
ENGROSSED SUBSTITUTE HOUSE BILL 1524

State of Washington

63rd Legislature

2013 Regular Session

By House Early Learning & Human Services (originally sponsored by Representatives Roberts, Clibborn, Goodman, Maxwell, Kagi, Orwall, Appleton, Ryu, Ormsby, Jinkins, Fey, and Bergquist)

READ FIRST TIME 02/20/13.

1 AN ACT Relating to juvenile mental health diversion and disposition
2 strategies; amending RCW 13.40.070, 13.40.080, and 13.40.127; adding a
3 new section to chapter 13.40 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the large number
6 of youth involved in the juvenile justice system with mental health
7 challenges is of significant concern. Access to effective treatment is
8 critical to the successful treatment of youth in the early stages of
9 their contact with the juvenile justice system. Such access may
10 prevent further involvement in the system after an initial contact or
11 assist a youth in avoiding any further contact with the juvenile
12 justice system altogether. There is growing evidence that mental
13 health diversion strategies, in particular, are effective in connecting
14 youth with needed treatment and preventing additional offending
15 behaviors. These strategies allow a continuum of opportunities for
16 connecting youth who may be facing a mental illness or disorder to
17 community mental health services at multiple decision points, such as
18 law enforcement diversion, prosecutor diversion, court-based diversion,
19 and court disposition. The effective use of these strategies can

1 result not only in significant cost savings for the juvenile justice
2 system, but can create the benefit of improved lives of the youth who
3 face mental health challenges and barriers.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.40 RCW
5 to read as follows:

6 (1) When a police officer has reasonable cause to believe that a
7 juvenile has committed acts constituting a nonfelony crime that is not
8 a serious offense as identified in RCW 10.77.092, and the officer
9 believes that the juvenile suffers from a mental disorder, and the
10 local prosecutor has entered into an agreement with law enforcement
11 regarding the detention of juveniles who may have a mental disorder,
12 the arresting officer, instead of taking the juvenile to the local
13 juvenile detention facility, may take the juvenile to:

14 (a) An evaluation and treatment facility as defined in RCW
15 71.34.020 if the facility has been identified as an alternative
16 location by agreement of the prosecutor, law enforcement, and the
17 mental health provider;

18 (b) A facility or program identified by agreement of the prosecutor
19 and law enforcement; or

20 (c) A location already identified and in use by law enforcement for
21 the purpose of mental health diversion.

22 (2) For the purposes of this section, an "alternative location"
23 means a facility or program that has the capacity to evaluate a youth
24 and, if determined to be appropriate, develop a behavioral health
25 intervention plan and initiate treatment.

26 (3) If a juvenile is taken to any location described in subsection
27 (1)(a) or (b) of this section, the juvenile may be held for up to
28 twelve hours and must be examined by a mental health professional
29 within three hours of arrival.

30 (4) The authority provided pursuant to this section is in addition
31 to existing authority under RCW 10.31.110.

32 **Sec. 3.** RCW 13.40.070 and 2010 c 289 s 7 are each amended to read
33 as follows:

34 (1) Complaints referred to the juvenile court alleging the
35 commission of an offense shall be referred directly to the prosecutor.

1 The prosecutor, upon receipt of a complaint, shall screen the complaint
2 to determine whether:

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

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

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

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

21 (4) An information shall be a plain, concise, and definite written
22 statement of the essential facts constituting the offense charged. It
23 shall be signed by the prosecuting attorney and conform to chapter
24 10.37 RCW.

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

28 (a) An alleged offender is accused of a class A felony, a class B
29 felony, an attempt to commit a class B felony, a class C felony listed
30 in RCW 9.94A.411(2) as a crime against persons or listed in RCW
31 9A.46.060 as a crime of harassment, or a class C felony that is a
32 violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

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

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

1 (d) An alleged offender has been referred by a diversion unit for
2 prosecution or desires prosecution instead of diversion; or

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

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

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

13 (7) Where a case is legally sufficient to charge an alleged
14 offender with either prostitution or prostitution loitering and the
15 alleged offense is the offender's first prostitution or prostitution
16 loitering offense, the prosecutor shall divert the case.

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

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

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

37 (11) The prosecutor, juvenile court probation counselor, or
38 diversion unit may, in exercising their authority under this section or

1 RCW 13.40.080, refer juveniles to mediation or victim offender
2 reconciliation programs. Such mediation or victim offender
3 reconciliation programs shall be voluntary for victims.

