
Early Learning & Human Services Committee

ESSB 6550

Brief Description: Concerning diversion of juvenile offenses.

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

Brief Summary of Engrossed Substitute Bill

- Expands the circumstances when a prosecutor may divert rather than prosecute an alleged juvenile offender case.
- Excludes restitution owed to insurance providers from diversion agreements.
- Expands the programs that may be used as part of a juvenile diversion and allows law enforcement to enter into a diversion agreement with a youth.
- Requires that juvenile records of persons 18 years of age or older consisting of successfully completed diversion agreements and counsel and release agreements, or both, be destroyed within 90 days.

Hearing Date: 2/20/18

Staff: Luke Wickham (786-7146).

Background:

Diversion of Juvenile Cases.

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 three diversions.

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.

A prosecutor must file an information with juvenile court rather than divert a case when the:

- alleged offender is accused of a felony offense;
- alleged offender was previously committed to the Department of Social and Health Services;
- alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion;
- alleged offender has had three or more diversions; or
- case includes a filing that the alleged offender or an accomplice was armed with a firearm when the offense was committed.

A case is diverted when the juvenile enters into an agreement, which may include, among other things, a requirement that the juvenile attend counseling, educational, or informational sessions at a community agency. A diversion agreement may be between a juvenile and a probation counselor, community accountability board, youth court under the supervision of the juvenile court, or other entity.

If a juvenile violates his or her diversion agreement, then the case is referred back to the prosecuting attorney for the filing of criminal charges in court.

Counsel and Release.

A diversion unit may counsel and release a juvenile in cases that do not involve a victim. A diversion unit may also counsel and release juveniles:

- with no prior criminal history;
- who are alleged to have committed an illegal act that did not involve a threat or instance of physical harm;
- involved in cases that do not involve more than \$50 in property loss or damage; and
- when there is no loss outstanding to the person of firm suffering the damage or loss.

A counsel and release agreement does not require a juvenile to complete the terms of a diversion agreement, but the diversion unit may refer the juvenile to community-based counseling, treatment programs, or a restorative justice program.

Destruction of Juvenile Court Records.

Certain juvenile records maintained by courts and law enforcement must be destroyed within 90 days of becoming eligible for destruction. Juvenile records are eligible for destruction when:

- the subject of the records is at least 18 years of age;
- the person's criminal history consists entirely of one diversion agreement or counsel and release;
- two years have elapsed since completion of the diversion agreement or counsel and release;
- no proceeding is pending against the person seeking the conviction of a criminal offense; and
- there is no restitution owing in the case.

Summary of Bill:

The circumstances when a prosecutor must file an information in juvenile court rather than divert a case are modified such that an information must be filed when:

- an alleged offender is accused of an offense that is defined as a sex offense or violent offense, other than Assault in the second degree or Robbery in the second degree; or
- an alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion.

The requirement that prosecutors be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense with an ability for prosecutors to be guided by these factors is replaced.

Prosecutors, juvenile court probation counselors, or diversion units may refer juveniles to community-based, restorative justice programs in addition to other programs that are currently allowed.

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.

The restriction that law enforcement officials or entities cannot enter into diversion agreements with youth is removed.

Restitution owed to insurance providers is excluded from diversion agreements.

Up to 20 hours of attendance in positive youth development may be required by a diversion agreement.

Juvenile records of persons 18 years of age or older consisting of successfully completed diversion agreements and counsel and release agreements, or both, completed after the effective date of the bill must be destroyed within 90 days. The requirements that two years must have passed since completion of a counsel and release agreement or diversion agreement and that the individual's criminal history consist of only one of those agreements for those records to be eligible for destruction are removed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to juvenile justice definitions following the transfer of juvenile justice programs to the Department of Children, Youth, and Families, which takes effect July 1, 2019.