

# HOUSE BILL REPORT

## ESHB 2906

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As Passed House  
February 21, 1994

**Title:** An act relating to violence prevention.

**Brief Description:** Relating to violence prevention.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Appelwick, Ballasiotes, J. Kohl, Long, L. Johnson, Cooke, Thibaudeau, Lemmon, Morris, Caver, Jones and Dunshee).

**Brief History:**

Reported by House Committee on:  
Appropriations, February 8, 1994, DPS;  
Passed House, February 21, 1994, 89-8.

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 23 members: Representatives Sommers, Chair; Valle, Vice Chair; Silver, Ranking Minority Member; Carlson, Assistant Ranking Minority Member; Appelwick; Ballasiotes; Basich; Cooke; Dellwo; Dorn; Dunshee; G. Fisher; Foreman; Jacobsen; Lemmon; Linville; Peery; Sehlin; Sheahan; Stevens; Talcott; Wineberry and Wolfe.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Leonard; H. Myers; Rust and Wang.

**Staff:** Bill Perry (786-7123).  
Pat Shelledy (786-7149).  
Margaret Allen (786-7191).  
Victor Moore (786-7143).

**Background:**

**Part I. FIREARMS AND DANGEROUS WEAPONS.** (Staff: Margaret Allen)

Terms such as "tidal wave," "epidemic," and "unprecedented" have been used by the media and others to describe the escalating incidence of violence in the United States, particularly violence among juveniles. In the search for

solutions, attention has been drawn to the availability of firearms and the role firearms play in violence.

Some commentators blame the ready availability of firearms for the tremendous personal and societal losses currently resulting from accidental or intentional misuse of firearms. Other persons are concerned that restricting firearm availability will infringe upon the right of a law-abiding citizen to keep and bear arms.

Washington courts have held a citizen's right to own, possess and use firearms is subject to reasonable regulation by the state under its police power. To meet the test of reasonableness, the regulation must be reasonably necessary to protect the public safety, health, morals and general welfare, and be substantially related to the legitimate ends sought.

#### **FIREARMS AND JUVENILES.**

State and federal law prohibit the transfer of handguns to persons under the age of 21. Federal law also prohibits the transfer of rifles and shotguns to persons under the age of 18.

However, neither state nor federal law expressly prohibits persons under the age of 21 from possessing firearms or from carrying firearms in public, as long as the firearms are carried openly rather than concealed, and are not carried in a manner intentionally intimidating or warranting alarm. One exception is that Washington law prohibits youth under the age of 14 from possessing any firearm, except under the supervision of a parent, guardian, or other adult approved by the parent or guardian, or under the supervision of a certified safety instructor. Juveniles under the age of 14 who illegally possess a firearm, or persons who aid or knowingly permit a juvenile to illegally possess a firearm, are guilty of a misdemeanor.

The Youth Handgun Safety Act of 1993, currently pending in Congress, would make it illegal to transfer a handgun or handgun ammunition to a juvenile under the age of 18 unless an enumerated exception applied. The act also would make it illegal for the juvenile to possess either a handgun or handgun ammunition, unless an enumerated exception applied. Violators of the act could be incarcerated for one year, fined or sentenced to probation. The act also would amend the Juvenile Justice and Delinquency Prevention Act of 1974 (JJJPA) to allow the incarceration of juveniles who illegally possess firearms, without jeopardizing a state's funding under the JJJPA.

The JJDPDA provides formula grants to states and local governments for juvenile delinquency programs and to improve the juvenile justice system. To qualify for a grant, a state is to refrain from placing juveniles in secure detention or correctional facilities for status offenses, that is, for offenses that would not be illegal if the juvenile were an adult. Washington reportedly receives approximately \$1 million under the JJDPDA.

#### **FIREARMS AND OTHER PERSONS.**

**Persons Disqualified from Possessing Pistols.** Current state law makes it a class C felony for a person who has been convicted of a crime of violence, a felony in which a firearm was used or displayed, or a felony violation of the Uniform Controlled Substances Act, or a person who has been involuntarily committed for mental health treatment, to possess a pistol. Such persons are not disqualified from possessing other types of firearms, such as rifles or shotguns.

