

# HOUSE BILL REPORT

## E2SHB 2219

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### As Amended by the Senate

**Title:** An act relating to offenders.

**Brief Description:** Changing provisions relating to offenders.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Foreman, Sheahan, Ballasiotes, Schoesler, Pennington, Mastin, Chandler, Delvin, Robertson, Campbell, Huff, Hickel, Thompson, Blanton, McMahan, Hargrove and Stevens).

**Brief History:**

**Committee Activity:**

Law & Justice: 1/9/96, 1/16/96 [DPS];

Appropriations: 1/24/96, 1/30/96 [DP2S(w/o sub LJ)].

**Floor Activity:**

Passed House: 2/9/96, 91-4.

Senate Amended.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Smith and Sterk.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Cody; Murray and Veloria.

**Staff:** Pat Shelledy (786-7149).

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Law & Justice. Signed by 27 members: Representatives Huff, Chairman; Clements, Vice Chairman; Pelesky, Vice Chairman; H. Sommers, Ranking Minority Member; Basich; Beeksmas; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dyer; Foreman;

Grant; Hargrove; Hickel; Jacobsen; Kessler; Lambert; Linville; McMorris; Reams; Sehlin; Sheahan; Silver; Talcott and Wolfe.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Valle, Assistant Ranking Minority Member; Dellwo; Poulsen and Rust.

**Staff:** Dave Johnson (786-7154).

**Background:**

**A. Juvenile Offender Provisions**

**1. Jurisdiction of the Juvenile Court**

In general, the juvenile court has exclusive original jurisdiction over juveniles under age 18 who are charged with an offense, traffic infraction, or violation.

**Exceptions to rules governing Juvenile Court jurisdiction:**

A few exceptions apply to the general rule.

**Prosecution of certain offenders as adults:**

One exception, which was adopted during the 1994 session, provides that juveniles will automatically be prosecuted as adults in adult Criminal Court under the following circumstances:

The juvenile is 16 or 17 years old and the alleged offense is:

- (1) a serious violent offense, or;
- (2) a violent offense and the offender has a criminal history consisting of:
  - (a) one or more prior serious violent offenses;
  - (b) two or more prior violent offenses, or;
  - (c) three or more of any combination of the following offenses: any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's 13th birthday and prosecuted separately.

**Decline Hearings:**

Another exception, which has existed since 1979, is when the Juvenile Court declines to exercise its jurisdiction and transfers a juvenile to adult Criminal Court for prosecution pursuant to a procedure commonly referred to as a "decline hearing."

The court must consider a variety of factors at the decline hearing to determine whether a transfer is in the best interest of the public or the juvenile.

The prosecutor, juvenile, or the court on its own motion may file a motion requesting the court to transfer a juvenile for adult criminal prosecution. This motion may be filed in any case.

Unless waived by the court, the parties, and their counsel, the court must hold a decline hearing under the following circumstances:

- (1) the 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;
- (2) the juvenile is 17 years old and the information alleges:
  - second-degree assault;
  - first-degree extortion;
  - indecent liberties;
  - second-degree child molestation;
  - second-degree kidnapping; or
  - second-degree robbery.

### **Institutional placement of adult offenders under age 18:**

If a juvenile offender under age 18 is prosecuted and convicted as an adult, and the offender is sentenced to prison, the offender may be housed in a juvenile rehabilitation facility under certain circumstances. The Secretary of the Department of Corrections makes an independent assessment of the offender to determine if the offender's needs and correctional goals would be served better if the offender was housed in a juvenile facility. If the Secretary of the Department of Social and Health Services accepts the offender, the offender may reside in a Juvenile Rehabilitation Administration (JRA) facility until age 21 and then transfer to an adult correctional facility. The secretaries must review the placement regularly with a determination based on the offender's maturity and sophistication, behavior and progress, security needs, and program and treatment alternatives.

