

SENATE BILL REPORT

ESHB 2164

As of February 20, 2014

Title: An act relating to evidence-based and research-based interventions for juvenile firearm offenders.

Brief Description: Requiring evidence-based and research-based interventions for juvenile firearm offenders in certain circumstances.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Orwall, Appleton, Carlyle and Ryu).

Brief History: Passed House: 2/11/14, 98-0.

Committee Activity: Human Services & Corrections: 2/20/14.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: Unlawful Possession of a Firearm. A person is guilty of unlawful possession of a firearm in the first degree if the person owns, possesses, or has in that person's control, any firearm after having previously been convicted of a serious offense. A serious offense includes any crime of violence and a number of other specified felonies. A person is guilty of unlawful possession of a firearm in the second degree if the person owns, possesses, or has in control any firearm and the person:

- has previously been convicted of any felony, other than a serious offense;
- has previously been convicted of certain specified gross misdemeanors;
- has previously been involuntarily committed for mental health treatment;
- is under the age of 18, with some exceptions; or
- is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

Under the Juvenile Justice Act, unlawful possession of a firearm in the first degree is a level B offense, resulting in a standard range disposition of local sanctions for the first or second offense. Local sanctions include one or more of the following: 0–30 days of confinement; 0–12 months of community supervision; 0–150 hours of community restitution; and/or a \$0–\$500 fine. If the juvenile has two or more prior adjudications, the juvenile is subject to confinement in a Juvenile Rehabilitation Administration (JRA) facility.

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.

Unlawful possession of a firearm in the second degree is categorized as a level C offense. This results in a standard range disposition of local sanctions, with a presumptive minimum of ten days of confinement if the violation is based on possession of a firearm as a person under 18 years of age. If the juvenile has four or more prior adjudications, the juvenile is subject to a term of JRA confinement.

Deferred Disposition. A juvenile offender is eligible for a deferred disposition unless the juvenile is charged with a sex or violent offense, has a criminal history including any felony, has a prior deferred disposition or deferred adjudication, or has two or more prior adjudications. Under a deferred disposition, the juvenile is found guilty and must complete certain conditions set out by the court, including probation and payment of restitution, in exchange for having the case dismissed.

Juvenile Parole. Following release from JRA custody, a juvenile offender may be required to comply with a program of parole administered by the Department of Social and Health Services (department) in the juvenile's community. Conditions of parole are specified by the department, and may include participation in treatment services, reporting, pursuit of a course of study or employment, and remaining within specific geographic boundaries, in addition to various other conditions. The decision to place an offender on parole must be based on the department's assessment of the offender's risk for re-offense upon release, with priority for parole resources given to offenders at moderate to high risk of re-offense.

Evidence-Based and Research-Based Programs. The Washington State Institute for Public Policy (WSIPP) has undertaken comprehensive reviews of evidence-based policy strategies in the areas of juvenile and adult criminal justice, as well as in other public policy areas. Evidence-based practices are generally defined as those programs or policies that are supported by a rigorous outcome evaluation clearly demonstrating effectiveness. A research-based practice has some research demonstrating effectiveness, but does not yet meet the standard of an evidence-based practice.

WSIPP maintains a list of current findings for a variety of programs, including a cost analysis that examines whether the benefits from a given program exceed its costs. The list is updated periodically as new information becomes available. Several programs that are active in Washington have been evaluated and identified as cost beneficial by WSIPP, including Aggression Replacement Training (ART) and Functional Family Therapy (FFT), among others.

ART. ART is a ten-week, 30-hour intervention administered to groups of eight to ten youth three times per week. ART utilizes repetitive learning techniques and guided group discussion to help the youth develop anger-control skills, employ more appropriate behaviors, and correct anti-social thinking. A juvenile offender is generally eligible for ART if it is determined, based on the results of the formal assessment tool administered by the juvenile courts, that the youth has a moderate to high risk for re-offense and is aggressive or has social skills or attitudes and beliefs that lead to anti-social behavior.

FFT. FFT is a structured, home-based family intervention involving 12 weekly visits. FFT uses a multi-step approach to enhance protective factors which reduce likelihood of participation in criminal activities and reduce risk factors which increase likelihood of

participation in criminal activities, in the family. A juvenile offender is generally eligible for FFT if the formal assessment tool indicates a moderate to high risk for re-offense and significant family problems.

Summary of Bill: A juvenile court disposition or deferred disposition for unlawful possession of a firearm must include a requirement that the juvenile participate in a qualifying evidence-based or research-based program, where available, except upon a written finding by the court that participation in a program would be inappropriate. The court's finding that program participation would be inappropriate must be based on the outcome of the juvenile's formal risk assessment, and specifically must be based on factors other than the juvenile's overall risk classification.

The description of qualifying program includes (1) ART; (2) FFT; or (3) any program applicable to the juvenile firearm offender population that has been identified in the current list compiled by WSIPP as evidence based or research based and cost beneficial.

A juvenile adjudicated of unlawful possession of a firearm, possession of a stolen firearm, theft of a firearm, or drive-by shooting and sentenced to JRA confinement may participate in ART, FFT, or Functional Family Parole aftercare following release if the juvenile meets eligibility requirements for these services. When assessing offenders for placement in evidence-based parole programs, the assessment must examine the ongoing treatment needs of the juvenile, in addition to the risk for re-offense.

JRA must compile and analyze historical data regarding persons who made initial contact with the criminal justice system between 2005 and 2013, and were found to have committed a juvenile offense of unlawful possession of a firearm. In particular, JRA must examine data regarding previous and subsequent criminal history, interventions provided to offenders, and known gang association of offenders. The Department of Corrections and the Caseload Forecast Council must provide JRA with any information necessary to complete the analysis, which may include individual identifier level data. JRA must report its findings to the Legislature by October 1, 2014.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 18, 2104.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is the result of a long stakeholder process over the interim. It is rare to see all these groups working together and agreeing on a result. The juvenile justice system needs to take every opportunity to address these offenders and provide them with treatment at the earliest possible time before they go on to commit horrendous crimes. A juvenile adjudicated of a firearm offense will not necessarily assess out as moderate or high risk in order to trigger referral to an evidence-based program. This bill makes sure that the juvenile is considered and has the opportunity to receive programming. This is another tool in the tool box. The judge is not mandated to order treatment, and can

make a different determination on an individualized basis. Once a juvenile commits a firearm crime it is time for us to take notice and make sure they receive the benefit of these treatment programs that are proven to work. No one commits a drive-by shooting as their first act of delinquency. Currently it may take up to five crimes before any kind of intervention. The bill also requires JRA to continue to analyze data and see if additional steps need to be taken.

CON: Washington is the national model for evidence-based programming and the example across the country as to what other states want to implement. As a state, we decided that we are not going to do what feels good, but we are going to do what is proven to work. This bill is not keeping to the fidelity of what got us here to begin with. Research says that when you put low-risk kids in treatment, you actually increase recidivism. Research tells us that it is not simply no harm/no foul by sending them to treatment. The bill is well intentioned but a huge step backward. The Superior Court Judges Association was not a part of the interim workgroup on this issue.

Persons Testifying: PRO: Representative Orwall; Chris Kaasa, American Civil Liberties Union of WA; Don Pierce, WA Assn. of Sheriffs and Police Chiefs; Bob Cooper, WA Defender Assn., WA Assn. of Criminal Defense Lawyers; Carla Lee, King County Prosecuting Attorney's Office, WA Assn. of Prosecuting Attorneys.

CON: Stephen Warning, Superior Court Judges Assn.