Persons ineligible to possess a pistol are also ineligible for a concealed pistol license. But, under current law, a person convicted of assault in the third degree, indecent liberties, malicious mischief in the first degree, possession of stolen property in the first or second degree, or theft in the first or second degree is qualified to possess a pistol, but not qualified for a concealed pistol license. (The reference to indecent liberties may include only indecent liberties other than by forcible compulsion, since indecent liberties by forcible compulsion is included in the definition of a crime of violence.)

Persons who are ineligible to possess a pistol because of having been formerly involuntarily committed for mental health treatment and persons who are ineligible for a concealed pistol license but are eligible to possess a pistol, may have their rights restored, if certain conditions are met.

**Restoration of Rights.** A person ineligible to possess a pistol because of having been involuntarily committed for mental health treatment may petition a court to have his or her right to possess a pistol restored. The court must immediately restore the right upon a showing that the person is no longer required to participate in a treatment program and is no longer required to take medication to treat a condition related to the commitment. There is no requirement to show that the condition leading to the commitment no longer exists and is unlikely to recur. Although the right to possess a pistol must be restored by a court, current law requires the Department of Social and

Health Services (DSHS) to develop rules to create an approval process for the restoration of such rights.

A person eligible to possess a pistol, but ineligible for a concealed pistol license because of having been convicted of an enumerated crime, may petition a District Court to have his or her eligibility restored after one year following successful completion of his or her sentence, provided he or she has not again been convicted of, and is not under indictment for, any crime.

**Delivery of Pistols.** A current state statute makes it a misdemeanor to deliver a pistol to someone under the age of 21, or where there is reason to believe the recipient has been convicted of a crime of violence, or is a drug addict, habitual drunkard or of unsound mind. The terms "drug addict," "habitual drunkard," and "unsound mind" are undefined, and the statute does not make it illegal to deliver a pistol to someone convicted of a variety of other offenses that make a person ineligible to possess a pistol. In addition, the statute does not make it illegal to deliver a rifle or shotgun to a person in any of the listed groups.

**Carrying Firearms.** A person carrying a concealed or loaded pistol in a vehicle must have a concealed pistol license unless an exception applies. However, there are few other restrictions on the manner in which a person may carry a firearm. The primary restrictions prohibit, with some exceptions, a person from carrying any firearm in a manner intentionally intimidating or warranting alarm, or carrying a loaded shotgun or rifle in a vehicle. Carrying loaded pistols that are unconcealed, or loaded rifles or shotguns outside of a vehicle is permissible as long as the firearms are not carried in an intentionally intimidating or alarming manner.

#### **CONCEALED PISTOL LICENSES.**

Unless an exception applies, a person may carry a concealed pistol without a concealed pistol license only at home or at a fixed place of business. One of the exceptions is for current, but not retired, law enforcement officers. Only persons with concealed pistol licenses, or persons covered by an exception, may carry a loaded pistol in a vehicle. Carrying a pistol in violation of these limitations is a misdemeanor.

**Applications.** An applicant must meet several requirements to qualify for a concealed pistol license. For example, an applicant must be at least 21 years of age, not have been convicted of specified crimes, and not be subject to a court

order or injunction regarding firearms under the domestic violence or marital dissolution statutes.

An alien who wants a concealed pistol license must first have a special license issued by the Department of Licensing (DOL). Before DOL will issue the license, the alien must state he or she is planning to become a United States citizen, and the consul in the state representing the alien's country must provide a certificate stating the alien is a responsible person. The license costs \$15 and need not be renewed.

There have been reports of issuing authorities refusing to accept applications for concealed pistol licenses during normal business hours.

Making a false statement regarding citizenship or other information on a concealed pistol license application is a misdemeanor, but there is no explicit requirement that the issuing authority, usually a law enforcement agency, verify the information on the application. The recently-enacted Brady Bill exempts from the waiting period any person with a concealed pistol license issued in a state requiring an authorized official to verify the applicant is legally qualified to possess a pistol.

The issuing authority sends copies of issued concealed pistol licenses to DOL.

**Licensing Fees.** The current fee for an original license is \$23, and its distribution is set by statute: \$4 to the state general fund, \$4 to the agency taking the fingerprints, \$12 to the issuing authority, and \$3 to the firearms range account. The license must be renewed every four years.

