

CERTIFICATION OF ENROLLMENT  
SECOND SUBSTITUTE HOUSE BILL 2627

63rd Legislature  
2014 Regular Session

Passed by the House March 11, 2014  
Yeas 97 Nays 1

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**Speaker of the House of Representatives**

Passed by the Senate March 6, 2014  
Yeas 47 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2627** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SECOND SUBSTITUTE HOUSE BILL 2627**

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AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

**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; creating new sections; and providing an  
4 expiration date.

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

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

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

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

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

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

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

12 (c) Is known by history or consultation with staff designated by  
13 the county to suffer from a chemical dependency, as defined in RCW  
14 70.96A.020, the arresting officer may:

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

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

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

24 (iv) Release the individual upon agreement to voluntary  
25 participation in outpatient treatment.

26 (3) If the individual is released to the community, the chemical  
27 dependency provider shall inform the arresting officer of the release  
28 within a reasonable period of time after the release if the arresting  
29 officer has specifically requested notification and provided contact  
30 information to the provider.

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

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

3 (6) Any agreement to participate in treatment shall not require  
4 individuals to stipulate to any of the alleged facts regarding the  
5 criminal activity as a prerequisite to participation in a chemical  
6 dependency treatment alternative. The agreement is inadmissible in any  
7 criminal or civil proceeding. The agreement does not create immunity  
8 from prosecution for the alleged criminal activity.

9 (7) If an individual violates such agreement and the chemical  
10 dependency treatment alternative is no longer appropriate, the chemical  
11 dependency provider shall inform the referring law enforcement agency  
12 of the violation.

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

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

19 NEW SECTION. **Sec. 3.** Snohomish county shall evaluate the effects  
20 of the pilot program as provided in section 2 of this act. Snohomish  
21 county shall submit a report to the legislature consistent with RCW  
22 43.01.036. The report must summarize the effectiveness of the pilot  
23 program and include: How often the chemical dependency diversion was  
24 used, the kind of treatment the person engaged in, how often treatment  
25 was completed, the number of prosecutions, any cost savings to the  
26 county or state, any cost shifting from the county or state onto other  
27 systems, and the recidivism rate of offenders involved in the pilot  
28 program. The report may include any recommendations to the legislature  
29 to improve the effectiveness of the pilot program. The report is due  
30 July 1, 2015, and every other year until July 1, 2019.

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

33 (1) When a police officer has reasonable cause to believe that a  
34 juvenile has committed acts constituting a nonfelony crime that is not  
35 a serious offense as identified in RCW 10.77.092, and the officer  
36 believes that the juvenile suffers from a mental disorder, and the

1 local prosecutor has entered into an agreement with law enforcement  
2 regarding the detention of juveniles who may have a mental disorder or  
3 may be suffering from chemical dependency, the arresting officer,  
4 instead of taking the juvenile to the local juvenile detention  
5 facility, may take the juvenile to:

6 (a) An evaluation and treatment facility as defined in RCW  
7 71.34.020 if the juvenile suffers from a mental disorder and the  
8 facility has been identified as an alternative location by agreement of  
9 the prosecutor, law enforcement, and the mental health provider;

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

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

14 (2) For the purposes of this section, an "alternative location"  
15 means a facility or program that has the capacity to evaluate a youth  
16 and, if determined to be appropriate, develop a behavioral health  
17 intervention plan and initiate treatment.

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

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

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

26 (1) A diversion agreement shall be a contract between a juvenile  
27 accused of an offense and a diversion unit whereby the juvenile agrees  
28 to fulfill certain conditions in lieu of prosecution. Such agreements  
29 may be entered into only after the prosecutor, or probation counselor  
30 pursuant to this chapter, has determined that probable cause exists to  
31 believe that a crime has been committed and that the juvenile committed  
32 it. Such agreements shall be entered into as expeditiously as  
33 possible.

