

HOUSE BILL REPORT

HB 2696

As Reported by House Committee On:
Juvenile Justice & Family Law

Title: An act relating to a youthful offender sentencing alternative.

Brief Description: Creating a youthful offender sentencing alternative.

Sponsors: Representatives Dickerson and Wood; by request of Sentencing Guidelines Commission.

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/5/02, 2/7/02 [DPS].

Brief Summary of Substitute Bill

- Creates a sentencing alternative for 16 and 17 year old offenders automatically charged as adults, unless the offense is murder 1 or murder 2.
- Requires the Juvenile Rehabilitation Administration to have custody of a youthful offender under the sentencing alternative until the offender turns 21, and then, in certain cases, the Department of Corrections obtains custody of the offender until the offender turns 25.
- Allows the conviction to be considered a juvenile offense if the offender successfully completes the sentencing alternative.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Dickerson, Chair; Darneille, Vice Chair; Eickmeyer and Tokuda.

Minority Report: Do not pass. Signed by 3 members: Representatives Delvin, Ranking Minority Member; Armstrong and Carrell.

Staff: Trudes Hutcheson (786-7384).

Background:

Generally, the juvenile court has exclusive jurisdiction over offenders under the age of 18. A juvenile may be charged as an adult if the juvenile court uses its discretion to decline jurisdiction over the case or if the juvenile court is statutorily required to automatically decline jurisdiction.

Offenders aged 16 and 17 are automatically charged as adults if the alleged offense is:

- (a) A serious violent offense;
- (b) a violent offense and the offender has criminal history consisting of either one or more prior serious violent offenses; or two or more prior violent offenses; or three or more of any class A or class B felony, vehicular assault, or manslaughter 2, all of which must have been committed after the offender turned 13 and all of which were prosecuted separately;
- (c) robbery 1, rape of a child 1, or drive-by shooting committed on or after July 1, 1997;
- (d) burglary 1 committed on or after July 1, 1997 and the offender has a criminal history consisting of one or more prior felony or misdemeanor offenses; or
- (e) any violent offense committed on or after July 1, 1997 and the offender is alleged to have been armed with a firearm.

"Serious violent offense" is a subcategory of violent offense and means:

- (a) Murder 1;
- (b) homicide by abuse;
- (c) murder 2;
- (d) assault 1;
- (e) kidnapping 1;
- (f) rape 1;
- (g) manslaughter 1;
- (h) assault of a child 1; or
- (i) any attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies.

Under the Sentencing Reform Act (SRA), the court imposes a standard sentence range based on the seriousness of the offense and the offender score. The offender score is based on points given to the offender for prior felony convictions and other criminal history. There are specific rules governing which prior convictions are included in the offender score. Felony dispositions in juvenile court must be counted as criminal history for purposes of adult sentencing, except under the general "wash-out" provisions that apply to adult offenses. Generally, prior class A and sex felony convictions, including class B sex felonies, are always included in the offender score. Prior class B felony convictions, whether they are juvenile or adult convictions, are not included in the offender score if the offender has spent 10 consecutive years in the community without having been convicted of any crime. For class C felony convictions, the wash-out period is five consecutive years.

Under what is commonly referred to as the "three strikes" law, an offender who commits

three "most serious offenses" is considered a "persistent offender" and is subject to a sentence of life imprisonment. The term "most serious offense" is defined to include all class A felonies and several other enumerated offenses when committed as an adult.

In addition to the determinant sentence under the SRA, the court must also impose a period of community custody, which may include conditions of supervision and rehabilitative treatment.

Summary of Substitute Bill:

A youthful offender sentencing alternative (YOSA) is created. The court has discretion to impose a YOSA for a juvenile who has been automatically charged as an adult for an offense other than murder 1 or murder 2.

In considering whether to impose the YOSA, the court must consider, among other things, the history, character, and condition of the offender, including the offender's sophistication and maturity, pattern of living, and emotional and mental development. The court may impose the YOSA if it finds that such a sentence would be in the best interest of the community.

Under the YOSA, the court must first impose an adult sentence under the SRA at the time of sentencing. The court suspends the adult sentence on the condition that the offender comply with the terms of the YOSA. Under the YOSA, the court commits the youthful offender to the custody of the Juvenile Rehabilitation Administration (JRA) until the offender reaches age 21. In cases involving serious violent offenses, the offender is transferred to the Department of Corrections (DOC) at the age of 21 until the offender turns 25 or the length of the adult sentence, whichever is shorter.

If at any time the juvenile fails to make progress in the JRA programs, or the juvenile reoffends or constitutes a serious threat to the physical safety of others, the court may revoke the YOSA and impose the suspended adult sentence. Once the YOSA is revoked, the offender must serve his or her adult sentence under the DOC.

For cases that are not serious violent offenses, no sooner than three months before the offender's twenty-first birthday, the offender must appear in court. The court must determine the offender's compliance with the YOSA. Victims must be notified of the hearing and have the right to participate. If the court finds that the offender has made progress, has not reoffended, and has not posed a serious threat to the physical safety of others, the court must release the offender from the adult conviction and order community custody under the supervision of the DOC for up to 48 months. Absent such a finding, the court must revoke the YOSA and impose the suspended adult sentence. For cases involving serious violent offenses, the court's review to determine compliance with the YOSA must occur no sooner than three months before the offender's twenty-fifth

birthday or expected release date.

If the YOSA is revoked, the matter shall be considered an adult conviction. The offender shall be given credit for the time served while committed to the custody of the JRA and the DOC. If the offender completes the YOSA and is released from the adult portion of the sentence, the matter shall be considered a juvenile offense.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that the youthful offender remains under the jurisdiction of the DOC for community custody purposes, even if the offender's conviction is treated as a juvenile offense. It also clarifies that the offender's suspended sentence is an adult sentence under the SRA, not a juvenile sentence, even though the juvenile is committed to the JRA under the YOSA.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill recognizes that not all juveniles are the same and that not all pose the same kinds of threats to the community. Most of the juveniles receiving automatic declines serve less than four years under the adult system. There are short term benefits to treat the juveniles as adults, but in the long term, those juveniles need rehabilitation services. This bill imposes confinement and rehabilitation services. Juveniles under this alternative will go back into the community with a better chance of being productive. Under the bill, the court looks at what is in the community's best interest. Studies show that youthful offenders receiving "blended" sentences are less likely to reoffend. In a cost benefit analysis, it costs less in the long run to provide treatment to these juveniles.

Testimony Against: The courts already have options in current law to accomplish what this bill does. Current law allows youthful offenders to be shifted from the adult system to the juvenile system. This bill would require a second hearing in which victims may have to participate again. The studies quoted are not studies from Washington. The costs of the bill could be high.

Testified: (In support) Ida Rudolph Leggett, Sentencing Guidelines Commission; Judge Michael Spearman, Sentencing Guidelines Commission and Superior Court Judges' Association; George Yeannakis, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Paul Barry, Children's Alliance; and Alan

Mountjoy-Venning, Friends Committee on Washington Public Policy.

(Against) Tom McBride, Washington Association of Prosecuting Attorneys.