

HOUSE BILL REPORT

HB 2319

As Reported By House Committee On:
Judiciary

Title: An act relating to violence prevention.

Brief Description: Enacting programs to reduce youth violence.

Sponsors: Representatives Appelwick, Leonard, Johanson, Valle, Wang, Wineberry, Scott, Karahalios, Caver, Kessler, Basich, Wolfe, J. Kohl, Voloria, Quall, Holm, Jones, Shin, King, Patterson, Eide, Dellwo, L. Johnson, Springer, Pruitt, Ogden, H. Myers and Anderson; by request of Governor Lowry.

Brief History:

Reported by House Committee on:
Judiciary, February 3, 1994, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Appelwick, Chair; Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; J. Kohl; Long; Morris; Schmidt; Scott; Tate and Wineberry.

Minority Report: Do not pass. Signed by 1 member: Representative H. Myers.

Staff: Bill Perry (786-7123).
Pat Shelledy (786-7149).
Margaret Allen (786-7191).

Background:

1. FIREARMS AND DANGEROUS WEAPONS.

Terms such as "tidal wave," "epidemic," and "unprecedented" have been used by the media and others to describe the escalating incidence of violence in the United States, particularly violence among juveniles. In the search for solutions, attention has been drawn to the availability of firearms and the role firearms play in violence.

Some commentators blame the ready availability of firearms for the tremendous personal and societal losses currently resulting from accidental or intentional misuse of firearms. Other persons are concerned restricting firearm availability will infringe upon the right of a law-abiding citizen to keep and bear arms.

Washington courts have held a citizen's right to own, possess and use firearms is subject to reasonable regulation by the state under its police power. To meet the test of reasonableness, the regulation must be reasonably necessary to protect the public safety, health, morals and general welfare, and be substantially related to the legitimate ends sought.

FIREARMS AND JUVENILES.

State and federal law prohibit the transfer of handguns to persons under the age of 21. Federal law also prohibits the transfer of rifles and shotguns to persons under the age of 18.

However, neither state nor federal law expressly prohibits persons under the age of 21 from possessing firearms or from carrying firearms in public, as long as the firearms are carried openly rather than concealed, and are not carried in a manner intentionally intimidating or warranting alarm. One exception is that Washington law prohibits youth under the age of 14 from possessing any firearm, except under the supervision of a parent, guardian or other adult approved by the parent or guardian, or under the supervision of a certified safety instructor. Juveniles under the age of 14 who illegally possess a firearm, or persons who aid or knowingly permit a juvenile to illegally possess a firearm, are guilty of a misdemeanor.

The Youth Handgun Safety Act of 1993, currently pending in Congress, would make it illegal to transfer a handgun or handgun ammunition to a juvenile under the age of 18 unless an enumerated exception applied. The act also would make it illegal for the juvenile to possess either a handgun or handgun ammunition unless an enumerated exception applied. Violators of the act could be incarcerated for one year, fined or sentenced to probation. The act also would amend the Juvenile Justice and Delinquency Prevention Act of 1974 (JJJPA) to allow the incarceration of juveniles who illegally possess firearms without jeopardizing a state's funding under the JJJPA.

The JJJPA provides formula grants to states and local governments for juvenile delinquency programs and to improve the juvenile justice system. To qualify for a grant, a

state is to refrain from placing juveniles in secure detention or correctional facilities for status offenses, that is, for offenses that would not be illegal if the juvenile were an adult. Washington reportedly receives approximately \$1 million under the JJDP.

FIREARMS AND OTHER PERSONS.

Persons disqualified from possessing pistols. Current state law makes it a class C felony for a person who has been convicted of a crime of violence, a felony in which a firearm was used or displayed, a felony conviction of the Uniform Controlled Substances Act, or a person who has been involuntarily committed for mental health treatment, to possess a pistol. Such persons are not disqualified from possessing other types of firearms, such as rifles or shotguns.

Persons who are ineligible to possess a pistol also are ineligible for a concealed pistol license. But, under current law, a person convicted of assault in the third degree, indecent liberties, malicious mischief in the first degree, possession of stolen property in the first or second degree, or theft in the first or second degree is qualified to possess a pistol, but not qualified for a concealed pistol license.

Persons who are ineligible to possess a pistol because of having been formerly involuntarily committed for mental health treatment, and persons who are ineligible for a concealed pistol license but are eligible to possess a pistol, may have their rights restored, if certain conditions are met.

Restoration of rights. A person who is ineligible to possess a pistol because of having been involuntarily committed for mental health treatment may petition a court to have his or her right to possess a pistol restored. The court must immediately restore the right upon a showing that the person no longer is required to participate in a treatment program and is no longer required to take medication to treat a condition related to the commitment. There is no requirement of a showing that the condition leading to the commitment no longer exists and is unlikely to recur. Although the right to possess a pistol must be restored by a court, current law requires the Department of

¹ This may include only indecent liberties other than by forcible compulsion, since indecent liberties by forcible compulsion is included in the definition of a crime of violence.

Social and Health Services (DSHS) to develop rules to create an approval process for the restoration of such rights.

A person who is eligible to possess a pistol, but is ineligible for a concealed pistol license because of having been convicted of an enumerated crime, may petition a District Court to have his or her eligibility restored after one year following successful completion of his or her sentence, provided he or she has not again been convicted of, and is not under indictment for, any crime.

