

SENATE BILL REPORT

SB 5376

As of February 26, 2013

Title: An act relating to juvenile firearms and weapons crimes.

Brief Description: Concerning juvenile firearms and weapons crimes.

Sponsors: Senators Kline, Fain, Shin, Nelson, Keiser, Carrell, McAuliffe, Hill, Litzow and Tom.

Brief History:

Committee Activity: Human Services & Corrections: 2/07/13, 2/20/13 [DPS-WM, DNP, w/oRec].

Ways & Means:

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5376 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Hargrove and Padden.

Minority Report: Do not pass.

Signed by Senator Darneille, Ranking Member.

Minority Report: That it be referred without recommendation.

Signed by Senator Harper.

Staff: Joan Miller (786-7784)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Carma Matti-Jackson (786-7454)

Background: Unlawful Possession of a Firearm. First Degree. Under the Juvenile Justice Act, first degree unlawful possession of a firearm is a level B offense, which results in a standard range disposition of local sanctions for the first or second offense. Local sanctions include one or more of the following: 0 to 30 days of confinement; 0 to 12 months of community supervision; 0 to 150 hours of community restitution; and/or a \$0 to \$500 fine. If the juvenile has two or three prior adjudications, the juvenile is subject to confinement in a

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Juvenile Rehabilitation Administration (JRA) facility for 15 to 36 weeks, and if there are four or more prior adjudications, a term of 52 to 65 weeks is imposed.

Second Degree. Under the Juvenile Justice Act, second degree unlawful possession of a firearm is categorized as a level C offense, which results in a standard range disposition of local sanctions. If the juvenile has four or more prior adjudications, the juvenile is subject to JRA confinement for a term of 15 to 36 weeks.

Juvenile Sentencing Alternatives. *Deferred Disposition.* A deferred disposition in juvenile court is akin to a deferred prosecution in adult court. The juvenile offender is found guilty at the time that the court agrees to allow a deferred disposition. In exchange for having the charges dismissed, a juvenile must complete certain conditions set out by the court, including probation and payment of restitution. A juvenile is eligible for a deferred disposition unless the juvenile is charged with a sex or violent offense, has a criminal history that includes any felony, or has two or more prior adjudications.

Manifest Injustice. Washington uses a determinate sentencing structure in committing juvenile offenders. Youth committed to JRA custody have court-determined minimum and maximum sentence terms. Sentencing length is determined using a point system that takes both offense seriousness and criminal history into account. The court must also consider both aggravating and mitigating circumstances.

Through a finding of manifest injustice, juvenile courts have the authority to sentence outside the standard range. If a judge or juvenile court commissioner finds that the standard range sentence is too lenient for the seriousness of the offense, a longer term of confinement may be ordered. If a judge or juvenile court commissioner finds that the standard range sentence is overly punitive, a sentence less than the standard range may be ordered. The court's finding of manifest injustice must be supported by clear and convincing evidence. Manifest injustice dispositions also carry determinate minimum and maximum sentence terms.

Summary of Bill (Recommended Substitute): The following new firearm offenses are added to the Juvenile Offender Sentencing Standards:

- First degree unlawful possession of a firearm is raised to offense category A-, which carries a JRA sentence of 15 to 36 weeks on a first offense, and 30 to 40 weeks if the juvenile is at least 15 years old. The terms increase incrementally depending on the number of prior adjudications with a maximum of 103 to 129 weeks if the juvenile has four or more prior offenses.
- Second degree unlawful possession of a firearm is raised to offense category B+, if the charge is based on a reason other than being in possession when under the age of 18 or if the charge is a second or subsequent violation of unlawful possession based on minority age. This offense category carries a JRA sentence of 15 to 36 weeks for the first offense or with one prior adjudication. The terms increase incrementally depending on the number of prior adjudications with a maximum of 103 to 129 weeks if the juvenile has four or more prior offenses.
- A first adjudication for second degree unlawful possession of a firearm based solely on minority age remains a class C offense and carries local sanctions. Additionally, a mandatory minimum sentence of ten days in confinement is required.

The court's options for entering alternative dispositions are limited in a number of ways. First, juveniles charged with unlawful possession of a firearm in the second degree, theft of a firearm, or possession of a stolen firearm are not eligible for a deferred disposition. Second, the court's discretion to impose a manifest injustice sentence for unlawful possession of a firearm or for crimes in which the juvenile was armed with a firearm is removed. Third, if a juvenile is found to have committed the crime of unlawful possession of a firearm, either in the first or second degree on any grounds, and there is a standard range sentence of over 30 days, that sentence must stand.

Under certain circumstances, the court has the discretion to impose a Firearm Disposition Alternative, Option E. When an offender has been adjudicated of unlawful possession of a firearm in the second degree based solely on minority age, theft of a firearm, or possession of a stolen firearm, and the court determines that the juvenile may benefit from an intervention aimed at reducing aggressive or violent behavior, then the court may impose the following disposition alternative: if the offender has no prior adjudication for unlawful possession of a firearm in the second degree based solely on minority age, theft of a firearm, or possession of a stolen firearm and is subject to a standard range disposition of local sanctions, the court may impose the required disposition and suspend that disposition on condition that the juvenile participate in an intensive intervention that uses evidence-based practices proven effective for reducing aggressive or violent behavior. The court must also impose a minimum of six months' community supervision. If the juvenile fails to comply with these conditions, the judge must revoke the alternative disposition and impose the suspended disposition. An offender is ineligible for the firearm disposition alternative if the offender has previously been adjudicated of a violent offense.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): An Option E Firearm Disposition Alternative is added.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):
PRO: The purpose of this bill is to accelerate the process of getting a youth separated from their environment. We need to get to young people possessing guns earlier than we do, and we need to do it in a way that is not prison. We have young people who feel, given their environment, that they need to protect themselves with a gun, or alternatively, they need a gun to feel macho in order to make it in their gang or other group. That fear is what turns good people into bad people. We need to separate kids from the environment in which they got that fear. This bill is not meant to be punitive. A budget proviso will be sought to create a curriculum that goes to the issue of gun violence and its legal implications.

