

2SHB 2627 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 03/06/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the large number
4 of individuals involved in the juvenile justice and criminal justice
5 systems with substance abuse challenges is of significant concern.
6 Access to effective treatment is critical to the successful treatment
7 of individuals in the early stages of their contact with the juvenile
8 justice and criminal justice systems. Such access may prevent further
9 involvement in the systems. The effective use of substance abuse
10 treatment options can result not only in significant cost savings for
11 the juvenile justice and criminal justice systems, but can benefit the
12 lives of individuals who face substance abuse challenges.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.31 RCW
14 to read as follows:

15 (1) A pilot program is established in Snohomish county for the
16 purpose of studying the effect of chemical dependency diversions as
17 described in this section.

18 (2) When a police officer has reasonable cause to believe that the
19 individual:

20 (a) Has committed acts constituting a nonfelony crime that is not
21 a serious offense as identified in RCW 9.41.010;

22 (b) Has not committed a possible violation of laws relating to
23 driving or being in physical control of a vehicle while under the
24 influence of intoxicating liquor or any drug under chapter 46.20 RCW;
25 and

26 (c) Is known by history or consultation with staff designated by
27 the county to suffer from a chemical dependency, as defined in RCW
28 70.96A.020, the arresting officer may:

1 (i) Take the individual to an approved chemical dependency
2 treatment provider for treatment. The individual must be examined by
3 a chemical dependency treatment provider within three hours of arrival;

4 (ii) Take the individual to an emergency medical service
5 customarily used for incapacitated persons, if no approved treatment
6 program is readily available. The individual must be examined by a
7 chemical dependency treatment provider within three hours of arrival;

8 (iii) Refer the individual to a chemical dependency professional
9 for initial detention and proceeding under chapter 70.96A RCW; or

10 (iv) Release the individual upon agreement to voluntary
11 participation in outpatient treatment.

12 (3) If the individual is released to the community, the chemical
13 dependency provider shall inform the arresting officer of the release
14 within a reasonable period of time after the release if the arresting
15 officer has specifically requested notification and provided contact
16 information to the provider.

17 (4) In deciding whether to refer the individual to treatment under
18 this section, the police officer shall be guided by standards mutually
19 agreed upon with the prosecuting authority, which address, at a
20 minimum, the length, seriousness, and recency of the known criminal
21 history of the individual, the mental health and substance abuse
22 history of the individual, where available, and the circumstances
23 surrounding the commission of the alleged offense.

24 (5) The police officer shall submit a written report to the
25 prosecuting attorney within ten days.

26 (6) Any agreement to participate in treatment shall not require
27 individuals to stipulate to any of the alleged facts regarding the
28 criminal activity as a prerequisite to participation in a chemical
29 dependency treatment alternative. The agreement is inadmissible in any
30 criminal or civil proceeding. The agreement does not create immunity
31 from prosecution for the alleged criminal activity.

32 (7) If an individual violates such agreement and the chemical
33 dependency treatment alternative is no longer appropriate, the chemical
34 dependency provider shall inform the referring law enforcement agency
35 of the violation.

36 (8) Nothing in this section may be construed as barring the
37 referral of charges to the prosecuting attorney, or the filing of
38 criminal charges by the prosecuting attorney.

1 (9) The police officer, staff designated by the county, or
2 treatment facility personnel are immune from liability for any good
3 faith conduct under this section.

4 NEW SECTION. **Sec. 3.** Snohomish county shall evaluate the effects
5 of the pilot program as provided in section 2 of this act. Snohomish
6 county shall submit a report to the legislature consistent with RCW
7 43.01.036. The report must summarize the effectiveness of the pilot
8 program and include: How often the chemical dependency diversion was
9 used, the kind of treatment the person engaged in, how often treatment
10 was completed, the number of prosecutions, any cost savings to the
11 county or state, any cost shifting from the county or state onto other
12 systems, and the recidivism rate of offenders involved in the pilot
13 program. The report may include any recommendations to the legislature
14 to improve the effectiveness of the pilot program. The report is due
15 July 1, 2015, and every other year until July 1, 2019.

