
SENATE BILL 6550

State of Washington

65th Legislature

2018 Regular Session

By Senators Darneille and Saldaña

Read first time 01/24/18. Referred to Committee on Human Services & Corrections.

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 subsections (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 (~~(7)~~) and (6)(~~(7) and (8)~~) of this section. If the prosecutor finds
3 that the requirements of subsection (1)(a) and (b) of this section
4 are not met, the prosecutor shall maintain a record, for one year, of
5 such decision and the reasons therefor. In lieu of filing an
6 information or diverting an offense a prosecutor may file a motion to
7 modify community supervision where such offense constitutes a
8 violation of 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 (~~(5) (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 for~~
27 ~~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 subsection(~~(5)~~
37 ~~and (8)~~) (6) of this section, a case under this subsection may also
38 be 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))~~ (6) Where a case is legally sufficient and ~~((falls))~~ does
10 not fall into ~~((neither))~~ subsection (5) ~~((nor-(6)))~~ of this section,
11 it may be filed or diverted. In deciding whether to file or divert an
12 offense under this section the prosecutor ~~((shall))~~ may be guided
13 ~~((only))~~ by the length, seriousness, and recency of the alleged
14 offender's criminal history and the circumstances surrounding the
15 commission of the alleged offense.

16 ~~((+9))~~ (7) Whenever a juvenile is placed in custody or, where
17 not placed in custody, referred to a diversion interview, the parent
18 or legal guardian of the juvenile shall be notified as soon as
19 possible concerning the allegation made against the juvenile and the
20 current status of the juvenile. Where a case involves victims of
21 crimes against persons or victims whose property has not been
22 recovered at the time a juvenile is referred to a diversion unit, the
23 victim shall be notified of the referral and informed how to contact
24 the unit.

25 ~~((+10))~~ (8) The responsibilities of the prosecutor under
26 subsections (1) through ~~((+9))~~ (7) of this section may be performed
27 by a juvenile court probation counselor for any complaint referred to
28 the court alleging the commission of an offense which would not be a
29 felony if committed by an adult, if the prosecutor has given
30 sufficient written notice to the juvenile court that the prosecutor
31 will not review such complaints.

32 ~~((+11))~~ (9) The prosecutor, juvenile court probation counselor,
33 or diversion unit may, in exercising their authority under this
34 section or RCW 13.40.080, refer juveniles to community-based
35 programs, restorative justice programs, mediation, or victim offender
36 reconciliation programs. Such mediation or victim offender
37 reconciliation programs shall be voluntary for victims.

38 (10) Prosecutors and juvenile courts are encouraged to engage
39 with and partner with community-based programs to expand, improve,
40 and increase options to divert youth from formal processing in

1 juvenile court. Nothing in this chapter should be read to limit
2 partnership with community-based programs to create diversion
3 opportunities for juveniles.

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

6 For the purposes of this chapter:

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

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

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

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

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

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

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

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

9 (a) Community-based sanctions;

10 (b) Community-based rehabilitation;

11 (c) Monitoring and reporting requirements;

12 (d) Posting of a probation bond;

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

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

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

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

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

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

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

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

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

1 detention facilities for juveniles committed to the department.
2 Pretrial confinement or confinement of less than thirty-one days
3 imposed as part of a disposition or modification order may be served
4 consecutively or intermittently, in the discretion of the court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 restrictions from leaving or entering specified geographical areas;
2 requirements to report to the probation officer as directed and to
3 remain under the probation officer's supervision; and other
4 conditions or limitations as the court may require which may not
5 include confinement;

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

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

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

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

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

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

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

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

36 (26) "Restitution" means financial reimbursement by the offender
37 to the victim, and shall be limited to easily ascertainable damages
38 for injury to or loss of property, actual expenses incurred for
39 medical treatment for physical injury to persons, lost wages
40 resulting from physical injury, and costs of the victim's counseling

1 reasonably related to the offense. Restitution shall not include
2 reimbursement for damages for mental anguish, pain and suffering, or
3 other intangible losses. Nothing in this chapter shall limit or
4 replace civil remedies or defenses available to the victim or
5 offender;

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

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

15 (a) Physical restraint; or

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

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

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

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

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

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

37 (34) "Surety" means an entity licensed under state insurance laws
38 or by the state department of licensing, to write corporate,
39 property, or probation bonds within the state, and justified and

1 approved by the superior court of the county having jurisdiction of
2 the case;

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

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

13 (37) "Violent offense" means a violent offense as defined in RCW
14 9.94A.030;

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

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

19 For the purposes of this chapter:

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

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

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

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

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

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

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

22 (a) Community-based sanctions;

23 (b) Community-based rehabilitation;

24 (c) Monitoring and reporting requirements;

25 (d) Posting of a probation bond;

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

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

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

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

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

39 (D) The child has been given the opportunity to engage in less
40 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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