

SENATE BILL REPORT

SB 5614

As Passed Senate, May 2, 2017

Title: An act relating to diversion agreements and counsel and release agreements by modifying the conditions under which both may be entered into and mandating eligibility for automatic destruction.

Brief Description: Concerning diversion agreements and counsel and release agreements.

Sponsors: Senators Darneille, Hasegawa and Kuderer.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/07/17, 2/14/17 [DP, w/oRec].

Floor Activity:

Passed Senate: 3/08/17, 44-5.

First Special Session: Passed Senate: 5/02/17, 41-5.

Brief Summary of Bill

- Changes the filing criteria for criminal charges against a juvenile by removing the cap that a history of three or more diversions requires the prosecutor to file the charge.
- Requires the destruction of a juvenile's criminal record when they reach 18 years of age if the record consists only of completed diversion, counsel, and release agreements; the agreements were completed after this bill becomes effective; and all restitution is paid.
- Preserves existing authority to destroy diversion and counsel and release agreements or seal them as otherwise provided by law.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: Do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Carlyle, Hunt and Walsh.

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 Senator Padden.

Staff: Kevin Black (786-7747)

Background: Criteria for Filing Charges. Under current law, a prosecutor reviews a potential criminal charge to determine that the court has jurisdiction over the case, and there is probable cause to file a charge. The prosecutor must file the charge if one of the mandatory filing criteria for charges against a juvenile applies to the case. A prior history of three diversions is a mandatory filing criterion. If the juvenile defendant has a history of three or more diversions, the prosecutor must file the charge.

Automatic Destruction of Records. A defendant's criminal history may trigger automatic destruction of juvenile court records after the defendant turns 18 years of age. Under current law, records must be automatically destroyed if:

- the only criminal history is one diversion agreement or counsel and release agreement entered after June 12, 2008;
- the defendant successfully completed the agreement at least two years ago;
- no criminal charges are currently pending; and
- all restitution is paid.

A governor's pardon triggers mandatory destruction of records. The court may order records destroyed upon the defendant's motion after notice to the prosecutor and the agency holding the records if the records qualify for destruction. A court may order sealing of juvenile records if statutory criteria are met.

Summary of Bill: A prosecutor is not required to file charges against a juvenile who has a history of three or more diversions. A juvenile's criminal records must be destroyed when the defendant reaches 18 years of age if the records are limited to completed diversions and counsel and release agreements, and all restitution is paid. The destruction requirement applies to records of diversions and counsel and release agreements completed after the bill's effective date. This change has no effect on other laws requiring or permitting destruction or sealing of juvenile records in specific circumstances.

Appropriation: None

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: *Testimony from 2017 Regular Session.* PRO: At first, the law only allowed one diversion. As time passed, a second and then a third diversion was allowed. If the juvenile had a diversion at a very young age, this bill would still allow for diversion when the juvenile is older.

OTHER: The bill allows up to three diversions now, which is a positive. The prosecutors have discretion to allow diversion and the recidivism rate from diversion is lower than putting the juvenile through court adjudication. Diversion is an alternative that saves money

and appears more effective. Other states have a different approach to address nuisance and repeated crimes. Some states use a civil citation, which is like Washington's civil infraction. This bill's proposal is similar. A whole new system is not needed. When juveniles are given a second chance, there is a dramatic decrease in filings; from 5000 down to 2000. Expanding diversion programs again will help prosecutors and juvenile courts. Incidents such as minor in possession should not be treated as a citation. The diversion process holds the contract completion over the minor's head and allows the court to retain the ultimate handle.

Persons Testifying: PRO: Senator Darneille, Prime Sponsor.

OTHER: George Yeannakis, State Office of Public Defense.

Persons Signed In To Testify But Not Testifying: No one.