

EHB 1775 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 04/11/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.40.020 and 2010 c 181 s 10 are each amended to
4 read as follows:

5 For the purposes of this chapter:

6 (1) "Community-based rehabilitation" means one or more of the
7 following: Employment; attendance of information classes; literacy
8 classes; counseling, outpatient substance abuse treatment programs,
9 outpatient mental health programs, anger management classes, education
10 or outpatient treatment programs to prevent animal cruelty, or other
11 services; or attendance at school or other educational programs
12 appropriate for the juvenile as determined by the school district.
13 Placement in community-based rehabilitation programs is subject to
14 available funds;

15 (2) "Community-based sanctions" may include one or more of the
16 following:

17 (a) A fine, not to exceed five hundred dollars;

18 (b) Community restitution not to exceed one hundred fifty hours of
19 community restitution;

20 (3) "Community restitution" means compulsory service, without
21 compensation, performed for the benefit of the community by the
22 offender as punishment for committing an offense. Community
23 restitution may be performed through public or private organizations or
24 through work crews;

25 (4) "Community supervision" means an order of disposition by the
26 court of an adjudicated youth not committed to the department or an
27 order granting a deferred disposition. A community supervision order
28 for a single offense may be for a period of up to two years for a sex
29 offense as defined by RCW 9.94A.030 and up to one year for other
30 offenses. As a mandatory condition of any term of community

1 supervision, the court shall order the juvenile to refrain from
2 committing new offenses. As a mandatory condition of community
3 supervision, the court shall order the juvenile to comply with the
4 mandatory school attendance provisions of chapter 28A.225 RCW and to
5 inform the school of the existence of this requirement. Community
6 supervision is an individualized program comprised of one or more of
7 the following:

8 (a) Community-based sanctions;

9 (b) Community-based rehabilitation;

10 (c) Monitoring and reporting requirements;

11 (d) Posting of a probation bond;

12 (5) "Confinement" means physical custody by the department of
13 social and health services in a facility operated by or pursuant to a
14 contract with the state, or physical custody in a detention facility
15 operated by or pursuant to a contract with any county. The county may
16 operate or contract with vendors to operate county detention
17 facilities. The department may operate or contract to operate
18 detention facilities for juveniles committed to the department.
19 Pretrial confinement or confinement of less than thirty-one days
20 imposed as part of a disposition or modification order may be served
21 consecutively or intermittently, in the discretion of the court;

22 (6) "Court," when used without further qualification, means the
23 juvenile court judge(s) or commissioner(s);

24 (7) "Criminal history" includes all criminal complaints against the
25 respondent for which, prior to the commission of a current offense:

26 (a) The allegations were found correct by a court. If a respondent
27 is convicted of two or more charges arising out of the same course of
28 conduct, only the highest charge from among these shall count as an
29 offense for the purposes of this chapter; or

30 (b) The criminal complaint was diverted by a prosecutor pursuant to
31 the provisions of this chapter on agreement of the respondent and after
32 an advisement to the respondent that the criminal complaint would be
33 considered as part of the respondent's criminal history. A
34 successfully completed deferred adjudication that was entered before
35 July 1, 1998, or a deferred disposition shall not be considered part of
36 the respondent's criminal history;

37 (8) "Department" means the department of social and health
38 services;

1 (9) "Detention facility" means a county facility, paid for by the
2 county, for the physical confinement of a juvenile alleged to have
3 committed an offense or an adjudicated offender subject to a
4 disposition or modification order. "Detention facility" includes
5 county group homes, inpatient substance abuse programs, juvenile basic
6 training camps, and electronic monitoring;

7 (10) "Diversion unit" means any probation counselor who enters into
8 a diversion agreement with an alleged youthful offender, or any other
9 person, community accountability board, youth court under the
10 supervision of the juvenile court, or other entity except a law
11 enforcement official or entity, with whom the juvenile court
12 administrator has contracted to arrange and supervise such agreements
13 pursuant to RCW 13.40.080, or any person, community accountability
14 board, or other entity specially funded by the legislature to arrange
15 and supervise diversion agreements in accordance with the requirements
16 of this chapter. For purposes of this subsection, "community
17 accountability board" means a board comprised of members of the local
18 community in which the juvenile offender resides. The superior court
19 shall appoint the members. The boards shall consist of at least three
20 and not more than seven members. If possible, the board should include
21 a variety of representatives from the community, such as a law
22 enforcement officer, teacher or school administrator, high school
23 student, parent, and business owner, and should represent the cultural
24 diversity of the local community;

25 (11) "Foster care" means temporary physical care in a foster family
26 home or group care facility as defined in RCW 74.15.020 and licensed by
27 the department, or other legally authorized care;

28 (12) "Institution" means a juvenile facility established pursuant
29 to chapters 72.05 and 72.16 through 72.20 RCW;

30 (13) "Intensive supervision program" means a parole program that
31 requires intensive supervision and monitoring, offers an array of
32 individualized treatment and transitional services, and emphasizes
33 community involvement and support in order to reduce the likelihood a
34 juvenile offender will commit further offenses;

