

HOUSE BILL REPORT

E2SSB 6160

As Passed House - Amended:

February 28, 2018

Title: An act relating to revising conditions under which a person is subject to exclusive adult jurisdiction and extending juvenile court jurisdiction over serious cases to age twenty-five.

Brief Description: Revising conditions under which a person is subject to exclusive adult jurisdiction and extending juvenile court jurisdiction over serious cases to age twenty-five.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kuderer, Darneille and Palumbo).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/20/18, 2/23/18 [DPA];

Appropriations: 2/24/18, 2/26/18 [DPA(ELHS)].

Floor Activity:

Passed House - Amended: 2/28/18, 58-40.

Brief Summary of Engrossed Second Substitute Bill (As Amended by House)

- Eliminates exclusive adult court jurisdiction for 16 and 17 year olds charged with Robbery in the first degree; Drive-by Shooting; Burglary in the first degree with one or more prior adjudications; and any violent offense when the juvenile is alleged to have been armed with a firearm.
- Limits discretionary decline hearings to 15 year olds and older who are charged with a serious violent felony and 14 year olds and younger who are charged with Murder in the first or second degree.
- Limits mandatory decline hearings to individuals charged with Escape when the respondent is serving a minimum sentence to age 21.
- Creates a new offense category called A++ that includes a range of 129 weeks to 260 weeks of confinement for individuals age 16 or 17 that are adjudicated of Robbery in the first degree, and Drive-by Shooting.
- Extends the maximum period of juvenile court commitment to age 25 for offenders adjudicated of an A++ offense or sentenced to the new 12-month firearm enhancement.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Creates an additional firearm enhancement of 12 months for juveniles adjudicated for any violent offense committed by a 16 or 17 year old.
- Creates a new three-month enhancement for the offenses removed from exclusive adult court jurisdiction if the respondent's participation was related to membership in a criminal street gang.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 10 members: Representatives Kagi, Chair; Senn, Vice Chair; Dent, Ranking Minority Member; Eslick, Frame, Goodman, Griffey, Kilduff, Muri and Ortiz-Self.

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert and Lovick.

Minority Report: Without recommendation. Signed by 1 member: Representative McCaslin, Assistant Ranking Minority Member.

Staff: Luke Wickham (786-7146).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Early Learning & Human Services. Signed by 22 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Caldier, Cody, Fitzgibbon, Graves, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Condotta, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

Staff: Kelci Karl-Robinson (786-7116).

Background:

Adult Court Jurisdiction Over Juveniles.

In the State of Washington, juvenile courts are a division of the state's superior court system. Juvenile courts have jurisdiction over persons under the age of 18 who are alleged to have committed a crime. However, there are several exceptions to that jurisdiction where state law requires youths to be tried in adult courts.

There are three situations where adult criminal courts may have jurisdiction over persons under age 18:

- The juvenile court declines jurisdiction to adult court following a discretionary decline hearing which a court can initiate on its own motion or any party may file a motion requesting the court transfer the juvenile to adult court.
- The juvenile court is required to hold a decline hearing in circumstances when:
 - the accused person is age 16 or 17 and is alleged to have committed a class A felony or attempt, solicitation, or conspiracy to commit a class A felony;
 - the juvenile is age 17 and is alleged to have committed 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; or
 - the information alleges an escape and the juvenile is serving a minimum juvenile sentence to age 21.
- Adult criminal courts have exclusive jurisdiction over juveniles age 16 or 17 on the date of the offense when the offense is:
 - a serious violent offense;
 - a violent offense and the juvenile has a criminal history consisting of a prior serious violent offense, two or more prior violent offenses, or three or more of any combination of class A felonies, class B felonies, Vehicular Assault, or Manslaughter in the second degree;
 - Robbery in the first degree, Rape of a Child in the first degree, or Drive-by Shooting;
 - Burglary in the first degree and the juvenile has a criminal history of one or more prior felony or misdemeanor offenses; or
 - any violent offense and the juvenile is alleged to have been armed with a firearm.

Once a juvenile is declined to adult jurisdiction, he or she will be subject to adult jurisdiction for all future alleged crimes unless the juvenile is found not guilty. If the juvenile is found not guilty of the charge for which he or she was transferred to adult court or is convicted of a lesser offense, the juvenile court will have jurisdiction of the remaining charges in the case.

If a juvenile is age 16 or 17 years old, and he or she is charged with a traffic, fish, boating, or game offense, or an infraction, the case is referred to district or municipal court.

Juvenile Offender Sentencing.

Juvenile court dispositions are subject to statutory sentencing guidelines.

Juvenile offenses are categorized using letters E through A+ to indicate the seriousness level of the offense with E being the least serious and A+ being the most serious offense category. A statutory grid establishes the standard sentencing range for a particular offense based on the offense category and an individual's prior adjudications. Each prior felony adjudication counts as one point, and each prior violation, misdemeanor, or gross misdemeanor counts as one-fourth point. Fractional points are rounded down.

