HOUSE BILL REPORT
HB 1141

As Reported by House Committee On:
Human Services

Title: An act relating to destruction of diversion records.

Brief Description: Modifying diversion records provisions.

Sponsors: Representatives Roberts, Haler, O'Brien, Green, Goodman, Kagi, Appleton, Walsh, Williams, Dickerson, Darneille, Flannigan, McCoy, Hinkle, Pettigrew and Hasegawa.

Brief History:
Committee Activity:
Human Services: 1/23/07, 1/30/07 [DPS].

Brief Summary of Substitute Bill

- Requires the records of a diversion agreement or counsel and release to be automatically destroyed when the person who is the subject of the charge turns eighteen years of age, so long as the diversion contract or counsel and release has been successfully completed and there is no restitution owing in the case.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Roberts, Vice Chair; Ahern, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Bailey, Darneille, McCoy and O'Brien.

Staff: Sonja Hallum (786-7092).

Background:

If a prosecuting attorney receives a report from law enforcement of an alleged offense, the prosecutor screens the complaint to determine whether there is juvenile court jurisdiction over the alleged offense and whether there is probable cause to believe that the juvenile committed the offense.

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.

If the prosecutor determines the case is legally sufficient, the prosecutor is required to divert the case if the alleged offense is a misdemeanor, gross misdemeanor, or violation and the alleged offense is the offender's first offense or violation.

When the case is referred to Diversion, the juvenile will sign a contract in which the juvenile agrees to fulfill certain obligations in lieu of prosecution. These obligations may include restitution, community service, and counseling as well as other possible obligations. If the offense is very minor, the diversion counselor may counsel the juvenile and release him or her from further obligation. This is known as a counsel and release.

If a diversion contract is signed and the juvenile fails to follow the terms of the contract, the contract may be terminated by the court and the case re-referred to the prosecuting attorney to decide whether to file formal charges and bring the juvenile into the court system.

If the juvenile completes the terms of the contract, the juvenile's obligation ends and the offense is reflected on the juvenile's criminal history.

The juvenile's history in the official juvenile court file is open to the public unless the file has been sealed by court order or destroyed. A person's juvenile record may be destroyed in only the following circumstances:

1) if the person who is 18 years of age or older requests the court destroy his or her record, the criminal history consists of only one diversion, and two years has passed since the diversion was completed;

2) if the person who is 23 years of age or older requests the court destroy his or her record, the criminal history consists of only diversion referrals which have been successfully completed, and there are no criminal proceedings pending against the person; or

3) if the juvenile justice care agency has developed routine procedures for destroying records when two years have elapsed since the completion of the agreement and the person who is the subject of the information or complaint has turned 23 years of age or older or the person is 18 years of age and his or her criminal history consists of only one diversion agreement.

Summary of Substitute Bill:

The criminal history records of a person who is 18 years of age must be automatically destroyed if the criminal history consists of only one diversion or a counsel and release which was successfully completed and there is no restitution owing in the case.

Substitute Bill Compared to Original Bill:

Adds cases which were disposed of through a counsel and release to the history which may be automatically destroyed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is almost identical to the one passed out of the House last year that ran out of time and died in the Senate. This bill is a matter of fairness. If a juvenile completes a deferred disposition it is removed, but a diversion stays on a person's record. Diversions deal with kids who commit very minor offenses. Often this is the biggest deal the family has ever dealt with and they just want to put it behind them. Eighty-one percent of youth who go through diversion never come back. The youth never returns to juvenile court and they forget about it until the youth is trying to join the military, get a job, or get a scholarship to school. Ninety-five percent of youth never have their record sealed. Only records where there is one diversion and no restitution owing can be destroyed. Last year we heard from a youth who received an engineering degree and was offered a job as an engineer, but lost the offer when his criminal history revealed a diversion when he was a young boy.

(With concerns) If the purpose is to remove criminal history, this doesn't destroy all the criminal history. It doesn't destroy the records of law enforcement.

(Opposed) None.

Persons Testifying: (In Support) Representative Roberts, prime sponsor; and Charles Shelan and Jim St. Ours, Community Youth Services.

(With concerns) Martha Harden Cesar, Superior Court Judges Association and Washington Association of Juvenile Court Administrators.

Persons Signed In To Testify But Not Testifying: None.