16 **Sec. 4.** RCW 13.40.042 and 2013 c 179 s 2 are each amended to read
17 as follows:

18 (1) When a police officer has reasonable cause to believe that a
19 juvenile has committed acts constituting a nonfelony crime that is not
20 a serious offense as identified in RCW 10.77.092, and the officer
21 believes that the juvenile suffers from a mental disorder, and the
22 local prosecutor has entered into an agreement with law enforcement
23 regarding the detention of juveniles who may have a mental disorder or
24 may be suffering from chemical dependency, the arresting officer,
25 instead of taking the juvenile to the local juvenile detention
26 facility, may take the juvenile to:

27 (a) An evaluation and treatment facility as defined in RCW
28 71.34.020 if the juvenile suffers from a mental disorder and the
29 facility has been identified as an alternative location by agreement of
30 the prosecutor, law enforcement, and the mental health provider;

31 (b) A facility or program identified by agreement of the prosecutor
32 and law enforcement; or

33 (c) A location already identified and in use by law enforcement for
34 the purpose of ((~~mental~~)) a behavioral health diversion.

35 (2) For the purposes of this section, an "alternative location"

1 means a facility or program that has the capacity to evaluate a youth
2 and, if determined to be appropriate, develop a behavioral health
3 intervention plan and initiate treatment.

4 (3) If a juvenile is taken to any location described in subsection
5 (1)(a) or (b) of this section, the juvenile may be held for up to
6 twelve hours and must be examined by a mental health or chemical
7 dependency professional within three hours of arrival.

8 (4) The authority provided pursuant to this section is in addition
9 to existing authority under RCW 10.31.110 and section 2 of this act.

10 **Sec. 5.** RCW 13.40.080 and 2013 c 179 s 4 are each amended to read
11 as follows:

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

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

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

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

27 (c) Attendance at up to ten hours of counseling and/or up to twenty
28 hours of educational or informational sessions at a community agency.
29 The educational or informational sessions may include sessions relating
30 to respect for self, others, and authority; victim awareness;
31 accountability; self-worth; responsibility; work ethics; good
32 citizenship; literacy; and life skills. If an assessment identifies
33 mental health or chemical dependency needs, a youth may access up to
34 thirty hours of counseling. The counseling sessions may include
35 services demonstrated to improve behavioral health and reduce
36 recidivism. For purposes of this section, "community agency" may also
37 mean a community-based nonprofit organization, a physician, a

1 counselor, a school, or a treatment provider, if approved by the
2 diversion unit. The state shall not be liable for costs resulting from
3 the diversion unit exercising the option to permit diversion agreements
4 to mandate attendance at up to thirty hours of counseling and/or up to
5 twenty hours of educational or informational sessions;

6 (d) A fine, not to exceed one hundred dollars;

7 (e) Requirements to remain during specified hours at home, school,
8 or work, and restrictions on leaving or entering specified geographical
9 areas; and

10 (f) Upon request of any victim or witness, requirements to refrain
11 from any contact with victims or witnesses of offenses committed by the
12 juvenile.

13 (3) Notwithstanding the provisions of subsection (2) of this
14 section, youth courts are not limited to the conditions imposed by
15 subsection (2) of this section in imposing sanctions on juveniles
16 pursuant to RCW 13.40.630.

17 (4) In assessing periods of community restitution to be performed
18 and restitution to be paid by a juvenile who has entered into a
19 diversion agreement, the court officer to whom this task is assigned
20 shall consult with the juvenile's custodial parent or parents or
21 guardian. To the extent possible, the court officer shall advise the
22 victims of the juvenile offender of the diversion process, offer victim
23 impact letter forms and restitution claim forms, and involve members of
24 the community. Such members of the community shall meet with the
25 juvenile and advise the court officer as to the terms of the diversion
26 agreement and shall supervise the juvenile in carrying out its terms.

27 (5)(a) A diversion agreement may not exceed a period of six months
28 and may include a period extending beyond the eighteenth birthday of
29 the diverttee.

30 (b) If additional time is necessary for the juvenile to complete
31 restitution to a victim, the time period limitations of this subsection
32 may be extended by an additional six months.