The issuing authority's \$12 share has remained the same since 1983, when the share was raised from \$1.50. (At the same time, the total cost of an original license was raised from \$5 to \$20. In 1988, the total cost was raised \$3 to the current cost of \$23, with the additional \$3 earmarked for the firearms range account.)

The current fee for a renewal license is \$15, with \$4 distributed to the state general fund, \$8 to the issuing authority, and \$3 to the firearms range account. As with original licenses, the fee for a renewal license was raised \$3 in 1988, with the increase allocated to the firearms range account. Again, the issuing authority's share has remained constant since 1983.

A late fee of \$10 is assessed for a license not renewed within 90 days of expiration, with \$3 allocated to the state wildlife fund and \$7 allocated to the issuing authority.

#### **FIREARMS DEALERS.**

State law requires retail pistol dealers: (1) to be licensed; (2) to conduct business only in the building designated in the license; (3) to display the license on the premises; (4) to sell pistols in accordance with state laws and only to purchasers personally known to the seller or who present clear identification; and (5) to keep detailed sales records.

**Deliveries to Purchasers.** Dealers also must: (1) withhold delivery of a pistol until specified conditions are met (the purchaser produces a valid concealed pistol license, the dealer receives word from the local law enforcement agency that the application to purchase is granted, or the requisite time elapses); (2) require a purchaser to complete an application providing various information and deliver the application to the local law enforcement agency; or (3) give a purchaser a copy of the Department of Wildlife pamphlet concerning firearms laws and safety. The same restrictions do not apply to sales of rifles or shotguns.

Failure to comply with a requirement is a misdemeanor and is to result in license forfeiture.

Making a false statement on a purchase application is a misdemeanor, but law enforcement agencies are not explicitly required to verify an applicant is eligible to purchase a pistol.

State law does not define a "dealer," but does define a "commercial seller" to mean anyone who has a federal firearms license.

**Licensing.** Federal law requires dealers in all types of firearms to be licensed. A "dealer" under federal law is any person who is: (1) engaged in the business of selling firearms at wholesale or retail; (2) engaged in the business of repairing firearms or of making or fitting special barrels, stocks or trigger mechanisms to firearms; or (3) a pawnbroker whose business includes receiving firearms as security for payment.

The term "engaged in the business" in the federal definition means a person who devotes time, attention and labor to dealing in firearms as a regular course of trade or business, with the principal objective of livelihood and profit through repetitive dealing in firearms. It does not

include a person who makes occasional sales, exchanges, purchases, repairs or other transactions involving firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of a personal collection of firearms.

The screening process for a federal dealer's license is more extensive than that for a state dealer's license, and, as with state law, to qualify for a federal license the applicant must have premises from which to conduct business. While a license is required for each of the premises, an exception is made for gun shows.

DOL reportedly processes approximately 580 original and approximately 1,600 renewal applications for dealer licenses per year. According to the Bureau of Alcohol, Tobacco and Firearms (ATF), over 6,000 federally licensed dealers list Washington State as their place of business. The Brady Bill recently raised the cost of a three-year federal license (original or renewal) from \$30 to \$200 for the initial three-year license, and \$90 for a three-year renewal license. A state dealer's license costs \$5 and must be renewed annually.

It has been suggested that some persons with federal licenses are not actually engaged in the business of selling firearms but rather are licensed primarily for the advantage of being able to purchase firearms at lower prices than an unlicensed consumer would pay.

#### **CONFIDENTIALITY.**

DSHS, mental health institutions, and other health care facilities must supply information relevant to determining a person's eligibility to possess a pistol or concealed pistol license upon written request from courts or law enforcement agencies. There is no specific requirement that the person authorize the disclosure of such information.

The information provided is to be used exclusively for the purpose of determining the person's eligibility to possess a pistol or for a concealed pistol license, and is not to be made available for public inspections except by the person who is the subject of the information. The statute imposing the requirement was enacted in 1983. However, the Uniform Health Care Information Act, enacted in 1991, specifies some circumstances in which a health care provider may deny a person his or her health information, such as when release of the information could reasonably be expected to endanger someone's life or safety.

