

SENATE BILL REPORT

ESSB 6550

As Passed Senate, February 12, 2018

Title: An act relating to diversion of juvenile offenses.

Brief Description: Concerning diversion of juvenile offenses.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Darneille and Saldaña).

Brief History:

Committee Activity: Human Services & Corrections: 1/30/18, 1/31/18 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/12/18, 35-11.

Brief Summary of Engrossed First Substitute Bill

- Allows prosecutorial discretion to file or divert any case which is not a sex offense or violent offense other than assault 2 or robbery 2, subject to limited exceptions.
- Expands options for the formation of diversion agreements and diversion units.
- Encourages engagement with community programs to expand options to divert youth from formal processing in juvenile court.
- Provides for destruction of a juvenile's criminal records which consist of successfully completed diversions and counsel and release agreements which the juvenile turns 18.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6550 be substituted therefor, and the substitute bill do pass.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; Carlyle and Frockt.

Minority Report: Do not pass.

Signed by Senator O'Ban, Ranking Member.

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.

Minority Report: That it be referred without recommendation.

Signed by Senator Miloscia.

Staff: Kevin Black (786-7747)

Background: State laws constrain the discretion of a prosecutor to file or divert a juvenile case when a prosecutor receives a complaint which is within the jurisdiction of the juvenile court and is supported by probable cause. A prosecutor is required to divert a misdemeanor or gross misdemeanor which is a juvenile's first offense. A prosecutor must also divert a juvenile's first prostitution or prostitution loitering offense or first voyeurism in the second degree offense, unless the juvenile has received two diversions for any offense in the past two years.

A prosecutor must file a legally sufficient case in juvenile court which is a class A felony, class B felony, attempt to commit a class B felony, a crime against persons, a crime of harassment, or a crime relating to unlawful possession or delivery of a firearm. A prosecutor must also file a felony charge when the juvenile has a criminal history of any felony or at least two misdemeanors or gross misdemeanors, has three prior diversions, was armed with a firearm or an accomplice was armed with a firearm, or the juvenile has been previously committed to juvenile rehabilitation. In other circumstances, the prosecutor may decide whether to file or divert a case, but may only be guided by the length, seriousness, and recency of the juvenile's criminal history and the circumstances surrounding the commission of the alleged offense.

A diversion agreement is a contract between a juvenile and a diversion unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. A diversion may not extend longer than six months except for an extension to allow payment of restitution. A diversion agreement may include one or more of the following:

- community restitution of up to 150 hours;
- restitution up to the amount of the actual loss incurred by a victim;
- attendance of up to 10 hours of counseling or up to 20 hours of educational or information sessions;
- up to 30 hours of mental health or chemical dependency counseling if an assessment identifies such a need;
- a requirement to remain at home, school, or work during specified hours or to stay away from certain geographical areas; and
- a requirement to not have contact with victims or witnesses at the request of the victims or witnesses.

Facts of the case underlying a successful diversion must be concealed from the juvenile court. Under certain circumstances, a diversion unit may counsel and release a juvenile after making a record of the diversion.

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 Engrossed First Substitute Bill: A prosecutor may file or divert any complaint within the jurisdiction of juvenile court which is supported by probable cause and not subject to mandatory diversion, except that the prosecutor must file:

- an offense which is a sex offense or violent offense other than assault 2 or robbery 2;
- the case of a juvenile has been referred from a diversion unit for prosecution; or
- the case of a juvenile who desires prosecution instead of diversion.

In making a filing decision, the prosecutor may be, but is not required to be, guided by the length, seriousness, and recency of the juvenile's criminal history and the circumstances of the alleged offense.

A prosecutor, juvenile court probation counselor, or diversion unit may refer a juvenile to a community-based program or restorative justice program. Prosecutors and juvenile courts are encouraged to engage with and partner with community-based programs to expand, improve, and increase options to divert youth from formal processing in juvenile court. A law enforcement official or entity may be deemed a diversion unit for the purpose of a juvenile court diversion.

A diversion agreement may exclude restitution owed to an insurance provider when calculating the actual loss incurred by a victim of the offense. A juvenile may participate in up to 20 hours of positive youth development as part of a diversion agreement.

A requirement is made optional for members of the community to meet with a juvenile and advise the court when a juvenile is ordered to make community restitution.

A juvenile's criminal records must be destroyed when the defendant reaches 18 years of age if the records consist of successfully completed diversions and counsel and release agreements, or both, which were successfully completed after the effective date of this act, and there is no restitution owing in the case.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This bill expands the currently limited ability of prosecutors to divert cases from formal juvenile court processing to community-based diversion programs. Teenagers make mistakes, which is just part of growing up. This bill recognizes youth potential for development and learning, and provides options to connect youth with support and intervention. Our diversion program helps kids get internships and jobs and get back in school, go to college, and get business licenses. Leadership from the community can help youth go down a different path. Felony filings create stigma. Let us be proactive at the front end before kids have to walk through life with a shadow hanging over them. There are more drugs in college frat parties than in community settings, but the kids in juvenile court do not get the same benefit of the doubt. These kids make common mistakes many of us have made. Allowing police officers to be diversion units will be beneficial. Please amend the bill to restore language allowing youth to opt out of diversion and fight the charges. A second chance helped me make the right decisions in life. I was charged as a juvenile with a felony with no criminal record and was facing two years in prison. Because I was given a second chance, I now counsel youth and attend church, school, and work. My felonies kept me from working, and I felt my life was over at 17. Because of community support, I graduated on time and now I am a dance instructor.

CON: The potential for disparate results will increase if you allow diversion of more serious crimes. Restrictions on judges and prosecutors prevents this. How many times can we say this is just a mistake instead of intentional behavior? We should not forget accountability for youth, and we should not forget victims. Our concern is more with felonies than misdemeanors.

Persons Testifying: PRO: Anne Lee, TeamChild; Dominique Davis, Community Passageways; Riall Johnson, Criminal Justice Chair, NAACP Snohomish County; Kelly Vomacka, Washington Defender Association, Washington Association of Criminal Defense Lawyers; Kaeshon Adams, citizen; Jamari McDaniel, citizen; Iziah Reedy, citizen; Jahila Moody, citizen.

CON: Jim Nagle, Walla Walla County Prosecuting Attorney, Washington Association of Prosecuting Attorneys; Greg Zempel, Kittitas County Prosecuting Attorney, Washington Association of Prosecuting Attorneys.

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