33 (c) If the juvenile has not paid the full amount of restitution by
34 the end of the additional six-month period, then the juvenile shall be
35 referred to the juvenile court for entry of an order establishing the
36 amount of restitution still owed to the victim. In this order, the
37 court shall also determine the terms and conditions of the restitution,
38 including a payment plan extending up to ten years if the court

1 determines that the juvenile does not have the means to make full
2 restitution over a shorter period. For the purposes of this subsection
3 (5)(c), the juvenile shall remain under the court's jurisdiction for a
4 maximum term of ten years after the juvenile's eighteenth birthday.
5 Prior to the expiration of the initial ten-year period, the juvenile
6 court may extend the judgment for restitution an additional ten years.
7 The court may relieve the juvenile of the requirement to pay full or
8 partial restitution if the juvenile reasonably satisfies the court that
9 he or she does not have the means to make full or partial restitution
10 and could not reasonably acquire the means to pay the restitution over
11 a ten-year period. If the court relieves the juvenile of the
12 requirement to pay full or partial restitution, the court may order an
13 amount of community restitution that the court deems appropriate. The
14 county clerk shall make disbursements to victims named in the order.
15 The restitution to victims named in the order shall be paid prior to
16 any payment for other penalties or monetary assessments. A juvenile
17 under obligation to pay restitution may petition the court for
18 modification of the restitution order.

19 (6) The juvenile shall retain the right to be referred to the court
20 at any time prior to the signing of the diversion agreement.

21 (7) Divertees and potential divertees shall be afforded due process
22 in all contacts with a diversion unit regardless of whether the
23 juveniles are accepted for diversion or whether the diversion program
24 is successfully completed. Such due process shall include, but not be
25 limited to, the following:

26 (a) A written diversion agreement shall be executed stating all
27 conditions in clearly understandable language;

28 (b) Violation of the terms of the agreement shall be the only
29 grounds for termination;

30 (c) No diverttee may be terminated from a diversion program without
31 being given a court hearing, which hearing shall be preceded by:

32 (i) Written notice of alleged violations of the conditions of the
33 diversion program; and

34 (ii) Disclosure of all evidence to be offered against the diverttee;

35 (d) The hearing shall be conducted by the juvenile court and shall
36 include:

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

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

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

3 (iv) Demonstration by evidence that the divertee has substantially
4 violated the terms of his or her diversion agreement;

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

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

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

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

17 (10) The diversion unit may refer a juvenile to a restorative
18 justice program, community-based counseling, or treatment programs.

19 (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(7). A signed acknowledgment of such advisement shall be
32 obtained from the juvenile, and the document shall be maintained by the
33 diversion unit together with the diversion agreement, and a copy of
34 both documents shall be delivered to the prosecutor if requested by the
35 prosecutor. The supreme court shall promulgate rules setting forth the
36 content of such advisement in simple language.

37 (12) When a juvenile enters into a diversion agreement, the

1 juvenile court may receive only the following information for
2 dispositional purposes:

- 3 (a) The fact that a charge or charges were made;
- 4 (b) The fact that a diversion agreement was entered into;
- 5 (c) The juvenile's obligations under such agreement;
- 6 (d) Whether the alleged offender performed his or her obligations
7 under such agreement; and
- 8 (e) The facts of the alleged offense.

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

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

1 retain the same right to counsel and right to have his or her case
2 referred to the court for formal action as any other juvenile referred
3 to the unit.

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

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

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

23 NEW SECTION. **Sec. 6.** Sections 2 and 3 of this act expire July 31,
24 2019."

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By Committee on Human Services & Corrections

ADOPTED 03/06/2014

25 On page 1, line 2 of the title, after "dependency;" strike the
26 remainder of the title and insert "amending RCW 13.40.042 and
27 13.40.080; adding a new section to chapter 10.31 RCW; creating new
28 sections; and providing an expiration date."

EFFECT: The authority of police officers to detain certain arrested adults to a chemical dependency treatment alternative is restricted to a pilot program in Snohomish County for the purpose of studying the effect of chemical dependency diversions. The police officer must submit a written report to the prosecuting attorney within 10 days of the arrest. Snohomish County must evaluate the effects of the pilot program and submit a report to the Legislature every other year starting July 1, 2015. The report must track treatment completion, cost savings, and recidivism. The pilot program expires July 1, 2019.

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