
SECOND SUBSTITUTE SENATE BILL 6292

State of Washington

62nd Legislature

2012 Regular Session

By Senate Ways & Means (originally sponsored by Senators Harper and Carrell)

READ FIRST TIME 02/07/12.

1 AN ACT Relating to juvenile offenses; and amending RCW 19.182.040,
2 13.40.070, and 13.40.080.

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

4 **Sec. 1.** RCW 19.182.040 and 2011 c 333 s 2 are each amended to read
5 as follows:

6 (1) Except as authorized under subsection (2) of this section, no
7 consumer reporting agency may make a consumer report containing any of
8 the following items of information:

9 (a) Bankruptcies that, from date of adjudication of the most recent
10 bankruptcy, antedate the report by more than ten years;

11 (b) Suits and judgments that, from date of entry, antedate the
12 report by more than seven years or until the governing statute of
13 limitations has expired, whichever is the longer period;

14 (c) Paid tax liens that, from date of payment, antedate the report
15 by more than seven years;

16 (d) Accounts placed for collection or charged to profit and loss
17 that antedate the report by more than seven years;

18 (e) Records of arrest, indictment, or conviction of an adult for a

1 crime that, from date of disposition, release, or parole, antedate the
2 report by more than seven years; and

3 ~~(f) ((Juvenile records, as defined in RCW 13.50.010(1)(c), when the~~
4 ~~subject of the records is twenty one years of age or older at the time~~
5 ~~of the report; and~~

6 ~~(g))~~ Any other adverse item of information that antedates the
7 report by more than seven years.

8 (2) Subsection (1)(a) through ~~((e) and (g))~~ (f) of this section
9 is not applicable in the case of a consumer report to be used in
10 connection with:

11 (a) A credit transaction involving, or that may reasonably be
12 expected to involve, a principal amount of fifty thousand dollars or
13 more;

14 (b) The underwriting of life insurance involving, or that may
15 reasonably be expected to involve, a face amount of fifty thousand
16 dollars or more; or

17 (c) The employment of an individual at an annual salary that
18 equals, or that may reasonably be expected to equal, twenty thousand
19 dollars or more.

20 **Sec. 2.** RCW 13.40.070 and 2010 c 289 s 7 are each amended to read
21 as follows:

22 (1) Complaints referred to the juvenile court alleging the
23 commission of an offense shall be referred directly to the prosecutor.
24 The prosecutor, upon receipt of a complaint, shall screen the complaint
25 to determine whether:

26 (a) The alleged facts bring the case within the jurisdiction of the
27 court; and

28 (b) On a basis of available evidence there is probable cause to
29 believe that the juvenile did commit the offense.

30 (2) If the identical alleged acts constitute an offense under both
31 the law of this state and an ordinance of any city or county of this
32 state, state law shall govern the prosecutor's screening and charging
33 decision for both filed and diverted cases.

34 (3) If the requirements of subsections (1)(a) and (b) of this
35 section are met, the prosecutor shall either file an information in
36 juvenile court or divert the case, as set forth in subsections (5),
37 (6), and (8) of this section. If the prosecutor finds that the

1 requirements of subsection (1)(a) and (b) of this section are not met,
2 the prosecutor shall maintain a record, for one year, of such decision
3 and the reasons therefor. In lieu of filing an information or
4 diverting an offense a prosecutor may file a motion to modify community
5 supervision where such offense constitutes a violation of community
6 supervision.

7 (4) An information shall be a plain, concise, and definite written
8 statement of the essential facts constituting the offense charged. It
9 shall be signed by the prosecuting attorney and conform to chapter
10 10.37 RCW.

11 (5) Except as provided in RCW 13.40.213 and subsection (7) of this
12 section, where a case is legally sufficient, the prosecutor shall file
13 an information with the juvenile court if:

14 (a) An alleged offender is accused of a class A felony, a class B
15 felony, an attempt to commit a class B felony, a class C felony listed
16 in RCW 9.94A.411(2) as a crime against persons or listed in RCW
17 9A.46.060 as a crime of harassment, or a class C felony that is a
18 violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

19 (b) An alleged offender is accused of a felony and has a criminal
20 history of any felony, or at least two gross misdemeanors, or at least
21 two misdemeanors; or

22 (c) An alleged offender has previously been committed to the
23 department; or

24 (d) An alleged offender has been referred by a diversion unit for
25 prosecution or desires prosecution instead of diversion; or

26 (e) An alleged offender has (~~two or~~) more than two diversion
27 agreements on the alleged offender's criminal history; or

28 (f) A special allegation has been filed that the offender or an
29 accomplice was armed with a firearm when the offense was committed.

30 (6) Where a case is legally sufficient the prosecutor shall divert
31 the case if the alleged offense is a misdemeanor or gross misdemeanor
32 or violation and the alleged offense is the offender's first or second
33 offense or violation. If the alleged offender is charged with a
34 related offense that must or may be filed under subsections (5) and (8)
35 of this section, a case under this subsection may also be filed.