The sentencing category "local sanctions" is the least serious category for juvenile sentencing purposes. Local sanctions include a range of up to 30 days in confinement, up to 12 months of community supervision, up to 150 hours of community service, and up to a \$500 fine.

When a juvenile court sentences a juvenile offender to local sanctions, the court must impose

a determinate sentence within the standard range. Confinement imposed by a juvenile court up to 30 days is served in a county juvenile detention facility.

Any confinement imposed that is greater than 30 days is served through commitment at a Department of Social and Health Services (DSHS) juvenile rehabilitation facility. The DSHS operates two juvenile rehabilitation institutions: Echo Glen Children's Center and Green Hill School. Echo Glen Children's Center in Snoqualmie is designated for younger male juvenile offenders and female juvenile offenders. Green Hill School in Chehalis is designated for older male juvenile offenders.

Naselle Youth Camp in Naselle is a work camp that offers male offenders a forestry work program in collaboration with the Department of Fish and Wildlife in an aquaculture program and assisting with fighting fires.

If the court concludes that disposition within the standard range would effectuate a manifest injustice, the court must impose a disposition outside the standard range. A court's finding of manifest injustice must be supported by clear and convincing evidence.

A juvenile offender cannot be committed by the juvenile court beyond the offender's twenty-first birthday.

On July 1, 2019, the juvenile rehabilitation functions of the DSHS will transfer to the Department of Children, Youth, and Families (DCYF).

Suspended Disposition Alternative.

A court may impose a standard range juvenile offender sentence and suspend the disposition on condition that the offender comply with one or more local sanctions and educational or treatment requirements. An offender is not eligible for a suspended disposition alternative if the offender is:

- adjudicated of an A+ offense;
- 14 years of age or older and is adjudicated of:
 - a class A offense;
 - Manslaughter in the first degree;
 - Assault in the second degree;
 - Extortion in the first degree;
 - Kidnapping in the second degree;
 - Robbery in the second degree;
 - Residential Burglary;
 - Burglary in the second degree;
 - Drive-by Shooting;
 - Vehicular Homicide;
 - Hit and Run death;
 - Intimidating a Witness; or
 - violation of the Uniform Controlled Substances Act; or Manslaughter 2 when the offense includes infliction of bodily harm upon another or when during the commission of the offense the respondent was armed with a deadly weapon.
- ordered to serve a disposition for a firearm violation; or
- adjudicated of a sex offense.

A juvenile offender is subject to a standard range disposition of local sanctions or 13 weeks to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a chemical dependency or mental health disposition alternative.

Violent Offense.

A violent offense is a category of felony offense which includes:

- any class A or attempt to commit a class A felony;
- criminal solicitation of or criminal conspiracy to commit a class A felony;
- Manslaughter in the first or second degree;
- Indecent Liberties Committed by Forcible Compulsion;
- Kidnapping in the second degree;
- Arson in the second degree;
- Assault in the second degree;
- Assault of a Child in the second degree;
- Extortion in the first degree;
- Robbery in the second degree;
- Drive-by Shooting;
- Vehicular Assault when caused by the operation or driving of a vehicle by a person under the influence of intoxicating liquor or any drug or by operating a vehicle in a reckless manner; and
- Vehicular Homicide when proximately caused by the driving of any vehicle by a person under the influence of intoxicating liquor or any drug or by operating a vehicle in a reckless manner.

Serious Violent Offense.

A serious violent offense is a category offense which includes:

- Murder in the first degree;
- Homicide by Abuse;
- Murder in the second degree;
- Manslaughter in the first degree;
- Assault in the first degree;
- Kidnapping in the first degree;
- Rape in the first degree;
- Assault of a Child in the first degree; or
- an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies.

Summary of Amended Bill:

Exclusive adult court jurisdiction is eliminated for 16 and 17 year olds charged with:

- Robbery in the first degree;
- Drive-by Shooting;
- Burglary in the first degree with one or more priors; and
- any violent offense and the juvenile is alleged to have been armed with a firearm.

A new juvenile offender sentencing offense category is created. The new offense category is called A++ and includes a range of 129 weeks to 260 weeks of confinement for individuals age 16 or 17 who are adjudicated of the following offenses:

- Robbery in the first degree; and
- Drive-by Shooting.

Another new juvenile sentencing offense category is created, called B++, which includes a range of 15 weeks to 36 weeks for individuals who have an offender score below one. This category applies to individuals age 14 or under adjudicated of:

- Child Molestation in the first degree;
- Rape in the second degree; and
- Rape of a Child in the first degree.

Burglary in the first degree when committed by an individual age 16 or 17 is moved to the more serious A- offense category, and the sentencing range for that offense category increases for individuals with an offender score less than one to 30-40 weeks.

