

# HOUSE BILL REPORT

## HB 2795

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**As Reported by House Committee On:**  
Human Services & Early Learning

**Title:** An act relating to convictions for offenses that were committed at age sixteen or seventeen and placed in exclusive jurisdiction of the juvenile court in 2018.

**Brief Description:** Concerning convictions for offenses that were committed at age sixteen or seventeen and placed in exclusive jurisdiction of the juvenile court in 2018.

**Sponsors:** Representatives Frame, Senn, Kilduff, Davis, Peterson, Lekanoff, Pollet and Santos.

**Brief History:**

**Committee Activity:**

Human Services & Early Learning: 1/31/20, 2/7/20 [DPS].

**Brief Summary of Substitute Bill**

- Creates a process for persons convicted under exclusive original adult criminal jurisdiction between July 1, 1997, and June 7, 2018, for certain crimes committed at the age of 16 or 17 to petition the court to vacate the judgment and sentence.

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### HOUSE COMMITTEE ON HUMAN SERVICES & EARLY LEARNING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Senn, Chair; Callan, Vice Chair; Frame, Vice Chair; Goodman, Kilduff, Lovick and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Dent, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Corry, Griffey and Klippert.

**Staff:** Luke Wickham (786-7146).

**Background:**

*Adult Court Jurisdiction over Offenses Committed While under Age 18.*

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*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.*

Generally juvenile court has jurisdiction over individuals who commit an offense before turning age 18.

There are four instances where adult court will have jurisdiction over individuals who commit a criminal offense before turning age 18:

- discretionary decline: where the prosecutor, respondent, or the court on its own motion may file a motion requesting the court to transfer the respondent for adult criminal prosecution if the respondent is age 15 or older and charged with a serious violent offense, age 14 or younger and charged with Murder in the first or second degree, or any age and charged with custodial assault while serving sentence to age 21;
- required decline hearing: unless waived by the court, the parties, and their counsel, a decline hearing must be held when the information alleges an escape and the juvenile is serving a juvenile sentence to age 21; or
- exclusive adult court jurisdiction: adult criminal court has exclusive original jurisdiction over juveniles ages 16 or 17 on the date of the offense when the offense is:
  - a serious violent offense;
  - a violent offense with certain criminal history; or
  - Rape of a Child in the first degree; and
  - offenses charged after an individual turns age 18.

Adult district and municipal courts also have jurisdiction over alleged offenses or infractions that are traffic, fish, boating, or game offenses, or traffic or civil infractions committed by a juvenile age 16 or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction.

In 2018 the following offenses were transferred from the exclusive original jurisdiction of adult court to the exclusive original jurisdiction of juvenile court when committed by a youth age 16 or 17:

- Robbery in the first degree;
- Drive-by Shooting;
- Burglary in the first degree if the juvenile has a prior felony or misdemeanor offense; and
- any violent offense when the juvenile is alleged to have been armed with a firearm.

#### *Adult Sentencing.*

During sentencing for an adult criminal offense, the court will calculate an individual's offender score, which is determined based on the individual's criminal history and the classification of that history as established in law. Prior adjudications and convictions are assigned different point values depending on the nature of the present and prior offenses. While prior violent offenses and sex offenses are generally scored the same whether committed as an adult or juvenile, a prior nonviolent juvenile adjudication is generally assigned a lower point value than a nonviolent adult conviction.

#### *Persistent Offender.*

Voters approved Initiative Measure No. 593, the "three strikes" law, in 1993. The law established the penalty of life in prison without the possibility of release for offenders

deemed to be "persistent offenders." A persistent offender is an offender who is convicted of a most serious offense and who has at least two prior convictions for most serious offenses that would be included in the offender score for purposes of sentence calculation. In order to establish persistent offender status, at least one of the two or more previous convictions must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted.

The Sentencing Reform Act defines "most serious offense" as including any class A felony, various class B felonies, which are primarily assault, sex, or kidnapping-related offenses, as well as any felony with a deadly weapon, and federal or out-of-state offenses that are equivalent to any most serious offense.

#### *Violent Offense.*

The term "violent offense" is defined to mean any of the following felony offenses:

- any felony defined as a class A felony or an attempt to commit a class A felony;
- criminal solicitation of or criminal conspiracy to commit a class A felony;
- Manslaughter in the first degree;
- Manslaughter in the second degree;
- Indecent Liberties if 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 while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and
- Vehicular Homicide when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
- any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to the above felonies; and
- any federal or out-of-state conviction for an offense that would meet the elements of the above felonies.

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#### **Summary of Substitute Bill:**

Any person convicted under exclusive original adult criminal jurisdiction between July 1, 1997, and June 7, 2018, for a crime committed at the age of 16 or 17 may petition the court of conviction to vacate the conviction for the following offenses:

- Robbery in the first degree;
- Drive-by Shooting;
- Burglary in the first degree when the juvenile has a criminal history consisting of one or more prior felony, misdemeanor, or gross misdemeanor offenses; or

- any violent offense and the juvenile is alleged to have been armed with a firearm.