36 (7) Where a case is legally sufficient to charge an alleged
37 offender with either prostitution or prostitution loitering and the

1 alleged offense is the offender's first or second prostitution or
2 prostitution loitering offense, the prosecutor shall divert the case.

3 (8) Where a case is legally sufficient and falls into neither
4 subsection (5) nor (6) of this section, it may be filed or diverted.
5 In deciding whether to file or divert an offense under this section the
6 prosecutor shall be guided only by the length, seriousness, and recency
7 of the alleged offender's criminal history and the circumstances
8 surrounding the commission of the alleged offense.

9 (9) Whenever a juvenile is placed in custody or, where not placed
10 in custody, referred to a diversion interview, the parent or legal
11 guardian of the juvenile shall be notified as soon as possible
12 concerning the allegation made against the juvenile and the current
13 status of the juvenile. Where a case involves victims of crimes
14 against persons or victims whose property has not been recovered at the
15 time a juvenile is referred to a diversion unit, the victim shall be
16 notified of the referral and informed how to contact the unit.

17 (10) The responsibilities of the prosecutor under subsections (1)
18 through (9) of this section may be performed by a juvenile court
19 probation counselor for any complaint referred to the court alleging
20 the commission of an offense which would not be a felony if committed
21 by an adult, if the prosecutor has given sufficient written notice to
22 the juvenile court that the prosecutor will not review such complaints.

23 (11) The prosecutor may divert unranked felonies.

24 (12) The prosecutor, juvenile court probation counselor, or
25 diversion unit may, in exercising their authority under this section or
26 RCW 13.40.080, refer juveniles to mediation or victim offender
27 reconciliation programs. Such mediation or victim offender
28 reconciliation programs shall be voluntary for victims.

29 **Sec. 3.** RCW 13.40.080 and 2004 c 120 s 3 are each amended to read
30 as follows:

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

1 it. Such agreements shall be entered into as expeditiously as
2 possible.

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

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

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

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

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

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

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

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

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

1 impact letter forms and restitution claim forms, and involve members of
2 the community. Such members of the community shall meet with the
3 juvenile and advise the court officer as to the terms of the diversion
4 agreement and shall supervise the juvenile in carrying out its terms.

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

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

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

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

37 (7) Diverttees and potential diverttees shall be afforded due process
38 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) If the court decides not to terminate the diversion,
22 information about the court hearing, including any court file, and fact
23 of the continuing diversion shall not be available to the public;

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

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

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

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

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

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

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

11 The juvenile shall be advised that a diversion agreement shall
12 constitute a part of the juvenile's criminal history as defined by RCW
13 13.40.020(7). A signed acknowledgment of such advisement shall be
14 obtained from the juvenile, and the document shall be maintained by the
15 diversion unit together with the diversion agreement, and a copy of
16 both documents shall be delivered to the prosecutor if requested by the
17 prosecutor. Neither the diversion agreement nor the signed
18 acknowledgment shall be available to the public as long as the juvenile
19 meets the requirements of the diversion agreement. The supreme court
20 shall promulgate rules setting forth the content of such advisement in
21 simple language.

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

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

31 (b) None of the information received by the court under this
32 section shall be available to the public.

33 (13) A diversion unit may refuse to enter into a diversion
34 agreement with a juvenile. When a diversion unit refuses to enter a
35 diversion agreement with a juvenile, it shall immediately refer such
36 juvenile to the court for action and shall forward to the court the
37 criminal complaint and a detailed statement of its reasons for refusing
38 to enter into a diversion agreement. If the court later determines

1 that the case should nevertheless be diverted, none of the information
2 regarding the initial refusal to enter into a diversion agreement with
3 the juvenile or about the subsequent diversion shall be available to
4 the public. The diversion unit shall also immediately refer the case
5 to the prosecuting attorney for action if such juvenile violates the
6 terms of the diversion agreement.

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

32 (15) A diversion unit may supervise the fulfillment of a diversion
33 agreement entered into before the juvenile's eighteenth birthday and
34 which includes a period extending beyond the diverttee's eighteenth
35 birthday.

36 (16) If a fine required by a diversion agreement cannot reasonably
37 be paid due to a change of circumstance, the diversion agreement may be
38 modified at the request of the diverttee and with the concurrence of the

1 diversion unit to convert an unpaid fine into community restitution.
2 The modification of the diversion agreement shall be in writing and
3 signed by the diverttee and the diversion unit. Information about the
4 modification of the diversion agreement under this subsection shall not
5 be available to the public. The number of hours of community
6 restitution in lieu of a monetary penalty shall be converted at the
7 rate of the prevailing state minimum wage per hour.

8 (17) Fines imposed under this section shall be collected and paid
9 into the county general fund in accordance with procedures established
10 by the juvenile court administrator under RCW 13.04.040 and may be used
11 only for juvenile services. In the expenditure of funds for juvenile
12 services, there shall be a maintenance of effort whereby counties
13 exhaust existing resources before using amounts collected under this
14 section.

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