

HOUSE BILL REPORT

ESSB 5746

As Passed House - Amended:

April 15, 2009

Title: An act relating to sentencing provisions for juveniles adjudicated of certain crimes.

Brief Description: Modifying sentencing provisions for juveniles adjudicated of certain crimes.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senator Hargrove).

Brief History:

Committee Activity:

Human Services: 3/23/09, 3/26/09 [DPA].

Floor Activity

Passed House - Amended: 4/15/09, 97-0.

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

- Allows the juvenile court to have jurisdiction over a juvenile, even if the juvenile has previously been the subject of adult court jurisdiction as a result of a decline hearing, if in adult court the juvenile is either acquitted of the offense charged or convicted of a lesser offense.
- Allows the prosecutor and the respondent, by agreement, and with the court's approval, to waive the exclusive adult court jurisdiction triggered by certain offenses when the juvenile is age 16 or 17 years.
- Excludes juveniles age 15 years from mandatory decline hearings.
- Adds periods of community supervision or parole supervision to the maximum sentence for a juvenile convicted of a felony motor vehicle offense.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 5 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Green, Morrell and O'Brien.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Dammeier, Ranking Minority Member; Klippert and Walsh.

Staff: Linda Merelle (786-7092)

Background:

Juvenile Court Jurisdiction.

The terms "juvenile," "youth," and "child" are synonymous under Washington law. A juvenile is any individual who is under the chronological age of 18 years and who has not been previously transferred to adult court pursuant to the decline statutes or who is otherwise under adult court jurisdiction.

Under Washington law, a child under the age of 8 is incapable of committing a crime. Children ages 8 through 11 years are presumed to be incapable of committing an offense. That presumption may be removed by clear and convincing evidence that the child had the capacity to understand the act and to know that it was wrong. Children aged 12 years and older are presumed to have the capacity to commit an offense or crime, which may be rebutted by evidence regarding competency.

Generally, children aged 12 through 17 years (and those aged 8 through 11 years for whom the state has rebutted the presumption that they are incapable of committing an offense), are under the exclusive jurisdiction of the juvenile court. There are some critical exceptions to this rule, such as when a juvenile court has issued an order declining jurisdiction or circumstances exist where an adult court has exclusive jurisdiction over a 16- or 17-year-old.

Adult Court Jurisdiction for Persons Under Age 18 Years.

Decline Hearings: There are two kinds of decline hearings, mandatory and discretionary. A decline hearing is held before a hearing is held on the merits of an alleged offense charged by the state. There are eight criteria that a juvenile court should consider before declining jurisdiction. A court may decline jurisdiction even if all of the criteria are not met. Some of the factors to be considered are whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner, as well as the sophistication and maturity of the juvenile. A court order declining jurisdiction must articulate its findings for declining jurisdiction. These findings must be supported by a preponderance of the evidence.

- **Mandatory** -- A decline hearing is mandatory when a 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. It is mandatory if the juvenile is 17 years old and the information alleges Assault in the second degree, Extortion in the first degree, Indecent Liberties, Child Molestation in the second degree, Kidnapping in the second degree, Robbery in the second degree. A decline hearing is also mandatory if the information alleges an escape and the juvenile is serving a minimum juvenile sentencing to age 21.

- Discretionary -- The prosecutor, the juvenile, or the court may file a motion requesting a hearing on whether the court should transfer a juvenile to adult court for criminal prosecution.

Automatic Adult Court Jurisdiction: The adult criminal court has exclusive jurisdiction over a juvenile if the juvenile is age 16 or 17 years and is alleged to have committed one of the following:

- a serious violent offense;
- a violent offense with a criminal history of: (1) one or more prior serious violent offenses; (2) two or more prior violent offenses; or (3) three or more of any combination of any class A felony, class B felony, Vehicular Assault, or Manslaughter in the second degree. All of these must have been committed after the juvenile's 13th birthday and prosecuted separately;
- Robbery in the first degree with a criminal history of one or more prior felony or misdemeanor offenses;
- Burglary in the first degree with one or more prior felony or misdemeanor offenses;
- or
- any violent offense with a firearm allegation.