Delivery of pistols. A current state statute makes it a misdemeanor to deliver a pistol to someone under the age of 21 or where there is reason to believe the recipient has been convicted of a crime of violence or is a drug addict, habitual drunkard or of unsound mind. The terms "drug addict," "habitual drunkard" and "unsound mind" are undefined, and the statute does not make it illegal to deliver a pistol to someone convicted of a variety of other offenses that make a person ineligible to possess a pistol. In addition, the statute does not make it illegal to deliver a rifle or shotgun to any of the listed groups.

CONCEALED PISTOL LICENSES.

Unless an exception applies, a person may carry a concealed pistol without a concealed pistol license only at home or at a fixed place of business. One of the exceptions is for current, but not retired, law enforcement officers. Only persons with concealed pistol licenses or persons covered by an exception may carry a loaded pistol in a vehicle. Carrying a pistol in violation of these limitations is a misdemeanor.

Applications. An applicant must meet several requirements to qualify for a concealed pistol license. For example, an applicant must be at least 21 years of age, not have been convicted of specified crimes, and not be subject to a court order or injunction regarding firearms under the domestic violence or marital dissolution statutes. However, an applicant need not be knowledgeable in the safe and legal use of firearms.

Applications for concealed pistol licenses are exempt from public disclosure.

An alien who wants a concealed pistol license must first have a special license issued by the Department of Licensing (DOL). Before DOL will issue the license, the alien must state he or she is planning to become a United States citizen, and the consul in the state representing the alien's country must provide a certificate stating the alien

is a responsible person. The license costs \$15, and need not be renewed.

Making a false statement regarding citizenship or other information on a concealed pistol license application is a misdemeanor, but there is no explicit requirement that the issuing authority, usually a law enforcement agency, verify the information on the application. The recently enacted Brady Bill exempts from the waiting period any person with a concealed pistol license issued in a state requiring an authorized official to verify the applicant is not legally disqualified from possessing a pistol.

Licensing fees. The current fee for an original license is \$23, and its distribution is set by statute: \$4 to the state general fund, \$4 to the agency taking the fingerprints, \$12 to the issuing authority and \$3 to the firearms range account. The license must be renewed every four years.

The issuing authority's \$12 share has remained the same since 1983, when the share was raised from \$1.50. (At the same time, the total cost of an original license was raised from \$5 to \$20. In 1988, the total cost was raised \$3 to the current cost of \$23, with the additional \$3 earmarked for the firearms range account.)

The current fee for a renewal license is \$15, with \$4 distributed to the state general fund, \$8 to the issuing authority and \$3 to the firearms range account. As with original licenses, the fee for a renewal license was raised \$3 in 1988, with the increase allocated to the firearms range account. Again, the issuing authority's share has remained constant since 1983.

A late fee of \$10 is assessed for a license not renewed within 90 days of expiration, with \$3 allocated to the state wildlife fund, and \$7 allocated to the issuing authority.

FIREARMS DEALERS.

State law requires retail pistol dealers: (1) to be licensed; (2) to conduct business only in the building designated in the license; (3) to display the license on the premises; (4) to sell pistols in accordance with state laws and only to purchasers personally known to the seller or who present clear identification; and (5) to keep detailed sales records.

Deliveries to purchasers. Dealers also must: (1) withhold delivery of a pistol until specified conditions are met (the purchaser produces a valid concealed pistol license, the

dealer receives word from the local law enforcement agency that the application to purchase is granted, or the requisite time elapses); (2) require a purchaser to complete an application providing various information and must deliver the application to the local law enforcement agency; or (3) give a purchaser a copy of the Department of Wildlife pamphlet concerning firearms laws and safety. The same restrictions do not apply to sales of rifles or shotguns.

Failure to comply with a requirement is a misdemeanor and is to result in license forfeiture.

Making a false statement on a purchase application is a misdemeanor, but law enforcement agencies are not explicitly required to verify an applicant is eligible to purchase a pistol.

State law does not define a "dealer" but does define a "commercial seller" to mean anyone who has a federal firearms license.

Licensing. Federal law requires dealers in all types of firearms to be licensed. A "dealer" under federal law is any person who is: (1) engaged in the business of selling firearms at wholesale or retail; (2) engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or (3) a pawnbroker whose business includes receiving firearms as security for payment.

The term "engaged in the business" in the federal definition means a person who devotes time, attention and labor to dealing in firearms as a regular course of trade or business, with the principal objective of livelihood and profit through repetitive dealing in firearms. It does not include a person who makes occasional sales, exchanges, purchases, repairs or other transactions involving firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of a personal collection of firearms.

The screening process for a federal dealer's license is more extensive than that for a state dealer's license. And, as with state law, to qualify for a federal license the applicant must have premises from which to conduct business. While a license is required for each of the premises, an exception is made for gun shows.

DOL reportedly processes approximately 580 original and approximately 1,600 renewal applications for dealer licenses per year. According to the Bureau of Alcohol, Tobacco and Firearms (ATF), over 6,000 federally licensed dealers list

Washington State as their place of business. The Brady Bill recently raised the cost of a three-year federal license (original or renewal) from \$30 to \$200 for the initial three-year license, and \$90 for a three-year renewal license. A state dealer's license costs \$5 and must be renewed annually.

It has been suggested some persons with federal licenses are not actually engaged in the business of selling firearms, but rather are licensed primarily for the advantage of being able to purchase firearms at lower prices than an unlicensed consumer would pay.

PREEMPTION.

