

# HOUSE BILL REPORT

## ESHB 1524

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### As Passed Legislature

**Title:** An act relating to juvenile mental health diversion and disposition strategies.

**Brief Description:** Providing for juvenile mental health diversion and disposition strategies.

**Sponsors:** House Committee on Early Learning & Human Services (originally sponsored by Representatives Roberts, Clibborn, Goodman, Maxwell, Kagi, Orwall, Appleton, Ryu, Ormsby, Jinkins, Fey and Bergquist).

#### **Brief History:**

##### **Committee Activity:**

Early Learning & Human Services: 2/12/13, 2/15/13 [DPS].

##### **Floor Activity:**

Passed House: 3/6/13, 75-23.

Passed Senate: 4/15/13, 47-1.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- Authorizes law enforcement to take a juvenile to an evaluation and treatment facility or alternative location where the juvenile has committed a nonserious offense, the officer believes that the juvenile suffers from a mental disorder, and law enforcement, the local prosecutor, and the mental health provider have previously agreed upon the location.
- Permits a juvenile to have up to three diversion agreements before an information must be filed for an alleged offense.
- Allows up to 30 hours of counseling under a diversion agreement for a juvenile who has been assessed as needing mental health treatment.
- Expands the definition of "community agency" to include physicians, counselors, schools, and treatment providers.
- Permits a court that has granted a deferred disposition to require a juvenile to undergo a mental health or substance abuse evaluation and impose treatment as a condition of supervision.

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*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.*

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## HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kagi, Chair; Freeman, Vice Chair; Walsh, Ranking Minority Member; Farrell, Goodman, MacEwen, Roberts, Sawyer and Zeiger.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Scott, Assistant Ranking Minority Member; Overstreet.

**Staff:** Linda Merelle (786-7092).

### **Background:**

#### Law Enforcement Detention Authority.

In 2007 the Legislature passed Substitute Senate Bill 5533 which gave law enforcement officers the authority under certain circumstances to deliver a person to a facility for short-term detention for assessment and evaluation where the officer has reasonable cause to believe that the individual has a mental disorder and has committed a nonfelony crime that is not a serious offense. The officer may take the individual to a crisis stabilization unit or a triage facility, refer the individual to a mental health professional for evaluation under the mental health commitment statutes, or release the individual upon agreement to voluntary participation in outpatient treatment. If the individual is taken to a crisis stabilization unit or a triage facility, the person may be detained for up to 12 hours and must be examined by a mental health professional within the first three hours of arrival.

#### Crisis Stabilization Units.

Crisis stabilization units were created as a type of facility to which law enforcement officers could take individuals suffering from mental disorders for up to 12 hours. A crisis stabilization unit is defined as a short-term facility for individuals who are experiencing an acute crisis and who need to be assessed, diagnosed, and provided short-term treatment.

#### Triage Facility.

A triage facility is a short-term facility which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual. A triage facility may be structured as a voluntary or involuntary placement facility. A person taken to a triage facility may be held there for up to 12 hours, and must be examined by a mental health professional within three hours of arrival.

#### Evaluation and Treatment Facility.

An evaluation and treatment facility is one which can provide emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder.

#### Diversions.

If a juvenile is alleged to have committed a misdemeanor or gross misdemeanor, and it is his or her first violation, the prosecutor is required to "divert" the case rather than file a complaint. In some circumstances, the prosecutor has discretion whether to allow the juvenile to enter into a diversion or file the case. Except under certain circumstances, a juvenile may have no more than two diversions.

A case is diverted when the juvenile enters into an agreement which may include, among other things, a requirement that the juvenile attend counseling or educational or informational sessions at a community agency. The educational or information sessions may include victim awareness, self-worth, and life skills, among other subjects. A community agency may be a community-based nonprofit organization.

A diversion agreement may be between a juvenile and probation counselor, or any other person, community accountability board, youth court under the supervision of the juvenile court, or other entity except a law enforcement official.

When a juvenile enters into a diversion agreement, the only information provided to the juvenile court for dispositional purposes is:

- the fact that a charge or charges were made;
- the fact that a diversion agreement was entered into;
- the juvenile's obligations under such agreement;
- whether the alleged offender performed his or her obligations under such agreement;
- and
- the facts of the alleged offense.

### Deferred Disposition.

A deferred disposition in juvenile court is akin to a deferred prosecution in adult court. The juvenile offender is found guilty at the time that the court agrees to allow a deferred disposition. A deferred disposition allows a juvenile to complete certain conditions set out by the court and probation, including any restitution payment, in exchange for having the charges dismissed.

A juvenile is eligible for a deferred disposition unless he or she:

- is charged with a sex or violent offense;
- has a criminal history which includes any felony; or
- has two or more prior adjudications.

