
HOUSE BILL 2804

State of Washington

53rd Legislature

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By Representatives Morris, Long, Chappell, Johanson, Eide, Conway, Campbell, Wineberry, Brough, B. Thomas, Fuhrman, Talcott, Rayburn, Van Luven, Jones, Lemmon, Flemming, Casada, Silver, Basich, Moak, Quall, Karahalios, Springer and Mielke

Read first time 01/24/94. Referred to Committee on Corrections.

1 AN ACT Relating to juvenile offenders; amending RCW 13.40.080 and
2 13.04.040; creating a new section; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that an effective
5 juvenile justice system requires significant parental participation.
6 Requiring a parent to be a party to a child's diversion or community
7 supervision agreement will encourage parents to take additional
8 responsibility for the child's criminal behavior. Parental involvement
9 will aid the juvenile's rehabilitation, and will decrease the
10 likelihood of recidivism.

11 **Sec. 2.** RCW 13.40.080 and 1992 c 205 s 108 are each amended to
12 read as follows:

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

1 committed it. Such agreements shall be entered into as expeditiously
2 as possible. The juvenile's custodial parent or parents or legal
3 guardian shall be made parties to the diversion agreement.

4 (2) A diversion agreement shall be limited to:

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

7 (b) Restitution limited to the amount of actual loss incurred by
8 the victim, and to an amount the juvenile has the means or potential
9 means to pay;

10 (c) Attendance at up to ten hours of counseling and/or up to twenty
11 hours of educational or informational sessions at a community agency:
12 PROVIDED, That the state shall not be liable for costs resulting from
13 the diversionary unit exercising the option to permit diversion
14 agreements to mandate attendance at up to ten hours of counseling and/
15 or up to twenty hours of educational or informational sessions; and

16 (d) A fine, not to exceed one hundred dollars. In determining the
17 amount of the fine, the diversion unit shall consider only the
18 juvenile's financial resources and whether the juvenile has the means
19 to pay the fine. The diversion unit shall not consider the financial
20 resources of the juvenile's parents, guardian, or custodian in
21 determining the fine to be imposed.

22 (3) In assessing periods of community service to be performed and
23 restitution to be paid by a juvenile who has entered into a diversion
24 agreement, the court officer to whom this task is assigned shall
25 consult with victims who have contacted the diversionary unit and, to
26 the extent possible, involve members of the community. Such members of
27 the community shall meet with the juvenile and advise the court officer
28 as to the terms of the diversion agreement and shall supervise the
29 juvenile in carrying out its terms.

30 (4) A diversion agreement may not exceed a period of six months and
31 may include a period extending beyond the eighteenth birthday of the
32 diveree. Any restitution assessed during its term may not exceed an
33 amount which the juvenile could be reasonably expected to pay during
34 this period. If additional time is necessary for the juvenile to
35 complete restitution to the victim, the time period limitations of this
36 subsection may be extended by an additional six months.

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

1 (6) Divertees and potential divertees shall be afforded due process
2 in all contacts with a diversionary unit regardless of whether the
3 juveniles are accepted for diversion or whether the diversion program
4 is successfully completed. Such due process shall include, but not be
5 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 without
11 being given a court hearing, which hearing shall be preceded by:

12 (i) Written notice of alleged violations of the conditions of the
13 diversion program; and

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

15 (d) The hearing shall be conducted by the juvenile court and shall
16 include:

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

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

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

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

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

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

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

29 (7) The juvenile's custodial parent, parents, or legal guardian
30 shall be made parties to the diversion agreement.

31 (a) The diversion agreement shall contain the parent or guardian's
32 agreement to make reasonable efforts to:

33 (i) Ensure that the juvenile complies with the terms of the
34 diversion agreement;

35 (ii) Ensure that the juvenile attends all counseling or other
36 appointments required by the diversion agreement;

37 (iii) Ensure that the juvenile performs all community service
38 required by the diversion agreement; and

39 (iv) Prevent the juvenile from reoffending.