Much of the violence associated with handguns and firearms in our community comes at the hands of people who have no business having a gun in the first place including people with mental illness, with felony convictions, or juveniles. This bill deals with juveniles with felonies. Washington law regarding gun possession by juveniles is ridiculously lenient. It takes five felonies before the system wakes up. We go from literally doing nothing to treating them like adults. The policy is indefensible. You don't have juveniles committing drive-by shootings as their first act of delinquency. At that point, there have been all sorts of opportunities to intervene. The second offense is the time to intervene and help rehabilitate the juvenile. Current policy misses greater opportunities to send a message to youth who think they need to pack a gun and to inform and educate them about the legal consequences. This bill will cost money because it costs money to do something rather than nothing, which is current policy. But we'll save money in the long run if we do a better job of warning and teaching youth.

CON: Gun violence has reached an epidemic proportion in our country. We as a society must find a common-sense approach to this plague that brings havoc to our communities, primarily communities of color. But an oppressive approach to the problem, rather than a preventive one, will not work. A great number of juveniles make a turnaround. When we lock them up, we run the risk of them becoming more criminalized and learning more antisocial behaviors. Incarceration really does damage a lot of our kids, and this bill will lock up youth for weeks or months, cutting them off from critical resources such as family members, jobs, and school. These things are needed to keep kids out of gang life.

When we incarcerate youth, they learn from real criminals, extending the cycle of violence. Youth placed in long-term confinement with older and more experienced offenders will only become more violent and more likely to be recruited into a gang and matriculated into the adult criminal justice system. If we are serious about preventing youth violence, our priorities are backwards. The key word we need to focus on when discussing this bill is evidence. The vast weight of evidence surrounding youth violence points in the opposite direction from which this bill intends to go. The bill relies on a discredited model that simply assumes incarceration is the solution to our youth violence problem. Instead, we should fund and support more community-based treatment and programs. Youth do not get them at JRA. Regardless of whether youth learn any skills in JRA, they come back to the exact same environment that we take them out of. Nothing in the community has changed. It is community-based programs that can make a difference because they can help kids while they are living in the community. What these kids lack is someone in their own community who cares. Youth are pushed out of school, out of their homes, and onto the street where we leave them. The question then becomes, what led these kids to pick up a gun? Instead of addressing this question, we want to lock them up and put them in jail. These kids can become productive members of society; they go on to college. But incarceration only extends the cycle of criminality. People do better when they have the opportunity to learn about the problems they're getting mixed up in through community-based programs.

The U.S. Supreme Court has recognized the importance of individualized sentencing of juveniles because of youth's continued brain development and the high likelihood of rehabilitation. Under current law, any youth can be sentenced to what is the appropriate sentence for that youth. We know from an evidence-based approach that is modeled from the Department of Justice that a one-size-fits-all approach does not work. There is a concern that

taking away judicial discretion to determine on a case-by-case basis whether a juvenile should be incarcerated or whether there are opportunities to get what they need inside their community will put kids in situations where they will be more alienated and more likely to commit future crimes, not less likely. This bill takes away discretion from the one decision-maker who is best placed to tailor the kind of sentencing that the Supreme Court has already told us is the best course – the judge. Counter to what you have heard, judges already have the discretion to sentence youth, so in fact, youth are not simply walking away after offenses one, two, three, and four. Rather, a judge is making the decision that there is a better place for that youth than JRA. Make no mistake, this is not an intervention measure. We need to invest in our judges who are already doing it right. Juvenile crime continues to go down every year, and this money would be better spent further up the pipeline.

The stereotypes presented in testimony were unbelievable. We are talking about individuals here. We are not talking about packaged goods. We're talking about youth who have lives, personalities, and families. To say that they need to be taken out of their environment right out of the box because of the underlying implication that their families are bad is a very dangerous assumption to make. Numerous studies show that taking kids out of their environment can have detrimental effects. Many programs exist for the purpose of keeping kids with family and in the community. There are also underlying racial stereotypes involved in this bill. Youth of color do not get into any more trouble than anyone else. We need to leave the decision-making to judges. They are the ones we elect to make these decisions, who hear the stories from juveniles who are human beings, not stereotypes.

Persons Testifying (Human Services & Corrections): PRO: Dan Satterberg, King County Prosecuting Attorney, WAPA; Alan Gottlieb, Citizens Committee for the Right to Keep and Bear Arms; Don Pierce, Sheriffs and Police Chiefs.

CON: Shankar Narayan, ACLU of WA; Travis Stearns, WA Defender Assn.; Jamie Garcia, Consejo Counseling & Referral Service, Minority Executive Directors Coalition; Elinor Cromwell, Society of Counsel Representing Accused Persons; Debra Baker, Raising Our Youth as Leaders, Society of Counsel Representing Accused Persons; Dennis Turner, Building the Bridges; Brandon Muller, Alliance of People with Disabilities; Steven Aldrich, Friends Committee on WA Public Policy.