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

36 (a) Community restitution not to exceed one hundred fifty hours,

1 not to be performed during school hours if the juvenile is attending  
2 school;

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

5 (c) Attendance at up to ten hours of counseling and/or up to twenty  
6 hours of educational or informational sessions at a community agency.  
7 The educational or informational sessions may include sessions relating  
8 to respect for self, others, and authority; victim awareness;  
9 accountability; self-worth; responsibility; work ethics; good  
10 citizenship; literacy; and life skills. If an assessment identifies  
11 mental health or chemical dependency needs, a youth may access up to  
12 thirty hours of counseling. The counseling sessions may include  
13 services demonstrated to improve behavioral health and reduce  
14 recidivism. For purposes of this section, "community agency" may also  
15 mean a community-based nonprofit organization, a physician, a  
16 counselor, a school, or a treatment provider, if approved by the  
17 diversion unit. The state shall not be liable for costs resulting from  
18 the diversion unit exercising the option to permit diversion agreements  
19 to mandate attendance at up to thirty hours of counseling and/or up to  
20 twenty hours of educational or informational sessions;

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

22 (e) Requirements to remain during specified hours at home, school,  
23 or work, and restrictions on leaving or entering specified geographical  
24 areas; and

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

28 (3) Notwithstanding the provisions of subsection (2) of this  
29 section, youth courts are not limited to the conditions imposed by  
30 subsection (2) of this section in imposing sanctions on juveniles  
31 pursuant to RCW 13.40.630.

32 (4) In assessing periods of community restitution to be performed  
33 and restitution to be paid by a juvenile who has entered into a  
34 diversion agreement, the court officer to whom this task is assigned  
35 shall consult with the juvenile's custodial parent or parents or  
36 guardian. To the extent possible, the court officer shall advise the  
37 victims of the juvenile offender of the diversion process, offer victim  
38 impact letter forms and restitution claim forms, and involve members of

1 the community. Such members of the community shall meet with the  
2 juvenile and advise the court officer as to the terms of the diversion  
3 agreement and shall supervise the juvenile in carrying out its terms.

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

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

10 (c) If the juvenile has not paid the full amount of restitution by  
11 the end of the additional six-month period, then the juvenile shall be  
12 referred to the juvenile court for entry of an order establishing the  
13 amount of restitution still owed to the victim. In this order, the  
14 court shall also determine the terms and conditions of the restitution,  
15 including a payment plan extending up to ten years if the court  
16 determines that the juvenile does not have the means to make full  
17 restitution over a shorter period. For the purposes of this subsection  
18 (5)(c), the juvenile shall remain under the court's jurisdiction for a  
19 maximum term of ten years after the juvenile's eighteenth birthday.  
20 Prior to the expiration of the initial ten-year period, the juvenile  
21 court may extend the judgment for restitution an additional ten years.  
22 The court may relieve the juvenile of the requirement to pay full or  
23 partial restitution if the juvenile reasonably satisfies the court that  
24 he or she does not have the means to make full or partial restitution  
25 and could not reasonably acquire the means to pay the restitution over  
26 a ten-year period. If the court relieves the juvenile of the  
27 requirement to pay full or partial restitution, the court may order an  
28 amount of community restitution that the court deems appropriate. The  
29 county clerk shall make disbursements to victims named in the order.  
30 The restitution to victims named in the order shall be paid prior to  
31 any payment for other penalties or monetary assessments. A juvenile  
32 under obligation to pay restitution may petition the court for  
33 modification of the restitution order.

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

36 (7) Diverttees and potential diverttees shall be afforded due process  
37 in all contacts with a diversion unit regardless of whether the

1 juveniles are accepted for diversion or whether the diversion program  
2 is successfully completed. Such due process shall include, but not be  
3 limited to, the following:

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

6 (b) Violation of the terms of the agreement shall be the only  
7 grounds for termination;

8 (c) No divertee may be terminated from a diversion program without  
9 being given a court hearing, which hearing shall be preceded by:

10 (i) Written notice of alleged violations of the conditions of the  
11 diversion program; and

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

13 (d) The hearing shall be conducted by the juvenile court and shall  
14 include:

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

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

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

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

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

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

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

27 (8) The diversion unit shall, subject to available funds, be  
28 responsible for providing interpreters when juveniles need interpreters  
29 to effectively communicate during diversion unit hearings or  
30 negotiations.