Since the state has preempted the area of firearms regulation, counties, cities and other municipalities may enact only those ordinances specifically authorized by state law. Currently, counties, cities and other municipalities may adopt ordinances restricting the discharge of firearms in areas where persons, domestic animals or property would be jeopardized, and may restrict possession of firearms in stadiums or convention centers unless the person has a concealed pistol license. Counties and cities are not authorized to regulate through zoning, where firearms may be sold.

SCHOOL GROUNDS.

During the 1993 session, the Legislature amended the law governing firearms and other dangerous weapons on school grounds. Unless an exception applies, the law now prohibits any person from carrying firearms or other dangerous weapons onto school premises, school-provided transportation, or areas of facilities while being used exclusively by schools.

The current state law does not specifically address a situation where a person has possession of a firearm or other dangerous weapon on, but may not have carried the weapon onto, school premises.

Several exceptions concern weapons in vehicles. Any person conducting legitimate business at the school may have a firearm or other dangerous weapon if the weapon is: (1) secured in an attended vehicle; (2) concealed in a locked, unattended vehicle; or (3) unloaded and secured in a vehicle. Current firearm laws do not prohibit any person at least 14 years of age from possessing firearms and do not prohibit the delivery of firearms other than pistols to anyone under the age of 21. Some persons have argued "conducting legitimate business at the school" includes attending school or after-school events as a student.

Carrying firearms or other dangerous weapons in violation of the statute is a gross misdemeanor and subjects a student to expulsion. "Expulsion" is, by definition, for an indefinite period of time.

JUVENILE DRIVING PRIVILEGES.

Currently, a court is required to notify DOL if the court has found that a juvenile between the ages of 13 and 18 years has violated the state's drug or alcohol control laws.

Upon receiving the notice and without a hearing, DOL must revoke the juvenile's driving privileges. For a first notice, DOL revokes the privileges for one year, or until the juvenile reaches 17 years of age, whichever is longer. For a subsequent notice, DOL revokes the privileges for two years, or until the juvenile reaches 18 years of age, whichever is longer.

A juvenile may petition the court for earlier reinstatement of driving privileges. The court may, at any time the court deems appropriate, notify DOL that the juvenile's driving privileges should be reinstated. However, for a first offense, the juvenile must wait to petition the court until 90 days after the date he or she turns 16, or 90 days after the judgment was entered, whichever is later. For a subsequent offense, the juvenile must wait until he or she turns 17, or one year after the date the judgment was entered, whichever is later.

Similarly, if a juvenile enters into a diversion agreement concerning a violation of the drug or alcohol control laws, the diversion unit must notify DOL after the diversion agreement is signed. Upon receiving the notice and without a hearing, DOL must revoke the juvenile's driving privileges.

The diversion unit also must notify DOL once the juvenile has completed the agreement so DOL can reinstate the juvenile's driving privileges. However, for a first offense, DOL cannot reinstate the driving privileges until the latter of 90 days after the date the juvenile turns 16 or 90 days after the juvenile entered into the diversion agreement. For a subsequent offense, DOL cannot reinstate the juvenile's driving privileges until the latter of the date the juvenile turns 17 or one year after the juvenile entered into the diversion agreement.

No similar provisions exist to revoke the driving privileges of juveniles who commit offenses while armed with a firearm that involve the use of a vehicle.

MISCELLANEOUS PROVISIONS.

Immunity. The Brady Bill gives immunity to local governments and local and federal governmental employees responsible for providing information to the national instant criminal background check system for failing to prevent the sale of a firearm to a person ineligible or for preventing the sale of a firearm to a person eligible to possess a firearm.

Restricted firearms. While the possession of short-barreled rifles and short-barreled shotguns is regulated under federal law, possessing such firearms does not violate state law.

Currently, firearms manufacturers in Washington State may produce machine guns for sale to the United States armed forces. Manufacturers are not expressly authorized to repair such firearms or to sell them to domestic law enforcement agencies. Neither are manufacturers authorized by state law to sell machine guns to foreign countries, even if the manufacturer complies with all federal requirements.

Conflicts between firearms laws and other criminal statutes. Some provisions of current firearm laws potentially conflict with other laws in the criminal code. For example, firearm laws concerning spring guns potentially conflict with the assault and homicide statutes.

A statute creating a presumption that a person armed with an unlicensed pistol intended to commit a crime of violence has been declared unconstitutional by the Washington Supreme Court.

2. DISPOSITION AND SENTENCING.

JUVENILE COURT JURISDICTION.

Juvenile jurisdiction or adult criminal court jurisdiction. The Juvenile Court has exclusive original jurisdiction over juveniles under age 18 who have allegedly committed offenses. Under certain circumstances, the Juvenile Court may decline to exercise its jurisdiction over juveniles and may transfer the juvenile for prosecution as an adult to adult criminal court.

Juveniles may be transferred to adult court following a hearing in which the court considers a variety of factors to

Law enforcement officers engaged in official duties are allowed to possess machine guns.

determine whether a transfer is in the best interests of the public or the juvenile.

All decline decisions are within the court's discretion.

A decline hearing will be held under the following circumstances:

- (1) Upon motion of the court, prosecutor or respondent in any case; or
- (2) Unless waived by the court, the state and the respondent, a decline hearing must be held when:
 - (a) the respondent is 15, 16 or 17 and the information alleges a class A felony or an attempt, solicitation or conspiracy to commit a class A felony; or
 - (b) the respondent is 17 years of age 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; or
 - robbery in the second degree.