35 (14) "Juvenile," "youth," and "child" mean any individual who is
36 under the chronological age of eighteen years and who has not been
37 previously transferred to adult court pursuant to RCW 13.40.110, unless

1 the individual was convicted of a lesser charge or acquitted of the
2 charge for which he or she was previously transferred pursuant to RCW
3 13.40.110 or who is not otherwise under adult court jurisdiction;

4 (15) "Juvenile offender" means any juvenile who has been found by
5 the juvenile court to have committed an offense, including a person
6 eighteen years of age or older over whom jurisdiction has been extended
7 under RCW 13.40.300;

8 (16) "Labor" means the period of time before a birth during which
9 contractions are of sufficient frequency, intensity, and duration to
10 bring about effacement and progressive dilation of the cervix;

11 (17) "Local sanctions" means one or more of the following: (a) 0-
12 30 days of confinement; (b) 0-12 months of community supervision; (c)
13 0-150 hours of community restitution; or (d) \$0-\$500 fine;

14 (18) "Manifest injustice" means a disposition that would either
15 impose an excessive penalty on the juvenile or would impose a serious,
16 and clear danger to society in light of the purposes of this chapter;

17 (19) "Monitoring and reporting requirements" means one or more of
18 the following: Curfews; requirements to remain at home, school, work,
19 or court-ordered treatment programs during specified hours;
20 restrictions from leaving or entering specified geographical areas;
21 requirements to report to the probation officer as directed and to
22 remain under the probation officer's supervision; and other conditions
23 or limitations as the court may require which may not include
24 confinement;

25 (20) "Offense" means an act designated a violation or a crime if
26 committed by an adult under the law of this state, under any ordinance
27 of any city or county of this state, under any federal law, or under
28 the law of another state if the act occurred in that state;

29 (21) "Physical restraint" means the use of any bodily force or
30 physical intervention to control a juvenile offender or limit a
31 juvenile offender's freedom of movement in a way that does not involve
32 a mechanical restraint. Physical restraint does not include momentary
33 periods of minimal physical restriction by direct person-to-person
34 contact, without the aid of mechanical restraint, accomplished with
35 limited force and designed to:

36 (a) Prevent a juvenile offender from completing an act that would
37 result in potential bodily harm to self or others or damage property;

1 (b) Remove a disruptive juvenile offender who is unwilling to leave
2 the area voluntarily; or

3 (c) Guide a juvenile offender from one location to another;

4 (22) "Postpartum recovery" means (a) the entire period a woman or
5 youth is in the hospital, birthing center, or clinic after giving birth
6 and (b) an additional time period, if any, a treating physician
7 determines is necessary for healing after the youth leaves the
8 hospital, birthing center, or clinic;

9 (23) "Probation bond" means a bond, posted with sufficient security
10 by a surety justified and approved by the court, to secure the
11 offender's appearance at required court proceedings and compliance with
12 court-ordered community supervision or conditions of release ordered
13 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
14 cash or posting of other collateral in lieu of a bond if approved by
15 the court;

16 (24) "Respondent" means a juvenile who is alleged or proven to have
17 committed an offense;

18 (25) "Restitution" means financial reimbursement by the offender to
19 the victim, and shall be limited to easily ascertainable damages for
20 injury to or loss of property, actual expenses incurred for medical
21 treatment for physical injury to persons, lost wages resulting from
22 physical injury, and costs of the victim's counseling reasonably
23 related to the offense. Restitution shall not include reimbursement
24 for damages for mental anguish, pain and suffering, or other intangible
25 losses. Nothing in this chapter shall limit or replace civil remedies
26 or defenses available to the victim or offender;

27 (26) "Restorative justice" means practices, policies, and programs,
28 informed by and sensitive to the needs of crime victims that are
29 designed to encourage offenders to accept responsibility for repairing
30 the harm caused by their offense by providing safe and supportive
31 opportunities for voluntary participation and communication between the
32 victim, the offender, their families, and relevant community members.

33 (27) "Restraints" means anything used to control the movement of a
34 person's body or limbs and includes:

35 (a) Physical restraint; or

36 (b) Mechanical device including but not limited to: Metal
37 handcuffs, plastic ties, ankle restraints, leather cuffs, other
38 hospital-type restraints, tasers, or batons;

1 ~~((+27))~~ (28) "Secretary" means the secretary of the department of
2 social and health services. "Assistant secretary" means the assistant
3 secretary for juvenile rehabilitation for the department;

4 ~~((+28))~~ (29) "Services" means services which provide alternatives
5 to incarceration for those juveniles who have pleaded or been
6 adjudicated guilty of an offense or have signed a diversion agreement
7 pursuant to this chapter;

8 ~~((+29))~~ (30) "Sex offense" means an offense defined as a sex
9 offense in RCW 9.94A.030;

10 ~~((+30))~~ (31) "Sexual motivation" means that one of the purposes
11 for which the respondent committed the offense was for the purpose of
12 his or her sexual gratification;