## **2. Dispositions for Juveniles Under State Jurisdiction**

**JRA Dispositions:** A juvenile offender may be confined in state institutions for serious offenses or for being a chronic offender. The length of the term of confinement varies depending on the seriousness of the offense, the juvenile's age, the offender's prior criminal history, and the recency of that history. Some offenders are considered "serious offenders" based on their age and crime. Other offenders are

considered "middle offenders." The minimum commitment range for an offender sent to JRA is 8 to 12 weeks in confinement.

**"Serious offenders":** Only juveniles 15 years of age or older who commit certain serious crimes are considered "serious offenders." Serious offenders receive presumptive JRA commitment ranges and are ineligible for a community supervision disposition referred to as an "Option B" disposition.

### **3. Disposition Alternatives**

#### **Special Sexual Offender Disposition Alternative (SSODA):**

Some juvenile sex offenders may be ordered into treatment in the community and placed on supervision, rather than serve a longer period in confinement. If the offender fails to comply with the treatment and supervision requirements, the offender is returned to custody. A concern has been raised that the period of confinement is too short to provide sufficient incentive for the offenders to comply with the disposition. A juvenile who has been convicted of rape in the first degree is ineligible for SSODA, but an offender who is convicted of rape in the second degree is eligible for SSODA.

#### **Chemically dependent juveniles:**

Adult offenders who commit certain offenses may receive a sentence that allows them to serve less time in prison provided they obtain treatment for their drug dependency and comply with supervision. A similar disposition option does not exist for juvenile offenders committed to JRA who have substance abuse problems.

#### **Deferred adjudication:**

Some offenders are eligible for a disposition option called "deferred adjudication." Those offenders' convictions and dispositions are deferred, provided they comply with terms of community supervision. Some of those offenders, if convicted, would lose their privilege to drive for a period of time. The department of licensing does not suspend a license without a conviction.

### **4. Juveniles Under Jurisdiction of the County**

#### **County detention ranges:**

Juveniles whose standard ranges include less than 30 days' confinement are under county jurisdiction. Disposition ranges for juveniles under county jurisdiction vary depending on the number of "points" an offender has accumulated. The standard

ranges for offenses are restrictive (2-4 days in detention, 0-3 months' supervision, 8-24 hours community service, \$0-\$25 fine, for example).

The standard range disposition provisions for offenders classified as "minor/first" offenders do not include confinement.

### **Jurisdiction of the Superior Court over offenders:**

Except in a few circumstances, the Superior Court, rather than courts of limited jurisdiction, has jurisdiction over juveniles.

### **Diversion:**

In some cases, juvenile offenders are "diverted" from the formal adjudication process and enter into "diversion contracts." Current law imposes restrictions on the number of hours of counseling and education that a juvenile may be required to attend under a diversion contract (10 hours of counseling and 20 hours of education).

## **5. Review of the Juvenile Disposition Standards**

The Juvenile Justice Act of 1977 vested the Juvenile Disposition Standards Commission with the power to review the juvenile disposition standards and make recommendations to the Legislature for changes. The Sentencing Guidelines Commission has a similar role under the Sentencing Reform Act regarding adult sentencing. In 1995, the Legislature passed a bill transferring the power and duties of the Juvenile Disposition Standards Commission to the Sentencing Guidelines Commission, effective June 30, 1997.

## **6. Role of Parents**

### **Appearance at Juvenile Court proceedings:**

When a juvenile is charged in Juvenile Court with an offense, the information must also be sent to the parents notifying them of the charges and requiring them to appear and be parties to the proceedings at the arraignment. The Juvenile Justice Act does not explicitly state that the Juvenile Court has jurisdiction over the parents or that the parents may be required to appear at other hearings involving the juvenile or can be found in contempt for failing to appear.

