

HOUSE BILL ANALYSIS

HB 3900

Title: An act relating to offenders.

Brief Description: Revising the Juvenile Code (Introduced with Senate sponsors).

Sponsors: Representatives Sheahan, Ballasiotes, Schoesler, Bush, Honeyford, Carrell, Chandler, Mitchell, Clements, Huff, Thompson, Hankins, Mulliken, Koster, Carlson, Cairnes, Cooke, Johnson, Skinner, Mastin, Smith, Crouse, Benson, Alexander, Talcott, Robertson, Lisk, Zellinsky, Boldt, Delvin, Sterk, Lambert, Hickel, Backlund and Pennington.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Edie Adams (786-7180).

Background:

1. JUVENILE COURT JURISDICTION

The juvenile court generally has exclusive original jurisdiction over a juvenile under the age of 18 who is alleged to have committed an offense, traffic infraction, or violation. The code does not specifically provide that the juvenile court has jurisdiction over civil infractions. However, under current practice, the juvenile court does hear civil infraction cases.

A juvenile may be prosecuted as an adult in adult court if the juvenile is subject to "automatic decline" or if the juvenile court declines to exercise jurisdiction over the juvenile after a decline hearing.

Automatic Decline: A juvenile will be automatically prosecuted as an adult if 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.

Decline Hearings: The juvenile court may decline to exercise jurisdiction over a juvenile offender and transfer the offender to adult court under a procedure called a decline hearing. The court may transfer the juvenile to adult court if, after considering all relevant information, the court finds that it would be in the best interest of the juvenile or the public to transfer the juvenile to adult court.

The prosecutor, the juvenile, or the court may file a motion for the transfer of any juvenile to adult court.

The court must hold a decline hearing, unless waived by all parties, *under the following circumstances:*

- (1) *The 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;*
- (2) *The juvenile is 17 years old and the information alleges: second-degree assault; first-degree extortion; indecent liberties; second-degree child molestation; second-degree kidnapping; or second-degree robbery.*

2. DISPOSITION STANDARDS

If a juvenile is adjudicated of an offense, the court determines the disposition to be imposed on the offender based on a formula that considers the following factors:

- The seriousness level of the current offense;
- The age of the offender;
- The seriousness level of any prior criminal history; and
- The recency of any prior criminal history.

Based on these four factors, the juvenile offender receives a certain number of "points" that will determine, based on the type of offender, the standard range disposition for the offense. In general, an older offender will receive greater punishment or services than a younger offender for the same offense. In addition, an offender who has more criminal history, more serious criminal history, or more recent criminal history will receive greater punishment than an offender with less serious levels and types of criminal history.

Offenders are generally categorized as either "minor/first offenders," "middle offenders," or "serious offenders." A minor/first offender means a juvenile whose current offense and prior adjudications involve relatively few misdemeanors or gross misdemeanors. A serious offender is a juvenile who is 15 or older and who has

committed certain serious offenses. A middle offender is an offender who does not meet the definition of either minor/first or serious offender.

A. Offense Category Schedule: The seriousness of an offense is determined according to the offense category schedule. The offense category schedule ranks offenses from A+ to E, with A+ offenses being the most serious and E offenses being the least serious. Generally, a class A felony is ranked as an A offense, a class B felony is ranked as a B offense, a class C felony is ranked as a C offense, a gross misdemeanor is ranked as a D offense, and a misdemeanor is ranked as an E offense. Murder 1 and murder 2 are the only A+ offenses.

B. Standard Range Disposition: The standard range disposition for an offender is determined by reference to a "grid" developed for each category of offender (minor/first, middle, or serious) that specifies the standard range based on the number of points calculated for the offender. A juvenile is generally under county jurisdiction if the offender is subject to a period of confinement of 30 days or less and under state jurisdiction if subject to confinement for more than 30 days. The Department of Social and Health Services Juvenile Rehabilitation Administration (JRA) supervises offenders under the jurisdiction of the state.

Minor/First Offenders: In general, minor/first offenders are under the jurisdiction of the county and may not receive a disposition of confinement. A minor/first offender may receive community supervision, community service hours, and a fine. The length of community supervision, the number of community service hours, and the amount of the fine that may be imposed vary depending on the number of points. For example, a minor/first offender with 1-19 points may receive 0-3 months of supervision, 0-8 hours of community service, and/or a fine of \$0-\$10, while a minor/first offender with 70-79 points may receive 6-9 months of community supervision, 40-56 hours of community service, and/or a fine of \$0-\$50.

