

# HOUSE BILL REPORT

## EHB 3078

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**As Passed House:**

February 16, 1998

**Title:** An act relating to diversion eligibility in juvenile court.

**Brief Description:** Restricting juvenile diversion eligibility.

**Sponsors:** Representatives Ballasiotes, Zellinsky and McDonald.

**Brief History:**

**Committee Activity:**

Law & Justice: 2/4/98, 2/6/98 [DP].

**Floor Activity:**

Passed House: 2/16/98, 91-7.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Constantine, Assistant Ranking Minority Member; and Cody.

**Staff:** Edie Adams (786-7180).

**Background:** Diversion is a disposition option available for some juvenile offenders. The offender is diverted from the formal prosecution procedures and sanctions of the juvenile court and referred to a "diversion unit." The diversion unit may enter into a contract with the juvenile, refuse to enter into a contract with the juvenile and return the case to the prosecutor for filing, or in some cases, counsel and release the juvenile. If a juvenile successfully completes a diversion contract, no further action is taken. A successfully completed diversion is a part of the juvenile's criminal history.

A juvenile must be diverted if the alleged offense is a misdemeanor or gross misdemeanor and the juvenile has no prior offenses. If not specifically ineligible for diversion, the prosecutor may elect to divert a juvenile who is not subject to automatic diversion. A juvenile is not eligible for diversion if the offense is almost any felony offense, the juvenile has previously been committed to the Juvenile Rehabilitation

Administration, the juvenile has been diverted at least two times, the juvenile is alleged to have been armed with a firearm during the offense, or the juvenile desires prosecution or is referred for prosecution by a diversion unit.

Prior to July 1, 1997, some juvenile offenders were eligible for a disposition alternative called deferred adjudication. Deferred adjudication allowed the adjudication and disposition for an offense to be deferred for a specified period of time on the condition that the offender meet conditions of community supervision. If the offender complied with all conditions imposed by the court, the case was dismissed with prejudice. A successfully completed deferred adjudication does not count as criminal history.

In 1997, the Legislature amended the juvenile justice laws to change deferred adjudication to deferred disposition. If a juvenile agrees to a deferral of disposition, after a plea of guilty or after a determination of guilt upon a reading of the record, the court may continue the case for disposition for up to one year and place the juvenile on community supervision. If the juvenile complies with all conditions of the deferral, the juvenile's adjudication is vacated and the case is dismissed with prejudice. A successfully completed deferred disposition does not count as criminal history.

Because deferred adjudications and deferred dispositions do not count as criminal history, a juvenile who commits a misdemeanor or gross misdemeanor must be diverted if the juvenile has no prior offenses, even if the juvenile has a prior deferred disposition or adjudication.

**Summary of Bill:** A juvenile alleged to have committed a misdemeanor or gross misdemeanor first offense is not entitled to mandatory diversion if the juvenile has previously been granted a deferred disposition or a deferred adjudication. The prosecutor has discretion to divert these cases, and may consider the recency and seriousness on the charge for which the juvenile received the deferred adjudication or deferred disposition in making the decision of whether or not to divert the juvenile.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill is a minor adjustment to correct an unintended consequence. The law now requires mandatory diversion for certain juveniles who have a prior deferred adjudication or disposition because a deferred adjudication or disposition is not considered a prior offense. Diversion should not be allowed when a juvenile has a prior deferred adjudication or disposition because that does in fact represent a prior criminal conduct by the juvenile.

**Testimony Against:** This bill eliminates an important opportunity for juveniles to enter into diversion. Diversion works. Ninety percent of juveniles who receive a diversion successfully complete it. In Thurston County under the fast track program, 81 percent of the juveniles who successfully complete diversion do not re-offend. There is accountability in diversion. The eligibility for diversion should be increased not decreased. The prosecutors should be given discretion in these cases, rather than completely prohibiting diversion. Some of the offenses underlying a deferred adjudication or disposition are minor offenses. This bill will cost money, because it will take substantially more resources to hear these cases in court than to send them to diversion.

**Testified:** Bernardean Broadous, Thurston County Prosecuting Attorney (pro); Jim Power, Office of the Thurston County Prosecuting Attorney (pro); Charles Shelan, Community Youth Services (con); John Butler, Community Youth Services (con); and Martin Meyer, attorney.