Various states have created statutes which provide that certain juveniles who would otherwise be under juvenile court jurisdiction will not be treated as juveniles depending on their age, the seriousness of the alleged offense and in some cases, the juvenile's criminal history.

Family Court and Juvenile Court. The Juvenile Court is a division of the Superior Court. The Family Court is not technically a division of the Superior Court, however, the judges act as the "Family Court" when considering cases involving divorce, custody, visitation and child support. The Juvenile Court considers cases involving dependencies and crimes committed by juveniles. One juvenile may be involved in various court systems simultaneously, such as when the juvenile is a dependent of the state, is also an offender, or is a child of parents involved in a divorce. Although the barrier between "Family Court" and "Juvenile" Court is artificial, it currently prevents one court from considering various issues affecting the same child.

Review of the potential disproportionate impact of the juvenile offender system upon youth of color. Last year the Legislature passed a bill, HB 1966, which implemented some

of the recommendations of a study on racial discrimination in the juvenile justice system. One provision of HB 1966 directed the Office of the Administrator for the Courts to convene a working group to develop standards and guidelines for the prosecution of juvenile offenders. The work group is scheduled to submit its recommendations to the Legislature by December 1, 1994.

THEFT OF FIREARMS.

A person is guilty of theft in the second degree if the person steals a firearm having a value less than \$1,500. Theft in the second degree is a class C felony. It has a seriousness level of I on the adult Sentencing Reform Act grid. The presumptive range for a first-time adult offender who commits theft in the second degree is 0 - 60 days in jail. If the firearm's value is greater than \$1,500, the adult is guilty of theft in the first degree, which is a class B felony and which has a seriousness level of II on the grid. The presumptive range for crimes at seriousness level II is 0 - 90 days in jail for first-time offenders. If a person is in possession of a stolen firearm, regardless of its value, the person is guilty of possession of stolen property in the second degree, which is a class C felony at seriousness level I.

Special rules apply to dispositions imposed on juvenile offenders who commit theft in the first or second degree or possession of stolen property in the first or second degree. Under current law, depending upon the juvenile's criminal history, the prosecutor may divert a minor from prosecution for committing theft in the second degree or possession of stolen property in the second degree. If the juvenile is under age 17, the juvenile may be considered a "minor or first offender" depending on the offender's criminal history. "Minor or first offenders'" presumptive dispositions do not include detention as a disposition option. The actual disposition that a court may impose upon a juvenile depends on a variety of factors, including the juvenile's age, alleged offense, criminal history and recency of that criminal history.

RECKLESS ENDANGERMENT IN THE FIRST DEGREE.

Reckless endangerment in the first degree is charged when a person recklessly discharges a firearm in a manner which creates a substantial risk of death or serious physical injury to another person, and the discharge is either from a motor vehicle or from the immediate vicinity of a motor vehicle that was used to transport the shooter to the scene of the discharge. Reckless endangerment in the first degree is a class C felony and is ranked at seriousness level II on

the adult sentencing grid. The standard range for seriousness level II is 0 - 90 days in jail for a first-time offender.

DEADLY WEAPON ENHANCEMENTS.

If an adult commits certain offenses while the offender or an accomplice was armed with a deadly weapon, the prosecutor may file a special allegation alleging that the defendant was armed with a deadly weapon. If the trier of fact returns a special verdict finding that the defendant was armed with a deadly weapon when the offense was committed, the defendant must serve a mandatory minimum penalty in addition to whatever penalty the court imposes for the underlying offense. The additional penalty ranges are as follows:

12 months for assault 2, assault of a child 2, escape 1, kidnapping 2, burglary 2, theft of livestock 1 or 2, or any drug offense;

18 months for burglary 1; and

24 months for rape 1, robbery 1 or kidnapping 1.

The mandatory minimum penalty applies to attempts and conspiracies as well. Rape 1, robbery 1, and kidnapping 1 are serious violent offenses. All of the other offenses are violent offenses, except burglary 2, theft of livestock 1 or 2, and escape 1. All of the offenses are either class A or B offenses, except theft of livestock 2, which is a class C felony, and some drug offenses.

Comparable provisions do not exist in the juvenile offender disposition code.

JUVENILE DISPOSITION STANDARDS.

MINOR OR FIRST OFFENDERS.

Juvenile offenders are characterized as "minor or first offenders," "middle offenders," or "serious offenders," depending on their age and criminal history. Minor or first offenders are 16 years of age or younger whose criminal history falls entirely within one of the following categories:

- (1) (a) four misdemeanors;
- (b) two misdemeanors;
- (c) one misdemeanor and two gross misdemeanors; or
- (d) three gross misdemeanors; or

- (2) one class C felony, except manslaughter in the second degree, and one misdemeanor or gross misdemeanor; or
- (3) one class B felony, except: any felony which constitutes an attempt to commit a class A felony; manslaughter in the first degree; assault in the second degree; extortion in the first degree; indecent liberties; burglary in the second degree; robbery in the second degree; residential burglary; vehicular homicide; or arson in the second degree.

The standard range disposition for minor or first offenders does not include detention time.

DIVERSION.

Some juveniles must or may be "diverted" from the juvenile justice system when they commit an offense. A diverted youth is referred to a county diversion unit, which is a probation counselor or any other person or entity with whom the Juvenile Court administrator has contracted to arrange and supervise the juvenile's compliance with a "diversion agreement." Some Juvenile Court administrators contract with "community accountability boards" to act as diversion units.

