

SENATE BILL REPORT

SB 6292

As Reported by Senate Committee On:
Human Services & Corrections, February 2, 2012
Ways & Means, February 7, 2012

Title: An act relating to access to juvenile records.

Brief Description: Changing provisions related to juvenile offenses.

Sponsors: Senators Harper and Carrell.

Brief History:

Committee Activity: Human Services & Corrections: 1/20/12, 2/02/12 [DPS-WM, w/oRec].
Ways & Means: 2/06/12, 2/07/12 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6292 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Harper and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell and Padden.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6292 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Brown, Conway, Fraser, Harper, Hatfield, Kastama, Keiser, Kohl-Welles, Pridemore, Regala and Tom.

Minority Report: Do not pass.

Signed by Senators Honeyford, Padden and Schoesler.

Minority Report: That it be referred without recommendation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Hewitt and Holmquist Newbry.

Staff: Sherry McNamara (786-7402)

Background: If a prosecutor finds there is probable cause to believe that a juvenile committed a particular offense, the prosecutor must either file an information or divert the case. A prosecutor is required to divert a case if the alleged offense is a misdemeanor, gross misdemeanor, or violation and the alleged offense is the juvenile's first offense or violation. The prosecutor has discretion on whether to divert a case on a subsequent charge.

In deciding whether to file an information or divert a case, the prosecutor is to be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

A diversion agreement is a contract between a juvenile accused of an offense and a diversion unit in which the juvenile agrees to fulfill certain conditions instead of prosecution. A diversion agreement cannot exceed a six month period and may include a period extending beyond when the diverted juvenile turns 18. Violation of the terms of the agreement are the only grounds for terminating the agreement and no diveree may be terminated from the program without being first provided a court hearing.

The diversion unit is to advise the juvenile that a diversion agreement will constitute part of the juvenile's criminal history. The juvenile must sign an acknowledgement that the advisement was received. A diversion unit may refuse to enter into a diversion agreement with a juvenile. When this occurs, the unit must immediately refer the matter to the court for action along with the reasons the unit refused to enter into a diversion agreement with the juvenile.

While diversion matters are to be confidential, if the juvenile does not meet the requirements of the agreement or the diversion unit refers the matter to the court, the information can become available to the public.

Summary of Bill (Recommended Second Substitute): A prosecutor must divert the first two offenses committed by a juvenile if the offenses are misdemeanors, gross misdemeanors, or violations. The prosecutor may divert unranked felonies. As long as the juvenile meets the requirements of the diversion agreement, neither the agreement nor the acknowledgement of rights are to be available to the public. The information the court receives when a juvenile enters into a diversion agreement is not available to the public.

In the situation in which the diversion unit refuses to enter into a diversion agreement with the juvenile and the unit refers the case to court, if the court later determines that the case should be diverted, none of the information about the initial refusal by the diversion unit to enter into a diversion agreement with the juvenile or the subsequent diversion is available to the public.

The juvenile's criminal history is not available to the public.

Information about the modification of the diversion agreement is not available to the public.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute):

- Removes the provisions making the official juvenile court file confidential.
- Requires that the prosecutor divert the first two misdemeanors or gross misdemeanor offenses with which a juvenile is charged.
- Gives the prosecutor the discretion to divert low-level felonies.
- Clarifies that diversion cases are confidential and not available to the public.
- Changes the title of the bill.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended First Substitute): Adds to the list of juvenile court records that would be open to the public those juvenile offenders charged with:

- a sex offense;
- a burglary; or
- any offense committed with a firearm.

The record of any offender adjudicated or convicted of his or her third offense would also be open to the public.

Adds law enforcement to the list of agencies that have access to confidential juvenile court records. Provides that a record that was initially open to the public can become confidential if the disposition of the charge is dismissal or amendment to a crime that is not considered a serious violent offense.

Language is added to clarify that the use of confidential juvenile court records in later juvenile court or adult criminal proceedings is permitted.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect April 1, 2013.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: Has provided legal representation for many juveniles whose criminal record has kept them from productive lives. This bill will allow juveniles who have been rehabilitated to not have to live lives of poverty and unemployment and be able to find housing. The bill is a smart compromise – it allows courts to open the records in certain situations. This bill will increase public safety. Every month there are people in their 20s and 30s who show up at the clinic for help in sealing their juvenile records. Many of these people have been crime free for a good amount of the time since their juvenile crime. Their juvenile record impacts their lives – they find out when they try to get a job or housing. It is also really hard to seal a case. The court process is daunting especially for persons unrepresented by an attorney – and they

usually cannot afford to hire an attorney because they can't get a job. Even after the case is sealed, it takes about two or three months for the information to be deleted from the consumer reporting data. In some cases, the information continues to show up even after that time period. This bill addresses access to information issue equally and removes the provision added last year that amended the consumer reporting statute, which is a positive amendment.

CON: If juvenile court files are confidential, one cannot ask that the records be made unconfidential because no one knows that the record exists. This bill would not allow the public to hold the system accountable. A juvenile could commit a number of property crimes and that information would not be available to the public. If the terms of the conviction have not been satisfied when the juvenile turns 18, then the file should be open to the public. Article I, section 10 provides that courts and their records must be open to the public. The juvenile offender system is not just about law enforcement, courts, etc. – it's also about the community and they should know how the players exercise discretion in the courts. There is a process for sealing records and that should be the process. It is not a solution to sweep the fact of a crime under the rug; rather, that fact should be faced and dealt with. Do not agree that most juvenile offenses are holding people back.

Persons Testifying (Human Services & Corrections): PRO: Casey Trupin, Columbia Legal Services; Angelissa Savino, Record Sealing Clinic; Cliff Webster, Consumer Data Industry Assn.

CON: Tom McBride, WAPA; Rowland Thompson, Allied Daily Newspapers.

Staff Summary of Public Testimony on Substitute as Passed by Human Services & Corrections (Ways & Means): PRO: This bill provides an opportunity to save costs. It will result in savings of over \$100,000 to the state and over \$2.5 million to counties. It will decrease the approximately 2000 hearings required to seal juvenile records and add less than 200 hearings to open records. This bill makes our state similar to most states who have confidentiality laws that govern juvenile records, similar to dependency records and adoption records. The majority of juvenile offenders do not recidivate. Having a juvenile record can affect someone into their adult life; so it is important to help those juveniles who made bad decisions early in their lives to grow and get their lives back on track.

Persons Testifying (Ways & Means): PRO: Senator Harper, prime sponsor; Casey Trupin, Columbia Legal Services; Bob Cooper, WA Defenders Assn.; Dominique Davis, citizen.