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**ENGROSSED SUBSTITUTE SENATE BILL 6550**

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**State of Washington 65th Legislature 2018 Regular Session**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that ((~~must or~~)) may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

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

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

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

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

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

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

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

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

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

For the purposes of this chapter:

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

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

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

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

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

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

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

(a) Community-based sanctions;

(b) Community-based rehabilitation;

(c) Monitoring and reporting requirements;

(d) Posting of a probation bond;

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

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

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

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

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

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

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

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

(6) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Physical restraint; or

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

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

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

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

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

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

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

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

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

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

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

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

For the purposes of this chapter:

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

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

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

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

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

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

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

(a) Community-based sanctions;

(b) Community-based rehabilitation;

(c) Monitoring and reporting requirements;

(d) Posting of a probation bond;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Physical restraint; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) In assessing periods of community restitution to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian. To the extent possible, the court officer shall advise the victims of the juvenile offender of the diversion process, offer victim impact letter forms and restitution claim forms, and involve members of the community. Such members of the community ((~~shall~~)) may meet with the juvenile and may advise the court officer as to the terms of the diversion agreement and ((~~shall~~)) may supervise the juvenile in carrying out its terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The facts of the alleged offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) All records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within thirty days of being notified by the governor's office that the subject of those records received a full and unconditional pardon by the governor.

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

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

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

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

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

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

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

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

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

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

**--- END ---**