Eligibility for the suspended disposition alternative is modified to allow eligibility for juveniles age 14 or older adjudicated for Robbery in the second degree, Residential Burglary, Burglary in the second degree, Intimidating a Witness, violation of the Uniform Controlled Substances Act but exclude eligibility for a violation of the Uniform Controlled Substances Act when the offense includes infliction of bodily harm upon another when the respondent was armed with a deadly weapon. Juveniles with a prior suspended disposition alternative are no longer eligible for that disposition alternative.

Eligibility for the chemical dependency or mental health disposition alternative is modified to include individuals subject to a standard range disposition of local sanctions or 15 weeks to 36 weeks of confinement and has not committed a B++ or B+ offense.

Discretionary decline hearings are limited to:

- 15 year olds and older who are charged with a serious violent felony; or
- 14 year olds and younger who are charged with Murder in the first or second degree.

Mandatory decline hearings are limited to individuals charged with escape when the respondent is serving a minimum sentence to age 21.

An additional firearm enhancement for juveniles adjudicated for any violent offense committed by a 16 or 17 year old of 12 months is created.

If the court finds that a respondent who is 16 or 17 committed Robbery in the first degree, Drive-by Shooting, Burglary in the first degree with one or more priors, or any violent offense and the juvenile is alleged to have been armed with a firearm, and the court finds that the respondent's participation was related to membership in a criminal street gang, a period of three months total confinement must be added to the sentence and be served consecutive to other sentencing enhancements. Criminal street gang is defined as any ongoing organization, association, or group of three or more persons, having as one of its primary activities the commission of criminal acts, and whose members individually or collectively engage in a pattern of street gang activity. The definition does not apply to employees engaged in

concerted activities for their mutual aid and protection, or the activities of labor and bona fide nonprofit organizations.

The maximum period of juvenile court commitment is extended to age 25 for offenders adjudicated of an A++ offense or sentenced to the new 12-month firearm enhancement.

If a juvenile disposition order imposes commitment to a juvenile rehabilitation facility for an A++ offense, or an individual that receives the new 12 month firearm enhancement, then jurisdiction for parole is automatically extended to include a period up to 24 months of parole, but not extending past the individual's twenty-fifth birthday.

The DSHS (and the DCYF after July 1, 2019) must take appropriate actions to protect younger children in confinement from older youths who may be confined based on this bill, recognizing the potential for positive mentorship and the potential risks relating to victimization and negative influence. The court may exercise oversight if needed to accomplish this goal.

The Washington State Institute for Public Policy is required to conduct a study of the bill with a preliminary report due December 1, 2023, and a final report due December 1, 2027.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 2 and 7, relating to juvenile court jurisdiction over juvenile offender cases following the transfer of juvenile justice duties to the Department of Children, Youth, and Families, which take effect July 1, 2019.

Staff Summary of Public Testimony (Early Learning & Human Services):

(In support) In the 1990s, there was a mindset of being tough on crime, and this bill is smart on crime. This is the first time that the juvenile justice system is being aligned with brain science. There is huge potential for this. This bill will save lives and help return individuals to their communities.

If the goal is to have fewer young people in adult court and adult prison, this bill is the right solution. Prosecutors are often forced to charge an offense in adult court because prosecutors do not think that commitment to age 21 is enough to address the underlying behavior. About 80 percent of the cases that King County currently puts into adult court would be retained in juvenile court in this bill. Most of the automatic adult court cases are Robbery in the first degree cases that involve firearms. This bill also adds two years of parole for the offenses that are removed from adult court jurisdiction.

This is a compromise bill and gives the court more discretion and provides for more potential for safety in the community. Sending kids to adult prison leaves kids worse off than they would have been if they had been served in the juvenile system.

Some provisions of this bill are concerning. The bottom end of the A++ range is too high. Mandatory enhancements do not apply to juveniles adjudicated in adult court, based on the *State v. Houston-Sconiers* decision in 2017 and should not be applied in juvenile court cases.

The only disappointment is that this bill does not go far enough. The exclusive adult provisions in the law stem from the super predator theory that has been debunked. The state and United States Supreme Courts have both acknowledged the need to address the unique needs of children. The maximum age of juvenile court, the sentence ranges, and the gang enhancement should be decreased.

(Opposed) None.

(Other) There is concern about the three-month gang enhancement. The original bill struck a great compromise, including a new 12-month firearm enhancement. The gang enhancement is duplicative.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Early Learning & Human Services): (In support) Senator Kuderer, prime sponsor; Dan Satterberg, King County Prosecuting Attorney's Office; Kitty-Ann Van Doorninck, Washington State Superior Court Judges Association; Vanessa Hernandez, American Civil Liberties Union of Washington; and Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Opposed) None.

(Other) Antonio Ginatta, Columbia Legal Services.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (Early Learning & Human Services): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.