

2 SHB 2580 - S COMM AMD

3 By Committee on Human Services & Corrections

4 ADOPTED AS AMENDED 2/29/96

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended  
8 to read as follows:

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

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

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

21 (b) Restitution limited to the amount of actual loss incurred by  
22 the victim(~~(, and to an amount the juvenile has the means or potential~~  
23 ~~means to pay))~~);

24 (c) Attendance at up to ten hours of counseling and/or up to twenty  
25 hours of educational or informational sessions at a community agency.  
26 The educational or informational sessions may include sessions relating  
27 to respect for self, others, and authority; victim awareness;  
28 accountability; self-worth; responsibility; work ethics; good  
29 citizenship; and life skills. For purposes of this section, "community  
30 agency" may also mean a community-based nonprofit organization, if  
31 approved by the diversion unit. The state shall not be liable for  
32 costs resulting from the diversionary unit exercising the option to  
33 permit diversion agreements to mandate attendance at up to ten hours of  
34 counseling and/or up to twenty hours of educational or informational  
35 sessions;

1 (d) A fine, not to exceed one hundred dollars. In determining the  
2 amount of the fine, the diversion unit shall consider only the  
3 juvenile's financial resources and whether the juvenile has the means  
4 to pay the fine. The diversion unit shall not consider the financial  
5 resources of the juvenile's parents, guardian, or custodian in  
6 determining the fine to be imposed; and

7 (e) Requirements to remain during specified hours at home, school,  
8 or work, and restrictions on leaving or entering specified geographical  
9 areas.

10 (3) In assessing periods of community service to be performed and  
11 restitution to be paid by a juvenile who has entered into a diversion  
12 agreement, the court officer to whom this task is assigned shall  
13 consult with the juvenile's custodial parent or parents or guardian and  
14 victims who have contacted the diversionary unit and, to the extent  
15 possible, involve members of the community. Such members of the  
16 community shall meet with the juvenile and advise the court officer as  
17 to the terms of the diversion agreement and shall supervise the  
18 juvenile in carrying out its terms.

19 (4) (a) A diversion agreement may not exceed a period of six months  
20 and may include a period extending beyond the eighteenth birthday of  
21 the divertee. ~~((Any restitution assessed during its term may not  
22 exceed an amount which the juvenile could be reasonably expected to pay  
23 during this period.))~~

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

27 (c) If the juvenile has not paid the full amount of restitution by  
28 the end of the additional six-month period, then the juvenile shall be  
29 referred to the juvenile court for entry of an order establishing the  
30 amount of restitution still owed to the victim. In this order, the  
31 court shall also determine the terms and conditions of the restitution,  
32 including a payment plan extending up to ten years if the court  
33 determines that the juvenile does not have the means to make full  
34 restitution over a shorter period. For the purposes of this subsection  
35 (4)(c), the juvenile shall remain under the court's jurisdiction for a  
36 maximum term of ten years after the juvenile's eighteenth birthday.  
37 The court may not require the juvenile to pay full or partial  
38 restitution if the juvenile reasonably satisfies the court that he or  
39 she does not have the means to make full or partial restitution and

1 could not reasonably acquire the means to pay the restitution over a  
2 ten-year period. The county clerk shall make disbursements to victims  
3 named in the order. The restitution to victims named in the order  
4 shall be paid prior to any payment for other penalties or monetary  
5 assessments. A juvenile under obligation to pay restitution may  
6 petition the court for modification of the restitution order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (7) The diversion unit shall, subject to available funds, be  
38 responsible for providing interpreters when juveniles need interpreters

1 to effectively communicate during diversion unit hearings or  
2 negotiations.

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

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

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

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

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

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

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

1 immediately refer the case to the prosecuting attorney for action if  
2 such juvenile violates the terms of the diversion agreement.

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

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

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

1 (16) Fines imposed under this section shall be collected and paid  
2 into the county general fund in accordance with procedures established  
3 by the juvenile court administrator under RCW 13.04.040 and may be used  
4 only for juvenile services. In the expenditure of funds for juvenile  
5 services, there shall be a maintenance of effort whereby counties  
6 exhaust existing resources before using amounts collected under this  
7 section.

8 **Sec. 2.** RCW 13.40.190 and 1995 c 33 s 5 are each amended to read  
9 as follows:

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

36 (2) Regardless of the provisions of subsection (1) of this section,  
37 the court shall order restitution in all cases where the victim is  
38 entitled to benefits under the crime victims' compensation act, chapter

1 7.68 RCW. If the court does not order restitution and the victim of  
2 the crime has been determined to be entitled to benefits under the  
3 crime victims' compensation act, the department of labor and  
4 industries, as administrator of the crime victims' compensation  
5 program, may petition the court within one year of entry of the  
6 disposition order for entry of a restitution order. Upon receipt of a  
7 petition from the department of labor and industries, the court shall  
8 hold a restitution hearing and shall enter a restitution order.

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

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

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18 On page 1, line 1 of the title, after "restitution;" strike the  
19 remainder of the title and insert "and amending RCW 13.40.080 and  
20 13.40.190."

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