4 **Sec. 4.** RCW 13.40.080 and 2012 c 201 s 2 are each amended to read
5 as follows:

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

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

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

19 (b) Restitution limited to the amount of actual loss incurred by
20 any victim;

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

37 (d) A fine, not to exceed one hundred dollars;

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

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

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

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

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

24 (b) If additional time is necessary for the juvenile to complete
25 restitution to a victim, the time period limitations of this subsection
26 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 (5)(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 Prior to the expiration of the initial ten-year period, the juvenile
38 court may extend the judgment for restitution an additional ten years.

1 The court may relieve the juvenile of the requirement to pay full or
2 partial restitution if the juvenile reasonably satisfies the court that
3 he or she does not have the means to make full or partial restitution
4 and could not reasonably acquire the means to pay the restitution over
5 a ten-year period. If the court relieves the juvenile of the
6 requirement to pay full or partial restitution, the court may order an
7 amount of community restitution that the court deems appropriate. The
8 county clerk shall make disbursements to victims named in the order.
9 The restitution to victims named in the order shall be paid prior to
10 any payment for other penalties or monetary assessments. A juvenile
11 under obligation to pay restitution may petition the court for
12 modification of the restitution order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 The juvenile shall be advised that a diversion agreement shall
24 constitute a part of the juvenile's criminal history as defined by RCW
25 13.40.020(7). A signed acknowledgment of such advisement shall be
26 obtained from the juvenile, and the document shall be maintained by the
27 diversion unit together with the diversion agreement, and a copy of
28 both documents shall be delivered to the prosecutor if requested by the
29 prosecutor. The supreme court shall promulgate rules setting forth the
30 content of such advisement in simple language.

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

- 34 (a) The fact that a charge or charges were made;
- 35 (b) The fact that a diversion agreement was entered into;
- 36 (c) The juvenile's obligations under such agreement;
- 37 (d) Whether the alleged offender performed his or her obligations
38 under such agreement; and

1 (e) The facts of the alleged offense.

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

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

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

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

9 (17) Fines imposed under this section shall be collected and paid
10 into the county general fund in accordance with procedures established
11 by the juvenile court administrator under RCW 13.04.040 and may be used
12 only for juvenile services. In the expenditure of funds for juvenile
13 services, there shall be a maintenance of effort whereby counties
14 exhaust existing resources before using amounts collected under this
15 section.

16 **Sec. 5.** RCW 13.40.127 and 2012 c 177 s 1 are each amended to read
17 as follows:

18 (1) A juvenile is eligible for deferred disposition unless he or
19 she:

20 (a) Is charged with a sex or violent offense;

21 (b) Has a criminal history which includes any felony;

22 (c) Has a prior deferred disposition or deferred adjudication; or

23 (d) Has two or more adjudications.

24 (2) The juvenile court may, upon motion at least fourteen days
25 before commencement of trial and, after consulting the juvenile's
26 custodial parent or parents or guardian and with the consent of the
27 juvenile, continue the case for disposition for a period not to exceed
28 one year from the date the juvenile is found guilty. The court shall
29 consider whether the offender and the community will benefit from a
30 deferred disposition before deferring the disposition. The court may
31 waive the fourteen-day period anytime before the commencement of trial
32 for good cause.

33 (3) Any juvenile who agrees to a deferral of disposition shall:

34 (a) Stipulate to the admissibility of the facts contained in the
35 written police report;

36 (b) Acknowledge that the report will be entered and used to support

1 a finding of guilt and to impose a disposition if the juvenile fails to
2 comply with terms of supervision;

3 (c) Waive the following rights to: (i) A speedy disposition; and
4 (ii) call and confront witnesses; and

5 (d) Acknowledge the direct consequences of being found guilty and
6 the direct consequences that will happen if an order of disposition is
7 entered.

8 The adjudicatory hearing shall be limited to a reading of the
9 court's record.

10 (4) Following the stipulation, acknowledgment, waiver, and entry of
11 a finding or plea of guilt, the court shall defer entry of an order of
12 disposition of the juvenile.

13 (5) Any juvenile granted a deferral of disposition under this
14 section shall be placed under community supervision. The court may
15 impose any conditions of supervision that it deems appropriate
16 including posting a probation bond. Payment of restitution under RCW
17 13.40.190 shall be a condition of community supervision under this
18 section.