1 (b) A parent or guardian's willful failure to comply with his or
2 her portion of the diversion agreement constitutes contempt of court as
3 provided in chapter 7.21 RCW.

4 (i) The maximum term of imprisonment that may be imposed as a
5 punitive sanction for contempt of court under this section is
6 imprisonment for up to seven days.

7 (ii) If a parent found in contempt of court under this section
8 receives public moneys under Title 74 RCW, the portion of the parent's
9 grant related to the juvenile offender shall be terminated during the
10 time in which the parent is found in contempt.

11 (8) The diversion unit shall, subject to available funds, be
12 responsible for providing interpreters when juveniles need interpreters
13 to effectively communicate during diversion unit hearings or
14 negotiations.

15 ~~((+8))~~ (9) The diversion unit shall be responsible for advising a
16 divertee of his or her rights as provided in this chapter.

17 ~~((+9))~~ (10) The diversion unit may refer a juvenile to community-
18 based counseling or treatment programs.

19 ~~((+10))~~ (11) The right to counsel shall inure prior to the initial
20 interview for purposes of advising the juvenile as to whether he or she
21 desires to participate in the diversion process or to appear in the
22 juvenile court. The juvenile may be represented by counsel at any
23 critical stage of the diversion process, including intake interviews
24 and termination hearings. The juvenile shall be fully advised at the
25 intake of his or her right to an attorney and of the relevant services
26 an attorney can provide. For the purpose of this section, intake
27 interviews mean all interviews regarding the diversion agreement
28 process.

29 The juvenile shall be advised that a diversion agreement shall
30 constitute a part of the juvenile's criminal history as defined by RCW
31 13.40.020(9) as now or hereafter amended. A signed acknowledgment of
32 such advisement shall be obtained from the juvenile, and the document
33 shall be maintained by the diversionary unit together with the
34 diversion agreement, and a copy of both documents shall be delivered to
35 the prosecutor if requested by the prosecutor. The supreme court shall
36 promulgate rules setting forth the content of such advisement in simple
37 language.

1 (~~(11)~~) (12) When a juvenile enters into a diversion agreement,
2 the juvenile court may receive only the following information for
3 dispositional purposes:

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

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

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

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

9 (e) The facts of the alleged offense.

10 (~~(12)~~) (13) A diversionary unit may refuse to enter into a
11 diversion agreement with a juvenile. When a diversionary unit refuses
12 to enter a diversion agreement with a juvenile, it shall immediately
13 refer such juvenile to the court for action and shall forward to the
14 court the criminal complaint and a detailed statement of its reasons
15 for refusing to enter into a diversion agreement. The diversionary
16 unit shall also immediately refer the case to the prosecuting attorney
17 for action if such juvenile violates the terms of the diversion
18 agreement.

19 (~~(13)~~) (14) A diversionary unit may, in instances where it
20 determines that the act or omission of an act for which a juvenile has
21 been referred to it involved no victim, or where it determines that the
22 juvenile referred to it has no prior criminal history and is alleged to
23 have committed an illegal act involving no threat of or instance of
24 actual physical harm and involving not more than fifty dollars in
25 property loss or damage and that there is no loss outstanding to the
26 person or firm suffering such damage or loss, counsel and release or
27 release such a juvenile without entering into a diversion agreement.
28 A diversion unit's authority to counsel and release a juvenile under
29 this subsection shall include the authority to refer the juvenile to
30 community-based counseling or treatment programs. Any juvenile
31 released under this subsection shall be advised that the act or
32 omission of any act for which he or she had been referred shall
33 constitute a part of the juvenile's criminal history as defined by RCW
34 13.40.020(9) as now or hereafter amended. A signed acknowledgment of
35 such advisement shall be obtained from the juvenile, and the document
36 shall be maintained by the unit, and a copy of the document shall be
37 delivered to the prosecutor if requested by the prosecutor. The
38 supreme court shall promulgate rules setting forth the content of such
39 advisement in simple language. A juvenile determined to be eligible by

1 a diversionary unit for release as provided in this subsection shall
2 retain the same right to counsel and right to have his or her case
3 referred to the court for formal action as any other juvenile referred
4 to the unit.

