

HOUSE BILL REPORT

SHB 1471

As Amended by the Senate

Title: An act relating to diversion.

Brief Description: Regarding diversions.

Sponsors: By House Committee on Juvenile Justice (originally sponsored by Representatives Darneille, Delvin, Dickerson and Armstrong).

Brief History:

Committee Activity:

Juvenile Justice: 1/31/01, 2/13/01 [DPS].

Floor Activity:

Passed House: 3/9/01, 93-0.

Senate Amended.

Passed Senate: 4/9/01, 46-2.

Brief Summary of Substitute Bill

- Allows the prosecutor to divert a case when the alleged offender has two prior diversion contracts on his or her criminal history.
- Permits the sealing and destruction of juvenile diversion records in specified circumstances.
- Makes a juvenile ineligible for deferred disposition if the juvenile has a criminal history that includes two or more adjudications.

HOUSE COMMITTEE ON JUVENILE JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Delvin, Republican Co-Chair; Dickerson, Democratic Co-Chair; Eickmeyer, Democratic Vice Chair; Marine, Republican Vice Chair; Armstrong, Carrell, Darneille and Tokuda.

Staff: Jean Ann Quinn (786-7310).

Background:

Diversion is an agreement entered into between a juvenile accused of an offense and a diversionary unit, such as a community accountability board, where the juvenile agrees to fulfill certain conditions in lieu of prosecution. The conditions can include one or more of the following: (1) community service up to 150 hrs; (2) restitution; (3) counseling and/or education sessions; (4) a fine not to exceed \$100; and (5) geographic restrictions. A diversion contract generally may not exceed six months, but can be extended for an additional six months if the juvenile needs more time to complete the contract. If the juvenile violates the terms of his or her diversion agreement, the case is referred back to the prosecutor for the filing of charges.

Eligibility for Diversion

The prosecutor must refer the case for diversion if it is a misdemeanor, gross misdemeanor, or violation and it is the juvenile's first offense or violation. The prosecutor may not refer the case for diversion if the offender has two or more diversion contracts in his or her criminal history. The prosecutor has the discretion to refer a case for diversion if the offender has only one prior diversion agreement on his or her record, as long as the offender is otherwise eligible for diversion. For example, an offender is never eligible for diversion if the offense committed was a class A or B felony, certain class C felonies, if the offender was armed with a firearm, or if the offender has previously been committed to the Juvenile Rehabilitation Administration.

Sealing of Juvenile Records

A juvenile adjudicated of an offense may petition the court to vacate its order and findings and seal the records when certain conditions are met. A juvenile record for any offense may not be sealed until the offender has paid full restitution. Any subsequent adjudication of a juvenile offense or subsequent charging of an adult felony nullifies a sealing order on the offender's juvenile records.

Juvenile records related to class A or sex offenses may not be sealed. Juvenile records relating to class B offenses may be sealed if the offender has spent 10 years in the community without committing an offense. Juvenile records relating to class C offenses may be sealed after the offender has spent five years in the community without committing an offense. There is no provision in current law authorizing the court to seal juvenile records for diversions, misdemeanors, or gross misdemeanors.

Destruction of Juvenile Records

A person 18 years of age or older who has only one referral for diversion on his or her criminal history may request the court to destroy the records in that case. If it has been at least two years since the diversion agreement was completed, the court must grant the request and order the destruction of the official juvenile court file, the social file, and any

other file named in the order.

In addition, a juvenile justice agency may develop procedures for the routine destruction of records related to juvenile offenses and diversions. A juvenile justice agency may routinely destroy records once the person that is the subject of the complaint has reached the age of 23. The official juvenile court file may not be routinely destroyed under this authority.

Deferred Disposition

Deferred disposition is a disposition alternative for some juveniles offenders. In a deferred disposition, a guilty plea or finding of guilt is entered, the case is continued generally for up to one year, and the juvenile is placed on community supervision. If the juvenile complies with the conditions of supervision and pays full restitution, the guilty plea is vacated and the case is dismissed with prejudice. If the juvenile fails to comply with the conditions of the community supervision, the court must enter the original disposition order.

A juvenile is ineligible for deferred disposition if:

- the current charge is for a sex or violent offense;
- the juvenile has a criminal history that includes any felony;
- the juvenile has a prior deferred disposition or deferred adjudication; or
- the juvenile has two or more diversions.

No limit is placed on the number of prior misdemeanors or gross misdemeanors a juvenile may have before becoming ineligible for deferred disposition.

Summary of Bill:

Eligibility for Diversion

The prosecutor may, but is not required to, refer an offense for diversion if the juvenile has two prior diversion agreements as part of his or her criminal history.

Sealing of Juvenile Records

Diversion records may be sealed if the juvenile has reached the age of 18 and has spent two years since completion of the diversion agreement in the community without committing a new offense that subsequently results in conviction or diversion.

Destruction of Juvenile Records

A juvenile who is 23 years of age or older and has two or more diversions in his or her criminal history, but no other adjudications, may request that the diversion records be destroyed. The court must grant the request if it finds that all diversion agreements have been successfully completed and no criminal proceedings are pending.

Deferred Disposition

A juvenile is ineligible for deferred disposition if he or she has two or more adjudications of any kind in his or her criminal history. Thus, a juvenile with two prior misdemeanors or gross misdemeanors would be ineligible for a deferred disposition.

EFFECT OF SENATE AMENDMENT(S):

The provision authorizing the prosecutor to refer an offense for diversion if the juvenile has two prior diversion agreements as part of his or her criminal history is eliminated.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is about finding options that work, that reduce recidivism, that stop the revolving door, and that improve the potential for youth to learn and grow without sacrificing their futures. It expands the options for a prosecutor to refer a youth for a third time to the community accountability board for the imposition of meaningful community sanctions. These boards take a lot of time and care with the matters before them, and do a great deal to hold offenders accountable, and keep the courts from getting clogged. The diversion program is currently underutilized and it is a very efficient, effective way of handling minor first-time offenders and a lot of repeat offenses. The bill includes a provision for the destruction of diversion records at age 23 which provides a strong incentive for a juvenile to go through diversion, successfully complete the diversion, and not commit any new offenses. The clarification regarding eligibility for deferred disposition is a cleanup measure that is necessary because of an oversight that occurred during the drafting of previous legislation.

Testimony Against: None.

Testified: Arlene Balazic, Washington Association of Diversion Units and Pierce County Juvenile Court; Bruce Knutson, King County Juvenile Court and Washington Association of Juvenile Court Administrators; Tom McBride, Washington Association of Prosecuting Attorneys; Jim St. Ours, Community Youth Services/Thurston County Diversion; and Charles Shelan, Community Youth Services/Thurston County Diversion.