Applications for concealed pistol licenses are exempt from public disclosure, except to law enforcement and corrections agencies. The same is not true of applications to purchase pistols or records of pistol transfers.

DOL keeps records of purchase applications and pistol transfers but is not expressly authorized by statute to do so. Law enforcement agencies check DOL records when a specific firearm is involved in the investigation of a crime.

#### **PREEMPTION.**

Since the state has preempted the area of firearms regulation, counties, cities and other municipalities may enact only those ordinances specifically authorized by state law. Currently, counties, cities and other municipalities may adopt ordinances restricting the discharge of firearms in areas where persons, domestic animals or property would be jeopardized, and may restrict possession of firearms in stadiums or convention centers unless the person has a concealed pistol license. Counties and cities are not authorized to regulate, through zoning, where firearms may be sold.

#### **SCHOOL GROUNDS.**

During the 1993 session, the Legislature amended the law governing firearms and other dangerous weapons on school grounds. Unless an exception applies, the law now prohibits any person from carrying firearms or other dangerous weapons onto school premises, school-provided transportation, or areas of facilities while being used exclusively by schools.

The current state law does not specifically address a situation where a person has possession of a firearm or other dangerous weapon on, but may not have carried the weapon onto, school premises.

Several exceptions concern weapons in vehicles. Any person conducting legitimate business at the school may have a firearm or other dangerous weapon if the weapon is: (1) secured in an attended vehicle; (2) concealed in a locked, unattended vehicle; or (3) unloaded and secured in a vehicle. Current firearm laws do not prohibit any person 14 years of age or older from possessing firearms, and do not prohibit the delivery of firearms other than pistols to anyone under the age of 21. Some persons have argued "conducting legitimate business at the school" includes attending school or after-school events as a student.

Carrying firearms or other dangerous weapons in violation of the statute is a gross misdemeanor and subjects a student to expulsion. "Expulsion" is, by definition, for an indefinite period of time.

#### **JUVENILE DRIVING PRIVILEGES.**

Currently, a court is required to notify DOL if the court has found that a juvenile between the ages of 13 and 18 years has violated the state's drug or alcohol control laws.

Upon receiving the notice and without a hearing, DOL must revoke the juvenile's driving privileges. For a first notice, DOL revokes the privileges for one year, or until the juvenile reaches 17 years of age, whichever is longer. For a subsequent notice, DOL revokes the privileges for two years, or until the juvenile reaches 18 years of age, whichever is longer.

A juvenile may petition the court for earlier reinstatement of driving privileges. The court may, at any time the court deems appropriate, notify DOL that the juvenile's driving privileges should be reinstated. However, for a first offense, the juvenile must wait to petition the court until 90 days after the date he or she turns 16, or 90 days after the judgment was entered, whichever is later. For a subsequent offense, the juvenile must wait until he or she turns 17, or one year after the date the judgment was entered, whichever is later.

Similarly, if a juvenile enters into a diversion agreement concerning a violation of the drug or alcohol control laws, the diversion unit must notify DOL after the diversion agreement is signed. Upon receiving the notice and without a hearing, DOL must revoke the juvenile's driving privileges.

The diversion unit also must notify DOL once the juvenile has completed the agreement so DOL can reinstate the juvenile's driving privileges. However, for a first offense, DOL cannot reinstate the driving privileges until the later of 90 days after the date the juvenile turns 16, or 90 days after the juvenile entered into the diversion agreement. For a subsequent offense, DOL cannot reinstate the juvenile's driving privileges until the later of the date the juvenile turns 17, or one year after the juvenile entered into the diversion agreement.

No similar provisions exist to revoke the driving privileges of juveniles who illegally possess firearms in a vehicle, or who commit offenses while armed with a firearm that involve the use of a vehicle.

## **MISCELLANEOUS PROVISIONS.**

**Immunity.** The Brady Bill gives immunity to local governments and local and federal governmental employees responsible for providing information to the national instant criminal background check system, for failing to prevent the sale of a firearm to a person ineligible, or for preventing the sale of a firearm to a person eligible, to possess a firearm.

An applicant may bring a civil suit to enjoin a wrongful refusal to issue a concealed pistol license and is entitled to costs and reasonable attorneys' fees if successful.