If a court grants a deferred disposition, the juvenile is required to:

- stipulate to the admissibility of the facts contained in the written police report;
- acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition (i.e., sentencing) if the juvenile fails to comply with terms of supervision; and
- waive the right to a speedy disposition and to call and confront witnesses.

After the court enters a finding or plea of guilty, the court defers entry of an order of disposition. The juvenile offender is placed on community supervision, and the court may

impose any conditions that it deems appropriate. Payment of restitution must be a condition of supervision.

If the court finds that the juvenile offender has successfully complied with the conditions of his or her supervision, including payment of restitution, the conviction is vacated and the court dismisses the case with prejudice. If, at the conclusion of the deferral period, restitution has not been paid in full, the court may vacate the conviction if the court is satisfied the respondent made a good faith effort to pay. In this instance, the court must enter an order establishing the amount of restitution still owing and the terms and conditions of payment, which may include a payment plan extending up to 10 years.

If a juvenile has a conviction for Animal Cruelty in the first degree, his or her conviction may not be vacated.

### **Summary of Engrossed Substitute Bill:**

#### Authority of Law Enforcement.

When a police officer has reasonable cause to believe that a juvenile has committed acts that are considered nonserious offenses, and the officer has reason to believe that the juvenile suffers from a mental disorder, the officer may take the individual to an evaluation and treatment facility or an alternative location that the prosecutor, law enforcement, and the mental health provider have agreed to in advance. Law enforcement may continue any existing practice of taking a juvenile to an alternative location without agreement with local prosecutors.

#### Diversions.

A juvenile may have up to three diversions before the prosecutor must file an information alleging a criminal offense. If an assessment identifies that a juvenile has mental health needs and he or she has been granted a diversion, the juvenile may receive up to 30 hours of counseling, and a term of the diversion agreement may include services that have been demonstrated to improve behavioral health and to reduce recidivism.

The definition of "community agency" is expanded to include a physician, counselor, school, or treatment provider.

#### Deferred Disposition.

If the court grants a deferred disposition to a juvenile, the court may require the juvenile to undergo a mental health or substance abuse evaluation, or both. If the assessment identifies a need for treatment, the conditions of supervision may include treatment that has been demonstrated to improve behavioral health and reduce recidivism.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill is a work in progress, and there are several moving parts. To some extent, this bill is coming straight from the headlines, reflecting concern about violence and the mentally ill. This focuses on juveniles and asks for a more innovative approach to how we respond to youth who have mental health problems. The approach in this bill reflects cooperation between law enforcement, prosecutors, and the various resources. In the long run this really is better for our youth. It keeps them from being incarcerated and instead sees that they are being treated. It is best for our communities because it is the untreated mental health problems that lead to more expensive incarceration and in some cases tragedy within the community. The Legislature has taken numerous actions that has put Washington in the forefront nationally in intervening in the lives of children and adolescents in ways that are both clinically and cost effective. This bill is another move in that direction. Seventy percent of youth in the juvenile justice system have a mental health problem. The juvenile justice system, though effective and progressive, is not equipped to manage these children. Juveniles should not be ensnared in the juvenile justice system when there are community-based interventions that are designed to develop positive aspects in their lives. The bill represents a strategy to divert youth at the community level, improve outcomes for them, and bring about a savings for the community. By expanding diversion options for youth with mental health disorders, this bill will likely reduce unnecessary costs and suffering for families by connecting youth with effective mental health treatment rather than having them go through a formal court process. The courts are not adequately resourced to provide the mental health resources that these youth need. Expanding the number of counseling hours allowable and requiring the services ordered by the court that have proven to be effective would bring accountability to the kinds of services received through a diversion agreement or ordered by the court. This bill would allow better outcomes for youth in terms of symptom reduction and community safety. This bill has nothing but good things in it. Allowing three diversions is a good idea. It would be an opportunity to steer offenders away from future involvement in the juvenile justice system. Under current law, there is a hard cap on two formal diversions. The ability to have three diversions will allow prosecutors to do the right thing in the right cases. A diversion is less expensive than a formal adjudicative process.

(With concerns) A third diversion in many circumstances is appropriate, especially in circumstances where there is a mental health issue.

(Opposed) None.

**Persons Testifying:** (In support) Representative Roberts, prime sponsor; Eric Trupin, University of Washington, Division of Public Behavioral and Justice Policy; Russ Hauge, Washington Association of Prosecuting Attorneys; and Sarah Walker, University of Washington.

(With concerns) Tom McBride, Washington Association of Juvenile Court Administration.

**Persons Signed In To Testify But Not Testifying:** None.