

# HOUSE BILL REPORT

## E2SHB 1021

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### As Passed House:

March 7, 1995

**Title:** An act relating to juveniles.

**Brief Description:** Granting to adult court jurisdiction over juveniles who use a firearm while committing a violent offense.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Delvin, Hickel, Robertson, Smith, Padden, Sherstad, Dyer, Skinner, Kremen, Hargrove, Horn, Schoesler, Buck, Johnson, Thompson, Beeksma, Goldsmith, Radcliff, Chandler, Backlund, Crouse, Cairnes, Elliot, Reams, Pennington, Mastin, Carrell, K. Schmidt, Chappell, Basich, Grant, Sehlin, Honeyford, Van Luven, Ballasiotes, Pelesky, Blanton, Hankins, Lambert, D. Schmidt, Mulliken, McMorris, Clements, Campbell, L. Thomas, Huff, Mielke, Talcott, McMahan, Stevens and Casada).

### Brief History:

#### Committee Activity:

Corrections: 1/10/95, 1/24/95, 2/7/95 [DPS];

Law & Justice: 1/10/95, 1/24/95, 2/14/95 [DPS(COR-A LJ)];

Appropriations: 2/28/95 [DP2S(w/o sub COR)] as amended by the Committee on Law & Justice.

#### Floor Activity:

Passed House: 3/7/95, 79-16.

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## HOUSE COMMITTEE ON CORRECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Koster; Radcliff and Schoesler.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole and Dickerson.

**Staff:** Rick Neidhardt (786-7841).

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## HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill by Committee on Corrections be substituted therefor and the substitute bill as amended by Committee on Law & Justice do pass. Signed by 14 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Sheahan and Smith.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Cody; Thibaudeau and Veloria.

**Staff:** Pat Shelledy (786-7149).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Corrections as amended by the Committee on Law & Justice. Signed by 21 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Basich; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; Foreman; Grant; Hargrove; Hickel; Jacobsen; Lambert; Lisk; McMorris; Sehlin; Sheahan and Talcott.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Dellwo; Jacobsen; Poulsen; Rust; Thibaudeau and Wolfe.

**Staff:** John Woolley (786-7154).

### **Background:**

#### Capability of Juveniles to Commit Crimes

Juveniles under age 8 are legally incapable of committing crime.

Juveniles at least age 8 but less than age 12 are presumed to be incapable of committing crime. This presumption may be overcome by proof that they have sufficient capacity to understand the act and to know that it was wrong.

Juveniles at least age 12 are presumed capable of committing a crime and may be prosecuted.

#### Jurisdiction of the Juvenile Court

In general, the juvenile court has exclusive original jurisdiction over juveniles under age 18 who are charged with an offense, traffic infraction, or violation.

A few exceptions apply to the general rule.

1. One exception, which was adopted during the 1994 session, provides that juveniles will automatically be prosecuted as adults in adult criminal court under the following circumstances:

The juvenile is 16 or 17 years old and the alleged offense is:

- (1) a serious violent offense, or;
- (2) a violent offense and the offender has a criminal history consisting 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 the following offenses: any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's 13th birthday and prosecuted separately.

2. Another exception, which has existed since 1979, is when the juvenile court declines to exercise its jurisdiction and transfers a juvenile to adult criminal court for prosecution pursuant to a procedure commonly referred to as a "decline hearing." The court must consider a variety of factors at the decline hearing to determine whether a transfer is in the best interest of the public or the juvenile. A juvenile does not have a constitutional right to be tried as a juvenile. However, the state bears the burden of proving that prosecuting the juvenile as an adult is in the juvenile's or the public's best interest.

The prosecutor, juvenile, or the court on its own motion may file a motion requesting the court to transfer a juvenile for adult criminal prosecution. This motion may be filed in any case.

Unless waived by the court, the parties, and their counsel, the court must hold a decline hearing under the following circumstances:

- (1) The juvenile 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;
- (2) The juvenile is 17 and the information alleges:
  - second degree assault;
  - first degree extortion;
  - indecent liberties;
  - second-degree child molestation;

second-degree kidnapping; or  
second-degree robbery.

#### Limitations on Juvenile Court Jurisdiction

If the juvenile court transfers a juvenile to adult superior court after a decline hearing on one offense, the juvenile will be treated as an adult for all future offenses, even if the juvenile commits future offenses while the juvenile is still under age 18.

The juvenile court loses jurisdiction over a juvenile when the juvenile turns age 18, unless the court extends juvenile court jurisdiction by issuing a written order.

In no event may the juvenile court extend jurisdiction over any juvenile offender beyond the juvenile's 21st birthday.

Persons who commit crimes on or after their 18th birthday are considered adults and are prosecuted in adult criminal court.

