

SENATE BILL REPORT

SHB 1141

As Reported By Senate Committee On:
Human Services & Corrections, February 22, 2008

Title: An act relating to destruction of diversion records.

Brief Description: Modifying diversion records provisions.

Sponsors: 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).

Brief History: Passed House: 2/21/07, 93-0.

Committee Activity: Human Services & Corrections: 3/15/07, 3/29/07 [DPA, w/oRec]; 2/21/08, 2/22/08 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland and Carrell.

Staff: Shani Bauer (786-7468)

Background: If a prosecuting attorney determines that the juvenile court has jurisdiction over an alleged juvenile offender and there is probable cause to believe the juvenile committed the offense, the prosecutor is required to divert the case if the alleged offense is: (1) a misdemeanor, gross misdemeanor, or violation; and (2) the alleged offense is the offender's first offense or violation.

When the case is diverted, the juvenile signs a contract agreeing to fulfill certain obligations in lieu of prosecution, such as restitution, community service, and counseling. If the offense is very minor, the diversion counselor may counsel the juvenile and release the juvenile from further obligation. This practice is known as "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 determine whether to file formal charges. If the juvenile completes the terms of the contract, the offense is recorded on the juvenile's criminal history.

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

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- 1) a 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) a 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) a 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 that person's criminal history consists of only one diversion agreement.

Summary of Bill (Recommended Amendments): The criminal history records of a person who is 18 years of age must be automatically destroyed if: (1) the criminal history consists of only one diversion or a "counsel and release" which was successfully completed; (2) two years have elapsed since completion of the diversion agreement or counsel and release; and (3) no restitution is owing in the case.

Records maintained by any court or law enforcement agency must be destroyed within 90 days of becoming eligible. The Administrative Office of the Courts must provide a quarterly report to the juvenile courts of the records that may be eligible for destruction. The juvenile court must verify eligibility for destruction and notify the Washington State Patrol, local law enforcement, and the prosecutor's office. State and local governments are not liable for civil damages for the failure to destroy records.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): Limits destruction of records to cases where two years have elapsed since completion of the diversion agreement or counsel and release. Requires records maintained by any court or law enforcement agency to be destroyed within ninety days of becoming eligible. Requires the Administrative Office of the Courts to provide a quarterly report to the juvenile courts of the records that may be eligible for destruction. Requires the juvenile court to verify the records are eligible for destruction and notify the WSP, local law enforcement, and the prosecutor's office.

Specifies that state and local governments are not liable for civil damages for the failure to destroy records. Restores process for requesting that the court order the destruction of records when the person is 18 years or older, his or her history consists of one diversion agreement and two years have elapsed since completion of the agreement.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute Bill: PRO: This bill makes it easier for juveniles to move forward without a criminal record when they have successfully completed their diversion and have not committed an additional crime for some period of time. Young

people often forget to go back and clean up their record when they are eligible and these records often end up costing them jobs, housing and other opportunities in their adult lives. This bill would provide a seamless way to clean up a juvenile's record after they turn 18.

This bill does not substantially change current law, but places the burden of destroying the file on the courts. Juvenile diversion files are not open to the public. The original bill would not solve the problem because juvenile court files are confidential. Other agency files such as those with law enforcement and the prosecutor's office are not. The juvenile court anticipates they will be closing approximately 6000 cases per year but will not see the fiscal impact for a couple of years.

Records show that 14 juveniles in Thurston County made a request to destroy records in 2005, 9 in 2006 and 10 in 2007. This shows that young people are forgetting to take care of this. Approximately 100-200 juveniles in Thurston County each year should be eligible to request destruction of their records.

Persons Testifying: PRO: Representative Mary Helen Roberts, prime sponsor; Charles Shelan, Community Youth Services; Jim St. Ours, Community Youth Services; Mike Merringer, Washington Association of Juvenile Court Administrators.