
SENATE BILL 5706

State of Washington

62nd Legislature

2011 Regular Session

By Senators Harper, Nelson, and Kline

Read first time 02/08/11. Referred to Committee on Human Services & Corrections.

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 designed to bring about acceptance of responsibility by offenders for
5 repairing the harm caused by their offense, through bringing together
6 the victim, the offender, their families, and relevant community
7 members.

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

10 (a) Physical restraint; or

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

14 ((+27)) (28) "Secretary" means the secretary of the department of
15 social and health services. "Assistant secretary" means the assistant
16 secretary for juvenile rehabilitation for the department;

17 ((+28)) (29) "Services" means services which provide alternatives
18 to incarceration for those juveniles who have pleaded or been
19 adjudicated guilty of an offense or have signed a diversion agreement
20 pursuant to this chapter;

21 ((+29)) (30) "Sex offense" means an offense defined as a sex
22 offense in RCW 9.94A.030;

23 ((+30)) (31) "Sexual motivation" means that one of the purposes
24 for which the respondent committed the offense was for the purpose of
25 his or her sexual gratification;

26 ((+31)) (32) "Surety" means an entity licensed under state
27 insurance laws or by the state department of licensing, to write
28 corporate, property, or probation bonds within the state, and justified
29 and approved by the superior court of the county having jurisdiction of
30 the case;

31 ((+32)) (33) "Transportation" means the conveying, by any means,
32 of an incarcerated pregnant youth from the institution or detention
33 facility to another location from the moment she leaves the institution
34 or detention facility to the time of arrival at the other location, and
35 includes the escorting of the pregnant incarcerated youth from the
36 institution or detention facility to a transport vehicle and from the
37 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 community-based
12 counseling or treatment programs.

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

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

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

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

1 (e) The facts of the alleged offense.

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

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

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

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

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

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