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**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)

READ FIRST TIME 02/02/18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ~~(d))~~ an alleged offender has been referred by a diversion unit  
27 for prosecution or desires prosecution instead of diversion(~~(+ or~~

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

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

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

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

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

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

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

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

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

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

37 (12) Prosecutors and juvenile courts are encouraged to engage  
38 with and partner with community-based programs to expand, improve,  
39 and increase options to divert youth from formal processing in  
40 juvenile court. Nothing in this chapter should be read to limit

1 partnership with community-based programs to create diversion  
2 opportunities for juveniles.

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

5 For the purposes of this chapter:

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

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

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

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

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

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

34 (5) "Community supervision" means an order of disposition by the  
35 court of an adjudicated youth not committed to the department or an  
36 order granting a deferred disposition. A community supervision order  
37 for a single offense may be for a period of up to two years for a sex  
38 offense as defined by RCW 9.94A.030 and up to one year for other  
39 offenses. As a mandatory condition of any term of community

1 supervision, the court shall order the juvenile to refrain from  
2 committing new offenses. As a mandatory condition of community  
3 supervision, the court shall order the juvenile to comply with the  
4 mandatory school attendance provisions of chapter 28A.225 RCW and to  
5 inform the school of the existence of this requirement. Community  
6 supervision is an individualized program comprised of one or more of  
7 the following:

8 (a) Community-based sanctions;

9 (b) Community-based rehabilitation;

10 (c) Monitoring and reporting requirements;

11 (d) Posting of a probation bond;

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

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

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

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

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

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

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

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

34 (6) "Confinement" means physical custody by the department of  
35 social and health services in a facility operated by or pursuant to a  
36 contract with the state, or physical custody in a detention facility  
37 operated by or pursuant to a contract with any county. The county may  
38 operate or contract with vendors to operate county detention  
39 facilities. The department may operate or contract to operate  
40 detention facilities for juveniles committed to the department.

1 Pretrial confinement or confinement of less than thirty-one days  
2 imposed as part of a disposition or modification order may be served  
3 consecutively or intermittently, in the discretion of the court;

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

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

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

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

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

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

28 (11) "Diversion unit" means any probation counselor who enters  
29 into a diversion agreement with an alleged youthful offender, or any  
30 other person, community accountability board, youth court under the  
31 supervision of the juvenile court, or other entity (~~except a law~~  
32 ~~enforcement official or entity,~~) with whom the juvenile court  
33 administrator has contracted to arrange and supervise such agreements  
34 pursuant to RCW 13.40.080, or any person, community accountability  
35 board, or other entity specially funded by the legislature to arrange  
36 and supervise diversion agreements in accordance with the  
37 requirements of this chapter. For purposes of this subsection,  
38 "community accountability board" means a board comprised of members  
39 of the local community in which the juvenile offender resides. The  
40 superior court shall appoint the members. The boards shall consist of

1 at least three and not more than seven members. If possible, the  
2 board should include a variety of representatives from the community,  
3 such as a law enforcement officer, teacher or school administrator,  
4 high school student, parent, and business owner, and should represent  
5 the cultural diversity of the local community;

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

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

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

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

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

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

30 (18) "Local sanctions" means one or more of the following: (a)  
31 0-30 days of confinement; (b) 0-12 months of community supervision;  
32 (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

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

37 (20) "Monitoring and reporting requirements" means one or more of  
38 the following: Curfews; requirements to remain at home, school, work,  
39 or court-ordered treatment programs during specified hours;  
40 restrictions from leaving or entering specified geographical areas;

1 requirements to report to the probation officer as directed and to  
2 remain under the probation officer's supervision; and other  
3 conditions or limitations as the court may require which may not  
4 include confinement;

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

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

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

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

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

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

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

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

35 (26) "Restitution" means financial reimbursement by the offender  
36 to the victim, and shall be limited to easily ascertainable damages  
37 for injury to or loss of property, actual expenses incurred for  
38 medical treatment for physical injury to persons, lost wages  
39 resulting from physical injury, and costs of the victim's counseling  
40 reasonably related to the offense. Restitution shall not include

