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SENATE BILL 6345

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State of Washington

63rd Legislature

2014 Regular Session

By Senators McCoy, Pearson, Chase, and Kohl-Welles

Read first time 01/22/14. Referred to Committee on Human Services & Corrections.

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

11 **Sec. 3.** RCW 13.40.042 and 2013 c 179 s 2 are each amended to read  
12 as follows:

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

22 (a) An evaluation and treatment facility as defined in RCW  
23 71.34.020 if the juvenile suffers from a mental disorder and the  
24 facility has been identified as an alternative location by agreement of  
25 the prosecutor, law enforcement, and the mental health provider;

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

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

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

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

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

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

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

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

15 (a) Community restitution not to exceed one hundred fifty hours,  
16 not to be performed during school hours if the juvenile is attending  
17 school;

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

20 (c) Attendance at up to ten hours of counseling and/or up to twenty  
21 hours of educational or informational sessions at a community agency.  
22 The educational or informational sessions may include sessions relating  
23 to respect for self, others, and authority; victim awareness;  
24 accountability; self-worth; responsibility; work ethics; good  
25 citizenship; literacy; and life skills. If an assessment identifies  
26 mental health or chemical dependency needs, a youth may access up to  
27 thirty hours of counseling. The counseling sessions may include  
28 services demonstrated to improve behavioral health and reduce  
29 recidivism. For purposes of this section, "community agency" may also  
30 mean a community-based nonprofit organization, a physician, a  
31 counselor, a school, or a treatment provider, if approved by the  
32 diversion unit. The state shall not be liable for costs resulting from  
33 the diversion unit exercising the option to permit diversion agreements  
34 to mandate attendance at up to thirty hours of counseling and/or up to  
35 twenty hours of educational or informational sessions;

36 (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 a restorative  
12 justice program, community-based 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 diverttee 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 diverttee 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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