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61 respective decisions to either abstain from filing the juvenile  
62 petition or to dismiss the juvenile petition, as follows:

63 (1) If the minor has not previously been found delinquent,  
64 and the minor's activities represent a first offense for the  
65 activities described in subsection (a) of this section, the minor  
66 shall not be subject to the requirements of this article and  
67 chapter, as long as they successfully complete the educational  
68 diversion program; and

69 (2) If the minor's activities represent a second or subsequent  
70 offense for the activities described in subsection (a) of this  
71 section, the minor's successful completion of the educational  
72 diversion program may be considered as one of several factors  
73 to be considered by the prosecutor and court in deciding to not  
74 file a petition or to dismiss a petition, upon successful completion  
75 of an improvement plan established by the court.

76 (f) Notwithstanding the provisions of article twelve, chapter  
77 fifteen of this code, whether or not a minor adjudicated delin-  
78 quent for a second or subsequent violation or offense as set forth  
79 in subsection (a) of this section shall be subject to the provisions  
80 of article twelve, chapter fifteen shall remain in the discretion of  
81 the circuit court.