An alleged offender may be diverted for some class C felonies in the discretion of the prosecutor, depending on the offender's criminal history and other factors. Under current law, a juvenile offender accused of reckless endangerment in the first degree, theft in the second degree, possession of stolen property in the second degree, or unlawful possession or delivery of a firearm may be diverted if the offender otherwise meets the criteria for diversion.

Diversion agreements may include community service hours, restitution, counseling and a fine.

UNLAWFUL POSSESSION OF A FIREARM; DELIVERY OF A FIREARM.

Under current law, juveniles under age 14 may not possess firearms except under limited circumstances. Currently, unlawful possession of a firearm is a misdemeanor. Juveniles who commit this offense may be diverted and may be considered minor or first offenders depending on their age. Presumably, a minor may also be adjudicated of the offense of delivery of a firearm to another minor, which is also a misdemeanor.

CONSECUTIVE DISPOSITIONS: MAXIMUM TERMS.

When a disposition is imposed on a juvenile for two or more offenses, the terms run consecutively subject to specified limitations on the maximum term of community supervision, confinement, community service hours and a maximum fine that may be imposed. An additional cap on juvenile dispositions is that juveniles may not be confined for a period longer than an adult would be confined for the same offense.

3. CURFEWS.

Concern over unsupervised nighttime activity by minors has periodically caused various local jurisdictions to enact curfew ordinances. The state Supreme Court, however, ruled such an ordinance unconstitutional in 1973. Although there is a statute (RCW 43.06.220) authorizing the Governor to impose a temporary curfew as part of a declaration of an emergency, there is no state law addressing the question of an ongoing curfew for minors.

The state Supreme Court decision declaring a curfew ordinance unconstitutional is Seattle v. Pullman, 82 Wn.2d 794 (1973). The decision struck down a Seattle curfew law on two grounds. The court found that the law violated due process because it was too vague and that it violated the police powers of the city because it failed to distinguish between innocent and harmful behavior.

The Seattle ordinance imposed a curfew from 10 p.m. to 5 a.m. on persons under the age of 18. It made it illegal to "loiter, wander or play" on streets, sidewalks, highways, alleys, parks or other public places, or to be in an automobile, during the curfew. Three exceptions were provided. First, the curfew did not apply to a minor who was accompanied by a parent or guardian. Second, it did not apply to a minor who was traveling by "direct route" to work while carrying evidence that his employment was approved by the proper authorities. Third, the curfew did not apply to a minor who was traveling by direct route to a religious or educational activity while carrying written permission from a parent or guardian.

In holding the Seattle ordinance unconstitutionally vague, the court declared that the words "loiter, idle, wander or play" did not provide "ascertainable standards" so that a reasonable person could know what behavior is prohibited. Vagueness, however, was not the only defect the court found. In holding the ordinance unconstitutionally beyond government's police powers, the court declared that the ordinance was not reasonably related to some permissible goal. The court noted that there was not the "requisite connection" between the legitimate end of protecting minors

from abuse and the means employed which amounted to "the invasion of protected freedoms." The court stated that:

"Prima facie, mere sauntering or loitering on a public way is lawful and the right of any man, woman, or child." Pullman, at page 800, quoting Commonwealth v. Carpenter, 325 Mass. 519 (1950).

In a 1990 decision upholding a Seattle panhandling ordinance, the court cited Pullman with implicit approval. In Seattle v. Webster, 115 Wn.2d 635 (1990), the court upheld the panhandling law because, unlike the curfew ordinance in Pullman, it did not ban "mere sauntering or loitering on a public way." The panhandling ordinance required proof of specific intent to violate a law, i.e., to obstruct pedestrian or vehicular traffic.

Although the state Supreme Court has spoken directly on the issue of the constitutionality of curfews, there is no U.S. Supreme Court ruling directly on the issue of curfews for minors.

4. PERSONAL PROTECTION SPRAY DEVICES.

Certain chemical spray devices are commonly marketed and sold as self-defense devices. These sprays typically cause tearing of the eyes and running of the nose. They may also cause nausea. Generally, the purchase or possession of these devices is not illegal under state or federal law. However, use of a spray on another person, absent justifiable self-defense, may be a criminal assault. (Chapter 9A.36 RCW.) A more generalized discharge of a device in "any building or place" of a device that by its "offensive and pungent odor" will "annoy, injure, endanger or inconvenience and person" is a misdemeanor crime. (RCW 70.74.310.)

Because of fear over misuse of these devices, some local jurisdictions have banned private possession of some of them.

Summary of Substitute Bill:

1. FIREARMS AND DANGEROUS WEAPONS.

Persons who are prohibited from possessing pistols may not possess any type of firearm. It is a class C felony for any person who is prohibited from possessing a firearm to do so, and it is a class C felony to deliver a firearm to someone prohibited from possessing one.

FIREARMS AND JUVENILES.

It is a class C felony for juveniles under the age of 18 to possess firearms unless an enumerated exception applies. The several exceptions include safety training, target shooting or practice at an established range, engaging in an organized competition, hunting with a valid license, traveling to and from such activities with an unloaded firearm, on family property with parental permission, military service, and some situations of lawful use of deadly force. Also, there is an exception for juveniles at least 15 years old with hunter education certificates, in an area where it is legal to discharge firearms. Any juvenile over the age of 15 without a hunter education certificate, any juvenile under the age of 15, and any juvenile using a pistol must have parental supervision for the exception to apply.

