
SUBSTITUTE SENATE BILL 6345

State of Washington

63rd Legislature

2014 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators McCoy, Pearson, Chase, and Kohl-Welles)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to the creation of a pilot program in Snohomish
2 county for the arrest of individuals who suffer from chemical
3 dependency; amending RCW 13.40.042 and 13.40.080; adding a new section
4 to chapter 10.31 RCW; creating new sections; and providing an
5 expiration date.

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

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

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.31 RCW
18 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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