
HOUSE BILL 2580

State of Washington

54th Legislature

1996 Regular Session

By Representatives Costa, Ballasiotes, Sheahan, Murray, Hickel, Cooke, Conway and Boldt

Read first time 01/15/96. Referred to Committee on Corrections.

1 AN ACT Relating to restitution; and amending RCW 13.40.080.

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

3 **Sec. 1.** RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended to
4 read as follows:

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

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

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

17 (b) Restitution limited to the amount of actual loss incurred by
18 the victim(~~(, and to an amount the juvenile has the means or potential~~
19 ~~means to pay));~~

1 (c) Attendance at up to ten hours of counseling and/or up to twenty
2 hours of educational or informational sessions at a community agency.
3 The educational or informational sessions may include sessions relating
4 to respect for self, others, and authority; victim awareness;
5 accountability; self-worth; responsibility; work ethics; good
6 citizenship; and life skills. For purposes of this section, "community
7 agency" may also mean a community-based nonprofit organization, if
8 approved by the diversion unit. The state shall not be liable for
9 costs resulting from the diversionary unit exercising the option to
10 permit diversion agreements to mandate attendance at up to ten hours of
11 counseling and/or up to twenty hours of educational or informational
12 sessions;

13 (d) A fine, not to exceed one hundred dollars. In determining the
14 amount of the fine, the diversion unit shall consider only the
15 juvenile's financial resources and whether the juvenile has the means
16 to pay the fine. The diversion unit shall not consider the financial
17 resources of the juvenile's parents, guardian, or custodian in
18 determining the fine to be imposed; and

19 (e) Requirements to remain during specified hours at home, school,
20 or work, and restrictions on leaving or entering specified geographical
21 areas.

22 (3) In assessing periods of community service to be performed (~~and~~
23 ~~restitution to be paid~~) by a juvenile who has entered into a diversion
24 agreement, the court officer to whom this task is assigned shall
25 consult with the juvenile's custodial parent or parents or guardian and
26 victims who have contacted the diversionary unit and, to the extent
27 possible, involve members of the community. Such members of the
28 community shall meet with the juvenile and advise the court officer as
29 to the terms of the diversion agreement and shall supervise the
30 juvenile in carrying out its terms.

31 (4) A diversion agreement may not exceed a period of six months and
32 may include a period extending beyond the eighteenth birthday of the
33 divertee. (~~Any restitution assessed during its term may not exceed an~~
34 ~~amount which the juvenile could be reasonably expected to pay during~~
35 ~~this period.~~) If additional time is necessary for the juvenile to
36 complete restitution to the victim, the time period limitations of this
37 subsection may be extended by an additional six months. If additional
38 time is needed to make restitution after the additional six months
39 extension, the remaining restitution may be collected by a collection

1 agency licensed under chapter 19.16 RCW, if the victim consents. The
2 collection agency may impose a reasonable collection fee, as provided
3 in chapter 19.16 RCW. The juvenile must bear the cost of the
4 collection fees.

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

7 (6) Divertees and potential divertees shall be afforded due process
8 in all contacts with a diversionary unit regardless of whether the
9 juveniles are accepted for diversion or whether the diversion program
10 is successfully completed. Such due process shall include, but not be
11 limited to, the following:

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

14 (b) Violation of the terms of the agreement shall be the only
15 grounds for termination;

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

18 (i) Written notice of alleged violations of the conditions of the
19 diversion program; and

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

21 (d) The hearing shall be conducted by the juvenile court and shall
22 include:

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

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

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

27 (iv) Demonstration by evidence that the diverttee has substantially
28 violated the terms of his or her diversion agreement.

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

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

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

35 (7) The diversion unit shall, subject to available funds, be
36 responsible for providing interpreters when juveniles need interpreters
37 to effectively communicate during diversion unit hearings or
38 negotiations.

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

3 (9) The diversion unit may refer a juvenile to community-based
4 counseling or treatment programs.