The court must vacate a conviction as described above if the applicant meets the following requirements:

- for class A offenses, spent at least five consecutive years in the community without committing any crime or offense that subsequently results in a conviction since the last date of release from confinement;
- for class B or C offenses, spent at least two consecutive years in the community without committing any crime or offense that subsequently results in a conviction since the last date of release from confinement; and
- paid the full amount of restitution owing to the individual victim in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care coverage.

For any subsequent misdemeanor or gross misdemeanor conviction, the fact that the offender has been convicted of the offense must not be included in the offender's criminal history for purposes of determining a sentence. However, for any subsequent felony conviction, the fact that the offender has been convicted of the offense may be included in the offender's criminal history for purposes of determining a sentence. In this circumstance, the court must count the vacated conviction as a juvenile conviction.

The substitute bill provides that the conviction that has been vacated may not be treated as a conviction for purposes of the definition of "persistent offender."

#### **Substitute Bill Compared to Original Bill:**

The substitute bill removes resentencing provisions of the bill and details the process by which individuals with a conviction under exclusive adult criminal jurisdiction between July 1, 1997, and June 7, 2018, for a crime committed at the age of 16 or 17 may request to have the record of the conviction vacated if the conviction was:

- Robbery in the first degree;
- Drive-by shooting;
- Burglary in the first degree when the juvenile had a criminal history consisting of one or more prior felony, misdemeanor, or gross misdemeanor offenses; or
- any violent offense and the applicant was alleged to have been armed with a firearm.

The substitute bill requires the court to vacate a conviction as described above if the applicant meets the following requirements:

- for class A offenses, spent at least five consecutive years in the community without committing any crime or offense that subsequently results in a conviction since the last date of release from confinement;
- for class B or C offenses, spent at least two consecutive years in the community without committing any crime or offense that subsequently results in a conviction since the last date of release from confinement; and
- paid the full amount of restitution owing to the individual victim in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care coverage.

The substitute bill provides that in any subsequent misdemeanor or gross misdemeanor conviction, the fact that the offender has been convicted of the offense must not be included in the offender's criminal history for purposes of determining a sentence. However, for any subsequent felony conviction, the fact that the offender has been convicted of the offense may be included in the offender's criminal history for purposes of determining a sentence. In this circumstance, the court must count the vacated conviction as a juvenile conviction.

The substitute bill provides that the conviction that has been vacated may not be treated as a conviction for purposes of the definition of "persistent offender."

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) When young people return to the community, they should have all the tools for success. This bill is working to find the right mechanism to give parity to individuals who were subject to the previous law subjecting individuals to adult court jurisdiction. There are about 1,100 convictions that meet the eligibility criteria outlined in the bill. More than a quarter of these young people are under age 25. This bill would allow individuals the opportunity to vacate the conviction, and charges would remain. This would create a lot of work for prosecutors, but people should be treated the same as those who are currently charged with these offenses. Between 1997 and 2018, juveniles received adult court convictions when age 16 or 17 for certain offenses. The Legislature moved the jurisdiction for some of these offenses back to juvenile court jurisdiction in 2018. This bill will have a positive impact on the recidivism rates for individuals because it will reduce the criminal history for a number of individuals, making it easier for these individuals to seek employment and housing. Science and law now agree that juveniles should be treated differently than adults. This bill builds on the research to treat juveniles appropriately. The Legislature recognized that individuals were better served in juvenile court for these offenses. Black youth convicted of Robbery in the first degree have been disproportionately impacted by exclusive adult court jurisdiction. This bill is a corrective measure that aligns with actions taken by the Legislature two years ago. The automatic decline laws had a disproportionate impact on minority populations. The change that the Legislature made two years ago applied prospectively and not retroactively. The purpose of this bill is to create a process where the sentence moves from an adult court conviction to a juvenile court conviction. The goal is to impact the 1,100 people who are eligible to petition the court through a process similar to what is created in the bill. Thirty years ago, before we knew as much about brain development as we know now, this state demonstrated leadership and guidance in treating juveniles differently. All the evidence suggests that the longer individuals are removed from their communities, the less likely they are to be successful. There are a number of issues that

need to be addressed to make this legislation workable. To ensure accountability for offenders, it is essential to involve victims in the resolution of these offenses.

(Opposed) The prosecuting attorney association supported the change in 2018 to place these offenses back in juvenile court. The actions taken in this bill will undo the conviction and requirements under a conviction. There would be other offenses affected by this change. Any subsequent offenses use criminal history as scoring, and by removing these offenses, there will be a need to resentence a number of additional offenses. Prosecutors make charging decisions based on the circumstances and may have dismissed cases because the case was moved to adult court that may not have been dismissed if the case were to remain in juvenile court. By resentencing these cases now, none of the factors that went into charging will be taken into account.

**Persons Testifying:** (In support) Representative Frame, prime sponsor; Joe Huntley, Jaycob Trotter, and Guillermo Padilla, Green Hill School; Roxana Gomez, American Civil Liberties Union of Washington; Antonio Ginatta, Columbia Legal Services; Noreen Light; Stephanie Verdoia and Oliana Luke, University of Washington Law School Race and Justice Clinic; and Eric Trupin, University of Washington Department of Psychiatry and Behavioral Sciences.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.