FIREARMS AND OTHER PERSONS.

Persons disqualified from possessing firearms. In addition to persons currently prohibited from possessing firearms, persons who have been voluntarily committed for mental health treatment in excess of 14 continuous days may not possess a firearm until their right to do so has been restored. Persons who have been convicted on three occasions of operating a motor vehicle or vessel while under the influence of alcohol or drugs also may not possess a firearm.

Restoration of rights. A person who is prohibited from possessing a firearm because of having been committed for mental health treatment, either voluntarily or involuntarily, may petition a court to have his or her right to possess a firearm restored. The petition must include information specified in the act, and the petitioner bears the burden of proving the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur.

The requirement that DSHS develop rules for an approval process is removed.

Delivery of firearms. The delivery statute is amended to remove undefined terms and to make it a class C felony to deliver a firearm to anyone for whom it is a class C felony to possess a firearm.

CONCEALED PISTOL LICENSES.

Since a person must be 21 years of age to qualify for a concealed pistol license, a person at least 18 years of age, but under the age of 21, may only possess a pistol at work, home, on property he or she owns, or under other

circumstances in which one of the exceptions for juveniles applies.

A retired police officer does not need a license to carry a concealed pistol.

Applications. A person applying for an original concealed pistol license must present evidence of competence with a pistol. Satisfactory completion of a safety training course approved or offered by enumerated public and private sources, evidence of equivalent experience, or a satisfactory score on a test approved by the Department of Fish and Wildlife, will suffice as such evidence.

The current list of crimes for which a conviction will disqualify a person for a concealed pistol license, unless his or her rights are restored, is replaced by a reference to a list of crimes against a child or other person.

The issuing agency must check the Washington State Patrol and DSHS electronic data bases and other resources as appropriate, to determine whether an applicant is eligible for a concealed pistol license.

If an issuing agency discovers a license was issued in error, the agency must revoke the license and require the applicant to lawfully transfer, within 14 days of revocation, any pistol acquired while the applicant was in possession of the license.

Licensing fees. All of the licensing fees are increased. An original license fee is increased to \$65, to be distributed as follows: \$25 to DOL, \$10 to the agency taking the fingerprints, \$20 to the issuing authority and \$10 to the firearms range account. A renewal license fee is increased to \$55, with \$25 to DOL, \$20 to the issuing authority, and \$10 to the firearms range account. The late penalty is increased to \$20, with \$10 to the state wildlife fund and \$10 to the issuing authority. Finally, the alien license fee is increased to \$25 for a license that must be renewed every four years.

A person who knowingly makes a false statement concerning citizenship, identity or eligibility on a concealed pistol license application is guilty of a gross misdemeanor under the false swearing statute. In addition, the person is permanently ineligible for a concealed pistol license.

FIREARMS DEALERS.

A dealer is defined as a person engaged in the business of selling firearms at wholesale or retail who has, or is

required to have, a federal firearms license. Collectors making occasional sales are excluded.

Deliveries to purchasers. The waiting period before a dealer can deliver a pistol when the purchaser does not have a valid concealed pistol license is changed from five consecutive days to five business days, to correspond with the federal waiting period.

Law enforcement agencies are expressly required to check the Washington State Patrol and DSHS electronic data bases, and other resources as appropriate, to determine whether an applicant is eligible to possess a pistol. Once the national instant criminal background check system is operable, a dealer is required to rely on it for criminal background checks, but a law enforcement agency is still required to check the DSHS data base for mental health commitments.

A dealer who knowingly sells or delivers a firearm to a person ineligible to possess one is guilty of a class C felony, and will have his or her dealer's license permanently revoked.

A person who knowingly makes a false statement concerning identity or eligibility on a purchase application is guilty of a gross misdemeanor under the false swearing statute.

Like concealed pistol applications, purchase applications, transfer records and information obtained concerning mental health histories are exempt from public disclosure.

DOL is authorized to keep copies of purchase applications or records of pistol transfers.

Licensing. Any federally licensed dealer in the state must obtain a state dealer's license and register with the Department of Revenue. DOL is required to report to ATF dealers who do not comply with these requirements and whose gross proceeds from sales fall below a specified level.

To apply for a state dealer's license, an applicant must have a federal license and must undergo fingerprinting and a background check. A dealer must be eligible for a concealed pistol license even if he or she does not have one. A dealer also must require every employee who may sell a firearm in the course of his or her employment to undergo fingerprinting and a background check. An employee must be eligible to possess a firearm before being permitted to sell a firearm. In addition, every employee selling firearms must comply with the requirements concerning purchase

applications and restrictions on delivery of pistols that are applicable to dealers.

The fee for a dealer's license is increased to \$25.

The dealer must post his or her license in the area of the store where firearms are sold. A dealer may conduct business from a temporary location for a gun show and must post his or her license at that temporary location.

PREEMPTION.

Local governments may determine, through zoning, where firearms may be sold.

SCHOOL GROUNDS.

It is illegal to possess firearms or other dangerous weapons on school premises, school-provided transportation or areas of facilities while being used exclusively by public or private schools.

The exceptions for weapons in vehicles apply only to non-students at least 18 years of age.

Any student who violates the prohibition against firearms on school grounds shall be expelled for an indefinite period of time.

JUVENILE DRIVING PRIVILEGES.