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

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

35 (11) The right to counsel shall inure prior to the initial  
36 interview for purposes of advising the juvenile as to whether he or she  
37 desires to participate in the diversion process or to appear in the  
38 juvenile court. The juvenile may be represented by counsel at any

1 critical stage of the diversion process, including intake interviews  
2 and termination hearings. The juvenile shall be fully advised at the  
3 intake of his or her right to an attorney and of the relevant services  
4 an attorney can provide. For the purpose of this section, intake  
5 interviews mean all interviews regarding the diversion agreement  
6 process.

7 The juvenile shall be advised that a diversion agreement shall  
8 constitute a part of the juvenile's criminal history as defined by RCW  
9 13.40.020(7). A signed acknowledgment of such advisement shall be  
10 obtained from the juvenile, and the document shall be maintained by the  
11 diversion unit together with the diversion agreement, and a copy of  
12 both documents shall be delivered to the prosecutor if requested by the  
13 prosecutor. The supreme court shall promulgate rules setting forth the  
14 content of such advisement in simple language.

15 (12) When a juvenile enters into a diversion agreement, the  
16 juvenile court may receive only the following information for  
17 dispositional purposes:

- 18 (a) The fact that a charge or charges were made;
- 19 (b) The fact that a diversion agreement was entered into;
- 20 (c) The juvenile's obligations under such agreement;
- 21 (d) Whether the alleged offender performed his or her obligations  
22 under such agreement; and
- 23 (e) The facts of the alleged offense.

24 (13) A diversion unit may refuse to enter into a diversion  
25 agreement with a juvenile. When a diversion unit refuses to enter a  
26 diversion agreement with a juvenile, it shall immediately refer such  
27 juvenile to the court for action and shall forward to the court the  
28 criminal complaint and a detailed statement of its reasons for refusing  
29 to enter into a diversion agreement. The diversion unit shall also  
30 immediately refer the case to the prosecuting attorney for action if  
31 such juvenile violates the terms of the diversion agreement.

32 (14) A diversion unit may, in instances where it determines that  
33 the act or omission of an act for which a juvenile has been referred to  
34 it involved no victim, or where it determines that the juvenile  
35 referred to it has no prior criminal history and is alleged to have  
36 committed an illegal act involving no threat of or instance of actual  
37 physical harm and involving not more than fifty dollars in property  
38 loss or damage and that there is no loss outstanding to the person or

1 firm suffering such damage or loss, counsel and release or release such  
2 a juvenile without entering into a diversion agreement. A diversion  
3 unit's authority to counsel and release a juvenile under this  
4 subsection includes the authority to refer the juvenile to community-  
5 based counseling or treatment programs or a restorative justice  
6 program. Any juvenile released under this subsection shall be advised  
7 that the act or omission of any act for which he or she had been  
8 referred shall constitute a part of the juvenile's criminal history as  
9 defined by RCW 13.40.020(7). A signed acknowledgment of such  
10 advisement shall be obtained from the juvenile, and the document shall  
11 be maintained by the unit, and a copy of the document shall be  
12 delivered to the prosecutor if requested by the prosecutor. The  
13 supreme court shall promulgate rules setting forth the content of such  
14 advisement in simple language. A juvenile determined to be eligible by  
15 a diversion unit for release as provided in this subsection shall  
16 retain the same right to counsel and right to have his or her case  
17 referred to the court for formal action as any other juvenile referred  
18 to the unit.

19 (15) A diversion unit may supervise the fulfillment of a diversion  
20 agreement entered into before the juvenile's eighteenth birthday and  
21 which includes a period extending beyond the diverttee's eighteenth  
22 birthday.

23 (16) If a fine required by a diversion agreement cannot reasonably  
24 be paid due to a change of circumstance, the diversion agreement may be  
25 modified at the request of the diverttee and with the concurrence of the  
26 diversion unit to convert an unpaid fine into community restitution.  
27 The modification of the diversion agreement shall be in writing and  
28 signed by the diverttee and the diversion unit. The number of hours of  
29 community restitution in lieu of a monetary penalty shall be converted  
30 at the rate of the prevailing state minimum wage per hour.

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

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

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