### **Parents' presence at meetings with their child and their child's attorney:**

If a juvenile talks to the juvenile's defense attorney in the presence of the juvenile's parents, there isn't a privilege that protects the parents from being summoned to testify about the juvenile's statements. This concern apparently prompts some defense

attorneys to refuse to talk to the juvenile client in the parents' presence. It has been suggested that the attorney/client privilege extend to conversations between the juvenile and the juvenile's parents after charging the offender with an offense.

### **Parental supervision:**

California and Oregon have passed laws penalizing parents who fail to supervise their children properly and then the children commit crimes or status offenses.

## **7. JRA Institutional Security and Parole**

The Secretary of the Department of Social and Health Services has authority to issue arrest warrants for juveniles who escape from an institution. The secretary does not have explicit power to issue arrest warrants for juvenile offenders who abscond from parole supervision or fail to meet conditions of parole. In contrast, community corrections officers supervising adult offenders have explicit authority to arrest adult offenders who violate conditions of supervision or parole.

## **8. Miscellaneous Juvenile Provisions**

**Courtesy disposition hearings:** If a juvenile is adjudicated in one county, but resides in another, the case may be transferred to the offender's county of residence for the disposition hearing.

**Conduct of juvenile offenders in schools:** Many juvenile offenders may have problems with truancy, academic problems, or problems with behaving appropriately at school. The schools may not have services within the school to address all of these problems.

### **B. Adult Offender Provisions**

#### **1. Penalties for Second-degree Assault and Robbery**

The Sentencing Reform Act contains a sentencing grid which ranks the seriousness level of various offenses. The seriousness level of second-degree assault and second-degree robbery is level IV. A first-time offender without prior convictions has a standard range sentence of 3 to 9 months in jail.

#### **2. Counting Juvenile Adjudications as Criminal History in Adult Offender's Offender Score**

Juvenile criminal history does not always contribute as much to an adult defendant's offender score as much as convictions for crimes committed as an adult. For example, certain offenses "wash out" and are not counted, depending on the age of

the juvenile when the prior offense was committed and the age of the offender when the adult offense was committed. Serious violent offenses and sex offenses never wash out, but some violent offenses do wash out.

Misdemeanors and gross misdemeanors do not contribute to an adult offender's offender score. The court may take them into consideration for purposes of imposing an exceptional sentence.

### **Exceptional Sentences:**

The court may impose an exceptional sentence above the standard range for certain aggravating factors. Some of the aggravating factors are set forth in statute; others are developed by the courts.

### **Summary of Bill:**

#### **A. Juvenile Offender Provisions**

##### **1. Adult Jurisdiction Over Youthful Offenders**

Violent and sex offenders will be prosecuted as adults as follows:

#### **Violent and sex offenders:**

- „ Juveniles 16 and 17 years old who commit violent or felony sex offenses. Sixteen- and seventeen-year-old sex offenders who are eligible for SSODA, except those charged with rape in the second degree, will not be automatically prosecuted as adults. (A technical amendment is necessary to clarify this provision.)
- „ Juveniles less than 16 years old who commit violent or felony sex offenses if they have previously been (a) committed for a period of confinement to the Department of Social and Health Services, or (b) adjudicated of a felony sex offense.

#### **Mandatory decline hearings:**

- „ A decline hearing must be held for any 14- or 15-year-old who commits a sex or violent offense (who would be automatically prosecuted as an adult if age 16 or 17 when the offense was committed) unless the hearing is waived. Fourteen- or fifteen-year-old juveniles who are eligible for SSODA, except for those charged with rape in the second degree, are not subject to a mandatory decline hearing.
- „ A decline hearing must also be held for any offender charged with escaping from confinement while serving a juvenile disposition to age 21.

### **Institutional placement of adult offenders under age 18:**

In general, juvenile offenders under age 16 who are convicted as adults will be housed in JRA facilities until age 18. If the Department of Corrections develops the beds and has the funding, those offenders may be placed in adult corrections facilities separated from adult offenders over age 18. In general, juvenile offenders ages 16 and 17 will be housed in adult corrections facilities, and the Department of Corrections must make reasonable efforts to separate those offenders from adult offenders who are much older, more violent or predatory, or larger in stature. The Secretaries of the Department of Corrections and the Department of Social and Health Services retain the power to make placement decisions for individual offenders who may present special security needs.