The driving privileges of a juvenile who commits an offense while armed with a firearm, if that offense involves the use of a vehicle, are to be revoked for one year. If a juvenile also commits drug or alcohol offenses, revocation periods are to run consecutively.

MISCELLANEOUS PROVISIONS.

Immunity. Governmental and private entities and their employees, acting in good faith, are immune from liability for: (1) preventing or failing to prevent pistol sales; (2) issuing or failing to issue concealed pistol license; (3) revoking or failing to revoke concealed pistol licenses; and (4) for errors in preparing or transmitting information as part of determining a person's eligibility to receive or possess a firearm, or eligibility for a concealed pistol license.

A suit may be brought for a writ of mandamus directing an agency to issue a concealed pistol license wrongfully refused, or directing erroneous information resulting either

in the wrongful refusal to issue a concealed pistol license or in the wrongful denial of a purchase application be corrected. A person who prevails against a public agency in such a suit is entitled to reasonable attorney fees and costs.

Restricted firearms. A person may possess short-barreled shotguns or short-barreled rifles only if in compliance with federal law.

Washington firearm manufacturers may produce and repair machine guns. They also may sell machine guns to domestic governmental law enforcement agencies and, if in compliance with federal law, to foreign countries.

Other provisions. Conflicting statutes are amended or repealed, the statute held unconstitutional by the Washington Supreme Court is repealed, and numerous additional changes are made.

2. DISPOSITION AND SENTENCING.

JUVENILE COURT JURISDICTION.

Juvenile jurisdiction or adult criminal court jurisdiction.

The adult criminal court will have jurisdiction over offenders who are age 16 or 17 and:

- (1) the alleged offense is a serious violent offense; or
- (2) the alleged offense is a violent offense and the juvenile has a criminal history consisting of:
 - (a) at least one serious violent offense; or
 - (b) at least two violent offenses.

No hearing will be held. Provisions are added to clarify that the provision applies to juveniles age 16 or 17 who allegedly commit a serious violent or a violent offense on or after the effective date of the provision. The criminal history which may result in the loss of juvenile court jurisdiction may have been acquired before the effective date of the provision. If the juvenile challenges the criminal history, procedures are adopted to process that challenge. A number of statutes are amended to make technical cross-references to the new provision.

Family Court and Juvenile Court. The Family Court will have concurrent original jurisdiction with the Juvenile Court over all Juvenile Court proceedings.

Review of the potential disproportionate impact of the juvenile offender system upon youth of color. To reduce the likelihood that implementation of the law governing juvenile offenders will differentially and unjustifiably affect youth of color, all youth prosecuted under the juvenile code must be charged according to prosecutorial standards which must be racially neutral and equitably applied. Prosecutors must also apply those guidelines when filing charges which will result in a juvenile under age 18 being prosecuted as an adult under the new jurisdiction provision.

THEFT OF FIREARMS.

A new crime of theft of a firearm is created. A person is guilty of theft of a firearm if the person steals a firearm, possesses a stolen firearm, delivers a stolen firearm, possesses with intent to deliver a stolen firearm, or sells a stolen firearm. Theft of a firearm is a class B felony.

The seriousness level on the Sentencing Reform Act grid, which applies to adults, is level VI. The presumptive range for a first-time offender convicted of theft of a firearm is 12+ - 14 days in prison.

Theft of a firearm will by default be given a seriousness level "B" on the juvenile disposition grid. The Juvenile Disposition Commission is directed to advise the Legislature at what seriousness level theft of a firearm should be placed on the juvenile grid. The recommendation should be made no later than November 1, 1994. Juveniles who commit theft of a firearm may not be considered minor or first offenders, and they may not be diverted because it is a class B felony. A juvenile who is adjudicated of theft of a firearm must be committed to DSHS for a minimum of 180 days. DSHS may not release the offender prior to the expiration of 180 days' confinement.

RECKLESS ENDANGERMENT IN THE FIRST DEGREE.

Reckless endangerment in the first degree's seriousness level is raised from a level II to a level VI, and its classification is raised to a class B felony.

The presumptive range for a first-time adult offender at seriousness level VI is 12+ - 14 months in prison.

The Juvenile Disposition Commission is directed to advise the Legislature at what seriousness level to place reckless endangerment in the first degree on the juvenile offender grid. That recommendation should be made by November 1, 1994. A juvenile adjudicated of reckless endangerment in

the first degree may not be diverted and may not be a minor or first offender.

C. DEADLY WEAPON ENHANCEMENTS.

If an adult commits a serious violent offense or a violent offense while the offender or an accomplice was armed with a deadly weapon, the mandatory minimum penalty will be 36 months, in addition to the penalty imposed for the underlying offense. The mandatory minimum also applies to escape 1, burglary 2, theft of livestock 1 or 2, or any drug offense.

The juvenile disposition code is amended to adopt the adult provisions concerning deadly weapon enhancements. If a juvenile or an accomplice was armed with a deadly weapon when committing one of the felony offenses designated for adult penalty enhancement, the juvenile will be committed to DSHS for 1 year in addition to any term of confinement ordered for the underlying offense. The juvenile may not be released by the department before the year expires. The one year enhancement also applies to anticipatory offenses. Juveniles armed with a deadly weapon when committing an offense may not be diverted.

D. JUVENILE DISPOSITION STANDARDS.

MINOR OR FIRST OFFENDERS.

The reference to "minor or first offenders" is changed to "minor offenders."