Middle Offenders: Middle offenders with less than 110 points are under the jurisdiction of the county and may receive community supervision, community service hours, a fine, and in some cases, a period of confinement. The standard range disposition is composed of a discrete range, depending on the offender's point total.

Middle offenders with more than 110 points are generally committed to the JRA, with a minimum commitment range of 8-12 weeks. Middle offenders with more than 110 points may receive an "option B" disposition that allows them to remain under county jurisdiction with community supervision and a possible period of 30 days of confinement.

Serious Offenders: Serious offenders must be committed to the JRA. The commitment range is determined based on the offender's point total. The minimum

commitment range for an offender sent to JRA is 8 to 12 weeks. An offender who commits an A+ offense receives a commitment range of 180 to 224 weeks.

C. Disposition Alternatives:

Deferred Adjudication: Some offenders are eligible for deferred adjudication. Deferred adjudication allows the adjudication and disposition for an offense to be deferred for a specified period of time on the condition that the offender meet conditions of community supervision. If the offender complies with all conditions imposed by the court, the case is dismissed with prejudice. If the offender fails to comply with the terms of the deferred adjudication, the court enters an order of adjudication and a disposition for the offender. A successfully completed deferred adjudication does not count as criminal history.

Option B: Minor/first offenders and middle offenders with less than 110 points may receive an "option B" disposition of up to 12 months of community supervision, up to 150 hours of community service, and/or a fine of up to \$100. For middle offenders with less than 110 points, the court may also impose up to 30 days of confinement under option B.

A middle offender with more than 110 points is eligible for an "option B" suspended sentence. The court imposes the standard range disposition of confinement and then suspends that disposition on the condition that the offender comply with conditions of community supervision and serve up to 30 days of confinement.

Manifest Injustice: "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious and clear danger to society. If the court finds that the standard range disposition would effectuate a manifest injustice, the court may impose a disposition outside the standard range. A manifest injustice disposition is available for minor/first, middle, and serious offenders.

Special Sex Offender Disposition Alternative (SSODA): Certain juvenile sex offenders may be ordered into treatment in the community and placed on community supervision of up to two years, rather than serve a longer period in confinement. If the offender fails to comply with the treatment and supervision requirements, the offender is returned to custody. The state pays for the costs of initial evaluation and treatment of juvenile sex offenders who receive a SSODA disposition. A concern has been raised that the period of confinement is too short to provide sufficient incentive for the offenders to comply with the disposition.

Firearm Enhancements: A juvenile found to have committed the offense of minor in possession of a firearm must receive a determinate disposition of 10 days of confinement and up to 12 months of community supervision. A juvenile who is

armed with a firearm during the commission of certain offenses must receive a firearm enhancement of 90 days of confinement added to the standard range disposition.

Juvenile Offender Basic Training Camp: A juvenile offender who is subject to a disposition of not more than 78 weeks, and who did not commit a violent offense or a sex offense is eligible for a 120-day basic training camp option. Upon successful completion of the basic training camp, the offender may serve the remaining term of confinement on intensive parole in the community.

3. PARENTAL INVOLVEMENT

When a juvenile is charged with an offense, the court must send the information to the juvenile's parents in order to notify them of the charges and to require them to appear and be parties to the arraignment proceedings. The Juvenile Justice Act does not explicitly state that the juvenile court has jurisdiction over the parents, or that the parents may be required to appear at other hearings involving the juvenile, or that the parents can be found in contempt for failing to appear.

4. RESTITUTION

A juvenile offender is required to make restitution payments to compensate any person who suffered loss or damage as a result of the juvenile's offense. The court must determine how much restitution is owed in the disposition hearing and must include the payment of restitution in the order of disposition. The court may determine a restitution payment plan for an offender that extends for a period of 10 years if the offender cannot pay in a shorter period of time. The court does not have to impose restitution if the court determines that the juvenile lacks the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a 10-year period.

5. PAROLE ABSCONDERS

The secretary of the Department of Social and Health Services (DSHS) has authority to issue arrest warrants for juveniles who escape from an institution. The secretary does not have explicit power to issue arrest warrants for juvenile offenders who abscond from parole supervision or fail to meet conditions of parole. In contrast, community corrections officers supervising adult offenders have explicit authority to arrest adult offenders who violate conditions of supervision or parole.

