

---

**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 hours of counseling and/or up to twenty hours of educational or  
36 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 must include treatment  
29 for 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.

--- END ---