

2 SHB 2580 - S COMM AMD

3 By Committee on Human Services & Corrections

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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))~~ not to exceed seven hundred fifty dollars to be eligible  
24 for diversion;

25 (c) Attendance at up to ten hours of counseling and/or up to twenty  
26 hours of educational or informational sessions at a community agency.  
27 The educational or informational sessions may include sessions relating  
28 to respect for self, others, and authority; victim awareness;  
29 accountability; self-worth; responsibility; work ethics; good  
30 citizenship; and life skills. For purposes of this section, "community  
31 agency" may also mean a community-based nonprofit organization, if  
32 approved by the diversion unit. The state shall not be liable for  
33 costs resulting from the diversionary unit exercising the option to  
34 permit diversion agreements to mandate attendance at up to ten hours of  
35 counseling and/or up to twenty hours of educational or informational  
36 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 diversion agreement may not exceed a period of six months and  
20 may include a period extending beyond the eighteenth birthday of the  
21 divertee. Any restitution assessed during its term may not exceed ((an  
22 amount which the juvenile could be reasonably expected to pay during  
23 this period)) seven hundred fifty dollars. The diversion unit shall  
24 refer the case for prosecution if restitution for the offense will  
25 exceed seven hundred fifty dollars. If additional time is necessary  
26 for the juvenile to complete restitution to the victim, the time period  
27 limitations of this subsection may be extended by an additional six  
28 months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 The juvenile shall be advised that a diversion agreement shall  
39 constitute a part of the juvenile's criminal history as defined by RCW

1 13.40.020(9). A signed acknowledgment of such advisement shall be  
2 obtained from the juvenile, and the document shall be maintained by the  
3 diversionary unit together with the diversion agreement, and a copy of  
4 both documents shall be delivered to the prosecutor if requested by the  
5 prosecutor. The supreme court shall promulgate rules setting forth the  
6 content of such advisement in simple language.

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

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

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

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

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

15 (e) The facts of the alleged offense.

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

24 (13) A diversionary unit may, in instances where it determines that  
25 the act or omission of an act for which a juvenile has been referred to  
26 it involved no victim, or where it determines that the juvenile  
27 referred to it has no prior criminal history and is alleged to have  
28 committed an illegal act involving no threat of or instance of actual  
29 physical harm and involving not more than fifty dollars in property  
30 loss or damage and that there is no loss outstanding to the person or  
31 firm suffering such damage or loss, counsel and release or release such  
32 a juvenile without entering into a diversion agreement. A diversion  
33 unit's authority to counsel and release a juvenile under this  
34 subsection shall include the authority to refer the juvenile to  
35 community-based counseling or treatment programs. Any juvenile  
36 released under this subsection shall be advised that the act or  
37 omission of any act for which he or she had been referred shall  
38 constitute a part of the juvenile's criminal history as defined by RCW  
39 13.40.020(9). A signed acknowledgment of such advisement shall be

1 obtained from the juvenile, and the document shall be maintained by the  
2 unit, and a copy of the document shall be delivered to the prosecutor  
3 if requested by the prosecutor. The supreme court shall promulgate  
4 rules setting forth the content of such advisement in simple language.  
5 A juvenile determined to be eligible by a diversionary unit for release  
6 as provided in this subsection shall retain the same right to counsel  
7 and right to have his or her case referred to the court for formal  
8 action as any other juvenile referred to the unit.

9 (14) A diversion unit may supervise the fulfillment of a diversion  
10 agreement entered into before the juvenile's eighteenth birthday and  
11 which includes a period extending beyond the diverttee's eighteenth  
12 birthday.

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

21 (16) Fines imposed under this section shall be collected and paid  
22 into the county general fund in accordance with procedures established  
23 by the juvenile court administrator under RCW 13.04.040 and may be used  
24 only for juvenile services. In the expenditure of funds for juvenile  
25 services, there shall be a maintenance of effort whereby counties  
26 exhaust existing resources before using amounts collected under this  
27 section."

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31 On page 1, line 1 of the title, after "restitution;" strike the  
32 remainder of the title and insert "and amending RCW 13.40.080."

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