6. APPEALS

A juvenile disposition that is outside the standard range disposition may be appealed. The court of appeals may uphold a disposition outside the standard range only if it

finds that the reasons considered by the judge clearly and convincingly support a finding of manifest injustice and that the sentence imposed was not clearly excessive or clearly too lenient.

If the court of appeals finds that the manifest injustice finding was not clearly and convincingly supported by the reasons of the judge, the court of appeals must remand the case for disposition within the standard range or for community supervision without confinement if appropriate.

While an appeal is pending, the juvenile offender may not be committed or detained for a period in excess of the standard range for the offense, or 60 days, whichever is longer. Once this period expires, the court may impose conditions on the release of the offender pending the appeal.

7. JUVENILE RECORDS

A juvenile adjudicated of an offense may petition the court to vacate its order of adjudication and order the record sealed or destroyed. The court must grant the motion to seal if the court finds that two years have elapsed since the offense, or since the release of the juvenile from custody, if no criminal proceeding is pending against the person. If the court grants the motion, the proceedings are treated as if they never occurred, and the person may reply accordingly to an inquiry about his or her juvenile background.

A subsequent adjudication of a juvenile offense or crime nullifies the sealing order. A subsequent conviction for an adult felony nullifies the sealing order on records of the person's prior juvenile adjudications for class A offenses or sex offenses.

A person may ask the court to destroy the person's juvenile record. The court may grant the motion if the court finds that the person is at least 23 years old, has not subsequently been convicted of a felony, has no criminal proceeding currently pending, and has never been found guilty of a serious offense.

A person who is 18 and whose entire criminal history consists of one diversion may have the record destroyed if two years have elapsed since the completion of the diversion agreement.

8. MISCELLANEOUS JUVENILE PROVISIONS

Reckless Endangerment 1: A person is guilty of reckless endangerment in the first degree if the person recklessly discharges a firearm from a motor vehicle or the immediate area of a motor vehicle in a manner that creates a substantial risk of death or serious physical injury. First-degree reckless endangerment is a class B felony and is not included as a "violent offense."

10- and 11-Year-Old Offenders: Children who are eight but less than 12 years old are presumed to be incapable of committing crimes. This presumption may be overcome by proof that the child has sufficient capacity to understand the offense and to know that it is wrong. The prosecutor may file a motion for a hearing to determine a child's capacity.

Community-Based Rehabilitation and Sanctions: "Community-based sanctions" and "community-based rehabilitation" are components of "community supervision," which is a disposition that the court may impose on an adjudicated youth. Community-based sanctions include a fine not to exceed \$100 and community service hours. Community-based rehabilitation includes attendance at school, counseling, treatment programs, and other informational or educational classes.

Courtesy Disposition Hearings: If a juvenile is adjudicated in one county, but resides in another, the case may be transferred to the offender's county of residence for the disposition hearing. The jurisdiction that receives the transfer of the juvenile is responsible for the costs of the transfer.

Violations of Orders to Pay Monetary Penalties or Perform Service: When a juvenile offender violates an order of the court, the court may impose additional sanctions on the juvenile for that violation, including confinement for up to 30 days. If the violation is of a court order to pay fines, penalties, or restitution, or to perform community service hours, the court may assess confinement at a rate of one day per each \$25 or 8 hours owed.

9. ADULT PROVISIONS

A. Inclusion of Juvenile Adjudications in an Adult's Criminal History: Some but not all juvenile criminal history is included in the calculation of an adult's offender score, which is used to determine the adult's sentence.

Juvenile adjudications for sex offenses and serious violent offenses are always included in an adult offender's criminal history. Prior juvenile adjudications for other class A felony offenses are counted if the offender was 15 or older at the time of the offense. Prior adjudications for class B and C felonies or serious traffic offenses are counted only if the offender was 15 or older at the time of the juvenile offense, and less than 23 at the time of the adult offense for which he or she is being sentenced.

Prior juvenile adjudications that are entered or sentenced on the same date count only as one prior offense, except that if the offenses were violent offenses with separate victims, the offenses are counted separately.

Under the adult sentencing code, a "first-time offender" is eligible for a waiver of the standard range sentence on the condition that the offender meet certain conditions. A

"first-time offender" is an adult offender convicted of a felony that is not classified as a violent or sex offense or certain drug offenses. A juvenile adjudication for an offense committed before the age of 15 does not count as a prior felony except for sex offenses and serious violent offenses.