### **2. Dispositions for Juveniles Under State Jurisdiction**

**JRA Dispositions:** The minimum term of commitment for juveniles committed to the department (JRA) is increased as follows:

- „ "Serious offenders": 30-40 weeks (up from 8-12 weeks)
- „ "Middle offenders": 20-24 weeks (up from 8-12 weeks)

#### **"Serious" Offenders:**

The age requirement is eliminated so juveniles of any age who commit serious crimes serious will be considered "serious" offenders.

### **3. Disposition Alternatives**

#### **Special Sexual Offender Disposition Alternative (SSODA):**

- „ Judges may increase the length of the suspended range of commitment by imposing a manifest injustice to encourage compliance with conditions of SSODA.

#### **Chemically dependent juveniles:**

- „ A new disposition option is created to allow judges to suspend the disposition for some juveniles whose presumptive range is commitment to JRA, and impose community-based chemical dependency treatment and supervision. Violent and sex offenders are ineligible.

#### **Deferred disposition:**

- „ The deferred adjudication option is changed to a deferred "disposition" option. The conviction must be entered, and then the disposition will be deferred while



the respondent is on supervision. If the respondent complies, the conviction will be vacated. The Department of Licensing may suspend the offender's license following the conviction.

#### **4. Juveniles Under Jurisdiction of the County**

##### **County detention ranges:**

- „ Minor/first offenders may be confined up to 10 days as part of their standard disposition range.
- „ The minimum days of detention, months of supervision, hours of community service, and fines are retained, but the maximums are increased to 12 months of supervision, 150 hours of community service, \$100 fine, and in the case of middle offenders up to 30 days in detention.

##### **"Toppenish Plan" pilot project for minor offenders:**

- „ Local courts of limited jurisdiction in counties of a certain population may have jurisdiction over juvenile offenders who commit infractions or misdemeanors, or are truants. Several restrictions apply. The pilot project ends June 30, 1998.

##### **Diversion:**

- „ The proposal removes the current limitation on the number of hours of counseling and education that can be imposed and gives the diversion unit the discretion to decide how many hours are appropriate.

#### **5. Sentencing Guidelines Commission**

- „ The Sentencing Guidelines Commission assumes the duties of the Juvenile Disposition Standards Commission on June 30, 1996, and must develop recommendations for new disposition standards focusing on simplifying the scheme. The commission must study various disposition and institutional options. The recommendations are due December 1, 1996. Membership of the commission is expanded. Current outdated provisions governing the commission's responsibilities for adult offender sentencing are updated.

#### **6. Role of Parents**

A new goal of the juvenile justice system is to encourage and require parents to participate in juvenile offender proceedings against their child. To achieve those goals

- „ The court is granted limited jurisdiction over parents, is required to give parents notice of pertinent hearings, must require parents to attend, and may hold parents in contempt for failing to attend.
- „ A limited evidentiary privilege is created to allow parents to participate in discussions between their child and their child’s attorney without risking being called as witnesses to testify about the discussion.
- „ A parent commits a civil infraction of failing to supervise a child if the parent fails to supervise a child under age 15, fails to take reasonable steps to control the child’s conduct, and the child commits an offense or violates a curfew. "Fails to take reasonable steps to control the child’s conduct" is defined and penalties are established.

**7. JRA Institutional Security and Parole**

- „ The Department of Social and Health Services must submit an annual report on security at state juvenile facilities. The report must include information about escapes, leaves, and offenses committed while on escape or leave status.
- „ The secretary may issue arrest warrants for juveniles who abscond from parole or fail to meet parole conditions.

