

HOUSE BILL REPORT

HB 1021

As Reported By House Committee On:
Corrections

Title: An act relating to juveniles.

Brief Description: Granting to adult court jurisdiction over juveniles who use a firearm while committing a violent offense.

Sponsors: Representatives Delvin, Hickel, Robertson, Smith, Padden, Sherstad, Dyer, Skinner, Kremen, Hargrove, Horn, Schoesler, Buck, Johnson, Thompson, Beeksma, Goldsmith, Radcliff, Chandler, Backlund, Crouse, Cairnes, Elliot, Reams, Pennington, Mastin, Carrell, K. Schmidt, Chappell, Basich, Grant, Sehlin, Honeyford, Van Luven, Ballasiotes, Pelesky, Blanton, Hankins, Lambert, D. Schmidt, Mulliken, McMorris, Clements, Campbell, L. Thomas, Huff, Mielke, Talcott, McMahan, Stevens and Casada.

Brief History:

Committee Activity:

Corrections: 1/10/95, 1/24/95, 2/7/95 [DPS].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Koster; Radcliff and Schoesler.

Minority Report: Do not pass. Signed by 4 members: Representatives Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole and Dickerson.

Staff: Rick Neidhardt (786-7841).

Background:

Capability of Juveniles to Commit Crimes

Juveniles under age 8 are legally incapable of committing crime.

Juveniles at least age 8 but less than age 12 are presumed to be incapable of committing crime. This presumption may be overcome by proof that they have sufficient capacity to understand the act and to know that it was wrong.

Juveniles at least age 12 are presumed capable of committing a crime and may be prosecuted.

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.

A few exceptions apply to the general rule.

1. 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.
2. 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. A juvenile does not have a constitutional right to be tried as a juvenile. However, the state bears the burden of proving that prosecuting the juvenile as an adult is in the juvenile's or the public's best interest.

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 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 and the information alleges:
 - second degree assault;
 - first degree extortion;
 - indecent liberties;
 - second-degree child molestation;
 - second-degree kidnapping; or
 - second-degree robbery.

Limitations on Juvenile Court Jurisdiction

If the juvenile court transfers a juvenile to adult superior court after a decline hearing on one offense, the juvenile will be treated as an adult for all future offenses, even if the juvenile commits future offenses while the juvenile is still under age 18.

The juvenile court loses jurisdiction over a juvenile when the juvenile turns age 18, unless the court extends juvenile court jurisdiction by issuing a written order.

In no event may the juvenile court extend jurisdiction over any juvenile offender beyond the juvenile's 21st birthday.

Persons who commit crimes on or after their 18th birthday are considered adults and are prosecuted in adult criminal court.

Meaning of "Armed with a Firearm"

A firearm is a deadly weapon. The phrase "armed with a deadly weapon" has a specific meaning under case law. It means that a deadly weapon is easily accessible and readily available for use, for offensive or defensive purposes. The prosecutor has discretion whether to file an allegation asking the trier of fact to enter a special finding that the accused was armed with a deadly weapon during the commission of the crime.

An offender does not have to discharge, aim or display, or threaten to use the deadly weapon during the commission of the crime to be considered "armed."

Summary of Substitute Bill: Juveniles who are 16 or 17 years old will automatically be prosecuted as adults when the prosecutor alleges the juvenile (1) committed a violent offense while armed with a firearm and (2) discharged, aimed, or displayed a firearm during the offense.

Juveniles who are 14 or 15 years old will automatically receive a decline hearing in juvenile court when the prosecutor alleges the juvenile (1) committed a violent offense while armed with a firearm and (2) discharged, aimed, or displayed a firearm during the offense.

When a juvenile's case is automatically transferred to adult court, whether under this substitute bill or current law, the juvenile will remain subject to adult court jurisdiction for future offenses as well, whether the offenses are committed as a juvenile or an adult. This parallels the current provisions for decline proceedings. Also, the adult court will have jurisdiction over any other offenses that the juvenile committed during the same incident that led to the automatic transfer to adult court. Parallel changes are made to the definitional sections of the Juvenile Justice Act and the Sentencing Reform Act. The bill will apply to offenses committed on or after the effective date of this act.

Substitute Bill Compared to Original Bill: The original bill provided for automatic transfers to adult court whenever a juvenile committed a violent offense during which the juvenile or an accomplice was armed with a firearm and then discharged, aimed, or displayed the firearm.

The substitute bill restricts the automatic transfers to 16-year-olds and 17-year-olds and removes the language on accomplices. The substitute bill adds the provisions for mandatory decline hearings for 14-year-olds and 15-year-olds.

The substitute bill adds the provisions that (1) make clear that a juvenile, after being automatically transferred to adult court, remains under adult court jurisdiction for any future offenses; (2) make clear that adult court jurisdiction applies to any other offenses that the juvenile committed during the same incident that led to the automatic transfer; and (3) make corresponding changes to the definitional sections of the Juvenile Justice Act and the Sentencing Reform Act.

The substitute bill also addresses the effective date and makes minor technical changes.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Juveniles need to be held accountable for their actions. Juveniles mock the juvenile justice system because they believe they will not have to serve any

time. A juvenile with 18 prior convictions was able to kill a woman because he had not been adequately confined for the seriousness of his previous offenses.

Testimony Against: Decisions whether juveniles should be tried as adults should be made on a case-by-case basis. Juveniles are less culpable than adults. Judges should decide the jurisdiction question after holding a hearing. Automatic transfers to adult court ignore the characteristics of individual children. Prosecutors get sole discretion in deciding where trial will be held. We shouldn't change an entire system merely because of a few special cases. The bill is too broad. The bill would apply to first-timers even though they have never had the chance to get rehabilitation from the juvenile system. The bill should be amended to apply only to 16-year-olds and 17-year-olds. There are concerns of disproportionate and unfair impacts. Prosecutors are having more success with their decline hearings. Children should not be considered adults merely because they use a gun. Juveniles should not be sentenced to adult prisons, where they spend time in isolation.

Testified on Original Bill: Sid Sidorowicz, Juvenile Rehabilitation Administration (no position stated); Ken Whitehall, Spokane (pro); Tom McBride, Washington Association of Prosecuting Attorneys (proposing limitations); Sister Ann Davis, Catholic Juvenile Detention Ministry (con); Carolyn Charlston, Catholic Juvenile Detention Ministry (con); Michael Curtis and Martha Harden, Juvenile Court Administrators and Superior Court Judges (con); George Yeannakis, Washington Defender Association (con); Paola Maranan, Children's Alliance (con); Neill Tackett, Seattle (con); Larry Fehr, Washington Council on Crime and Delinquency (proposing limitations and alternatives); Simmie Baer, King County Public Defender's Office (con); and Representative Mary Lou Dickerson (con).