19 The court may require a juvenile offender convicted of animal
20 cruelty in the first degree to submit to a mental health evaluation to
21 determine if the offender would benefit from treatment and such
22 intervention would promote the safety of the community. After
23 consideration of the results of the evaluation, as a condition of
24 community supervision, the court may order the offender to attend
25 treatment to address issues pertinent to the offense.

26 The court may require the juvenile to undergo a mental health or
27 substance abuse assessment, or both. If the assessment identifies a
28 need for treatment, conditions of supervision may include treatment for
29 the assessed need that has been demonstrated to improve behavioral
30 health and reduce recidivism.

31 (6) A parent who signed for a probation bond has the right to
32 notify the counselor if the juvenile fails to comply with the bond or
33 conditions of supervision. The counselor shall notify the court and
34 surety of any failure to comply. A surety shall notify the court of
35 the juvenile's failure to comply with the probation bond. The state
36 shall bear the burden to prove, by a preponderance of the evidence,
37 that the juvenile has failed to comply with the terms of community
38 supervision.

1 (7)(a) Anytime prior to the conclusion of the period of
2 supervision, the prosecutor or the juvenile's juvenile court community
3 supervision counselor may file a motion with the court requesting the
4 court revoke the deferred disposition based on the juvenile's lack of
5 compliance or treat the juvenile's lack of compliance as a violation
6 pursuant to RCW 13.40.200.

7 (b) If the court finds the juvenile failed to comply with the terms
8 of the deferred disposition, the court may:

9 (i) Revoke the deferred disposition and enter an order of
10 disposition; or

11 (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

12 (8) At any time following deferral of disposition the court may,
13 following a hearing, continue supervision for an additional one-year
14 period for good cause.

15 (9)(a) At the conclusion of the period of supervision, the court
16 shall determine whether the juvenile is entitled to dismissal of the
17 deferred disposition only when the court finds:

18 (i) The deferred disposition has not been previously revoked;

19 (ii) The juvenile has completed the terms of supervision;

20 (iii) There are no pending motions concerning lack of compliance
21 pursuant to subsection (7) of this section; and

22 (iv) The juvenile has either paid the full amount of restitution,
23 or, made a good faith effort to pay the full amount of restitution
24 during the period of supervision.

25 (b) If the court finds the juvenile is entitled to dismissal of the
26 deferred disposition pursuant to (a) of this subsection, the juvenile's
27 conviction shall be vacated and the court shall dismiss the case with
28 prejudice, except that a conviction under RCW 16.52.205 shall not be
29 vacated. Whenever a case is dismissed with restitution still owing,
30 the court shall enter a restitution order pursuant to RCW 13.40.190 for
31 any unpaid restitution. Jurisdiction to enforce payment and modify
32 terms of the restitution order shall be the same as those set forth in
33 RCW 13.40.190.

34 (c) If the court finds the juvenile is not entitled to dismissal of
35 the deferred disposition pursuant to (a) of this subsection, the court
36 shall revoke the deferred disposition and enter an order of
37 disposition. A deferred disposition shall remain a conviction unless

1 the case is dismissed and the conviction is vacated pursuant to (b) of
2 this subsection or sealed pursuant to RCW 13.50.050.

3 (10)(a)(i) Any time the court vacates a conviction pursuant to
4 subsection (9) of this section, if the juvenile is eighteen years of
5 age or older and the full amount of restitution ordered has been paid,
6 the court shall enter a written order sealing the case.

7 (ii) Any time the court vacates a conviction pursuant to subsection
8 (9) of this section, if the juvenile is not eighteen years of age or
9 older and full restitution ordered has been paid, the court shall
10 schedule an administrative sealing hearing to take place no later than
11 thirty days after the respondent's eighteenth birthday, at which time
12 the court shall enter a written order sealing the case. The
13 respondent's presence at the administrative sealing hearing is not
14 required.

15 (iii) Any deferred disposition vacated prior to June 7, 2012, is
16 not subject to sealing under this subsection.

17 (b) Nothing in this subsection shall preclude a juvenile from
18 petitioning the court to have the records of his or her deferred
19 dispositions sealed under RCW 13.50.050 (11) and (12).

20 (c) Records sealed under this provision shall have the same legal
21 status as records sealed under RCW 13.50.050.

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