Misdemeanors and gross misdemeanors do not contribute to an adult's offender score. The court may consider them for the purposes of imposing an exceptional sentence.

B. Special Sex Offender Sentencing Alternative (SSOSA) Costs: SSOSA is a discretionary sentencing option allowing a judge to give an eligible sex offender a suspended sentence, including sex offender treatment in the community, if doing so will benefit the community and the offender. The costs of sex offender treatment under a SSOSA disposition must be paid by the offender.

Summary of Bill:

1. JUVENILE COURT JURISDICTION

Automatic Decline: The category of juvenile offenders who are subject to automatic decline to adult court is expanded to include any juvenile who is 16 or 17 and alleged to have committed a violent offense.

Civil Infractions: The juvenile court is specifically granted jurisdiction over juveniles alleged to have committed a civil infraction.

2. DISPOSITION STANDARDS

A. Offense Category Schedule: The following changes are made to the offense category schedule:

- Reckless Endangerment 1 is renamed "Drive-By Shooting" and is increased from a B to a B+ offense.
- Vehicle Prowling is increased from a D to a C offense.
- Obstructing a Law Enforcement Officer is increased from an E to a D offense.
- Rape of a Child 2 is increased from a B to a B+ offense.
- Child Molestation 1 is increased from a B+ to an A- offense.
- Child Molestation 2 is increased from a C+ to a B offense.
- Residential Burglary, Theft of a Firearm, and Possession of a Stolen Firearm are all specifically added as B offenses (currently they are all B offenses by default).

B. Standard Range Disposition: The current structure for determining an offender's standard range disposition is replaced with a new disposition grid. The distinction between minor/first, middle, and serious offenders is removed. The

standard range disposition for any juvenile offender is determined based on two factors: the seriousness of the current offense and the number of prior felony adjudications. The age of the offender, the seriousness of prior felony adjudications, prior misdemeanor offenses, and the recency of prior adjudications are no longer considered in determining the standard range disposition. Prior misdemeanor offenses and the seriousness of prior felony adjudications may be considered for the purposes of imposing a disposition outside the standard range.

Based on the current offense seriousness level and the number of prior felony adjudications, a juvenile offender will receive a standard range disposition of either local sanctions or commitment to the JRA.

Local Sanctions: Local sanctions may consist of up to 30 days of confinement, up to 12 months of community supervision, up to 150 hours of community service hours, and up to a \$500 fine. A misdemeanor or gross misdemeanor offender receives a standard range disposition of local sanctions, regardless of prior adjudications.

Commitment to the JRA: The initial JRA commitment range is increased to 24-36 weeks. An offender who commits a B+ or more serious offense receives a standard range disposition of commitment to the JRA for at least 24-36 weeks. Other felony offenders will receive commitment to the JRA only if the offender has one or more prior felony adjudications. An offender who commits an A+ offense is committed to the JRA for 180 weeks up to age 21.

C. Disposition Alternatives:

Deferred Adjudication: Deferred adjudication is replaced with deferred disposition. If a juvenile agrees to a deferral of disposition, after a plea of guilty or after a determination of guilt upon a reading of the record, the court may continue the case for disposition for up to one year and place the juvenile on community supervision. If the juvenile complies with all conditions of the deferral, the juvenile's adjudication is vacated and the case is dismissed with prejudice. If the juvenile fails to comply with the terms of the deferral, the court enters a disposition for the offense. A juvenile is not eligible for a deferred disposition if the current offense is a sex offense or violent offense, the juvenile's criminal history consists of any felony, or the juvenile has a prior deferred disposition, or more than two diversions. A successfully completed deferred disposition does not count as criminal history.

Manifest Injustice: Prior misdemeanor offenses and the seriousness of prior felony adjudications may be considered by the court for the purposes of imposing a disposition outside the standard range.

Chemical Dependency Disposition Alternative (CDDA): A new disposition option is created for certain juveniles who are chemically dependent and who will benefit from

a chemical dependency disposition. Offenders with a standard range disposition of local sanctions or commitment to JRA for 24-36 weeks and who have not committed an A- or B+ offense are eligible for this disposition. The court may suspend the standard range disposition on the condition that the offender undergo available outpatient or inpatient drug/alcohol treatment and comply with conditions of community supervision. The court may impose up to 30 days of confinement. The sum of confinement time and inpatient treatment may not exceed 90 days.