13 ~~((+31))~~ (32) "Surety" means an entity licensed under state
14 insurance laws or by the state department of licensing, to write
15 corporate, property, or probation bonds within the state, and justified
16 and approved by the superior court of the county having jurisdiction of
17 the case;

18 ~~((+32))~~ (33) "Transportation" means the conveying, by any means,
19 of an incarcerated pregnant youth from the institution or detention
20 facility to another location from the moment she leaves the institution
21 or detention facility to the time of arrival at the other location, and
22 includes the escorting of the pregnant incarcerated youth from the
23 institution or detention facility to a transport vehicle and from the
24 vehicle to the other location;

25 ~~((+33))~~ (34) "Violation" means an act or omission, which if
26 committed by an adult, must be proven beyond a reasonable doubt, and is
27 punishable by sanctions which do not include incarceration;

28 ~~((+34))~~ (35) "Violent offense" means a violent offense as defined
29 in RCW 9.94A.030;

30 ~~((+35))~~ (36) "Youth court" means a diversion unit under the
31 supervision of the juvenile court.

32 **Sec. 2.** RCW 13.40.080 and 2004 c 120 s 3 are each amended to read
33 as follows:

34 (1) A diversion agreement shall be a contract between a juvenile
35 accused of an offense and a diversion unit whereby the juvenile agrees
36 to fulfill certain conditions in lieu of prosecution. Such agreements
37 may be entered into only after the prosecutor, or probation counselor

1 pursuant to this chapter, has determined that probable cause exists to
2 believe that a crime has been committed and that the juvenile committed
3 it. Such agreements shall be entered into as expeditiously as
4 possible.

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

7 (a) Community restitution not to exceed one hundred fifty hours,
8 not to be performed during school hours if the juvenile is attending
9 school;

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

12 (c) Attendance at up to ten hours of counseling and/or up to twenty
13 hours of educational or informational sessions at a community agency.
14 The educational or informational sessions may include sessions relating
15 to respect for self, others, and authority; victim awareness;
16 accountability; self-worth; responsibility; work ethics; good
17 citizenship; literacy; and life skills. For purposes of this section,
18 "community agency" may also mean a community-based nonprofit
19 organization, if approved by the diversion unit. The state shall not
20 be liable for costs resulting from the diversion unit exercising the
21 option to permit diversion agreements to mandate attendance at up to
22 ten hours of counseling and/or up to twenty hours of educational or
23 informational sessions;

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

25 (e) Requirements to remain during specified hours at home, school,
26 or work, and restrictions on leaving or entering specified geographical
27 areas; and

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

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

35 (4) In assessing periods of community restitution to be performed
36 and restitution to be paid by a juvenile who has entered into a
37 diversion agreement, the court officer to whom this task is assigned
38 shall consult with the juvenile's custodial parent or parents or

1 guardian. To the extent possible, the court officer shall advise the
2 victims of the juvenile offender of the diversion process, offer victim
3 impact letter forms and restitution claim forms, and involve members of
4 the community. Such members of the community shall meet with the
5 juvenile and advise the court officer as to the terms of the diversion
6 agreement and shall supervise the juvenile in carrying out its terms.

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

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

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

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

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

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

8 (b) Violation of the terms of the agreement shall be the only
9 grounds for termination;

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

12 (i) Written notice of alleged violations of the conditions of the
13 diversion program; and

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

15 (d) The hearing shall be conducted by the juvenile court and shall
16 include:

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

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

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

21 (iv) Demonstration by evidence that the divertee has substantially
22 violated the terms of his or her diversion agreement.

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

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

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

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

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

35 (10) The diversion unit may refer a juvenile to community-based
36 counseling or treatment programs.

37 (11) The right to counsel shall inure prior to the initial
38 interview for purposes of advising the juvenile as to whether he or she

1 desires to participate in the diversion process or to appear in the
2 juvenile court. The juvenile may be represented by counsel at any
3 critical stage of the diversion process, including intake interviews
4 and termination hearings. The juvenile shall be fully advised at the
5 intake of his or her right to an attorney and of the relevant services
6 an attorney can provide. For the purpose of this section, intake
7 interviews mean all interviews regarding the diversion agreement
8 process.

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

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

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

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

34 (14) A diversion unit may, in instances where it determines that
35 the act or omission of an act for which a juvenile has been referred to
36 it involved no victim, or where it determines that the juvenile
37 referred to it has no prior criminal history and is alleged to have
38 committed an illegal act involving no threat of or instance of actual

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

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

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

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

1 exhaust existing resources before using amounts collected under this
2 section."

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3 On page 1, line 1 of the title, after "programs;" strike the
4 remainder of the title and insert "and amending RCW 13.40.020 and
5 13.40.080."

EFFECT: Amends the definition of restorative justice to ensure the program is sensitive to the needs of crime victims and voluntary on the part of the victim. Limits the authority of a diversion unit to refer a juvenile to a restorative justice program only when the diversion is a counsel and release.

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