5 (10) The right to counsel shall inure prior to the initial
6 interview for purposes of advising the juvenile as to whether he or she
7 desires to participate in the diversion process or to appear in the
8 juvenile court. The juvenile may be represented by counsel at any
9 critical stage of the diversion process, including intake interviews
10 and termination hearings. The juvenile shall be fully advised at the
11 intake of his or her right to an attorney and of the relevant services
12 an attorney can provide. For the purpose of this section, intake
13 interviews mean all interviews regarding the diversion agreement
14 process.

15 The juvenile shall be advised that a diversion agreement shall
16 constitute a part of the juvenile's criminal history as defined by RCW
17 13.40.020(9). A signed acknowledgment of such advisement shall be
18 obtained from the juvenile, and the document shall be maintained by the
19 diversionary unit together with the diversion agreement, and a copy of
20 both documents shall be delivered to the prosecutor if requested by the
21 prosecutor. The supreme court shall promulgate rules setting forth the
22 content of such advisement in simple language.

23 (11) When a juvenile enters into a diversion agreement, the
24 juvenile court may receive only the following information for
25 dispositional purposes:

- 26 (a) The fact that a charge or charges were made;
- 27 (b) The fact that a diversion agreement was entered into;
- 28 (c) The juvenile's obligations under such agreement;
- 29 (d) Whether the alleged offender performed his or her obligations
30 under such agreement; and
- 31 (e) The facts of the alleged offense.

32 (12) A diversionary unit may refuse to enter into a diversion
33 agreement with a juvenile. When a diversionary unit refuses to enter
34 a diversion agreement with a juvenile, it shall immediately refer such
35 juvenile to the court for action and shall forward to the court the
36 criminal complaint and a detailed statement of its reasons for refusing
37 to enter into a diversion agreement. The diversionary unit shall also
38 immediately refer the case to the prosecuting attorney for action if
39 such juvenile violates the terms of the diversion agreement.

1 (13) A diversionary unit may, in instances where it determines that
2 the act or omission of an act for which a juvenile has been referred to
3 it involved no victim, or where it determines that the juvenile
4 referred to it has no prior criminal history and is alleged to have
5 committed an illegal act involving no threat of or instance of actual
6 physical harm and involving not more than fifty dollars in property
7 loss or damage and that there is no loss outstanding to the person or
8 firm suffering such damage or loss, counsel and release or release such
9 a juvenile without entering into a diversion agreement. A diversion
10 unit's authority to counsel and release a juvenile under this
11 subsection shall include the authority to refer the juvenile to
12 community-based counseling or treatment programs. Any juvenile
13 released under this subsection shall be advised that the act or
14 omission of any act for which he or she had been referred shall
15 constitute a part of the juvenile's criminal history as defined by RCW
16 13.40.020(9). A signed acknowledgment of such advisement shall be
17 obtained from the juvenile, and the document shall be maintained by the
18 unit, and a copy of the document shall be delivered to the prosecutor
19 if requested by the prosecutor. The supreme court shall promulgate
20 rules setting forth the content of such advisement in simple language.
21 A juvenile determined to be eligible by a diversionary unit for release
22 as provided in this subsection shall retain the same right to counsel
23 and right to have his or her case referred to the court for formal
24 action as any other juvenile referred to the unit.

25 (14) A diversion unit may supervise the fulfillment of a diversion
26 agreement entered into before the juvenile's eighteenth birthday and
27 which includes a period extending beyond the diverttee's eighteenth
28 birthday.

29 (15) If a fine required by a diversion agreement cannot reasonably
30 be paid due to a change of circumstance, the diversion agreement may be
31 modified at the request of the diverttee and with the concurrence of the
32 diversion unit to convert an unpaid fine into community service. The
33 modification of the diversion agreement shall be in writing and signed
34 by the diverttee and the diversion unit. The number of hours of
35 community service in lieu of a monetary penalty shall be converted at
36 the rate of the prevailing state minimum wage per hour.

37 (16) Fines imposed under this section shall be collected and paid
38 into the county general fund in accordance with procedures established
39 by the juvenile court administrator under RCW 13.04.040 and may be used

1 only for juvenile services. In the expenditure of funds for juvenile
2 services, there shall be a maintenance of effort whereby counties
3 exhaust existing resources before using amounts collected under this
4 section.

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