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SECOND SUBSTITUTE HOUSE BILL 2627

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State of Washington                      63rd Legislature                      2014 Regular Session

By House Appropriations Subcommittee on Health & Human Services  
(originally sponsored by Representatives Roberts, Hayes, Moscoso,  
Robinson, and Freeman)

READ FIRST TIME 02/11/14.

1            AN ACT Relating to the arrest of individuals who suffer from  
2 chemical dependency; amending RCW 13.40.042 and 13.40.080; adding a new  
3 section to chapter 10.31 RCW; and creating a new section.

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

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

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

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

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

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

7 (c) Is known by history or consultation with staff designated by  
8 the county to suffer from a chemical dependency, as defined in RCW  
9 70.96A.020, the arresting officer may:

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

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

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

19 (iv) Release the individual upon agreement to voluntary  
20 participation in outpatient treatment.

21 (2) If the individual is released to the community, the chemical  
22 dependency provider shall inform the arresting officer of the release  
23 within a reasonable period of time after the release if the arresting  
24 officer has specifically requested notification and provided contact  
25 information to the provider.

26 (3) In deciding whether to refer the individual to treatment under  
27 this section, the police officer shall be guided by standards mutually  
28 agreed upon with the prosecuting authority, which address, at a  
29 minimum, the length, seriousness, and recency of the known criminal  
30 history of the individual, the mental health and substance abuse  
31 history of the individual, where available, and the circumstances  
32 surrounding the commission of the alleged offense.

33 (4) Any agreement to participate in treatment shall not require  
34 individuals to stipulate to any of the alleged facts regarding the  
35 criminal activity as a prerequisite to participation in a chemical  
36 dependency treatment alternative. The agreement is inadmissible in any  
37 criminal or civil proceeding. The agreement does not create immunity  
38 from prosecution for the alleged criminal activity.

1 (5) If an individual violates such agreement and the chemical  
2 dependency treatment alternative is no longer appropriate, the chemical  
3 dependency provider shall inform the referring law enforcement agency  
4 of the violation.

5 (6) Nothing in this section may be construed as barring the  
6 referral of charges to the prosecuting attorney, or the filing of  
7 criminal charges by the prosecuting attorney.

8 (7) Nothing in this section requires that the treatment options  
9 provided in this section be available. However, if these services are  
10 available and if an officer determines that it is appropriate to  
11 exercise his or her discretion guided by the standards provided in this  
12 section, an officer may use the options available in this section.

13 (8) The police officer, staff designated by the county, or  
14 treatment facility personnel are immune from liability for any good  
15 faith conduct under this section.

16 **Sec. 3.** 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"  
36 means a facility or program that has the capacity to evaluate a youth

1 and, if determined to be appropriate, develop a behavioral health  
2 intervention plan and initiate treatment.

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

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

12 **Sec. 4.** RCW 13.40.080 and 2013 c 179 s 4 are each amended to read  
13 as follows:

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

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

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

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

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

1 recidivism. For purposes of this section, "community agency" may also  
2 mean a community-based nonprofit organization, a physician, a  
3 counselor, a school, or a treatment provider, if approved by the  
4 diversion unit. The state shall not be liable for costs resulting from  
5 the diversion unit exercising the option to permit diversion agreements  
6 to mandate attendance at up to thirty hours of counseling and/or up to  
7 twenty hours of educational or informational sessions;

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

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

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

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

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

29 (5)(a) A diversion agreement may not exceed a period of six months  
30 and may include a period extending beyond the eighteenth birthday of  
31 the diveree.

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

35 (c) If the juvenile has not paid the full amount of restitution by  
36 the end of the additional six-month period, then the juvenile shall be  
37 referred to the juvenile court for entry of an order establishing the  
38 amount of restitution still owed to the victim. In this order, the

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

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

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

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

30 (b) Violation of the terms of the agreement shall be the only  
31 grounds for termination;

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

34 (i) Written notice of alleged violations of the conditions of the  
35 diversion program; and

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

37 (d) The hearing shall be conducted by the juvenile court and shall  
38 include:

1 (i) Opportunity to be heard in person and to present evidence;  
2 (ii) The right to confront and cross-examine all adverse witnesses;  
3 (iii) A written statement by the court as to the evidence relied on  
4 and the reasons for termination, should that be the decision; and

5 (iv) Demonstration by evidence that the diverttee has substantially  
6 violated the terms of his or her diversion agreement;

7 (e) The prosecutor may file an information on the offense for which  
8 the diverttee was diverted:

9 (i) In juvenile court if the diverttee is under eighteen years of  
10 age; or

11 (ii) In superior court or the appropriate court of limited  
12 jurisdiction if the diverttee is eighteen years of age or older.

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

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

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

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

31 The juvenile shall be advised that a diversion agreement shall  
32 constitute a part of the juvenile's criminal history as defined by RCW  
33 13.40.020(7). A signed acknowledgment of such advisement shall be  
34 obtained from the juvenile, and the document shall be maintained by the  
35 diversion unit together with the diversion agreement, and a copy of  
36 both documents shall be delivered to the prosecutor if requested by the  
37 prosecutor. The supreme court shall promulgate rules setting forth the  
38 content of such advisement in simple language.

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

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



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

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

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

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