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## Human Services Committee

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### ESSB 5746

**Brief Description:** Modifying sentencing provisions for juveniles adjudicated of certain crimes.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senator Hargrove).

#### Brief Summary of Engrossed Substitute Bill

- Allows the juvenile court to have jurisdiction over a juvenile, even if the juvenile has previously been the subject of adult court jurisdiction, as long as the juvenile is not otherwise under adult court jurisdiction at the time of an alleged offense.
- Allows the prosecutor and the respondent, by agreement, and with the court's approval, to waive the exclusive adult court jurisdiction triggered when juvenile is 16 or 17; the court shall only consider the facts of the alleged offense regarding seriousness, extent to which the juvenile was involved, whether the offense is against persons or property, and the manner in which the juvenile is alleged to have participated in the offense.
- Excludes juveniles aged 15 from mandatory decline hearings.
- Changes the mandatory minimum sentences for juveniles for offenses regarding theft and possession of motor vehicles.

**Hearing Date:** 3/23/09

**Staff:** Linda Merelle (786-7092)

#### **Background:**

##### Juvenile Court Jurisdiction.

The terms "juvenile," "youth," and "child" are synonymous under Washington law. A juvenile is any individual who is under the chronological age of 18 years and who has not been previously

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transferred to adult court pursuant to the decline statutes or who is otherwise under adult court jurisdiction.

Under Washington law, a child under the age of 8 is incapable of committing a crime. Children ages 8 through 11 are presumed to be incapable of committing an offense. That presumption may be removed by clear and convincing evidence that the child had the capacity to understand the act and to know that it was wrong. Children aged 12 and older are presumed to have the capacity to commit an offense or crime, which may be rebutted by evidence regarding competency.

Generally, children aged 12 through 17 (and those aged 8 through 11 for whom the state has rebutted the presumption that they are incapable of committing an offense), are under the exclusive jurisdiction of the juvenile court. There are some critical exceptions to this rule, such as when a juvenile court has issued an order declining jurisdiction or circumstances exist where an adult court has exclusive jurisdiction over a 16- or 17-year-old.

#### Adult Court Jurisdiction for Persons Under Age 18.

*Decline Hearings:* There are two kinds of decline hearings, mandatory and discretionary. A decline hearing is held before a hearing is held on the merits of an alleged offense charged by the state. There are eight criteria that a juvenile court should consider before declining jurisdiction. A court may decline jurisdiction even if all of the criteria are not met. Some of the factors to be considered are whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner, as well as the sophistication and maturity of the juvenile. A court order declining jurisdiction must articulate its findings for declining jurisdiction. These findings must be supported by a preponderance of the evidence.

Mandatory: A decline hearing is mandatory when a juvenile is 15, 16, or 17 years old and the information alleges a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony. It is mandatory if the juvenile is 17 and the information alleges Assault in the second degree, Extortion in the first degree, Indecent Liberties, Child Molestation in the second degree, Kidnapping in the second degree, Robbery in the second degree. A decline hearing is also mandatory if the information alleges an escape and the juvenile is serving a minimum juvenile sentencing to age 21.

Discretionary: The prosecutor, the juvenile, or the court may file a motion requesting a hearing on whether the court should transfer a juvenile to adult court for criminal prosecution.

*Automatic Adult Court Jurisdiction:* The adult criminal court has exclusive jurisdiction over a juvenile if the juvenile is 16 or 17 and is alleged to have committed one of the following:

- a serious violent offense;
- a violent offense with a criminal history of: (a) one or more prior serious violent offenses; (b) two or more prior violent offenses; or (c) three or more of any combination of any class A felony, class B felony, Vehicular Assault, or Manslaughter in the second degree. All of these must have been committed after the juvenile's thirteenth birthday and prosecuted separately;
- Robbery in the first degree with a criminal history of one or more prior felony or misdemeanor offenses;

- Burglary in the first degree with one or more prior felony or misdemeanor offenses; or
- any violent offense with a firearm allegation.

Under Washington law, once the adult criminal court has exerted jurisdiction over a juvenile, that person remains an adult for all future criminal offenses. For example, if a 15 year old has been convicted and completed the terms of a sentence in adult court, and that person commits a further offense at age 17, he or she is treated as an adult and is subject to adult court jurisdiction, regardless of the nature of the offense, felony or misdemeanor.

Mandatory Minimum Sentences of Offenses Involving Motor Vehicles.

A juvenile offender convicted of an offence receives a sentence that is based upon the seriousness of the offense and the offender's prior criminal history score. If the offender has no prior criminal history, the criminal history score is zero.

Current law requires that juvenile offenders convicted of Taking of a Motor Vehicle without Permission in the first or second degree, theft of a motor vehicle, and possession of a stolen vehicle, regardless of the criminal history score, serve mandatory sentences. For a conviction of Taking of a Motor Vehicle without Permission, in any degree, the mandatory minimum sentence must include confinement, which can, in some cases, be served as home detention.

*Taking Motor Vehicle without Permission - First Degree:* A person is guilty of Taking of a Motor Vehicle without Permission in the first degree if he or she, without permission of the owner, intentionally takes a motor vehicle and: (1) alters or changes the motor vehicle's appearance or primary identification; (2) removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts; (3) exports, or attempts to export, the motor vehicle across state lines or out of the country for profit; or (4) intends to sell the motor vehicle.

