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**SUBSTITUTE HOUSE BILL 1775**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** House Early Learning & Human Services (originally sponsored by Representatives Goodman and Kagi)

READ FIRST TIME 01/27/12.

1       AN ACT Relating to juvenile restorative justice programs; and  
2 amending RCW 13.40.020 and 13.40.080.

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

4       **Sec. 1.** RCW 13.40.020 and 2010 c 181 s 10 are each amended to read  
5 as follows:

6       For the purposes of this chapter:

7       (1) "Community-based rehabilitation" means one or more of the  
8 following: Employment; attendance of information classes; literacy  
9 classes; counseling, outpatient substance abuse treatment programs,  
10 outpatient mental health programs, anger management classes, education  
11 or outpatient treatment programs to prevent animal cruelty, or other  
12 services; or attendance at school or other educational programs  
13 appropriate for the juvenile as determined by the school district.  
14 Placement in community-based rehabilitation programs is subject to  
15 available funds;

16       (2) "Community-based sanctions" may include one or more of the  
17 following:

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

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

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

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

21 (a) Community-based sanctions;

22 (b) Community-based rehabilitation;

23 (c) Monitoring and reporting requirements;

24 (d) Posting of a probation bond;

25 (5) "Confinement" means physical custody by the department of  
26 social and health services in a facility operated by or pursuant to a  
27 contract with the state, or physical custody in a detention facility  
28 operated by or pursuant to a contract with any county. The county may  
29 operate or contract with vendors to operate county detention  
30 facilities. The department may operate or contract to operate  
31 detention facilities for juveniles committed to the department.  
32 Pretrial confinement or confinement of less than thirty-one days  
33 imposed as part of a disposition or modification order may be served  
34 consecutively or intermittently, in the discretion of the court;

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

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

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

5 (b) The criminal complaint was diverted by a prosecutor pursuant to  
6 the provisions of this chapter on agreement of the respondent and after  
7 an advisement to the respondent that the criminal complaint would be  
8 considered as part of the respondent's criminal history. A  
9 successfully completed deferred adjudication that was entered before  
10 July 1, 1998, or a deferred disposition shall not be considered part of  
11 the respondent's criminal history;

12 (8) "Department" means the department of social and health  
13 services;

14 (9) "Detention facility" means a county facility, paid for by the  
15 county, for the physical confinement of a juvenile alleged to have  
16 committed an offense or an adjudicated offender subject to a  
17 disposition or modification order. "Detention facility" includes  
18 county group homes, inpatient substance abuse programs, juvenile basic  
19 training camps, and electronic monitoring;

20 (10) "Diversion unit" means any probation counselor who enters into  
21 a diversion agreement with an alleged youthful offender, or any other  
22 person, community accountability board, youth court under the  
23 supervision of the juvenile court, or other entity except a law  
24 enforcement official or entity, with whom the juvenile court  
25 administrator has contracted to arrange and supervise such agreements  
26 pursuant to RCW 13.40.080, or any person, community accountability  
27 board, or other entity specially funded by the legislature to arrange  
28 and supervise diversion agreements in accordance with the requirements  
29 of this chapter. For purposes of this subsection, "community  
30 accountability board" means a board comprised of members of the local  
31 community in which the juvenile offender resides. The superior court  
32 shall appoint the members. The boards shall consist of at least three  
33 and not more than seven members. If possible, the board should include  
34 a variety of representatives from the community, such as a law  
35 enforcement officer, teacher or school administrator, high school  
36 student, parent, and business owner, and should represent the cultural  
37 diversity of the local community;

1 (11) "Foster care" means temporary physical care in a foster family  
2 home or group care facility as defined in RCW 74.15.020 and licensed by  
3 the department, or other legally authorized care;

4 (12) "Institution" means a juvenile facility established pursuant  
5 to chapters 72.05 and 72.16 through 72.20 RCW;

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

11 (14) "Juvenile," "youth," and "child" mean any individual who is  
12 under the chronological age of eighteen years and who has not been  
13 previously transferred to adult court pursuant to RCW 13.40.110, unless  
14 the individual was convicted of a lesser charge or acquitted of the  
15 charge for which he or she was previously transferred pursuant to RCW  
16 13.40.110 or who is not otherwise under adult court jurisdiction;

17 (15) "Juvenile offender" means any juvenile who has been found by  
18 the juvenile court to have committed an offense, including a person  
19 eighteen years of age or older over whom jurisdiction has been extended  
20 under RCW 13.40.300;

21 (16) "Labor" means the period of time before a birth during which  
22 contractions are of sufficient frequency, intensity, and duration to  
23 bring about effacement and progressive dilation of the cervix;

