

**TERMINATION OF DIVERSION AGREEMENT**

**(a) Petition.** The procedure to seek termination of a diversion agreement is to file a petition in juvenile court alleging that the juvenile has substantially violated the terms of the diversion agreement. The petition shall include a statement of:

- (1) The offense which the juvenile was alleged to have committed;
- (2) The terms of the diversion agreement; and
- (3) The alleged violation of the diversion agreement.

**(b) Preliminary Hearing if Juvenile Is in Detention.** A juvenile may not be taken into custody and held in detention solely for an alleged violation of a diversion agreement. RCW 13.40.040 and 13.40.050 are the only authority for taking a juvenile into custody and holding the juvenile in detention. If a juvenile alleged to have violated a diversion agreement is held in detention on some other basis, a preliminary hearing on the petition for termination shall be held within 72 hours after taking the juvenile into custody, excluding Saturdays, Sundays, and holidays. Notice of the hearing shall be given in accordance with rule 11.2. At the hearing the court shall determine whether probable cause exists to believe the allegations in the petition, whether the petition is contested, and, in accordance with rule 7.4, whether continued detention is necessary. If the petition is contested and the juvenile is held in detention, the hearing on the petition shall be held within 14 days of the date of the preliminary hearing. If the petition is uncontested, the court may proceed immediately with the hearing on the petition to terminate the diversion agreement.

**(c) Scheduling and Notice of Hearing.** The court shall schedule a hearing on the allegations in the petition with reasonable speed, except that when a juvenile is held in detention, the hearing shall be scheduled in accordance with section (b) of this rule. A copy of the petition and written notice of the hearing, containing the date, time, and other information required by RCW 13.40.080(6), shall be given the juvenile in accordance with rule 11.2. The notice shall also state that an information may be filed on the original offense.

**(d) Disclosure of Evidence.** All evidence to be offered against the juvenile shall be disclosed to the juvenile a reasonable time prior to the hearing.

**(e) Procedure at Hearing.** The court shall hold a hearing on the allegations made in the petition. At the hearing the juvenile shall have the opportunity to be heard in person, to present evidence, and to confront and cross-examine all adverse witnesses.

**(f) Burden of Proof and Order Terminating Diversion Agreement.** The petitioner must prove by a preponderance of the evidence that the allegations in the petition are true and that they are a substantial violation of the diversion agreement. If the court finds that the petitioner has met this burden of proof, it may order the termination of the diversion agreement. An order terminating a diversion agreement shall include a written statement of the evidence relied upon by the court and the reasons for the termination.

**(g) Consolidation of Termination Hearing With Adjudication of Offense.** When the diversion unit has referred the case to the prosecuting attorney, and the prosecutor has filed an information, the court may schedule the hearing on the allegations in the petition to terminate the diversion agreement for the same time and place as the adjudicatory hearing on the allegations in the information. In that case, the court shall hold a hearing in accordance with this rule and make a finding with respect to the allegations in the petition before conducting the adjudicatory hearing on the allegations in the information.

[Adopted effective July 1, 1978; Amended effective September 1, 1987.]