Special Sex Offender Disposition Alternative (SSODA): If the court determines that an offender is eligible for the SSODA, the court may impose and then suspend a manifest injustice sentence in order to provide a greater incentive for the offender to comply with the conditions of the SSODA disposition. The length of community supervision that may be imposed on an offender given a SSODA disposition is changed to at least two years.

Firearm Enhancements: The disposition that the court must impose for an offender who is found in violation of minor in possession of a firearm is changed to at least 10 days.

Juvenile Offender Basic Training Camp: Eligibility for the basic training camp is changed to those offenders who receive a disposition of up to 36 weeks of confinement.

3. PARENTAL INVOLVEMENT

A new goal of the juvenile justice system is to encourage and require parents to participate in juvenile offender proceedings against their child. To achieve those goals, the court is required to give parents notice of pertinent hearings, must require parents to attend, and may hold parents in contempt for failing to attend. In addition, a juvenile who is detained may only be released to a responsible adult.

4. RESTITUTION

In a disposition hearing, the court may set a hearing for a later date to determine the amount of restitution owed, rather than making that determination at the disposition hearing. A restitution payment plan may extend for 10 years after the juvenile's 18th birthday. The ability of the court to not impose restitution on an offender who does not have the means to make full or partial restitution, and could not reasonably acquire the means to pay, is removed.

5. PAROLE ABSCONDERS

The secretary may issue arrest warrants for juveniles who abscond from parole or fail to meet parole conditions.

6. APPEALS

If the court of appeals finds that the juvenile court's reasons for finding a manifest injustice are not clearly and convincingly supported, the court of appeals must remand the case for a disposition within the standard range. The time restrictions that apply when committing or detaining a juvenile pending appeal are removed so that the juvenile may be detained for the entire appeal period, even if this period exceeds the standard range disposition for the offense.

7. JUVENILE RECORDS

A juvenile's record may not be sealed until full restitution has been paid. The subsequent charging of an adult felony nullifies a sealing order on the offender's juvenile records. The ability to destroy the records of a juvenile adjudication for certain offenders, except offenders who only have a history of one diversion, is removed.

8. MISCELLANEOUS JUVENILE PROVISIONS

Reckless Endangerment 1: Reckless endangerment 1 is renamed "drive-by shooting" and added to the definition of "violent offense."

10- and 11-Year-Old Offenders: The court must hold a hearing for a juvenile who is 10 or 11 years old, and who is alleged to have committed an offense, to determine whether the juvenile has the capacity to understand the alleged offense and that it is wrong.

Community-Based Rehabilitation and Sanctions: The definition of "community-based sanction" is amended to increase the amount of the fine to \$500. The definition of "community-based rehabilitation" is amended to include employment.

Courtesy Disposition Hearings: The ability of a court to transfer the disposition hearing to the jurisdiction where the juvenile resides is removed.

Violations of Orders to Pay Monetary Penalties or Perform Service: The provision specifying that violations of orders to pay monetary penalties or to perform community service are converted to confinement at a rate of one day for each \$25 or 8 hours is removed.

9. ADULT PROVISIONS

A. Inclusion of Juvenile Adjudications in an Adult's Criminal History: An adult's criminal history includes all juvenile adjudications, regardless of the age of the juvenile at the time of the offense. Prior juvenile adjudications entered or sentenced on the same date are counted as separate offenses, unless they encompass the same criminal conduct.

Juvenile adjudications for offenses committed before the age of 15 count as prior offenses in determining whether an adult offender is a "first-time offender."

B. SSOSA Costs: The state must pay the costs of the initial examination and treatment of an offender under adult court jurisdiction who is less than 18 and who is given a SSOSA sentence.

10. MISCELLANEOUS PROVISIONS

The Department of Corrections (DOC) and the Juvenile Rehabilitation Administration must report to the Legislature by December 1, 1998, on the feasibility and desirability of placing juvenile offender services under the DOC or other measures that would not require the transfer of juvenile services to the DOC, such as the co-location of facilities and the joint provision of services.

The provision requiring the Sentencing Guidelines Commission to submit a report on juvenile disposition standards to the Legislature by December 1, 1996, is repealed. The provision establishing the Juvenile Disposition Standards Commission, which ceased to exist on June 30, 1996, is repealed. A provision requiring prosecutors to develop prosecutorial filing standards in juvenile cases based on a 1993 report is repealed. The Legislature adopted detailed prosecutorial filing standards in 1996.

Numerous technical amendments are made.

Fiscal Note: Requested February 7, 1997.

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

Office of Program Research