Under Washington law, once the adult criminal court has exerted jurisdiction over a juvenile, that person remains an adult for all future criminal offenses. For example, if a 15-year-old has been convicted and completed the terms of a sentence in adult court, and that person commits a further offense at age 17, he or she is treated as an adult and is subject to adult court jurisdiction, regardless of the nature of the offense, felony or misdemeanor.

Mandatory Minimum Sentences of Offenses Involving Motor Vehicles.

A juvenile offender convicted of an offense receives a sentence that is based upon the seriousness of the offense and the offender's prior criminal history score. If the offender has no prior criminal history, the criminal history score is zero.

Current law requires that juvenile offenders convicted of Taking of a Motor Vehicle without Permission in the first or second degree, Theft of a Motor Vehicle, and Possession of a Stolen Vehicle, regardless of the criminal history score, serve mandatory sentences. For a conviction of Taking of a Motor Vehicle without Permission, in any degree, the mandatory minimum sentence must include confinement, which can, in some cases, be served as home detention.

Taking of a Motor Vehicle without Permission - First Degree: A person is guilty of Taking of a Motor Vehicle without Permission in the first degree if he or she, without permission of the owner, intentionally takes a motor vehicle and: (1) alters or changes the motor vehicle's appearance or primary identification; (2) removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts; (3) exports, or attempts to export, the motor vehicle across state lines or out of the country for profit; or (4) intends to sell the motor vehicle.

Taking of a Motor Vehicle without Permission - Second Degree: A person is guilty of Taking of a Motor Vehicle without Permission in the second degree if he or she, without permission of the owner, intentionally takes a motor vehicle, or voluntarily rides in a motor

vehicle with the knowledge of the fact that it was unlawfully taken.

Theft of a Motor Vehicle: A person is guilty of Theft of a Motor Vehicle if he or she commits theft of a motor vehicle.

Possession of a Stolen Motor Vehicle: A person is guilty of Possession of a Stolen Vehicle if he or she possesses a stolen motor vehicle.

The current mandatory minimum sentences for juvenile offenses involved motor vehicles are as follows:

Offense	Criminal History Score	Mandatory Minimum Sentence
Taking of a Motor Vehicle without Permission – first degree	0 - 1/2 points	5 days home detention; 45 hours community service; \$200 fine.
Taking of a Motor Vehicle without Permission – first degree	3/4 - 1 1/2 points	10 days detention; 90 hours community service; \$400 fine.
Taking of a Motor Vehicle without Permission – first degree	2 or more points	15 - 36 weeks confinement; 7 days home detention; 4 months supervision; 90 hours community service; \$400 fine.
(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle	0 - 1/2 points	5 days home detention; 45 hours community service OR zero days home detention and 90 hours community service.
(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle	3/4 - 1 1/2 points	10 days detention; 90 hours community service; \$400 fine.
(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle	2 or more points	15 - 36 weeks confinement; 7 days home detention; 4 months supervision; 90 hours community service; \$400 fine.
Taking of a Motor Vehicle without Permission – second degree	0 - 1/2 points	EITHER: 1 day home detention; 1 month supervision; 15 hours community service; OR zero days home detention; 30 days supervision; 30 hours community service.
Taking Motor Vehicle without Permission – second degree	3/4 - 1 1/2 points	1 day detention; 2 days home detention; 2 months supervision; 30 hours community service; \$150 fine.
Taking Motor Vehicle without Permission – second degree	2 or more points	3 days detention; 7 days home detention; 3 months supervision; 45 hours community service; \$150 fine.

Summary of Amended Bill:

Juvenile Court Jurisdiction.

The juvenile court may have jurisdiction over a juvenile defendant, even if the juvenile court through a decline hearing has previously declined jurisdiction. The juvenile court may have jurisdiction if the juvenile is acquitted in adult court of the offense charged or convicted of a lesser offense not considered at the decline hearing. The juvenile court may have jurisdiction only if at the time of a subsequent offense the juvenile was not otherwise under the adult court jurisdiction.

