

Prosecutor Review Memo

Summary of HB 239 Sections Dealing with Prosecutor Review

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- HB 239 requires probation to conduct a preliminary inquiry for referrals for misdemeanors, infractions, or status offenses.
- If the minor meets certain criteria identified below, probation shall offer a non-judicial adjustment.
- HB 239 only requires that prosecutors review cases in which a youth is ineligible or fails a non-judicial adjustment.
- Section 17-18a-404 is not a mandate for prosecutors to review all juvenile referrals. The section directs that reviews should be pursuant to section 78A-6-602, which clearly lays out the parameters under which prosecutors are required to review referrals.
- The statutory language requires probation to determine eligibility for a non-judicial adjustment at initial referral.

HB 239 Sections Dealing with Prosecutor Review

There are two sections of HB 239 that deal with prosecutor review of charges in juvenile proceedings.

17-18a-404 (lines 156-161)

This section states that for a proceeding involving a charge of juvenile delinquency, infraction, or status offense, the prosecutor shall review cases pursuant to section 78A-6-602, and appear and prosecute for the state in the juvenile court.

78A-6-602 (lines 4430-4530)

This section lays out the procedure for prosecutor review of juvenile charges, which is as follows:

- Law enforcement may refer after an arrest with a referral form or on a citation to the juvenile court.
- Under 602(2)(b) the probation department *shall* make a preliminary inquiry into whether the minor is eligible to enter into a written consent agreement with the probation department (non-judicial adjustment).
- Probation *shall* offer a non-judicial adjustment unless the minor:
 - Is referred for a felony
 - Has 3 or more prior adjudications
 - Has three prior unsuccessful non-judicial attempts.

- Any youth who is high risk or moderate risk and charged with certain offenses *may* be offered a non-judicial adjustment, or the probation department may request that the prosecutor review the referral to file a petition or dismiss.
- The circumstances when prosecutors screen cases are defined under 602(2)(c):
 - After probation completes a pre-screen risk assessment (PSRA) and the results show high risk, then probation *may* ask the prosecutor to screen the case, or
 - After probation completes a PSRA and the results show moderate risk *and* the referral is for a Class A person crime or sex crime then probation *may* refer the case to a prosecutor for screening.
- If the results of a PSRA completed by probation show low risk, probation *shall* offer a non-judicial adjustment.
- If the youth fails the non-judicial, or if the youth is not eligible for a non-judicial, the prosecutor *shall* review the case and either:
 - Dismiss the case
 - Refer the case back to probation for a new attempt at non-judicial adjustment
 - File a petition (except as a result of failure to pay a fine).