Mental Health Juvenile Justice Policy Package

Project Background
The Mental Health Juvenile Justice Project is focused on developing statewide policies that will prevent the further penetration of youth with mental health challenges within the juvenile justice system. The large number of youth involved in the juvenile justice system with mental health challenges is a significant policy concern. As noted by Cheri Nolan, Deputy Assistant Attorney General of the Office of Justice Programs, “It is becoming clear that the increasing number of people with mental illness in the criminal justice system is one of the most pressing problems facing law enforcement and corrections today.” Further, identifying mental illness early and providing effective treatment can result in significant cost savings for the justice system and state budgets. There is growing evidence that mental health diversion strategies, in particular, are effective in connecting youth with needed treatment and preventing additional offending behaviors.

The University of Washington and Center for Children and Youth Justice, with support from the John D and Catherine T MacArthur Foundation and the Washington State Partnership Council on Juvenile Justice, convened a Workgroup to develop a policy solution that would prevent the further penetration of youth with mental health disorders within in the juvenile justice system, resulting in improved lives and saved costs. The draft policy would allow a continuum of opportunities for connecting youth back to community-mental health services at multiple decision points: law enforcement diversion, prosecutor diversion, court-based diversion, and deferred disposition.

Law Enforcement Diversion

In 2007, the legislature passed a bill (SSB5533) that allows law enforcement to deliver an individual in an apparent mental health crisis to a Crisis Stabilization Unit (CSU), rather than detention or jail, if a local agreement has been established between law enforcement and prosecutors. The diversion opportunity is available for both adults and youth. However, the WACs written for the codified language (RCW 10.31.110) are very restrictive and inhibit the use of the diversion. The Workgroup developed additional statutory language that would expand the list of approved locations where law enforcement could deliver individuals. The list would include triage and evaluation/treatment facilities identified as diversion locations. The revision would also remove the requirement that individual have previous contact with the RSN.

PROPOSED LAW ENFORCEMENT STATUTE CHANGES

**RCW 10.31.110**

(1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092 and the officer believes the individual is known by history or consultation with the regional support network to suffer from a mental disorder, the arresting officer may:

(a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020 (6). Individuals delivered to a crisis stabilization unit pursuant to this section may be held by the facility for a period of up to twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(b) Take the individual to a triage facility as defined in RCW 71.05.020 if the facility has been identified as a diversion point by agreement of the prosecutor, law enforcement and the mental health provider. An individual delivered to a triage facility which has elected to operate as an involuntary facility may be held up to a period of twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(c) Take the individual to an evaluation and treatment facility as defined in RCW 71.05.020 if the facility has been identified as a diversion point by agreement of the prosecutor, law enforcement and the mental health provider.

(d) Refer the individual to a mental health professional for evaluation for initial detention and proceeding under chapter 71.05 RCW; or

(e) Release the individual upon agreement to voluntary participation in outpatient treatment.

(f) Take the individual to a location or program by agreement of the prosecutor and law enforcement.
enforcement

Court-Based Diversion
The current statutory language requires that youth with eligible offenses be diverted from the juvenile justice system after their first offense, and allows prosecutors the discretion to divert youth a second time. The policy proposal includes expanding the diversion statute to allow youth with mental health challenges a third opportunity for diversion at the prosecutor's discretion. Also, the diversion agreement language is adjusted to allow for services demonstrated to improve behavioral health and reduce recidivism based on a functional assessment related to mental health need.

PROPOSED DIVERSION STATUTE CHANGES

RCW 13.41.070
(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

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

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

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

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

(e) An alleged offender has three or more diversion agreements on the alleged offender's criminal history; or

RCW 13.40.080
2(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; literacy; and life skills. If a functional assessment identifies mental health needs, the educational or informational sessions may include services demonstrated to improve behavioral health and reduce recidivism. For purposes of this section, "community agency" may also mean a community-based non-profit organization, physician, counselor, or treatment provider, if approved by the diversion unit.
Deferred Disposition
While pre-adjudication diversion is preferable because youth do not receive a juvenile record, it is not always possible. At adjudication, youth may stipulate to the facts of the case and receive a deferred disposition contingent on completion of conditions of supervision. The adjusted statute includes language that allows for a mental health and/or substance abuse assessment and requires that treatment be demonstrated to improve behavioral health and reduce recidivism.

PROPOSED DEFERRED DISPOSITION STATUTE CHANGES
RCW 13.40.127

5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

The court may require a mental health and/or substance abuse assessment. If the assessment identifies treatment need, conditions of supervision shall require treatment that is demonstrated to improve behavioral health and reduce recidivism.