**8. Miscellaneous**

- „ **Courtesy disposition hearings:** Disposition hearings for juveniles whose standard range includes commitment to JRA may be transferred to the county where the offender lives rather than the county where the juvenile was adjudicated.
- „ **Schools contract for services:** Schools may contract with private or public entities to provide educational services for students who have been adjudicated of offenses when the students have problems with truancy, appropriate behavior, or academic performance.
- „ The Department of Corrections may not construct or acquire any new building, nor renovate an existing building on the grounds of Western State Hospital, for use as a prerelease or work release program.

**B. Adult Offender Provisions**

**1. Penalty Increases for Assault 2 and Robbery 2**

- „ The seriousness level for assault 2 and robbery 2 is increased to seriousness level V, which yields a range of 6-12 months in jail for a first-time offender.

## **2. Juvenile Adjudication History When Prosecuted as Adults**

- „ Any "violent" offense committed as a juvenile will always be counted in an adult offender's criminal history score. A felony conviction as an adult nullifies any order sealing the offender's juvenile criminal history for violent offenses.
- „ In addition, a judge may consider the adult offender's prior juvenile history that does not count (misdemeanors or other less serious felonies) as a basis to impose an exceptional sentence above the range.

## **3. Exceptional sentence for impregnating a victim of child rape.**

The court may impose an exceptional sentence for impregnating a victim of child rape. The court must include payment of the victim's medical expenses incurred as a result of the rape and the pregnancy in the restitution order. If a court in a civil action establishes child support for the child resulting from the rape, that order must be enforced as part of the sentence in the criminal action. Identifying information about the victim and the child must be excluded from the judgment.

### **C. Technical**

Some technical and clarifying provisions are made.

**EFFECT OF SENATE AMENDMENT(S):** The Senate amendment does not include several provisions of the House bill, including the following: automatic prosecution of more juveniles as adults; mandatory decline hearings for more juveniles; increases in initial minimum commitment ranges for offenders sent to JRA; removal of the serious offender age limit; penalty increases for adult offenders who commit assault 2 or robbery 2; counting all prior juvenile violent offenses in the adult offender score; allowing schools to contract for services for juvenile offenders; creation of the civil infraction of failing to supervise a child; and the provisions allowing imposition of an exceptional sentence for impregnating a child victim of rape.

The Sentencing Guidelines Commission is directed to conduct studies but the report is not due until July 1, 1997, instead of December 1, 1996 as provided in the House bill. The Senate adopts a provision allowing a court to impose 0 to 10 days in confinement for minor/first offenders, but allows the court to suspend the disposition. The Senate did not adopt the provision restricting DOC from building correctional facilities on the grounds of Western State Hospital. The specific appropriation to counties is not included.

The Senate amendment includes provisions not contained in the House bill as follows. The amendment adds a provision that an adult offender will receive one offender point if the crime is committed while on juvenile parole. It adds the provision of

ESHB 2644 that creates the crimes of fourth degree rape of a child and child molestation in the fourth degree. It adds the provision that the goal of the juvenile justice system is to promote equitable treatment of juveniles and their families without regard to race, ethnicity, gender, creed, or religion. It increases the penalty for reckless endangerment in the first degree for juvenile offenders. It ranks several crimes on the juvenile grid without raising their penalties. It adds a youthful offender option for juveniles under age 15 who the court determines should be prosecuted as an adults. It encourages courts to hold hearings nights and weekends; adds prosecuting filing standards; adds a provision to allow judges to set rehabilitation goals and requires JRA to provide treatment to meet those goals; transfers authority to judges to set release dates for juvenile offenders; allows the JRA secretary to extend parole for certain offenders to 36 months in the discretion of the JRA secretary; adds intensive parole provisions; and adds a provision that certain sex offenders who violate parole do not have to be returned to an institution when confined for violating parole.

