

HOUSE BILL REPORT

ESHB 1113

As Passed House:

March 8, 2025

Title: An act relating to accountability and access to services for individuals charged with a misdemeanor.

Brief Description: Concerning accountability and access to services for individuals charged with a misdemeanor.

Sponsors: House Committee on Community Safety (originally sponsored by Representatives Farivar, Goodman, Simmons, Taylor, Macri, Scott, Fosse, Street, Reed, Senn, Berry, Alvarado, Morgan, Mena, Peterson, Stonier, Walen, Pollet, Wylie, Cortes, Obras, Gregerson, Ormsby, Bergquist, Salahuddin and Hill).

Brief History:

Committee Activity:

Community Safety: 2/3/25, 2/10/25 [DPS].

Floor Activity:

Passed House: 3/8/25, 50-46.

Brief Summary of Engrossed Substitute Bill

- Authorizes the court to dismiss a defendant's misdemeanor or gross misdemeanor charge upon the defendant's substantial compliance with court-ordered conditions, subject to certain requirements and exceptions.

HOUSE COMMITTEE ON COMMUNITY SAFETY

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 Obras.

Minority Report: Do not pass. Signed by 3 members: Representatives Graham, Ranking

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.

Minority Member; Griffey, Assistant Ranking Minority Member; Burnett.

Staff: Corey Patton (786-7388).

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 Engrossed Substitute Bill:

The court is authorized, upon motion of either party, to agree to dismiss a defendant's misdemeanor or gross misdemeanor charge upon substantial compliance with court-ordered terms, conditions, or programs. The following offenses and any violations of equivalent local ordinances are not eligible to be dismissed through this process:

- Reckless Driving;
- Racing;
- Reckless Endangerment of Roadway Workers;
- Negligent Driving in the first or second degree;
- Negligent Driving in the second degree with a vulnerable user victim;
- Hit and Run;
- Stalking;
- Hazing;

- Animal Cruelty in the second degree;
- Assault in the fourth degree;
- Communication with a Minor or Someone Believed to be a Minor for Immoral Purposes;
- Harassment;
- Cyber Harassment, except where the offense solely involves using lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;
- Unlawful Carrying or Handling of a Firearm;
- Indecent Exposure;
- Disclosing Intimate Images;
- Abandonment of a Dependent Person in the third degree;
- Leaving a Child in the Care of a Sex Offender;
- Criminal Mistreatment in the third or fourth degree;
- Interfering with the Reporting of Domestic Violence;
- Reckless Endangerment;
- certain offenses related to aiming or discharging a firearm or other specified weapon, or setting a so-called trap or other specified weapon;
- domestic violence offenses involving an intimate partner;
- violations of certain protection or no-contact orders;
- any offense with a finding of sexual motivation;
- any offense that would constitute a prior offense for purposes of determining Driving Under the Influence or Physical Control penalties;
- 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 of no less than six months, up to a maximum of 12 months, and order the defendant to comply with terms, conditions, or programs that are connected to the underlying charge and reasonably related to supporting the defendant's rehabilitation.

The court must:

- consider the defendant's specific circumstances, including, but not limited to, whether the underlying charge is the result of or caused by a behavioral health disorder, lack of access to stable housing or employment, or a combination of such factors, and whether the defendant has previously been identified as needing competency restoration treatment;
- consider ordering the defendant to participate in a Recovery Navigator Program, Arrest and Jail Alternative Program, Law Enforcement Assisted Diversion Program, Trueblood high utilizer program, or local diversion program, or a combination of such programs, to the extent such programs are available and appropriate; and
- hear from both parties and 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. The court must also order the defendant to not commit any new criminal law violations for the entire continuance period. Paying full restitution and avoiding any new criminal law violations must not be the only conditions imposed.

If the defendant substantially complies with the court-ordered terms and conditions, the court must dismiss the pending charges at the end of the continuance period and make written findings for its decision. Prior to dismissing the charges, the court must provide an opportunity for victims and survivors of victims to present a statement personally or by representation.

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 has failed 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 and set a new commencement date.

If the court agrees 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 for purposes of specified court rules. 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.

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) Courts currently have limited flexibility to encourage accountability in a meaningful way, especially with regard to defendants experiencing a substance use disorder or economic hardship that causes them to cycle in and out of the criminal justice system. Nearly half of all non-traffic, non-domestic violence cases statewide are resolved by dismissal. However, people are not being connected to any services upon dismissal in many instances. Many people charged with misdemeanors are only involved in the criminal justice system because of unmet basic needs.

This bill fills the gap in accountability by creating a structure for court-supervised resolution of cases that will require defendants to complete treatment, community service, or other rehabilitative programs. The prosecutor will still control the initial filing of charges, and the court will not become a party to cases. This bill will connect people who commit low-level offenses to services more immediately and effectively, allowing efficient movement out of the criminal justice system while maintaining accountability.

(Opposed) Opportunities for diversion are typically only offered when the prosecutor agrees after negotiating the terms of the diversion. This bill removes prosecutorial discretion to offer an alternative disposition and turns that power over to judges and defense attorneys, cutting out the prosecutor's ability to represent the interests of victims. Judges must uphold and promote the independency, integrity, and impartiality of the judiciary. Allowing the court to insert itself as a party to a case goes beyond the court's intended role and erodes the separation of powers. Getting prosecutors to follow through on charges is already difficult; public safety cannot afford judges doing the same thing.

(Other) There are concerns about how this bill will work in practice and what impact it will have on judicial resources, efficiency, and caseloads. Courts will need to monitor defendants for substantial compliance and it is unclear how substantial compliance is meant to be determined. The Code of Judicial Conduct restricts what the court can do when the parties disagree about the conditions that should be imposed. This bill does not require the defendant to forgo having a jury trial, which is a requirement in other diversions. All forms of Animal Cruelty in the second degree should be made ineligible for dismissal under this bill.

Persons Testifying: (In support) Representative Darya Farivar, prime sponsor; Kate Benward; Victoria Rivera, Catholic Charities; Kaili Lutes, Catholic Charities; and Holly Duffy, Pederson Law.

(Opposed) Russell Brown, WA Association of Prosecuting Attorneys; James McMahan, WA Assoc Sheriffs and Police Chiefs; and James Kenny, Seattle City Attorney's Office.

(Other) Kirsten Gregory, Pasado's Safe Haven; Melissa Johnson, District and Municipal Court Judges' Association; and Judge Carolyn Jewitt, District and Municipal Court Judges' Association.

Persons Signed In To Testify But Not Testifying: Courtney Hesla, Comprehensive

Healthcare; Joshua Wallace, Peer Washington; Judge Damon Shadid; and Candice Bock, Association of Washington Cities.