Decline Hearings.

A decline hearing for a juvenile aged 15 years is no longer mandatory for any offense.

Subject to approval of the court, the juvenile and the prosecutor, by agreement, may waive the exclusive adult court jurisdiction triggered by certain offenses alleged when the juvenile is age 16 or 17 years.

Mandatory Minimum Sentences for Juvenile Offenses Involving Motor Vehicles.

Terms of community supervision or parole supervision are added to mandatory minimum sentences for juveniles adjudicated of the offense of Taking of a Motor Vehicle Without Permission, Theft of a Motor Vehicle, and Possession of a Stolen Motor Vehicle.

Offense	Criminal History Score	Mandatory Minimum Sentences Pursuant to ESSB 5746
Taking of a Motor Vehicle without Permission – first degree	0 - 1/2 points	5 days home detention; 3 months community supervision; 45 hours community restitution; a \$200 fine.
Taking of a Motor Vehicle without Permission – first degree	3/4 - 1 1/2 points	10 days detention; 6 months community supervision; 90 hours community restitution; a \$400 fine.
Taking of a Motor Vehicle without Permission – first degree	2 or more points	15 - 36 weeks confinement; 4 months parole supervision; 4 months supervision; 90 hours community restitution; a \$400 fine.
(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle	0 - 1/2 points	5 days home detention; 3 months community supervision; a fine and either 5 days home detention or an additional 90 hours of community restitution.

(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle	3/4 - 1 1/2 points	10 days detention; 6 months community supervision; 90 hours community restitution; a \$400 fine.
(1) Theft of a Motor Vehicle OR (2) Possession of a Stolen Motor Vehicle	2 or more points	15 - 36 weeks confinement; 4 months parole supervision; 90 hours community restitution; a \$400 fine.
Taking of a Motor Vehicle without Permission – second degree	0 - 1/2 points	1 day home detention; 3 months supervision; 15 hours community restitution.
Taking of a Motor Vehicle without Permission – second degree	3/4 - 1 1/2 points	1 day detention; 3 months community supervision; 2 days home detention; 30 hours community restitution; a \$150 fine.
Taking of a Motor Vehicle without Permission – second degree	2 or more points	3 days detention; 6 months community supervision; 7 days home detention; 45 hours community restitution; a \$150 fine.

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.

Staff Summary of Public Testimony:

(In support) Juveniles are both less culpable than adults and more amenable to rehabilitation. It is better that they serve their time in the JRA because they can get rehabilitation services. At the same time, if a juvenile commits the worst crimes, they can be sentenced as adults and serve that kind of punishment time, so it is a balancing act. The extra criteria imposed upon a judge in deciding whether to approve an agreed-upon waiver of adult court jurisdiction which is triggered when a 16 or 17 year old is charged with certain offenses should be stricken. The court should have the ability to approve the waiver in its discretion, considering all of the circumstances of the case, such as developmental delay and other factors. Removing the requirement of a mandatory decline hearing for 15 year olds charged with a class A felony will streamline the issue and reduce costs. Electronic monitoring is defined in this bill, and it had not previously been defined for juveniles. About half of the courts provide electronic monitoring, so if it is available it can be used. All juveniles need some period of supervision.

(Opposed to section 2 of the bill) Section 2 of the bill should be removed. There are two ways that someone under the age of 18 years ends up in adult court: judicial decline or automatic transfer to adult court based upon an offense. Judicial decline is offender-based, not offense-based. When it is offense-based and the offense is not proved, the case should

come back down. When it is offender-based, they should not be returned to the juvenile court for a subsequent offense.

(Opposed) None.

Persons Testifying: (In support) Jean Soliz-Conklin, Sentencing Guidelines Commission; Beth Colgan, Columbia Legal Services; and Pete Peterson, Washington Association of Juvenile Court Administrators.

(Opposed to section 2 of the bill) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: (In support of section 4 only) Jo Arlow, Washington Association of Sheriffs and Police Chiefs.