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HOUSE BILL 2296

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State of Washington                      54th Legislature                      1996 Regular Session

By Representatives Thompson, Sterk, Beeksma, Pelesky and McMahan

Read first time 01/09/96. Referred to Committee on Law & Justice.

1            AN ACT Relating to parental supervision of children; amending RCW  
2 13.40.080 and 13.40.190; reenacting and amending RCW 13.04.030; adding  
3 a new section to chapter 9A.64 RCW; creating a new section; and  
4 prescribing penalties.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 9A.64 RCW  
7 to read as follows:

8            (1) A person commits the crime of failing to supervise a child if  
9 the person is the parent, lawful guardian, or other person lawfully  
10 charged with the care or custody of a child under fifteen years of age,  
11 fails to take reasonable steps to control the child's conduct, and the  
12 child:

13            (a) Commits an offense as defined by RCW 13.40.020 that brings the  
14 child within the jurisdiction of the juvenile court under chapter 13.40  
15 RCW; or

16            (b) Violates a curfew law of a county or other political  
17 subdivision.

18            "Fails to take reasonable steps to control the child's conduct"  
19 means that (i) the child has engaged in conduct within the same zone of

1 behavior as the offense or curfew violation the child committed when  
2 the person failed to supervise the child; (ii) the person knew that the  
3 child had engaged in that conduct; (iii) the person had the opportunity  
4 and knew of the necessity to control the child's conduct; and (iv) the  
5 person's failure to exercise reasonable care, supervision, protection,  
6 and control of the child was a gross departure from the conduct of a  
7 reasonable parent.

8 (2) Nothing in this section applies to an agency, as defined under  
9 RCW 74.15.020(3), that cares for children, expectant mothers, or the  
10 developmentally disabled. Nothing in this section applies to foster  
11 parents.

12 (3) A person may not be prosecuted for failing to supervise a child  
13 under subsection (1)(a) of this section, if the person:

14 (a) Is the victim of the offense; or

15 (b) Reported the offense to the appropriate authorities.

16 (4) If a person is convicted of failing to supervise a child and  
17 the person has not previously been convicted of failing to supervise a  
18 child, the court:

19 (a) Must warn the person of the penalty for future convictions of  
20 failing to supervise a child;

21 (b) Must order the person to pay restitution to the victim of any  
22 offense committed by a child that resulted in a charge against the  
23 person under this section. Restitution ordered under this subsection  
24 may not exceed two thousand five hundred dollars; and

25 (c) May suspend imposition of the fine, place the person on  
26 community supervision for a period up to one year, and order the person  
27 to complete either a parent effectiveness program approved by the  
28 court, or complete up to fifty community service hours, or both. Upon  
29 the person's completion of the parent effectiveness program or  
30 community service hours to the court's satisfaction, and payment of  
31 restitution, the court may discharge the person. If the person fails  
32 to complete the parent effectiveness program or the community service  
33 hours to the court's satisfaction, or pay restitution, the court may  
34 impose the fine authorized by this section.

35 (5) The court may not suspend a sentence under subsection (4)(c) of  
36 this section if the person has previously been convicted under this  
37 section.

38 (6) The juvenile court has jurisdiction over a person charged with  
39 failing to supervise a child.

1 (7) Failing to supervise a child is punishable by a fine of not  
2 more than one thousand dollars and supervision of up to one year but is  
3 not punishable by imprisonment.

4 (8) If the person willfully fails or refuses to pay the fine, the  
5 court may proceed against the person for contempt.

6 (9) Collection of restitution under this section shall not preclude  
7 the victim from pursuing other remedies available at law.

8 (10) Restitution collected under this section must be credited  
9 towards restitution the child is required to pay under a diversion  
10 agreement, disposition, or deferred adjudication under chapter 13.40  
11 RCW, unless the court does not order the child to make full restitution  
12 to the victim because the child lacks the ability to pay full  
13 restitution. In that case, only the amount paid under this section  
14 that exceeds the full amount of restitution due may be credited against  
15 the child's restitution obligation.

16 **Sec. 2.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15 are  
17 each reenacted and amended to read as follows:

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

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

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

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

27 (d) To approve or disapprove out-of-home placement as provided in  
28 RCW 13.32A.170;

29 (e) Relating to juveniles alleged or found to have committed  
30 offenses, traffic infractions, or violations as provided in RCW  
31 13.40.020 through 13.40.230, unless:

32 (i) The juvenile court transfers jurisdiction of a particular  
33 juvenile to adult criminal court pursuant to RCW 13.40.110; or

34 (ii) The statute of limitations applicable to adult prosecution for  
35 the offense, traffic infraction, or violation has expired; or

36 (iii) The alleged offense or infraction is a traffic, fish,  
37 boating, or game offense or traffic infraction committed by a juvenile  
38 sixteen years of age or older and would, if committed by an adult, be

1 tried or heard in a court of limited jurisdiction, in which instance  
2 the appropriate court of limited jurisdiction (~~shall have~~) has  
3 jurisdiction over the alleged offense or infraction(~~(:—PROVIDED,~~  
4 ~~That)~~). If (~~such~~) an alleged offense or infraction and an alleged  
5 offense or infraction subject to juvenile court jurisdiction arise out  
6 of the same event or incident, the juvenile court may have jurisdiction  
7 of both matters(~~(:—PROVIDED FURTHER, That)~~). The jurisdiction under  
8 this subsection does not constitute "transfer" or a "decline" for  
9 purposes of RCW 13.40.110(1) or (e)(i) of this subsection(~~(:—PROVIDED~~  
10 ~~FURTHER, That)~~). Courts of limited jurisdiction (~~which~~) that confine  
11 juveniles for an alleged offense or infraction may place juveniles in  
12 juvenile detention facilities under an agreement with the officials  
13 responsible for the administration of the juvenile detention facility  
14 in RCW 13.04.035 and 13.20.060; or

15 (iv) The juvenile is sixteen or seventeen years old and the alleged  
16 offense is: (A) A serious violent offense as defined in RCW 9.94A.030  
17 committed on or after June 13, 1994; or (B) a violent offense as  
18 defined in RCW 9.94A.030 committed on or after June 13, 1994, and the  
19 juvenile has a criminal history consisting of: (I) One or more prior  
20 serious violent offenses; (II) two or more prior violent offenses; or  
21 (III) three or more of any combination of the following offenses: Any  
22 class A felony, any class B felony, vehicular assault, or manslaughter  
23 in the second degree, all of which must have been committed after the  
24 juvenile's thirteenth birthday and prosecuted separately. In such a  
25 case the adult criminal court shall have exclusive original  
26 jurisdiction.

27 If the juvenile challenges the state's determination of the  
28 juvenile's criminal history, the state may establish the offender's  
29 criminal history by a preponderance of the evidence. If the criminal  
30 history consists of adjudications entered upon a plea of guilty, the  
31 state shall not bear a burden of establishing the knowing and  
32 voluntariness of the plea;

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

35 (g) Relating to termination of a diversion agreement under RCW  
36 13.40.080, including a proceeding in which the divertee has attained  
37 eighteen years of age;

38 (h) Relating to court validation of a voluntary consent to an out-  
39 of-home placement under chapter 13.34 RCW, by the parent or Indian

1 custodian of an Indian child, except if the parent or Indian custodian  
2 and child are residents of or domiciled within the boundaries of a  
3 federally recognized Indian reservation over which the tribe exercises  
4 exclusive jurisdiction; and

5 (i) Relating to petitions to compel disclosure of information filed  
6 by the department of social and health services (~~((pursuant to))~~) under  
7 RCW 74.13.042.

8 (2) The family court (~~((shall have))~~) has concurrent original  
9 jurisdiction with the juvenile court over all proceedings under this  
10 section if the superior court judges of a county authorize concurrent  
11 jurisdiction as provided in RCW 26.12.010.

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

16 (4) A parent, lawful guardian, or other person lawfully charged  
17 with the care and custody of a child under age fifteen is subject to  
18 the jurisdiction of the juvenile court under section 1 of this act.

19 **Sec. 3.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended to  
20 read as follows:

21 (1) A diversion agreement (~~((shall be))~~) is a contract between a  
22 juvenile accused of an offense and a diversionary unit whereby the  
23 juvenile agrees to fulfill certain conditions in lieu of prosecution.  
24 (~~((Such))~~) The agreements may be entered into only after the prosecutor,  
25 or probation counselor (~~((pursuant to))~~) under this chapter, has  
26 determined that probable cause exists to believe that a crime has been  
27 committed and that the juvenile committed it. (~~((Such))~~) The agreements  
28 (~~((shall))~~) must be entered into as expeditiously as possible.

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

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

33 (b) Restitution limited to the amount of actual loss incurred by  
34 the victim, and to an amount the juvenile has the means or potential  
35 means to pay. The diversion contract must specify the full amount of  
36 restitution due even if the juvenile does not have the means or  
37 potential to pay the full amount;

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

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

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

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

32 (4) A diversion agreement may not exceed a period of six months and  
33 may include a period extending beyond the eighteenth birthday of the  
34 diveree. Any restitution assessed during its term may not exceed an  
35 amount (~~which~~) that the juvenile could be reasonably expected to pay  
36 during this period. If additional time is necessary for the juvenile  
37 to complete restitution to the victim, the time period limitations of  
38 this subsection may be extended by an additional six months.

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

3 (6) Divertees and potential divertees shall be afforded due process  
4 in all contacts with a diversionary unit regardless of whether the  
5 juveniles are accepted for diversion or whether the diversion program  
6 is successfully completed. (~~Such~~) Due process (~~shall~~) includes,  
7 but is 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 without  
13 being given a court hearing, (~~which~~) and the hearing (~~shall~~) must  
14 be preceded 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 divertee;

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

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

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

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

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

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

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

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

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

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

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

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

11 The juvenile shall be advised that a diversion agreement shall  
12 constitute a part of the juvenile's criminal history as defined by RCW  
13 13.40.020(9). A signed acknowledgment of ((such)) the advisement shall  
14 be obtained from the juvenile, and the document shall be maintained by  
15 the diversionary unit together with the diversion agreement, and a copy  
16 of both documents shall be delivered to the prosecutor if requested by  
17 the prosecutor. The supreme court shall ((promulgate)) adopt rules  
18 setting forth the content of ((such)) the advisement in simple  
19 language.