24 (17) "Local sanctions" means one or more of the following: (a) 0-  
25 30 days of confinement; (b) 0-12 months of community supervision; (c)  
26 0-150 hours of community restitution; or (d) \$0-\$500 fine;

27 (18) "Manifest injustice" means a disposition that would either  
28 impose an excessive penalty on the juvenile or would impose a serious,  
29 and clear danger to society in light of the purposes of this chapter;

30 (19) "Monitoring and reporting requirements" means one or more of  
31 the following: Curfews; requirements to remain at home, school, work,  
32 or court-ordered treatment programs during specified hours;  
33 restrictions from leaving or entering specified geographical areas;  
34 requirements to report to the probation officer as directed and to  
35 remain under the probation officer's supervision; and other conditions  
36 or limitations as the court may require which may not include  
37 confinement;

1 (20) "Offense" means an act designated a violation or a crime if  
2 committed by an adult under the law of this state, under any ordinance  
3 of any city or county of this state, under any federal law, or under  
4 the law of another state if the act occurred in that state;

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

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

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

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

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

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

29 (24) "Respondent" means a juvenile who is alleged or proven to have  
30 committed an offense;

31 (25) "Restitution" means financial reimbursement by the offender to  
32 the victim, and shall be limited to easily ascertainable damages for  
33 injury to or loss of property, actual expenses incurred for medical  
34 treatment for physical injury to persons, lost wages resulting from  
35 physical injury, and costs of the victim's counseling reasonably  
36 related to the offense. Restitution shall not include reimbursement  
37 for damages for mental anguish, pain and suffering, or other intangible

1 losses. Nothing in this chapter shall limit or replace civil remedies  
2 or defenses available to the victim or offender;

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

9 (27) "Restraints" means anything used to control the movement of a  
10 person's body or limbs and includes:

11 (a) Physical restraint; or

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

15 ((+27)) (28) "Secretary" means the secretary of the department of  
16 social and health services. "Assistant secretary" means the assistant  
17 secretary for juvenile rehabilitation for the department;

18 ((+28)) (29) "Services" means services which provide alternatives  
19 to incarceration for those juveniles who have pleaded or been  
20 adjudicated guilty of an offense or have signed a diversion agreement  
21 pursuant to this chapter;

22 ((+29)) (30) "Sex offense" means an offense defined as a sex  
23 offense in RCW 9.94A.030;

24 ((+30)) (31) "Sexual motivation" means that one of the purposes  
25 for which the respondent committed the offense was for the purpose of  
26 his or her sexual gratification;

27 ((+31)) (32) "Surety" means an entity licensed under state  
28 insurance laws or by the state department of licensing, to write  
29 corporate, property, or probation bonds within the state, and justified  
30 and approved by the superior court of the county having jurisdiction of  
31 the case;

32 ((+32)) (33) "Transportation" means the conveying, by any means,  
33 of an incarcerated pregnant youth from the institution or detention  
34 facility to another location from the moment she leaves the institution  
35 or detention facility to the time of arrival at the other location, and  
36 includes the escorting of the pregnant incarcerated youth from the  
37 institution or detention facility to a transport vehicle and from the  
38 vehicle to the other location;

1        ~~((33))~~ (34) "Violation" means an act or omission, which if  
2 committed by an adult, must be proven beyond a reasonable doubt, and is  
3 punishable by sanctions which do not include incarceration;

4        ~~((34))~~ (35) "Violent offense" means a violent offense as defined  
5 in RCW 9.94A.030;

6        ~~((35))~~ (36) "Youth court" means a diversion unit under the  
7 supervision of the juvenile court.

8        **Sec. 2.** RCW 13.40.080 and 2004 c 120 s 3 are each amended to read  
9 as follows:

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

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

20        (a) Community restitution not to exceed one hundred fifty hours,  
21 not to be performed during school hours if the juvenile is attending  
22 school;

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

25        (c) Attendance at up to ten hours of counseling and/or up to twenty  
26 hours of educational or informational sessions at a community agency.  
27 The educational or informational sessions may include sessions relating  
28 to respect for self, others, and authority; victim awareness;  
29 accountability; self-worth; responsibility; work ethics; good  
30 citizenship; literacy; and life skills. For purposes of this section,  
31 "community agency" may also mean a community-based nonprofit  
32 organization, if approved by the diversion unit. The state shall not  
33 be liable for costs resulting from the diversion unit exercising the  
34 option to permit diversion agreements to mandate attendance at up to  
35 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 diverttee 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 diverttee 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.

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