A juvenile may no longer be considered a minor offender if the juvenile commits any class C or B felony.

DIVERSION.

Juvenile Court administrators are expressly authorized to contract with "community accountability boards" to act as diversion units. "Community accountability boards" are defined.

Juveniles who commit a class C felony that is a violation of the crime of delivery of a firearm, unlawful possession of a firearm, or reckless endangerment in the first degree, may not be diverted. A juvenile who commits a crime while armed with a deadly weapon may not be diverted. Because the new crime of theft of a firearm is a class B felony, juveniles may not be diverted for that crime.

A diversion agreement may contain, in addition to existing requirements, requirements to remain at home, school or

work, and restrictions on leaving or entering specified geographical areas.

UNLAWFUL POSSESSION OF A FIREARM; DELIVERY OF A FIREARM.

A juvenile adjudicated of unlawful possession of a firearm shall be committed to DSHS for a minimum of 60 days. The department shall not release the offender before the expiration of the 60-day term.

A juvenile adjudicated of delivery of a firearm shall be committed to the department for a minimum term of 120 days.

CONSECUTIVE DISPOSITIONS: MAXIMUM TERMS.

If a juvenile is adjudicated for theft of a firearm, unlawful possession of a firearm, delivery of a firearm or committing a crime while armed with a deadly weapon, and the juvenile is also adjudicated for other offenses at the same time, the limitations ordinarily imposed on the juvenile's maximum term for consecutive dispositions do not apply, except for the overall limitation that a juvenile may not be committed for a longer period than an adult for the same offense.

3. CURFEWS.

Persons under the age of 17 are prohibited from being in public between the hours of midnight and 5 a.m.

Exceptions are provided for:

1. youths accompanied by a parent or by another person at least 21 years old who has a parent's authorization;
2. youths traveling to or from religious, political or school activities;
3. youths traveling to or from work; and
4. youths in public due to some reasonable necessity.

Police may stop and detain youths to determine their ages, names and addresses. A youth in violation of the curfew may be taken to his or her home, or to a residential center or other facility with adult supervision.

A second curfew violation during the same curfew period is a misdemeanor.

A local government may choose not to have the curfew apply within its jurisdiction. A local government may also adopt

a local curfew ordinance, so long as it is not more restrictive or punitive than the state curfew.

4. PERSONAL PROTECTION SPRAY DEVICES.

Possession of a personal protection spray device by a person under age 18 is a misdemeanor, unless the person is over 14 and has parental permission.

Local jurisdictions may not prohibit the sale or possession of personal protection spray devices by persons age 18 or older, or by persons 14 or older who have parental permission.

Substitute Bill Compared to Original Bill: The original bill was not considered. All material in the original bill was replaced with the substitute.

Fiscal Note: Requested February 5, 1994.

Effective Date of Substitute Bill: The bill contains an emergency clause, and sections 105, 113, 118 and 137 take effect immediately. The remainder of the bill takes effect on July 1, 1994.

Testimony For: The problem of violence committed by and against youth requires increased control of firearms' possession or use by juveniles. Penalties must be increased for crimes committed while armed with a deadly weapon to protect society from the most dangerous offenders. A curfew will give police an effective tool to reduce harm done to and by juveniles.

Testimony Against: Regulations on firearms only hinder law-abiding citizens from protecting themselves and their families from criminals. Curfews are unconstitutional and will result in selective enforcement that discriminates against minority groups.

Witnesses: Dave LaCourse, Washington Citizens for Justice; Dwayne Slate, Washington State School Directors; R. Fuzzy Fletcher, King County Task Force on Responsible Gun Ownership; Mike Garner, Washington Ceasefire; Virginia Penn, Mothers Against Gangs; Gerald Rowland, President, Modern Firearm Hunters of Washington; Bob Fisher, Washington Education Association; Jon Halvorson, Mayor, city of Lacey; Barry Shaw, Washington Ceasefire; Alison Shaw, citizen; Steve Conway, citizen; Doc Remington Carlson, Northwest Militia; K. David Reynard, Kitsap Rifle and Revolver Club; Linda L. Everett, citizen; Ted Cowan, Washington State Rifle and Pistol Association; Tom Rolfs, Department of Corrections; Lupe Barkus, citizen; David Jensen, citizen;

Representative Bill Reams; John Benedict, citizen; Al Woodbridge, Washington State Rifle and Pistol; Tim Sekerak, citizen; Brian Judy, citizen; Kay Godefroy, Executive Director, Seattle Neighborhood Group, Stop Youth Violence, King County Task Force on Responsible Gun Ownership; Col. Mel Pfankvche, Col. Mel Pfankvche and Associates, Inc.; Sarah Shelton, citizen; Laurie Lippold, Children's Alliance; George Aiton, Washington Arms Collectors; Curtis Hays, citizen; Mark E. Duxbury, citizen; David Thomsen, citizen; Chris Stearns, citizen; Paul Williams, Citizens Committee for the Right to Keep and Bear Arms; Greg Dahlgren, Gun Owners of America; John Hubbard, Washington State Rifle and Pistol Association; Kim Childress, Mothers Against Gangs; Jerry Sheehan, American Civil Liberties Union; Mike Patrick, Washington State Association of Police Officers; Kurt Sharar, Washington State Association of Counties; Representative Steve Conway; John Kvamme, Tacoma Public Schools; Jim Justin, Association of Washington Cities; and Thomas Dunne, Society of Counsel.