1 reimbursement for damages for mental anguish, pain and suffering, or  
2 other intangible losses. Nothing in this chapter shall limit or  
3 replace civil remedies or defenses available to the victim or  
4 offender;

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

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

14 (a) Physical restraint; or

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

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

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

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

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

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

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

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

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

11 (37) "Violent offense" means a violent offense as defined in RCW  
12 9.94A.030;

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

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

17 For the purposes of this chapter:

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

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

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

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

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

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

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

21 (a) Community-based sanctions;

22 (b) Community-based rehabilitation;

23 (c) Monitoring and reporting requirements;

24 (d) Posting of a probation bond;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (10) "Detention facility" means a county facility, paid for by  
38 the county, for the physical confinement of a juvenile alleged to  
39 have committed an offense or an adjudicated offender subject to a  
40 disposition or modification order. "Detention facility" includes

1 county group homes, inpatient substance abuse programs, juvenile  
2 basic training camps, and electronic monitoring;

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

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

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

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

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

38 (16) "Juvenile offender" means any juvenile who has been found by  
39 the juvenile court to have committed an offense, including a person

1 eight years of age or older over whom jurisdiction has been  
2 extended under RCW 13.40.300;

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

6 (18) "Local sanctions" means one or more of the following: (a)  
7 0-30 days of confinement; (b) 0-12 months of community supervision;  
8 (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

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

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

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

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

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

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

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

37 (23) "Postpartum recovery" means (a) the entire period a woman or  
38 youth is in the hospital, birthing center, or clinic after giving  
39 birth and (b) an additional time period, if any, a treating physician

1 determines is necessary for healing after the youth leaves the  
2 hospital, birthing center, or clinic;

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

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

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

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

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

31 (a) Physical restraint; or

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

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

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

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

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

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

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

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

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

26 (37) "Violent offense" means a violent offense as defined in RCW  
27 9.94A.030;

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

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

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

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

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

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

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

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

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

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

36 (4) In assessing periods of community restitution to be performed  
37 and restitution to be paid by a juvenile who has entered into a  
38 diversion agreement, the court officer to whom this task is assigned  
39 shall consult with the juvenile's custodial parent or parents or  
40 guardian. To the extent possible, the court officer shall advise the

1 victims of the juvenile offender of the diversion process, offer  
2 victim impact letter forms and restitution claim forms, and involve  
3 members of the community. Such members of the community (~~shall~~) may  
4 meet with the juvenile and may advise the court officer as to the  
5 terms of the diversion agreement and (~~shall~~) may supervise the  
6 juvenile in carrying out its terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (e) The prosecutor may file an information on the offense for  
27 which 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 (8) The diversion unit shall, subject to available funds, be  
33 responsible for providing interpreters when juveniles need  
34 interpreters to effectively communicate during diversion unit  
35 hearings or negotiations.

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

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

1 (11) The right to counsel shall inure prior to the initial  
2 interview for purposes of advising the juvenile as to whether he or  
3 she desires to participate in the diversion process or to appear in  
4 the 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  
8 services an attorney can provide. For the purpose of this section,  
9 intake interviews mean all interviews regarding the diversion  
10 agreement 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  
13 RCW 13.40.020(8). A signed acknowledgment of such advisement shall be  
14 obtained from the juvenile, and the document shall be maintained by  
15 the diversion unit together with the diversion agreement, and a copy  
16 of both documents shall be delivered to the prosecutor if requested  
17 by the prosecutor. The supreme court shall promulgate rules setting  
18 forth the content of such advisement in simple language.

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

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

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

37 (14) A diversion unit may, in instances where it determines that  
38 the act or omission of an act for which a juvenile has been referred  
39 to it involved no victim, or where it determines that the juvenile  
40 referred to it has no prior criminal history and is alleged to have

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

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

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

35 NEW SECTION. **Sec. 5.** Section 2 of this act expires July 1,  
36 2019.

1        NEW SECTION.   **Sec. 6.**   Section 3 of this act takes effect July 1,  
2   2019.

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