**Restricted Firearms.** While the possession of short-barreled rifles and short-barreled shotguns is regulated under federal law, possessing such firearms does not violate state law.

Currently, firearms manufacturers in Washington State may produce machine guns for sale to the United States armed forces. Manufacturers are not expressly authorized to repair such firearms or to sell them to domestic law enforcement agencies, although law enforcement officers engaged in official duties are allowed to possess machine guns. Neither are manufacturers authorized by state law to sell machine guns to foreign countries, even if the manufacturer complies with all federal requirements.

Employees of such manufacturers are not required to undergo fingerprinting or background checks.

**Conflicts Between Firearms Laws and Other Criminal Statutes.** Some provisions of current firearm laws potentially conflict with other laws in the criminal code. For example, firearm laws concerning spring guns potentially conflict with the assault and homicide statutes.

A statute creating a presumption that a person armed with an unlicensed pistol intended to commit a crime of violence has been declared unconstitutional by the Washington Supreme Court.

**PART II. SUPERIOR AND JUVENILE COURT JURISDICTION.** (Staff: Pat Shelledy)

**Juvenile Jurisdiction or Adult Criminal Court Jurisdiction.** The Juvenile Court has exclusive original jurisdiction over juveniles under age 18 who have allegedly committed offenses. Under certain circumstances, the Juvenile Court may decline to exercise its jurisdiction over juveniles and

may transfer the juvenile for prosecution as an adult to adult criminal court.

Juveniles may be transferred to adult court following a hearing in which the court considers a variety of factors to determine whether a transfer is in the best interests of the public or the juvenile.

All decline decisions are within the court's discretion.

A decline hearing will be held under the following circumstances:

- (1) upon motion of the court, prosecutor or respondent in any case; or
- (2) unless waived by the court, the state and the respondent, a decline hearing must be held when:
  - (a) the respondent is 15, 16 or 17 and the information alleges a class A felony or an attempt, solicitation or conspiracy to commit a class A felony; or
  - (b) the respondent is 17 years of age 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; or
    - robbery in the second degree.

Various states have created statutes which provide that certain juveniles who would otherwise be under juvenile court jurisdiction will not be treated as juveniles depending on their age, the seriousness of the alleged offense, and in some cases, the juvenile's criminal history.

**Family Court and Juvenile Court.** The Juvenile Court is a division of the Superior Court. The Family Court is not technically a division of the Superior Court, however, the judges act as the "Family Court" when considering cases involving divorce, custody, visitation and child support. The Juvenile Court considers cases involving dependencies and crimes committed by juveniles. One juvenile may be involved in various court systems simultaneously, such as when the juvenile is a dependent of the state, is also an offender, or is a child of parents involved in a divorce. Although the barrier between "Family Court" and "Juvenile"

Court is artificial, it currently prevents one court from considering various issues affecting the same child.

**Review of the Potential Disproportionate Impact of the Juvenile Offender System Upon Youth of Color.** Last year the Legislature passed a bill, HB 1966, which implemented some of the recommendations of a study on racial discrimination in the juvenile justice system. One provision of HB 1966 directed the Office of the Administrator for the Courts to convene a working group to develop standards and guidelines for the prosecution of juvenile offenders. The work group is scheduled to submit its recommendations to the Legislature by December 1, 1994.

**PART III. THEFT OF FIREARMS.** (Staff: Pat Shelledy)

A person is guilty of theft in the second degree if the person steals a firearm having a value less than \$1,500. Theft in the second degree is a class C felony. It has a seriousness level of I on the adult Sentencing Reform Act grid. The presumptive range for a first-time adult offender who commits theft in the second degree is 0 - 60 days in jail. If the firearm's value is greater than \$1,500, the adult is guilty of theft in the first degree, which is a class B felony and which has a seriousness level of II on the grid. The presumptive range for crimes at seriousness level II is 0 - 90 days in jail for first-time offenders. If a person is in possession of a stolen firearm, regardless of its value, the person is guilty of possession of stolen property in the second degree, which is a class C felony at seriousness level I.

