

# SENATE BILL REPORT

## SB 5735

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As Reported by Senate Committee On:  
Human Services, Reentry & Rehabilitation, February 19, 2019

**Title:** An act relating to the appropriate age for juvenile court adjudication.

**Brief Description:** Concerning the appropriate age for juvenile court adjudication.

**Sponsors:** Senators Darneille, Nguyen, Hasegawa and Wilson, C..

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 2/12/19, 2/19/19 [DPS, DNP].

**Brief Summary of First Substitute Bill**

- Immunizes children aged eight to eleven from prosecution for a crime that is not a serious violent offense.

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### SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Majority Report:** That Substitute Senate Bill No. 5735 be substituted therefor, and the substitute bill do pass.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland and Wilson, C..

**Minority Report:** Do not pass.

Signed by Senators O'Ban and Zeiger.

**Staff:** Kevin Black (786-7747)

**Background:** Capacity of Young Children to Commit a Crime. Children under the age of eight are legally incapable of committing a crime, and may not be prosecuted in either juvenile or adult court. Children aged eight to eleven are presumed incapable of committing a crime. A prosecutor may overcome this presumption by presenting proof by clear and convincing evidence that they have sufficient capacity to understand the act or neglect, and know that it is wrong. Children twelve years of age and over are presumed to have capacity. The maximum age of juvenile court jurisdiction for commission of an offense is seventeen.

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*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.*

Age Distribution for Referrals and Filings or Diversions in Juvenile Court. Data from the Washington State Center for Court Research (WSCCR) describes the age distribution of initial law enforcement referrals and criminal filings or diversions against juveniles. The tables below were generated using WSCCR data to create a six-year average from 2013-2018.

Distribution of law enforcement referrals—out of an average of 9,334 annual referrals:

Age	Avg. # of referrals	Percent
8	15	0.2
9	37	0.4
10	74	0.8
11	188	2.0
12	549	5.9
13	1,095	11.7
14	1,564	16.8
15	1,929	20.7
16	1,982	21.2
17	1,902	20.4

Distribution of prosecutor filings or diversions—out of an average of 7,648 annual filings or diversions:

Age	Avg. # of filings or diversions	Percent
8	2	0.0
9	9	0.1
10	30	0.4
11	102	1.3
12	429	5.6
13	902	11.8
14	1,309	17.1
15	1,646	21.5
16	1,668	21.8
17	1,552	20.3

Overall, 62.3 percent of all law enforcement referrals were against juveniles fifteen to seventeen years of age, while 37.7 percent of referrals were against juveniles aged eight to fourteen. The youngest children, aged eight to eleven, made up 3.4 percent of law enforcement referrals. Among the cases filed or diverted by prosecutors, 63.6 percent were against juveniles fifteen to seventeen years of age, while 36.4 percent were against juveniles

aged eight to fourteen. The youngest children, aged eight to one, made up 1.9 percent of filings or diversions.

Serious Violent Offenses. Washington state law classifies the following felony offenses as serious violent offenses:

- murder 1 or 2;
- homicide by abuse;
- manslaughter 1;
- assault 1;
- kidnapping 1;
- rape 1;
- assault of a child 1;
- an attempt, criminal solicitation, or criminal conspiracy to commit one of these offenses; or
- a federal or out-of-state offense that would be classified as a serious violent offense if committed in Washington.

**Summary of Bill (First Substitute):** Children who are eight to eleven years old are incapable of committing a crime which is not a serious violent offense.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):**

- Raises age of incapacity to eleven for crimes that are not a serious violent offense.
- Removes amendment raising maximum age of rebuttable presumption of incapacity to fourteen.

**Appropriation:** None.

**Fiscal Note:** Requested on February 10, 2019.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: I have long been concerned that the floor of consideration for charging children criminally in this state is extremely low—eight years old. After this point they are in jeopardy of spending time in juvenile detention and can even be charged as adults. Around the county the conversation is happening as to when it is appropriate to perceive that a young child is committing a crime, or when they are more likely responding to a behavioral challenges relating to personal experiences of trauma or abuse. How young is too young for a child to be detained or perceived of committing a criminal act? The states of Texas, Mississippi, Kansas, Colorado, and most recently California have begun to address this issue to protect children from the dangers of having a child in detention. California houses the largest number of youth detained for juvenile justice in the world. Their decision to raise the minim age to twelve should influence all of us. Juvenile justice experiences have very serious negative consequences for young people.

Research shows an increased chance of early death, and especially violent death. There is no magic number, but we are trying to start this conversation and apply some science in our decision-making. One girl who was eleven years old was oppositional to her teacher ended up spending three months in detention.

CON: We appreciate the work that is being done to take care of those who are involved in the juvenile justice system. The twelve to fourteen-year-olds already have an opportunity to challenge competency. This bill would flip the presumption and force the prosecution to have a mini trial to prove that juveniles of this age have capacity. This would create the need for a lot more hearings, but we don't believe it would change the outcome. Rather than focusing on rehabilitation, resources would be consumed by capacity hearings. There may be unintended consequences in that if less serious cases are not filed, the child would be deprived of an opportunity to access services until they come into the system later. A mandatory diversion would be an alternative to saying that a twelve to fourteen year old does not have capacity. Legislation last year limited charging of juveniles under sixteen in adult court to charges of murder 1 and murder 2.

**Persons Testifying:** PRO: Senator Jeannie Darneille, Prime Sponsor.

CON: Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** No one.