
SENATE BILL 5614

State of Washington

65th Legislature

2017 Regular Session

By Senators Darneille, Hasegawa, and Kuderer

Read first time 01/31/17. Referred to Committee on Human Services,
Mental Health & Housing.

1 AN ACT Relating to diversion agreements and counsel and release
2 agreements by modifying the conditions under which both may be
3 entered into and mandating eligibility for automatic destruction; and
4 amending RCW 13.40.070 and 13.50.270.

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

6 **Sec. 1.** RCW 13.40.070 and 2013 c 179 s 3 are each amended to
7 read as follows:

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

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

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

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

20 (3) If the requirements of subsections (1)(a) and (b) of this
21 section are met, the prosecutor shall either file an information in

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

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

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

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

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

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

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

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

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

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

38 (7) Where a case is legally sufficient to charge an alleged
39 offender with either prostitution or prostitution loitering and the

1 alleged offense is the offender's first prostitution or prostitution
2 loitering offense, the prosecutor shall divert the case.

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

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

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

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

29 **Sec. 2.** RCW 13.50.270 and 2014 c 175 s 5 are each amended to
30 read as follows:

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

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

1 (ii) ~~The person's ((criminal history consists entirely of one~~
2 ~~diversion agreement or counsel and release entered on or after June~~
3 ~~12, 2008)) records consist of successfully completed diversion~~
4 ~~agreements and counsel and release agreements, or both, which were~~
5 ~~completed on or after the effective date of this section; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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