

HOUSE BILL REPORT

HB 1994

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to judicial dismissal of a misdemeanor following completion of court-ordered conditions.

Brief Description: Concerning judicial dismissal of a misdemeanor following completion of court-ordered conditions.

Sponsors: Representatives Farivar, Goodman, Reed, Alvarado, Ramos, Cortes, Morgan, Reeves, Simmons, Ormsby, Macri, Street, Fosse and Pollet.

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/9/24, 1/18/24 [DPS].

Brief Summary of Substitute Bill

- Authorizes the court, in its discretion or upon motion of either party, to dismiss a defendant's qualifying misdemeanor or gross misdemeanor charge upon the defendant's substantial compliance with court-ordered conditions.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

Staff: Corey Patton (786-7388).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Under certain circumstances, the prosecuting authority reviewing a case for possible criminal charges against a person may use its discretion to offer a diversion opportunity to the person before filing charges. Generally, prefiling diversions involve an agreement by the prosecuting authority to decline to file the pending charges if the person complies with certain conditions, such as completing a treatment program or remaining crime-free for an agreed period of time. These types of prefiling diversions are typically operated by the prosecuting authority.

If charges have been filed in a case, the defendant may seek other opportunities to resolve the case prior to trial depending on the nature of the charges. For example, a defendant charged with a misdemeanor or gross misdemeanor in district or municipal court may petition the court for a deferred prosecution, subject to meeting eligibility criteria, making certain stipulations and waivers, and complying with a specific treatment plan and other conditions. If the defendant completes the treatment plan and all other statutory requirements, the court must dismiss the defendant's charges.

Alternatively, a defendant may enter into a dispositional continuance, such as a Stipulated Order of Continuance, with the agreement of the prosecutor and approval of the court. A dispositional continuance typically requires the defendant to comply with agreed conditions in exchange for the dismissal of the defendant's charges. To enter into a dispositional continuance, the defendant must waive the right to a speedy trial. In some cases, the defendant must also waive the right to a trial by jury and agree to a stipulated facts trial if the defendant violates the conditions of the continuance.

Summary of Substitute Bill:

The court is authorized, in its discretion or upon motion of either party, to offer to dismiss a defendant's misdemeanor or gross misdemeanor charge upon substantial compliance with court-ordered terms, conditions, or programs. The following offenses are not eligible to be dismissed through this process:

- Driving Under the Influence or Physical Control;
- Stalking;
- Assault in the fourth degree;
- Animal Cruelty in the second degree involving the knowing, reckless, or criminally negligent infliction of unnecessary suffering or pain upon an animal, or abandonment of an animal that was involved in animal fighting;
- Communication with a Minor or Someone Believed to be a Minor for Immoral Purposes;
- domestic violence offenses involving an intimate partner;
- certain offenses related to aiming or discharging a firearm or other specified weapon, or setting a so-called trap or other specified weapon;

- any offense with a finding of sexual motivation;
- any traffic offense involving a commercial driver's license or learner's permit, or involving the operation of a commercial motor vehicle; and
- any offense that was originally filed as a felony but subsequently amended to, or refiled as, a misdemeanor or gross misdemeanor.

If the defendant agrees to waive the right to a speedy trial, the court may continue the defendant's case for a period not to exceed 12 months and order the defendant to comply with terms, conditions, or programs that the court deems appropriate based on the defendant's specific situation. The court must rule on the motion in open court. Full restitution must be a required condition, but the defendant's inability to pay restitution due to indigence may not be grounds to deny a dismissal following progress towards compliance or as a basis for finding that the defendant has failed to substantially comply. If the defendant substantially complies with the court-ordered terms and conditions, the court must dismiss the pending charges.

If it appears to the prosecutor that the defendant is not substantially complying with the court-ordered terms and conditions, and after providing the defendant with written notice of the alleged violations and disclosure of all evidence to be offered against the defendant, the court must hold a hearing to determine whether the defendant has willfully failed to substantially comply with the court-ordered terms and conditions. The Rules of Evidence do not apply at the hearing. The defendant must be afforded the due process rights required for the revocation of probation, including the right to confront and cross-examine all witnesses, and the defendant must have the opportunity to be heard in person and present evidence. If the court finds by a preponderance of the evidence that the defendant is willfully failing to substantially comply with the court-ordered terms and conditions, the court may either continue the hearing to provide additional time for substantial compliance or end the period of continuance.