Special rules apply to dispositions imposed on juvenile offenders who commit theft in the first or second degree or possession of stolen property in the first or second degree. Under current law, depending upon the juvenile's criminal history, the prosecutor may divert a minor from prosecution for committing theft in the second degree or possession of stolen property in the second degree. If the juvenile is under age 17, the juvenile may be considered a "minor or first offender" depending on the offender's criminal history. Minor or first offenders' presumptive dispositions do not include detention as a disposition option. The actual disposition that a court may impose upon a juvenile depends on a variety of factors, including the juvenile's age, alleged offense, criminal history and recency of that criminal history.

**PART IV. RECKLESS ENDANGERMENT IN THE FIRST DEGREE.**  
(Staff: Pat Shelledy)

Reckless endangerment in the first degree is charged when a person recklessly discharges a firearm in a manner which creates a substantial risk of death or serious physical injury to another person, and the discharge is either from a motor vehicle or from the immediate vicinity of a motor vehicle that was used to transport the shooter to the scene of the discharge. Reckless endangerment in the first degree is a class C felony and is ranked at seriousness level II on the adult sentencing grid. The standard range for seriousness level II is 0 - 90 days in jail for a first-time offender. Disposition rules that apply to juveniles who commit reckless endangerment in the first degree are similar to the rules that apply to juveniles who commit theft.

**PART V. ADULT SENTENCING FOR DEADLY WEAPON ENHANCEMENTS.**  
(Staff: Pat Shelledy)

If an adult commits certain offenses while the offender or an accomplice was armed with a deadly weapon, the prosecutor may file a special allegation alleging that the defendant was armed with a deadly weapon. If the trier of fact returns a special verdict finding that the defendant was armed with a deadly weapon when the offense was committed, the defendant must serve a mandatory minimum penalty in addition to whatever penalty the court imposes for the underlying offense. The additional penalty ranges are as follows:

12 months for assault 2, assault of a child 2, escape 1, kidnapping 2, burglary 2, theft of livestock 1 or 2, or any drug offense;

18 months for burglary 1; and

24 months for rape 1, robbery 1 or kidnapping 1.

The mandatory minimum penalty applies to attempts and conspiracies as well. Rape 1, robbery 1 and kidnapping 1 are serious violent offenses. All of the other offenses are violent offenses, except burglary 2, theft of livestock 1 or 2, and escape 1. All of the offenses are either class A or B offenses, except theft of livestock 2, which is a class C felony, and some drug offenses. Other "violent" crimes exist. The mandatory penalty enhancement for being armed with a deadly weapon during the commission of those violent offenses does not apply.

Comparable provisions do not exist in the juvenile offender disposition code.

**PART VI. PERSONAL PROTECTION SPRAY DEVICES.** (Staff: Bill Perry)

Certain chemical spray devices are commonly marketed and sold as self-defense devices. These sprays typically cause tearing of the eyes and running of the nose. They may also cause nausea. Generally, the purchase or possession of these devices is not illegal under state or federal law. However, use of a spray on another person, absent justifiable self-defense, may be a criminal assault. (Chapter 9A.36 RCW.) A more generalized discharge of a device in "any building or place" of a device that by its "offensive and pungent odor" will "annoy, injure, endanger or inconvenience any person" is a misdemeanor crime. (RCW 70.74.310.)

Because of fear over misuse of these devices, some local jurisdictions have banned private possession of some of them.

**PART VII. JUVENILE JUSTICE PROVISIONS, EFFECTIVE JULY 1, 1994.**

**A. ADMINISTRATION. (Staff: Kristen Lichtenberg)**

**Structuring of the Division of Juvenile Rehabilitation.** The state agency responsible for juvenile offenders is DSHS. The secretary of DSHS is a cabinet-level position, and the law gives the secretary broad authority to create administrative structures within the department, except as otherwise required by law. The DSHS secretary appoints assistant secretaries to administer the divisions within DSHS. Currently, the assistant secretary for Children, Family and Youth Services (CFYS) has jurisdiction over juvenile rehabilitation; within CFYS, the Division of Juvenile Rehabilitation (DJR) fulfills DSHS's responsibilities for juvenile offenders. CFYS receives 7.1 percent of DSHS's total budget, and DJR receives 28.8 percent of the CFYS budget. DJR thus receives only 2 percent of the DSHS budget.

