
ENGROSSED HOUSE BILL 3078

State of Washington 55th Legislature 1998 Regular Session

By Representatives Ballasiotes, Zellinsky and McDonald

Read first time 01/28/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to diversion eligibility in juvenile court; and
2 amending RCW 13.40.070.

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

4 **Sec. 1.** RCW 13.40.070 and 1997 c 338 s 17 are each amended to read
5 as follows:

6 (1) Complaints referred to the juvenile court alleging the
7 commission of an offense shall be referred directly to the prosecutor.
8 The prosecutor, upon receipt of a complaint, shall screen the complaint
9 to determine whether:

10 (a) The alleged facts bring the case within the jurisdiction of the
11 court; and

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

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

18 (3) If the requirements of subsections (1)(a) and (b) of this
19 section are met, the prosecutor shall either file an information in

1 juvenile court or divert the case, as set forth in subsections (5),
2 (6), and (7) of this section. If the prosecutor finds that the
3 requirements of subsection (1)(a) and (b) of this section are not met,
4 the prosecutor shall maintain a record, for one year, of such decision
5 and the reasons therefor. In lieu of filing an information or
6 diverting an offense a prosecutor may file a motion to modify community
7 supervision where such offense constitutes a violation of community
8 supervision.

9 (4) An information shall be a plain, concise, and definite written
10 statement of the essential facts constituting the offense charged. It
11 shall be signed by the prosecuting attorney and conform to chapter
12 10.37 RCW.

13 (5) Where a case is legally sufficient, the prosecutor shall file
14 an information with the juvenile court if:

15 (a) An alleged offender is accused of a class A felony, a class B
16 felony, an attempt to commit a class B felony, a class C felony listed
17 in RCW 9.94A.440(2) as a crime against persons or listed in RCW
18 9A.46.060 as a crime of harassment, or a class C felony that is a
19 violation of RCW 9.41.080 or 9.41.040(1)(b)(iii); or

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

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

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

27 (e) An alleged offender has two or more diversion contracts on the
28 alleged offender's criminal history; or

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

31 (6) Where a case is legally sufficient the prosecutor shall divert
32 the case if the alleged offense is a misdemeanor or gross misdemeanor
33 or violation and the alleged offense is the offender's first offense or
34 violation, unless the alleged offender has previously been granted a
35 deferred disposition or a deferral of adjudication. If the alleged
36 offender is charged with a related offense that must or may be filed
37 under subsections (5) and (7) of this section, a case under this
38 subsection may also be filed.

1 (7) Where a case is legally sufficient and falls into neither
2 subsection (5) nor (6) of this section, it may be filed or diverted.
3 In deciding whether to file or divert an offense under this section the
4 prosecutor shall be guided only by the length, seriousness, and recency
5 of the alleged offender's criminal history and the circumstances
6 surrounding the commission of the alleged offense. If the alleged
7 offender does not fall under subsection (6) of this section only
8 because the alleged offender has a prior deferred disposition or
9 deferred adjudication, the prosecutor may also consider the recency and
10 seriousness of the charge for which the offender received the deferred
11 disposition or deferred adjudication.

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

20 (9) The responsibilities of the prosecutor under subsections (1)
21 through (8) of this section may be performed by a juvenile court
22 probation counselor for any complaint referred to the court alleging
23 the commission of an offense which would not be a felony if committed
24 by an adult, if the prosecutor has given sufficient written notice to
25 the juvenile court that the prosecutor will not review such complaints.

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

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