If the court offers to dismiss the defendant's charge, any written confirmation of completion of an assessment or statement indicating the defendant's enrollment or referral to a specific service or program, or any written update regarding treatment or services, is considered a treatment evaluation or compliance form ordered by the court. The prosecution may not use admissions made by the defendant in the course of receiving treatment or services pursuant to the offer to dismiss in the prosecution's case in chief. The defendant's entry into a judicially authorized dismissal following substantial compliance with court-ordered conditions does not constitute a conviction for purposes of reporting certain convictions to the Department of Licensing.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) limits the newly established process for dismissing a misdemeanor or gross misdemeanor to cases in a court of limited jurisdiction; (2) requires the court to rule in open court on certain motions; (3) requires the defendant to substantially comply with

court-order conditions to receive a dismissal; (4) lowers the applicable standard of proof to a "preponderance of the evidence" standard for purposes of certain compliance hearings; (5) eliminates the provision in the original bill prohibiting the prosecution or the court from subpoenaing service providers to provide records or testimony; (6) requires certain confirmations and updates related to assessment for and enrollment in services or treatment to be considered a treatment evaluation or compliance form ordered by the court; (7) prohibits the prosecutor from using certain admissions made by the defendant in the course of receiving treatment or services in the prosecution's case in chief; (8) expands the list of offenses that may not be dismissed; and (9) amends current law related to the regulation of motor vehicles and reporting of certain convictions to the Department of Licensing to specify that entry into a dismissal through the newly established process does not constitute a conviction.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Misdemeanors represent 80 percent of the entire national criminal docket and are the way most people will encounter the criminal legal system. They often have devastating consequences for persons, families, and communities. The system does not do a good job of incentivizing thoughtful charging decision in a rigorous and equitable way in the context of misdemeanors, which are usually charged by less experienced prosecutors. Many people involved in the system due to misdemeanor charges are there because of symptoms of their disabilities. This is especially apparent in light of the *Trueblood v. Washington State Department of Social and Health Services* lawsuit. During the 2023 legislative session, it was found that 11 percent of *Trueblood* class members enter into the system on misdemeanors. This bill provides an opportunity to divert people into treatment and support, rather than endlessly cycle them through incarceration and homelessness.

Currently, judges are limited in how they can address defendants with mental health or substance use issues. We cannot jail our way out of the fentanyl crisis because that does not address the underlying causes of crime. We must be able to act quickly and effectively to ensure people do not go on to commit felonies. Importantly, this bill allows a judge, who is the only neutral party in the court, to dismiss a defendant's case with terms and conditions in order to ensure meaningful accountability while giving a pathway out of the system. Adopting the process in this bill would be optional for each court, not mandatory. We could measure recidivism between courts that utilize this tool and courts that choose not to. Nothing here takes away from the prosecutor's ability to file charges or object to a motion.

The separation of powers means relying on checks and balances between the branches to promote the integrity of the system. This bill improves those checks and balances.

There are some people with concerns about procedural aspects of this bill, but there is still broad support for specifically creating dismissal pathways for property crime and petty crime. These categories of crime occur due to lack of a social safety net, and this bill will act as an early force for intervention by connecting defendants with resources and services.

(Opposed) This bill violates the separation of powers. During the 2023 legislative session, there were similar attempts to pass legislation that would have created a diversion program and given judges the authority to grant diversions without the prosecutor's agreement. Prosecutors have the inherent ability to file, amend, and dismiss charges, and courts generally do not have the authority to offer diversions without prosecutor involvement. Until sentencing occurs, judges do not take an active role in the case or have the authority to make decisions and enter into agreements with the parties. This bill would fundamentally change that dynamic by inappropriately giving judges authority conveyed to the executive branch and putting judges in a position where they have to become partial.

Whether individuals are held responsible is not up to a single entity in the criminal justice system. This bill puts an impossible burden on prosecutors to prove a failure to engage with conditions without subpoenaing service providers. There are already many thoughtful prefiling and postfiling diversion programs, but this bill removes accountability, guts the criminal justice system, and is an affront to victims.

(Other) Criminal charging, dismissals, plea negotiations, and offers of settlement are executive functions that properly belong to the prosecutor. The judge, while neutral, is frequently the person who knows the least about the parties and the circumstances of the alleged crime, and is therefore probably in the worst position to fashion a continuance based on agreed conditions. These types of pretrial agreements are usually crafted by the parties. Additionally, when there is an alleged violation of an agreement, there are already established procedural requirements, court rules, and case law that apply. This bill creates an entirely new set of procedures.

Although this bill carves out exemptions for domestic violence crimes, there should be additional exemptions for sexual assault crimes as well. Sexual assault cases often resolve with pleas to lesser charges, many of which are misdemeanors. When survivors of sexual assault report crimes, there is a long wait in the process that makes them question their own motivations and truthfulness. Survivors often come from the same marginalized communities as the persons who harmed them, and they are less likely to be taken seriously when they do seek help. The criminal justice system should acknowledge their harm and trauma, and ensure their experiences are not minimized.

Dismissals often result in a truncated judicial record because a lot of the decision-making occurs in the mind of the judge. This bill should provide for full and complete records of

judges' decisions and make those records publicly available.

Persons Testifying: (In support) Representative Darya Farivar, prime sponsor; Damon Shadid; Alexandra Natapoff, Harvard Law School; and Anita Khandelwal, King County Department of Public Defense.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys; and Ann Davison, Seattle City Attorney's Office.

(Other) Commissioner Paul Wohl, District and Municipal Court Judges' Association; Rowland Thompson, Allied Daily Newspapers of Washington, Washington Newspaper Publishers Association, Washington State Association of Broadcasters; and Megan Allen, King County Sexual Assault Resource Center.

Persons Signed In To Testify But Not Testifying: Mary Logan.