5 ~~((14))~~ (15) A diversion unit may supervise the fulfillment of a
6 diversion agreement entered into before the juvenile's eighteenth
7 birthday and which includes a period extending beyond the diverttee's
8 eighteenth birthday.

9 ~~((15))~~ (16) If a fine required by a diversion agreement cannot
10 reasonably be paid due to a change of circumstance, the diversion
11 agreement may be modified at the request of the diverttee and with the
12 concurrence of the diversion unit to convert an unpaid fine into
13 community service. The modification of the diversion agreement shall
14 be in writing and signed by the diverttee and the diversion unit. The
15 number of hours of community service in lieu of a monetary penalty
16 shall be converted at the rate of the prevailing state minimum wage per
17 hour.

18 ~~((16))~~ (17) Fines imposed under this section, including fines
19 collected for contempt of court under subsection (7)(b) of this
20 section, shall be collected and paid into the county general fund in
21 accordance with procedures established by the juvenile court
22 administrator under RCW 13.04.040 and may be used only for juvenile
23 services. In the expenditure of funds for juvenile services, there
24 shall be a maintenance of effort whereby counties exhaust existing
25 resources before using amounts collected under this section.

26 **Sec. 3.** RCW 13.04.040 and 1983 c 191 s 14 are each amended to read
27 as follows:

28 The administrator shall, in any county or judicial district in the
29 state, appoint or designate one or more persons of good character to
30 serve as probation counselors during the pleasure of the administrator.
31 The probation counselor shall:

32 (1) Receive and examine referrals to the juvenile court for the
33 purpose of considering the filing of a petition or information pursuant
34 to RCW 13.34.040, 13.34.180, and 13.40.070 as now or hereafter amended,
35 and RCW 13.32A.150;

36 (2) Make recommendations to the court regarding the need for
37 continued detention or shelter care of a child unless otherwise
38 provided in this title;

1 (3) Arrange and supervise diversion agreements as provided in RCW
2 13.40.080, as now or hereafter amended, and ensure that the
3 requirements of such agreements are met except as otherwise provided in
4 this title;

5 (4) Prepare predisposition studies as required in RCW 13.34.120 and
6 13.40.130, as now or hereafter amended, and be present at the
7 disposition hearing to respond to questions regarding the
8 predisposition study: PROVIDED, That such duties shall be performed by
9 the department of social and health services for cases relating to
10 dependency or to the termination of a parent and child relationship
11 which is filed by the department of social and health services unless
12 otherwise ordered by the court; and

13 (5) Supervise court orders of disposition to ensure that all
14 requirements of the order are met.

15 All probation counselors shall possess all the powers conferred
16 upon sheriffs and police officers to serve process and make arrests of
17 juveniles under their supervision for the violation of any state law or
18 county or city ordinance.

19 The administrator may, in any county or judicial district in the
20 state, appoint one or more persons who shall have charge of detention
21 rooms or houses of detention.

22 The probation counselors and persons appointed to have charge of
23 detention facilities shall each receive compensation which shall be
24 fixed by the legislative authority of the county, or in cases of joint
25 counties, judicial districts of more than one county, or joint judicial
26 districts such sums as shall be agreed upon by the legislative
27 authorities of the counties affected, and such persons shall be paid as
28 other county officers are paid.

29 The administrator is hereby authorized, and to the extent possible
30 is encouraged to, contract with private agencies existing within the
31 community for the provision of services to youthful offenders and youth
32 who have entered into diversion agreements pursuant to RCW 13.40.080,
33 as now or hereafter amended.

34 The administrator shall establish procedures for the collection of
35 fines assessed under RCW 13.40.080 (2)(d) and (~~(+13+)~~) (14) and for the
36 payment of the fines into the county general fund.

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