

FINAL BILL REPORT

SHB 1141

C 221 L 08

Synopsis as Enacted

Brief Description: Modifying diversion records provisions.

Sponsors: By House Committee on Human Services (originally sponsored by Representatives Roberts, Haler, O'Brien, Green, Goodman, Kagi, Appleton, Walsh, Williams, Dickerson, Darneille, Flannigan, McCoy, Hinkle, Pettigrew and Hasegawa).

House Committee on Human Services

Senate Committee on Human Services & Corrections

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 a juvenile committed the offense.

Under the Juvenile Justice Act, that a case against a juvenile if the prosecutor determines is legally sufficient, the prosecutor is required to divert the case if the alleged offense is a misdemeanor or gross misdemeanor, 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 as a diversion.

The juvenile's criminal 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 a person who is 18 years of age or older requests the court to 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 a person who is 23 years of age or older requests the court to 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) 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 or older and his or her criminal history consists of only one diversion agreement.

Summary:

Subject to statutory requirements regarding retention of identifying information, all juvenile criminal history records maintained by any court or law enforcement agency must be automatically destroyed within 90 days of becoming eligible for destruction. Juvenile records are eligible for destruction when: (1) a person who is the subject of the complaint is at least 18 years of age; (2) his or her criminal history consists entirely of one diversion agreement or counsel and release entered on or after the effective date of this act; (3) two years have elapsed since completion of the diversion agreement or counsel and release; (4) no proceeding seeking the conviction of a criminal offense is pending against the person; and (5) there is no restitution owing.

A person who is at least 18 years of age and whose juvenile criminal history consists entirely of one diversion agreement or counsel and release prior to the effective date of this act may request that the court order the records in his or her case destroyed. The request must be granted if the court finds that two years have elapsed since completion of the diversion agreement or the counsel and release.

A person who is at least 23 years of age whose juvenile criminal history consists of only referrals for diversion may request a court order to destroy the records in those cases. The request must be granted if the court finds that all diversion agreements have been successfully completed and that no proceeding seeking a conviction of a criminal offense is pending against the person.

Votes on Final Passage:

House	93	0	
Senate	47	0	(Senate amended)
House			(House refused to concur)
House	97	0	
Senate	48	0	(Senate amended)
House	94	0	(House concurred)

Effective: June 12, 2008