

FINAL BILL REPORT

ESSB 6550

C 82 L 18
Synopsis as Enacted

Brief Description: Concerning diversion of juvenile offenses.

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

Senate Committee on Human Services & Corrections
House Committee on Early Learning & Human Services

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 ten hours of counseling or up to 20 hours of educational or information sessions;

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- 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 juvenile records sealed if statutory criteria are met.

Summary: 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.

Votes on Final Passage:

Senate	35	11
House	55	43

Effective: June 7, 2018
July 1, 2019 (Section 3)