**Warrant Authority.** The Fourth Amendment to the United States Constitution requires that an arrest warrant be issued by a "neutral and detached" magistrate who is capable of determining the existence of probable cause. The Fourth Amendment does not prohibit non-judges from issuing warrants, but the constitution does require severance of the warrant process from activities of law enforcement.

In Washington, the secretary of the Department of Corrections has narrow warrant-issuing authority. When the secretary grants a furlough to a prisoner, and either the prisoner violates furlough terms or the secretary revokes the furlough, the secretary has the statutory authority to issue an arrest warrant for the prisoner. Similarly,

community corrections officers have the authority to cause the arrest without a warrant of offenders who violate terms of their sentences.

**Juvenile Disposition Standards Commission.** The Juvenile Disposition Standards Commission (JDSC) proposes juvenile disposition standards to the Legislature. The JDSC is chaired by the secretary or the secretary's designee, and includes nine other members appointed by the Governor. The JDSC currently has no legislator members. Members serve three-year terms.

The JDSC reviews the effectiveness of existing disposition standards, reviews application of the juvenile justice laws for disproportionality, and recommends modifications of disposition standards.

**Juvenile Offender Education.** Juvenile offenders who are committed to DJR receive education provided by the school district in which the DJR facility is located. No centralized authority coordinates education for committed juvenile offenders.

**B. STUDIES CONCERNING JUVENILE JUSTICE.** (Staff: Kristen Lichtenberg)

There is concern about the state's and local jurisdictions' ability to fulfill adequately confinement needs for juvenile offenders. Significant change to the juvenile justice system could require the Office of the Administrator for the Courts to promulgate new standards for the administration of juvenile justice.

**C. JUVENILE DISPOSITION STANDARDS.** (Staff: Kristen Lichtenberg and Pat Shelledy)

**Offender Categories.** The current juvenile justice system bases the type and length of a juvenile's disposition (sentence) on several factors, including the juvenile's offender category. Juvenile offenders are characterized as "minor or first offenders," "middle offenders," or "serious offenders," depending on their age and criminal history.

Minor or first offenders are juveniles 16 years of age or younger whose criminal history falls entirely within one of the following categories:

- (1) (a) four misdemeanors;
- (b) two misdemeanors and one gross misdemeanor;
- (c) one misdemeanor and two gross misdemeanors; or
- (d) three gross misdemeanors; or

- (2) one class C felony, except manslaughter in the second degree, and one misdemeanor or gross misdemeanor; or
- (3) one class B felony, except: any felony which constitutes an attempt to commit a class A felony; manslaughter in the first degree; assault in the second degree; extortion in the first degree; indecent liberties; burglary in the second degree; robbery in the second degree; residential burglary; vehicular homicide; or arson in the second degree.

A serious offender, by contrast, is an offender who is 15 or older and whose current offense is a class A felony, an attempted class A felony, manslaughter 1, or a designated class B felony in which the offender either is armed with a deadly weapon or inflicts bodily harm upon another.

Middle offenders are juvenile offenders who are neither minor/first nor serious offenders. The middle offender category therefore includes both a 17 year old who commits a minor offense and a 14 year old who commits a class A felony.

**Diversion.** Some juveniles must or may be "diverted" from the juvenile justice system when they commit an offense. A diverted youth is referred to a county diversion unit, which is a probation counselor or any other person or entity with whom the Juvenile Court administrator has contracted to arrange and supervise the juvenile's compliance with a "diversion agreement." Some Juvenile Court administrators contract with "community accountability boards" to act as diversion units.

In the discretion of the prosecutor, an alleged offender may be diverted for some class C felonies, depending on the offender's criminal history and other factors. Under current law, a juvenile offender accused of reckless endangerment in the first degree, theft in the second degree, possession of stolen property in the second degree, or unlawful possession or delivery of a firearm may be diverted if the offender otherwise meets the criteria for diversion.

Diversion agreements may require community service, restitution, counseling and a fine.

**Statutory Standard Disposition Ranges.** Current law establishes a determinate sentencing system for juveniles. The standard range bases the type and length of a juvenile's disposition (sentence) on several factors: