

1 **HB 1096 - H AMD 015 ADOPTED 2-19-97**

2 By Representative Costa

3 On page 24, after line 6, insert:

4 "NEW SECTION. **Sec. 7.** A new section is added to chapter
5 13.40 RCW to read as follows:

6 If a juvenile is ordered to pay legal financial obligations,
7 including fines, penalty assessments, attorneys' fees, court costs,
8 and restitution, the money judgment remains enforceable for a
9 period of ten years. When the juvenile reaches the age of eighteen
10 years or at the conclusion of juvenile court jurisdiction,
11 whichever occurs later, the superior court clerk must docket the
12 remaining balance of the juvenile's legal financial obligations in
13 the same manner as other judgments for the payment of money. The
14 judgment remains valid and enforceable until ten years from the
15 date of its imposition. The clerk of the superior court may seek
16 extension of the judgment for legal financial obligations,
17 including crime victims' assessments, in the same manner as RCW
18 6.17.020 for purposes of collection as allowed under RCW 36.18.190.

19 **Sec. 8.** RCW 13.40.080 and 1996 c 124 s 1 are each amended to
20 read as follows:

21 (1) A diversion agreement shall be 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
24 prosecution. Such agreements may be entered into only after the
25 prosecutor, or probation counselor pursuant to this chapter, has
26 determined that probable cause exists to believe that a crime has
27 been committed and that the juvenile committed it. Such agreements
28 shall be entered into as expeditiously as possible.

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

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

1 (b) Restitution limited to the amount of actual loss incurred
2 by the victim;

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

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

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

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

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

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

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

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

29 (6) Divertees and potential diverttees shall be afforded due
30 process in all contacts with a diversionary unit regardless of
31 whether the juveniles are accepted for diversion or whether the
32 diversion program is successfully completed. Such due process
33 shall include, but not be limited to, the following:

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

36 (b) Violation of the terms of the agreement shall be the only
37 grounds for termination;

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

4 (i) Written notice of alleged violations of the conditions of
5 the diversion program; and

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

8 (d) The hearing shall be conducted by the juvenile court and
9 shall include:

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

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

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

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

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

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

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

24 (7) The diversion unit shall, subject to available funds, be
25 responsible for providing interpreters when juveniles need
26 interpreters to effectively communicate during diversion unit
27 hearings or negotiations.

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

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

32 (10) The right to counsel shall inure prior to the initial
33 interview for purposes of advising the juvenile as to whether he or
34 she desires to participate in the diversion process or to appear in
35 the juvenile court. The juvenile may be represented by counsel at
36 any critical stage of the diversion process, including intake
37 interviews and termination hearings. The juvenile shall be fully
38 advised at the intake of his or her right to an attorney and of the

1 relevant services an attorney can provide. For the purpose of this
2 section, intake interviews mean all interviews regarding the
3 diversion agreement process.

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

13 (11) When a juvenile enters into a diversion agreement, the
14 juvenile court may receive only the following information for
15 dispositional purposes:

- 16 (a) The fact that a charge or charges were made;
- 17 (b) The fact that a diversion agreement was entered into;
- 18 (c) The juvenile's obligations under such agreement;
- 19 (d) Whether the alleged offender performed his or her
20 obligations under such agreement; and
- 21 (e) The facts of the alleged offense.

22 (12) A diversionary unit may refuse to enter into a diversion
23 agreement with a juvenile. When a diversionary unit refuses to
24 enter a diversion agreement with a juvenile, it shall immediately
25 refer such juvenile to the court for action and shall forward to
26 the court the criminal complaint and a detailed statement of its
27 reasons for refusing to enter into a diversion agreement. The
28 diversionary unit shall also immediately refer the case to the
29 prosecuting attorney for action if such juvenile violates the terms
30 of the diversion agreement.

31 (13) A diversionary unit may, in instances where it determines
32 that the act or omission of an act for which a juvenile has been
33 referred to it involved no victim, or where it determines that the
34 juvenile referred to it has no prior criminal history and is
35 alleged to have committed an illegal act involving no threat of or
36 instance of actual physical harm and involving not more than fifty
37 dollars in property loss or damage and that there is no loss
38 outstanding to the person or firm suffering such damage or loss,

1 counsel and release or release such a juvenile without entering
2 into a diversion agreement. A diversion unit's authority to
3 counsel and release a juvenile under this subsection shall include
4 the authority to refer the juvenile to community-based counseling
5 or treatment programs. Any juvenile released under this subsection
6 shall be advised that the act or omission of any act for which he
7 or she had been referred shall constitute a part of the juvenile's
8 criminal history as defined by RCW 13.40.020(9). A signed
9 acknowledgment of such advisement shall be obtained from the
10 juvenile, and the document shall be maintained by the unit, and a
11 copy of the document shall be delivered to the prosecutor if
12 requested by the prosecutor. The supreme court shall promulgate
13 rules setting forth the content of such advisement in simple
14 language. A juvenile determined to be eligible by a diversionary
15 unit for release as provided in this subsection shall retain the
16 same right to counsel and right to have his or her case referred to
17 the court for formal action as any other juvenile referred to the
18 unit.

19 (14) A diversion unit may supervise the fulfillment of a
20 diversion agreement entered into before the juvenile's eighteenth
21 birthday and which includes a period extending beyond the
22 diverttee's eighteenth birthday.

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

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

1 **Sec. 9.** RCW 13.40.190 and 1996 c 124 s 2 are each amended to
2 read as follows:

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

31 (2) Regardless of the provisions of subsection (1) of this
32 section, the court shall order restitution in all cases where the
33 victim is entitled to benefits under the crime victims'
34 compensation act, chapter 7.68 RCW. If the court does not order
35 restitution and the victim of the crime has been determined to be
36 entitled to benefits under the crime victims' compensation act, the
37 department of labor and industries, as administrator of the crime
38 victims' compensation program, may petition the court within one

1 year of entry of the disposition order for entry of a restitution
2 order. Upon receipt of a petition from the department of labor and
3 industries, the court shall hold a restitution hearing and shall
4 enter a restitution order.

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

10 (4) A respondent under obligation to pay restitution may
11 petition the court for modification of the restitution order."

EFFECT: The ability of the court clerk to seek the extension of a judgment for all legal financial obligations imposed on a juvenile offender is clarified by explicitly authorizing the extension and by amending current provisions regarding restitution obligations. Currently the bill only amends a provision of the juvenile code relating to a judgment for court costs or the costs of publicly-funded counsel.