

SENATE BILL REPORT

E2SHB 2219

As Reported By Senate Committee On:
Law & Justice, February 22, 1996
Ways & Means, February 26, 1996

Title: An act relating to offenders.

Brief Description: Changing provisions relating to offenders.

Sponsors: 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: 2/19/96, 2/22/96 [DPA-WM].
Ways & Means: 2/26/96 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Smith, Chair; Fairley, Vice Chair; Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Quigley, Roach and Schow.

Staff: Lidia Mori (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Cantu, Drew, Finkbeiner, Fraser, Hargrove, Hochstatter, Johnson, Kohl, Long, McDonald, Pelz, Quigley, Roach, Sheldon, Snyder, Spanel, Strannigan, Sutherland, West and Winsley.

Staff: Susan Lucas (786-7711)

Background:

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. 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.

The juvenile court may decline to exercise its jurisdiction and transfer 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.

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.

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 eight 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:** 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.

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. Juveniles whose standard ranges include less than 30 days' confinement are under county jurisdiction. The standard range disposition provisions for offenders classified as "minor/first" offenders do not include confinement.

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. 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.

If a juvenile talks to the juvenile's defense attorney in the presence of the juvenile's parents, the parents may be 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.

California and Oregon have passed laws penalizing parents who fail to supervise their children properly and 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.

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 three to nine 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 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 when certain aggravating factors exist. Some aggravating factors are set forth in statute; others are developed by the courts.

Summary of Law & Justice Amended Bill: A decline hearing must be held for any juvenile offender charged with escaping from confinement while serving a juvenile disposition to age 21.

The disposition range for a minor/first offender with from 1 to 109 points is 0 to 12 months community supervision, and/or 0 to 150 hours of community service, and/or 0 to \$100 fine. The disposition range for a middle offender with from 1 to 109 points is 0 to 12 months community supervision, and/or 0 to 150 hours of community service, and/or a fine of 0 to \$100 and/or 0 to 30 days confinement.

The definition of "manifest injustice" includes a disposition that would fail to support the juvenile's need for sex offender treatment.

The secretary of the Juvenile Rehabilitation Administration has the authority to require juveniles sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion to comply with a program of parole that must be 24 months and may be up to 36 months.

Disposition alternatives. **Special sexual offender disposition alternative:** 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 is deferred while the respondent is on supervision. If the respondent complies, the conviction is vacated. The Department of Licensing may suspend the offender's license following the conviction.

Youthful offender option: Whenever juvenile court declines jurisdiction, it may, instead of transferring the offender to adult court, classify the person as a youthful offender and keep the person in juvenile court. This can only occur in situations when the offender's standard range in adult court involves incarceration past the age of 21. Only offenders who are less than 15 years old may be classified by a court as youthful offenders. People that are classified as youthful offenders are entitled to all the rights that an offender receives in the adult system. A youthful offender receives both an adult and a juvenile sentence. The adult sentence is suspended conditioned upon the offender's compliance with all the terms and conditions of the juvenile sentence, which includes confinement to age 21. No sooner than three months prior to the offender's 21st birthday, the offender must return to court for a determination of compliance with the juvenile sentence. A youthful offender may be remanded to the Department of Corrections to begin serving his or her adult sentence if the court finds that the offender is not likely to benefit from department services. In order to release a youthful offender from his or her adult sentence, the court must find by a preponderance of the evidence that the offender has meaningfully participated in rehabilitative programs, is not likely to reoffend, and does not pose a serious threat to the safety of others. If the youthful offender is released from the adult sentence at age 21, the court orders the offender to serve 24 months of community placement.

"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, 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.

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 July 1, 1997. Membership of the commission is expanded. Current outdated provisions governing the commission's responsibilities for adult offender sentencing are updated.

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:

- (1) 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.

- (2) 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.

Recommended prosecuting standards for charging and plea dispositions are added to the code.

JRA institutional security and parole. The Department of Social and Health Services must submit an annual report on security at state juvenile facilities. The secretary may issue arrest warrants for juveniles who abscond from parole or fail to meet parole conditions.

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.

Juvenile adjudication history when prosecuted as adults. A felony conviction as an adult nullifies any order sealing the offender's juvenile criminal history for violent offenses.

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.

One point is added to an adult's offender score if the present conviction is for an offense committed while the offender was on juvenile parole.

Amended Bill Compared to Substitute Bill: The substitute House bill made major changes to automatic adult court jurisdiction over juvenile offenders. The striking amendment restores current law.

The category of juvenile offenders for which a decline hearing must be held was substantially expanded in the substitute House bill. The striking amendment restores current law and adds that a decline hearing must be held when the information alleges an escape by the juvenile and, at the time of the escape, the juvenile is serving a minimum sentence to age 21.

