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**SENATE BILL 5614**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Darneille, Hasegawa, and Kuderer

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; and amending RCW 13.40.070 and 13.50.270.

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

**Sec.**  RCW 13.40.070 and 2013 c 179 s 3 are each amended to read as follows:

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

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

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

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

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

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

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)((~~(iii)~~)) (iv); or

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

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

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

(e) ((~~An alleged offender has three or more diversion agreements on the alleged offender's criminal history; or~~

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

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with either prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case.

(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall 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.

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

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

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

**Sec.**  RCW 13.50.270 and 2014 c 175 s 5 are each amended to read as follows:

(1)(a) Subject to RCW 13.50.050(13), all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ninety days of becoming eligible for destruction. Juvenile records are eligible for destruction when:

(i) The person who is the subject of the information or complaint is at least eighteen years of age;

(ii) The person's ((~~criminal history consists entirely of one diversion agreement or counsel and release entered on or after June 12, 2008~~)) records consist of successfully completed diversion agreements and counsel and release agreements, or both, which were completed on or after the effective date of this section; and

(iii) ((~~Two years have elapsed since completion of the agreement or counsel and release;~~

~~(iv) No proceeding is pending against the person seeking the conviction of a criminal offense; and~~

~~(v)~~)) There is no restitution owing in the case.

(b) Notwithstanding this subsection (1), records of successfully completed diversion agreements and counsel and release agreements remain subject to destruction under the terms set forth in subsections (2) through (4) of this section, as well as sealing under RCW 13.50.260.

(c) No less than quarterly, the administrative office of the courts shall provide a report to the juvenile courts of those individuals whose records may be eligible for destruction. The juvenile court shall verify eligibility and notify the Washington state patrol and the appropriate local law enforcement agency and prosecutor's office of the records to be destroyed. The requirement to destroy records under this subsection is not dependent on a court hearing or the issuance of a court order to destroy records.

((~~(c)~~)) (d) The state and local governments and their officers and employees are not liable for civil damages for the failure to destroy records pursuant to this section.

(2) All records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within thirty days of being notified by the governor's office that the subject of those records received a full and unconditional pardon by the governor.

(3)(a) A person may request that the court order the records in his or her case destroyed as follows:

(i) A person eighteen years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to June 12, 2008. The request shall be granted if the court finds that two years have elapsed since completion of the agreement or counsel and release.

(ii) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion. The request shall be granted if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(b) If the court grants the motion to destroy records made pursuant to this subsection, it shall, subject to RCW 13.50.050(13), order the official juvenile court record, the social file, and any other records named in the order to be destroyed.

(c) The person making the motion pursuant to this subsection must give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(4) Any juvenile justice or care agency may, subject to the limitations in RCW 13.50.050(13) and this section, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older or pursuant to subsection (1) of this section.

(b) The court may not routinely destroy the official juvenile court record or recordings or transcripts of any proceedings.

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