

1 **ESSB 6490** - H AMD TO H AMD (6490-S.E. AMH MORE DEAN 35)

2 By Representative Carrell **0503 FAILED 3-8-02**

3 On page 23, after line 14, insert:

4 **Sec. 6.** RCW 13.40.070 and 2001 c 175 s 2 are each amended to read  
5 as follows:

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

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

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

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

18 (3) If the requirements of subsections (1)(a) and (b) of this  
19 section are met, the prosecutor shall either file an information in  
20 juvenile court or divert the case, as set forth in subsections (5),  
21 (6), and (7) of this section. If the prosecutor finds that the  
22 requirements of subsection (1)(a) and (b) of this section are not met,  
23 the prosecutor shall maintain a record, for one year, of such decision  
24 and the reasons therefor. In lieu of filing an information or  
25 diverting an offense a prosecutor may file a motion to modify community  
26 supervision where such offense constitutes a violation of community  
27 supervision.

28 (4) An information shall be a plain, concise, and definite written  
29 statement of the essential facts constituting the offense charged. It  
30 shall be signed by the prosecuting attorney and conform to chapter  
31 10.37 RCW.

32 (5) Where a case is legally sufficient, the prosecutor shall file  
33 an information with the juvenile court if:

34 (a) An alleged offender is accused of a class A felony, a class B  
35 felony, an attempt to commit a class B felony, a class C felony listed  
36 in \*RCW 9.94A.411(2) as a crime against persons or listed in RCW  
37 9A.46.060 as a crime of harassment, ((or)) a class C felony that is a

1 violation of RCW 9.41.080 or 9.41.040(1)(b)(iii), or a class C felony  
2 that is a violation of RCW 9A.56.070; or

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

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

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

10 (e) An alleged offender has two or more diversion agreements on  
11 the alleged offender's criminal history; or

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

14 (6) Where a case is legally sufficient the prosecutor shall divert  
15 the case if the alleged offense is a misdemeanor or gross misdemeanor  
16 or violation and the alleged offense is the offender's first offense or  
17 violation. If the alleged offender is charged with a related offense  
18 that must or may be filed under subsections (5) and (7) of this  
19 section, a case under this subsection may also be filed.

20 (7) Where a case is legally sufficient and falls into neither  
21 subsection (5) nor (6) of this section, it may be filed or diverted.  
22 In deciding whether to file or divert an offense under this section the  
23 prosecutor shall be guided only by the length, seriousness, and recency  
24 of the alleged offender's criminal history and the circumstances  
25 surrounding the commission of the alleged offense.

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

34 (9) The responsibilities of the prosecutor under subsections (1)  
35 through (8) of this section may be performed by a juvenile court  
36 probation counselor for any complaint referred to the court alleging  
37 the commission of an offense which would not be a felony if committed  
38 by an adult, if the prosecutor has given sufficient written notice to  
39 the juvenile court that the prosecutor will not review such complaints.

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

**EFFECT:** Makes a juvenile ineligible for diversion if he or she has been accused of taking a motor vehicle without permission in the second degree (a class C offense).