The substitute House bill amended current law regarding the housing of juvenile offenders who are convicted as adults. The striking amendment restores current law.

The standard disposition ranges for minor/first offenders with 1 to 109 points and middle offenders with 1 to 109 points are collapsed. The disposition range for a minor/first offender or a middle offender with from 1 to 109 points is 0 to 12 months community supervision, and/or 0 to 150 hours community service, and/or a fine of 0 to \$100. A middle offender with 1 to 109 points may also be confined for 0 to 30 days. The standard disposition range for a minor/first offender does not include the option of confinement. No changes are made to current law regarding the disposition ranges and the definition of serious offenders.

The secretary of the Juvenile Rehabilitation Administration is given the authority to require juveniles sentenced to rape in the first or second degree, rape of a child in the first or second

degree, child molestation in the first degree, or indecent liberties with forcible compulsion to comply with a program of parole that may be up to 36 months.

The striking amendment includes the youthful offender disposition option. When juvenile court declines jurisdiction, it may classify the juvenile as a youthful offender. This can only occur when the offender's standard range in adult court involves incarceration past the age of 21 and the offender is less than 15 years old. People that are classified as youthful offenders are entitled to all the rights that an offender would receive in the adult system. A youthful offender receives an adult and a juvenile sentence. The adult sentence is suspended conditioned upon the offender's compliance with all the terms and conditions of the juvenile sentence, which includes confinement to age 21. A youthful offender may be remanded to the Department of Corrections to begin serving his or her adult sentence if the court finds that the offender is not likely to benefit from department services. In order to release a youthful offender from his or her adult sentence, the court must find, by a preponderance of the evidence, that the offender has meaningfully participated in rehabilitative programs, is not likely to reoffend, and does not pose a serious threat to the safety of others. If the youthful offender is released from the adult sentence at age 21, the court orders the offender to serve 24 months of community placement. The Sentencing Guidelines Commission is directed to study the development of a youthful offender disposition option and make recommendations.

The definition of "manifest injustice" includes a disposition that would fail to support the juvenile's need for sex offender treatment.

The recommendations of the Sentencing Guidelines Commission regarding disposition standards are due July 1, 1997.

The substitute House bill increased the seriousness level of assault 2 and robbery 2. The striking amendment restores current law.

Parents who hear a communication made by their child to the child's attorney may not be called as witnesses to testify about the communication. This evidentiary privilege applies only after the filing of juvenile criminal charges.

Superior courts are directed to hold hearings during nonstandard hours if possible.

The striking amendment does not contain a civil infraction of failing to supervise a child.

Restitution for the crime of rape of a child when the victim is impregnated is not required to include medical expenses and child support.

The Juvenile Rehabilitation Administration provides a report to the committing court containing an evaluation of each juvenile behavior and performance during commitment, including any progress made in achieving the rehabilitative goals set by the sentencing court. The court sets a release date for the juvenile after considering the report. The date will fall on or before the expiration of the original term of commitment.

Ways & Means Amendment Compared to Law & Justice Amendment: The requirement that the department provide youthful offenders certain services, that a report be prepared and

submitted to the committing court for each offender, and the authorization for enhanced parole requirements are subject to funding provided in the budget act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Testimony For (Law & Justice): There are two systems in Washington. The adult corrections system does not expect or focus on rehabilitation. The juvenile one does. This bill allows us to remove those juveniles from the juvenile system that cannot be rehabilitated, at least not with our current tools. That way, the remaining juvenile offenders can receive the benefit of limited rehabilitation services. The ability to confine minor/first offenders for up to ten days is important. They need to hear the jail door close behind them. The added conditions of parole are very helpful.

Testimony Against (Law & Justice): Putting kids in the Department of Corrections is not going to make society more safe. They are going to get out and will not have been rehabilitated. The transfer of juveniles to the adult criminal system should not be automatic. It should be on a case-by-case basis. The bill gives judges more discretion, yet, the automatic decline runs counter to this. The age requirement in the definition of serious offender should remain in place.

Testified (Law & Justice): Sid Sidorowicz, Juvenile Rehabilitation Administration (with concerns); Russ Hauge, WAPA (pro); Greg Hubbard, WAPA (pro); Judge Leonard Costello, Superior Court Judges Assn. (with concerns); Simmie Baer, Public Defender Assn. (con); Margaret Casey, WA State Catholic Conference (pro in part, con in part); Kurt Sharar, WA State Assn. of Counties (with concerns); Paola Maranan, Children's Alliance (with concerns).

Testimony For (Ways & Means): The bill is supported insofar as it resembles SB 6448. The pilot project for courts of limited jurisdiction is not supported.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): Margaret Casey, WA State Catholic Conference.