#### Meaning of "Armed with a Firearm"

A firearm is a deadly weapon. The phrase "armed with a deadly weapon" has a specific meaning under case law. It means that a deadly weapon is easily accessible and readily available for use, for offensive or defensive purposes. The prosecutor has discretion whether to file an allegation asking the trier of fact to enter a special finding that the accused was armed with a deadly weapon during the commission of the crime.

#### Meaning of "Violent Offense"

Under Washington law, violent offenses are defined as: Class A felonies; attempted Class A felonies; first or second degree manslaughter; indecent liberties if committed by force; second degree kidnapping; second degree arson; second degree assault; second degree assault of a child; first degree extortion; second degree robbery; vehicular assault; vehicular homicide involving alcohol, drugs or reckless driving; and comparable federal or out-of-state convictions.

#### Illegal Possession of a Firearm

As a general rule, a person who is under 18 years of age commits a crime by possessing a firearm.

A number of exceptions exist to this rule, so that under the following circumstances a juvenile can possess a firearm: while attending safety courses; while practicing in the use of a firearm or target shooting at limited locations; while participating in

organized firearms competitions or in performances by certain organized groups; while hunting or trapping under a valid license; for juveniles over 13 years of age who have been issued a hunter safety certificate, while possessing a firearm other than a pistol at limited locations; while under adult supervision at limited locations; while traveling with an unloaded firearm to and from the locations and activities described above; while on real property that is under a relative's control if the relative has given the juvenile permission to possess a firearm; while at his or her residence, if the parent has given the juvenile permission to possess a firearm, for purposes of self-defense, defense of others, or protection of property; or while on duty as a member of the armed forces, national guard or organized reserves.

**Summary of Bill:** Juveniles who are 16 or 17 years old will automatically be prosecuted as adults when the prosecutor alleges the juvenile committed a violent offense while armed with a firearm and the juvenile's possession of the firearm was illegal.

Juveniles who are 14 or 15 years old will automatically receive a decline hearing in juvenile court when the prosecutor alleges the juvenile committed a violent offense while armed with a firearm and the juvenile's possession of the firearm was illegal.

When a juvenile's case is automatically transferred to adult court, whether under this substitute bill or current law, the juvenile will remain subject to adult court jurisdiction for future offenses as well, whether the offenses are committed as a juvenile or an adult. This parallels the current provisions for decline proceedings. Also, the adult court will have jurisdiction over any other offenses that the juvenile committed during the same incident that led to the automatic transfer to adult court. Parallel changes are made to the definitional sections of the Juvenile Justice Act and the Sentencing Reform Act. The bill will apply to offenses committed on or after the effective date of this act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Corrections ) Juveniles need to be held accountable for their actions. Juveniles mock the juvenile justice system because they believe they will not have to serve any time. A juvenile with 18 prior convictions was able to kill a woman because he had not been adequately confined for the seriousness of his previous offenses.

(Law & Justice) Same as joint hearing with Corrections.

(Appropriations) None.

**Testimony Against:** (Corrections) Decisions whether juveniles should be tried as adults should be made on a case-by-case basis. Juveniles are less culpable than adults. Judges should decide the jurisdiction question after holding a hearing. Automatic transfers to adult court ignore the characteristics of individual children. Prosecutors get sole discretion in deciding where trial will be held. We shouldn't change an entire system merely because of a few special cases. The bill is too broad. The bill would apply to first-timers even though they have never had the chance to get rehabilitation from the juvenile system. The bill should be amended to apply only to 16-year-olds and 17-year-olds. There are concerns of disproportionate and unfair impacts. Prosecutors are having more success with their decline hearings. Children should not be considered adults merely because they use a gun. Juveniles should not be sentenced to adult prisons, where they spend time in isolation.

(Law & Justice) Same as joint hearing with Corrections.

(Appropriations) Decisions whether juveniles should be tried as adults should be made on a case-by-case basis by the judge. Automatic transfers to adult court ignore special circumstances and the individual characteristics of the youth.

**Testified:** (Corrections) (Original Bill) Sid Sidorowicz, Juvenile Rehabilitation Administration (no position stated); Ken Whitehall, Spokane (pro); Tom McBride, Washington Association of Prosecuting Attorneys (proposing limitations); Sister Ann Davis, Catholic Juvenile Detention Ministry (con); Carolyn Charlston, Catholic Juvenile Detention Ministry (con); Michael Curtis and Martha Harden, Juvenile Court Administrators and Superior Court Judges (con); George Yeannakis, Washington Defender Association (con); Paola Maranan, Children's Alliance (con); Neill Tackett, Seattle (con); Larry Fehr, Washington Council on Crime and Delinquency (proposing limitations and alternatives); Simmie Baer, King County Public Defender's Office (con); and Representative Mary Lou Dickerson (con).

(Law & Justice) Same as joint hearing with Corrections.

(Appropriations) Margaret Casey, Catholic Conference (con); and Paola Maranan, Children's Alliance (con).