Many of the provisions are similar or identical: the parental limited evidentiary provision; the transfer of the powers of the Juvenile Disposition Commission to the Sentencing Guidelines Commission; the Toppenish plan; making parents subject to the jurisdiction of the court and allowing courts to hold parents in contempt if they do not appear at hearings; the provisions relating to manifest injustice for sex offenders; the provisions relating to the collapse of the county ranges (the Senate amendment does not retain the minimum penalty); the provisions relating to JRA warrants for absconding from parole; requiring JRA to conduct security reports; removing the limits on diversion sanctions; the provisions relating to mandatory decline hearings for juveniles who escape from confinement while serving a term to age 21; the chemical dependency option; the provisions relating to nullifying a record of an adjudication of a violent offense committed as a juvenile upon conviction of a felony; and the provisions allowing courts to impose an exceptional sentence above the standard range for adults based on juvenile criminal history that does not count towards the offender score.

**Appropriation:** \$4,778,000 from the state general fund to the State Treasurer for the county criminal justice assistance account.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains several effective dates. Please refer to the bill.

**Testimony For:** (Law & Justice) Juvenile offenders who engage in violent and sex offenses must be held accountable for their acts. Parents must exercise more control over their children and should be encouraged and required to attend the child's hearings in Juvenile Court and attend their child's meetings with the child's attorney.

Juveniles should be subject to stiffer penalties, including the death penalty. The bill gives judges broader discretion and is tougher on first-time offenders and offenders prosecuted as adults who commit assault or robbery.

(Appropriations) Many of the provisions in the bill are good and will help address the issue.

**Testimony Against:** (Law & Justice) Concerns exist that the bill will affect the county jails, many of which suffer from overcrowding problems. The decision to prosecute juvenile offenders as adults should remain within the court's discretion and made on a case-by-case basis. Automatic prosecution as an adult will not lower the crime rate. The juvenile system handles juvenile sex offenders more effectively than the adult system. The category called "serious" offender should not be expanded to offenders under age 15. Court jurisdiction over juvenile offenders should remain with the Juvenile Court and not be fragmented as proposed in the Toppenish plan. Forty-five percent of the juvenile offenders who are sent to state institutions will spend less time in confinement in the adult system than in the juvenile system.

(Appropriations) The bill should be changed so that 16- and 17-year-olds charged with assault in the second degree or rape in the third degree are not automatically prosecuted as adults. The Special Sex Offender Disposition Alternative (SSODA) is a good program that works very well. These kids should be prosecuted as juveniles to see if they can be rehabilitated.

**Testified:** (Law & Justice) Representative Dale Foreman, prime sponsor; Representative Peggy Johnson (pro); Pastor William Self, citizen (pro); Barbara Lamb, citizen (pro); Rachel Hook, citizen (pro); Norm Maleng, King County Prosecuting Attorney (pro); John Ladenburg, Pierce County Prosecuting Attorney (pro); Russ Hauge, Kitsap County Prosecuting Attorney (pro); Owen Burt, Island County Sheriff (pro); Christina Wick, Island County Sheriff's Office (pro); Mabel Grantham, citizen (pro); Myra Owens, citizen (pro); Kurt Sharar, Washington State Association of Counties (with concerns); Judge Leonard Costello, Superior Court Judges Association (with concerns); Harold Delia, Washington Association of Juvenile Court Administrators (with concerns); Sherry Appleton, Washington Defenders Association and Washington Association of Criminal Defense Lawyers (with concerns, and con to the extent that the bill abandons rehabilitation); Margaret Casey, Washington State Catholic Conference (pro in part, with concerns); Paula Maranan, Children's Alliance (pro in part, with concerns); Sid Sidorowicz, Assistant Secretary, Juvenile Rehabilitation Administration (pro in part, with concerns); and Dick Van Wagenen and John Steiger, Sentencing Guidelines Commission (with comments).

(Appropriations) Representative Betty Sue Morris (pro with changes); Charles Hastings, citizen (con); and Kurt Sharar, Washington State Association of Counties (with comments).