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

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

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

38 (13) A diversionary unit may, in instances where it determines that  
39 the act or omission of an act for which a juvenile has been referred to

1 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))~~ the damage or loss, counsel and release or  
7 release such a juvenile without entering into a diversion agreement.  
8 A diversion unit's authority to counsel and release a juvenile under  
9 this subsection shall include the authority to refer the juvenile to  
10 community-based counseling or treatment programs. ~~((Any))~~ A juvenile  
11 released under this subsection shall be advised that the act or  
12 omission of any act for which he or she had been referred ~~((shall))~~  
13 constitutes a part of the juvenile's criminal history as defined by RCW  
14 13.40.020(9). A signed acknowledgment of ~~((such))~~ the advisement  
15 ~~((shall))~~ must 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))~~ adopt rules setting forth the  
19 content of ~~((such))~~ the advisement in simple language. A juvenile  
20 determined to be eligible by a diversionary unit for release as  
21 provided in this subsection ~~((shall))~~ retains the same right to counsel  
22 and right to have his or her case referred to the court for formal  
23 action as any other juvenile referred to the unit.

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

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

36 (16) Fines imposed under this section shall be collected and paid  
37 into the county general fund in accordance with procedures established  
38 by the juvenile court administrator under RCW 13.04.040 and may be used  
39 only for juvenile services. In the expenditure of funds for juvenile

1 services, there shall be a maintenance of effort whereby counties  
2 exhaust existing resources before using amounts collected under this  
3 section.

4 **Sec. 4.** RCW 13.40.190 and 1995 c 33 s 5 are each amended to read  
5 as follows:

6 (1) In its dispositional order, the court shall require the  
7 respondent to make restitution to any persons who have suffered loss or  
8 damage as a result of the offense committed by the respondent. In  
9 addition, restitution may be ordered for loss or damage if the offender  
10 pleads guilty to a lesser offense or fewer offenses and agrees with the  
11 prosecutor's recommendation that the offender be required to pay  
12 restitution to a victim of an offense or offenses (~~which, pursuant~~  
13 ~~to~~) that, under a plea agreement, are not prosecuted. The payment of  
14 restitution shall be in addition to any punishment (~~which~~) that is  
15 imposed (~~pursuant to~~) under the other provisions of this chapter.  
16 The court may determine the amount, terms, and conditions of the  
17 restitution including a payment plan extending up to ten years if the  
18 court determines that the respondent does not have the means to make  
19 full restitution over a shorter period. Restitution may include the  
20 costs of counseling reasonably related to the offense. If the  
21 respondent participated in the crime with another person or other  
22 persons, all (~~such~~) the participants (~~shall be~~) are jointly and  
23 severally responsible for the payment of restitution. For the purposes  
24 of this section, the respondent shall remain under the court's  
25 jurisdiction for a maximum term of ten years after the respondent's  
26 eighteenth birthday. The court may not require the respondent to pay  
27 full or partial restitution if the respondent reasonably satisfies the  
28 court that he or she does not have the means to make full or partial  
29 restitution and could not reasonably acquire the means to pay (~~such~~)  
30 the restitution over a ten-year period. In cases where an offender has  
31 been committed to the department for a period of confinement exceeding  
32 fifteen weeks, restitution may be waived. In all cases, the court must  
33 indicate the full amount of restitution due, and the amount, if any,  
34 the respondent is required to pay.

35 (2) Regardless of the provisions of subsection (1) of this section,  
36 the court shall order restitution in all cases where the victim is  
37 entitled to benefits under the crime victims' compensation act, chapter  
38 7.68 RCW. If the court does not order restitution and the victim of

1 the crime has been determined to be entitled to benefits under the  
2 crime victims' compensation act, the department of labor and  
3 industries, as administrator of the crime victims' compensation  
4 program, may petition the court within one year of entry of the  
5 disposition order for entry of a restitution order. Upon receipt of a  
6 petition from the department of labor and industries, the court shall  
7 hold a restitution hearing and shall enter a restitution order.

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

12 (4) Restitution received under section 1 of this act must be  
13 credited against the restitution the respondent is required to pay  
14 under the disposition, unless the court did not order the respondent to  
15 make full restitution. In that case, only the amount received under  
16 section 1 of this act that exceeds the full amount of restitution due  
17 should be credited against the respondent's restitution obligation.

18 (5) A respondent under obligation to pay restitution may petition  
19 the court for modification of the restitution order.

20 NEW SECTION. Sec. 5. This act applies to offenses and curfew  
21 violations committed by a juvenile on or after the effective date of  
22 this act.

23 NEW SECTION. Sec. 6. If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

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