*Taking Motor Vehicle without Permission - Second Degree:* A person is guilty of Taking of a Motor Vehicle without Permission in the second degree if he or she, without permission of the owner, intentionally takes a motor vehicle, or voluntarily rides in a motor vehicle with the knowledge of the fact that it was unlawfully taken.

*Theft of a Motor Vehicle:* A person is guilty of Theft of a Motor Vehicle if he or she commits theft of a motor vehicle.

*Possession of Stolen Motor Vehicle:* A person is guilty of Possession of a Stolen Vehicle if he or she possesses a stolen motor vehicle.

The current mandatory minimum sentences for juvenile offenses involved motor vehicles are as follows:

<b>Offense</b>	<b>Criminal History Score</b>	<b>Mandatory Minimum Sentence</b>
<b>Taking Motor Vehicle without Permission – First Degree</b>	0 - 1/2 points	5 days home detention; 45 hours community service; \$200 fine.

<b>Taking Motor Vehicle without Permission – First Degree</b>	3/4 - 1 1/2 points	10 days detention; 90 hours community service; \$400 fine.
<b>Taking Motor Vehicle without Permission – First Degree</b>	2 or more points	15 - 36 weeks confinement; 7 days home detention; 4 months supervision; 90 hours community service; \$400 fine.
<b>(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle</b>	0 - 1/2 points	5 days home detention; 45 hours community service <b>OR</b> zero days home detention <b>and</b> 90 hours community service.
<b>(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle</b>	3/4 - 1 1/2 points	10 days home detention; 90 hours community service; \$400 fine.
<b>(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle</b>	2 or more points	15 - 36 weeks confinement; 7 days home detention; 4 months supervision; 90 hours community service; \$400 fine.
<b>Taking Motor Vehicle without Permission – Second Degree</b>	0 - 1/2 points	<b>EITHER:</b> 1 day home detention; 1 month supervision; 15 hours community service; <b>OR</b> zero days home detention; 30 days supervision; 30 hours community service.
<b>Taking Motor Vehicle without Permission – Second Degree</b>	3/4 - 1 1/2 points	1 day detention; 2 days home detention; 2 months supervision; 30 hours community service; \$150 fine.
<b>Taking Motor Vehicle without Permission – Second Degree</b>	2 or more points	3 days detention; 7 days home detention; 3 months supervision; 45 hours community service; \$150 fine.

**Summary of Bill:**

Juvenile Court Jurisdiction.

The juvenile court may have jurisdiction even if the juvenile court has previously declined jurisdiction for a previous offense, or the juvenile was otherwise subject to adult court jurisdiction. The juvenile court may have jurisdiction only if at the time of the alleged offense the juvenile was not under the adult court jurisdiction. For example, a 15-year-old who has been convicted and completed the terms of his or her sentence in adult court would no longer be subject to adult court jurisdiction for a future offense unless there is a subsequent decline order or statutorily mandated adult court jurisdiction based upon the nature of the offense and the age of the individual.

Decline Hearings.

A decline hearing for a juvenile aged 15 is no longer mandatory for any offense.

The juvenile and the prosecutor, by agreement, may waive the exclusive adult court jurisdiction triggered by certain offenses. The court must approve the waiver, and in its determination shall consider only facts related to the following:

- the seriousness of the alleged offense and the extent to which the juvenile was involved;
- whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
- whether the alleged offense is against persons or property, greater weight being given to offenses against persons, especially if personal injury resulted from the offense.

Mandatory Minimum Sentences for Juvenile Offenses Involving Motor Vehicles.

The minimum penalties for a juvenile are increased for offenses involving motor vehicles as demonstrated in the following table:

<b>Offense</b>	<b>Criminal History Score</b>	<b>Mandatory Minimum Sentences Pursuant to ESSB 5746</b>
<b>Taking Motor Vehicle without Permission – First Degree</b>	0 - 1/2 points	5 days home detention; 3 months community supervision; 45 hours community restitution; \$200 fine.
<b>Taking Motor Vehicle without Permission – First Degree</b>	3/4 - 1 1/2 points	10 days detention; 6 months community supervision; 90 hours community restitution; \$400 fine.
<b>Taking Motor Vehicle without Permission – First Degree</b>	2 or more points	15 - 36 weeks confinement; 4 months parole supervision; 7 days home detention; 4 months supervision; 90 hours community restitution; \$400 fine.
<b>(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle</b>	0 - 1/2 points	5 days home detention; 3 months community supervision; \$200 fine and <b>either</b> 5 days home detention <b>or</b> an additional 90 hours of community restitution.
<b>(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle</b>	3/4 - 1 1/2 points	10 days detention; 6 months community supervision; 90 hours community restitution; \$400 fine.
<b>(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle</b>	2 or more points	15 - 36 weeks confinement; 4 months parole supervision; 7 days home detention; 90 hours community restitution; \$400 fine.
<b>Taking Motor Vehicle without Permission – Second Degree</b>	0 - 1/2 points	1 day home detention; 3 months supervision; 15 hours community restitution.

<b>Taking Motor Vehicle without Permission – Second Degree</b>	3/4 - 1 1/2 points	1 day detention; 3 months community supervision; 2 days home detention; 30 hours community restitution; \$150 fine.
<b>Taking Motor Vehicle without Permission – Second Degree</b>	2 or more points	3 days detention; 6 months community supervision; 7 days home detention; 45 hours community restitution; \$150 fine.

A juvenile may be subject to electronic monitoring where available, and confinement shall be served on nonschool days. These mandatory minimums are in addition to any restitution ordered by the court.

**Appropriation:** None.

**Fiscal Note:** Available.

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