. Referred to Committee on Corrections.

1 AN ACT Relating to counseling for juvenile offenders and their
2 parents; and amending RCW 13.04.030 and 13.40.080.

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

4 **Sec. 1.** RCW 13.04.030 and 1994 sp.s. c 7 s 519 are each amended to
5 read as follows:

6 (1) Except as provided in subsection (2) of this section, the
7 juvenile courts in the several counties of this state, shall have
8 exclusive original jurisdiction over all proceedings:

9 (a) Under the interstate compact on placement of children as
10 provided in chapter 26.34 RCW;

11 (b) Relating to children alleged or found to be dependent as
12 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

13 (c) Relating to the termination of a parent and child relationship
14 as provided in RCW 13.34.180 through 13.34.210;

15 (d) To approve or disapprove alternative residential placement as
16 provided in RCW 13.32A.170;

17 (e) Relating to juveniles alleged or found to have committed
18 offenses, traffic infractions, or violations as provided in RCW
19 13.40.020 through 13.40.230, unless:

1 (i) The juvenile court transfers jurisdiction of a particular
2 juvenile to adult criminal court pursuant to RCW 13.40.110; or
3 (ii) The statute of limitations applicable to adult prosecution for
4 the offense, traffic infraction, or violation has expired; or
5 (iii) The alleged offense or infraction is a traffic, fish,
6 boating, or game offense or traffic infraction committed by a juvenile
7 sixteen years of age or older and would, if committed by an adult, be
8 tried or heard in a court of limited jurisdiction, in which instance
9 the appropriate court of limited jurisdiction shall have jurisdiction
10 over the alleged offense or infraction: PROVIDED, That if such an
11 alleged offense or infraction and an alleged offense or infraction
12 subject to juvenile court jurisdiction arise out of the same event or
13 incident, the juvenile court may have jurisdiction of both matters:
14 PROVIDED FURTHER, That the jurisdiction under this subsection does not
15 constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1)
16 or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited
17 jurisdiction which confine juveniles for an alleged offense or
18 infraction may place juveniles in juvenile detention facilities under
19 an agreement with the officials responsible for the administration of
20 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or
21 (iv) The juvenile is sixteen or seventeen years old and the alleged
22 offense is: (A) A serious violent offense as defined in RCW 9.94A.030
23 committed on or after June 13, 1994; or (B) a violent offense as
24 defined in RCW 9.94A.030 committed on or after June 13, 1994, and the
25 juvenile has a criminal history consisting of: (I) One or more prior
26 serious violent offenses; (II) two or more prior violent offenses; or
27 (III) three or more of any combination of the following offenses: Any
28 class A felony, any class B felony, vehicular assault, or manslaughter
29 in the second degree, all of which must have been committed after the
30 juvenile's thirteenth birthday and prosecuted separately. In such a
31 case the adult criminal court shall have exclusive original
32 jurisdiction.

33 If the juvenile challenges the state's determination of the
34 juvenile's criminal history, the state may establish the offender's
35 criminal history by a preponderance of the evidence. If the criminal
36 history consists of adjudications entered upon a plea of guilty, the
37 state shall not bear a burden of establishing the knowing and
38 voluntariness of the plea;

1 (f) Under the interstate compact on juveniles as provided in
2 chapter 13.24 RCW;

3 (g) Relating to termination of a diversion agreement under RCW
4 13.40.080, including a proceeding in which the divertee has attained
5 eighteen years of age; and

6 (h) Relating to court validation of a voluntary consent to foster
7 care placement under chapter 13.34 RCW, by the parent or Indian
8 custodian of an Indian child, except if the parent or Indian custodian
9 and child are residents of or domiciled within the boundaries of a
10 federally recognized Indian reservation over which the tribe exercises
11 exclusive jurisdiction.

12 (2) The family court shall have concurrent original jurisdiction
13 with the juvenile court over all proceedings under this section if the
14 superior court judges of a county authorize concurrent jurisdiction as
15 provided in RCW 26.12.010.

16 (3) A juvenile subject to adult superior court jurisdiction under
17 subsection (1)(e) (i) through (iv) of this section, who is detained
18 pending trial, may be detained in a county detention facility as
19 defined in RCW 13.40.020 pending sentencing or a dismissal.

20 (4) A parent, guardian, or custodian who has custody of any
21 juvenile described in subsection (1)(e) of this section, if the parent,
22 guardian, or custodian was served with summons, shall be subject to the
23 jurisdiction of the court for purposes of participating in diversion
24 agreements pursuant to RCW 13.40.080.

25 **Sec. 2.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended to
26 read as follows:

27 (1) A diversion agreement shall be a contract between a juvenile
28 accused of an offense and a diversionary unit whereby the juvenile
29 agrees to fulfill certain conditions in lieu of prosecution. Such
30 agreements may be entered into only after the prosecutor, or probation
31 counselor pursuant to this chapter, has determined that probable cause
32 exists to believe that a crime has been committed and that the juvenile
33 committed it. Such agreements shall be entered into as expeditiously
34 as possible.

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

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

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

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

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

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

26 (f) Requirements that the juvenile and the juvenile's parents,
27 guardians, or custodians attend and participate together in counseling
28 sessions.

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

38 (4) A diversion agreement may not exceed a period of six months and
39 may include a period extending beyond the eighteenth birthday of the

1 divertee. Any restitution assessed during its term may not exceed an
2 amount which the juvenile could be reasonably expected to pay during
3 this period. If additional time is necessary for the juvenile to
4 complete restitution to the victim, the time period limitations of this
5 subsection may be extended by an additional six months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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