

# SENATE BILL REPORT

## E2SSB 6160

As Passed Senate, February 12, 2018

**Title:** An act relating to revising conditions under which a person is subject to exclusive adult jurisdiction and extending juvenile court jurisdiction over serious cases to age twenty-five.

**Brief Description:** Revising conditions under which a person is subject to exclusive adult jurisdiction and extending juvenile court jurisdiction over serious cases to age twenty-five.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Kuderer, Darneille and Palumbo).

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/10/18, 1/24/18 [DPS-WM, w/oRec].

Ways & Means: 2/05/18, 2/06/18 [DP2S, DNP, w/oRec].

**Floor Activity:**

Passed Senate: 2/12/18, 35-12.

### Brief Summary of Engrossed Second Substitute Bill

- Transfers certain offenses committed by youth aged 16 or 17 from the exclusive jurisdiction of adult court to the exclusive jurisdiction of juvenile court.
- Provides enhanced sentencing provisions in juvenile court for persons age 16 or 17 who are charged with these offenses.
- Creates a sentencing enhancement in juvenile court requiring an additional three months total confinement to be added to the sentence of certain youth involved with a criminal street gang.
- Expands the reach of the Option B juvenile suspended disposition alternative.
- Eliminates discretionary decline hearings for juveniles under 15 unless they are charged with murder 1 or murder 2, eliminates discretionary decline hearings for juveniles age 15 or higher unless they are charged with a serious violent offense or rape of a child 1, and eliminates mandatory decline hearings except for certain allegations of escape.

*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.*

- Extends the age limit for confinement in a juvenile rehabilitation institution from 21 to 25.

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## SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 6160 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; Carlyle, Frockt, Miloscia and Walsh.

**Minority Report:** That it be referred without recommendation.

Signed by Senator O'Ban, Ranking Member.

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

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 6160 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Mullet, Pedersen, Ranker and Van De Wege.

**Minority Report:** Do not pass.

Signed by Senators Braun, Ranking Member; Bailey, Becker, Brown, Schoesler, Wagoner and Warnick.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Fain and Rivers.

**Staff:** Travis Sugarman (786-7446)

**Background:** Juvenile courts have exclusive original jurisdiction over criminal offenses, traffic or civil infractions, and violations committed by a youth under 18 unless an exception applies. One such exception, known as autodecline, applies to juveniles who are 16 or 17 on the date of the offense and are charged with:

- a serious violent offense;
- a violent offense and the juvenile has a criminal history consisting of a serious violent offense, two or more violent offenses, or three of a number of specified felony offenses;
- robbery 1;
- rape of a child 1;
- drive-by shooting;
- burglary 1 if the juvenile has a prior felony or misdemeanor offense; or
- any violent offense when the juvenile is alleged to have been armed with a firearm.

The Juvenile Justice Act (JJA) provides a sentencing grid which uses a comparison between a seriousness level—called current offense category—and the number of prior adjudications to

produce a determinate sanction ranging from local sanctions to a maximum range of confinement from 180 weeks to until age 21. Local sanctions means zero to 30 days in custody, one year or less on probation, 150 hours of community restitution, or a fine of up to \$500.

A suspended disposition alternative, called Option B, exists for juvenile offenders who are not adjudicated for certain offenses. Imposition of Option B results in the suspension of the standard penalty range and imposition of local sanctions and an educational or treatment requirement.

A discretionary decline hearing is a hearing set at the motion of the prosecutor, the juvenile, or the court to request the transfer of the juvenile to adult court for adult criminal prosecution. A mandatory decline hearing must be held, unless waived by all parties and the court, if:

- the juvenile is 16 or 17 and charged with a class A felony or attempt, solicitation, or conspiracy to commit a class A felony;
- the juvenile is 17 years old and charged with assault 2, extortion 1, indecent liberties, child molestation 2, kidnaping 2, or robbery 2; or
- the juvenile is charged with escape and is serving a minimum sentence to age 21.

Serious violent felonies include murder 1, murder 2, homicide by abuse, manslaughter 1, assault 1, kidnapping 1, rape 1, assault of a child 1, and attempts, criminal solicitations, and criminal conspiracies to commit one of these felonies. Violent offenses include all of the above and any class A felony, any attempt, solicitation, or conspiracy to commit a class A felony, manslaughter 2, indecent liberties by forcible compulsion, kidnapping 2, arson 2, assault 2, assault of a child 2, extortion 1, robbery 2, and drive-by shooting.

The JJA includes certain minimum terms and sentencing enhancements when the court finds that the juvenile or an accomplice was armed with a firearm during an offense. The juvenile firearm enhancement is six months for a class A felony, four months for a class B felony, and two months for a class C felony. The court may impose a different disposition when this disposition would effectuate a manifest injustice. The firearm enhancement applicable in adult court is five years for a class A felony, three years for a class B felony, and 18 months for a class C felony.

A juvenile may not be committed to placement in a juvenile institution beyond the juvenile's 21st birthday. Parole may be ordered for a maximum of 12 months.

The Sentencing Reform Act has two sections establishing sentencing provisions for offenders in adult court related to criminal street gangs and their members and associates. A sentencing enhancement increases the standard sentencing range by multiplying it by 125 percent for any person 18 or older who compensated, threatened, or solicited a minor in the commission of a criminal street gang-related felony offense. An aggravating factor supports imposition of an exceptional sentence above the standard range if the defendant committed an offense with the intent to cause any benefit, aggrandizement, gain, profit, or other advantage to a criminal street gang, its reputation, influence, or membership.

**Summary of Engrossed Second Substitute Bill:** The following offenses are transferred from the exclusive original jurisdiction of adult court to the exclusive original jurisdiction of juvenile court when committed by a youth aged 16 or 17:

- robbery 1;
- rape of a child 1;
- drive by shooting;
- burglary 1 if juvenile has a prior felony or misdemeanor offense; and
- any violent offense when juvenile is alleged to have been armed with a firearm.

Sentencing ranges under the JJA are modified to create a new A++ sentencing range of 129 to 260 weeks, which is applied to persons age 16 or 17 adjudicated for drive-by shooting, rape of a child 1, and robbery 1. The penalty range of burglary 1 is increased for all 16-17 year olds, with a resulting increase in standard range sanctions, e.g., from 15-36 weeks to 30-40 weeks for juveniles with no prior adjudications.

The range of juvenile offenders authorized to receive an Option B suspended disposition alternative is increased to include offenders adjudicated for the following offenses:

- robbery 2;
- residential burglary;
- burglary 2;
- intimidating a witness; and
- manufacturing, delivery, or possession with intent to deliver a controlled substance or amphetamine, except in circumstances involving infliction of bodily harm or possession of a deadly weapon.

Second or subsequent Option B diversions are disallowed, and certain juveniles adjudicated for manslaughter 2 are made ineligible.

A discretionary decline hearing may not be set unless the juvenile is at least age 15 and charged with a felony which is a rape of a child 1 or a serious violent offense, or unless the juvenile is age 14 or younger and charged with murder 1 or murder 2. Mandatory decline hearings are eliminated, except for allegations of escape when a juvenile is serving a minimum sentence to age 21.

The firearm enhancement under the JJA is increased to 12 months for any juvenile aged 16 or 17 who is adjudicated for a violent offense. A sentencing enhancement is created in juvenile court requiring three months total confinement, to be served consecutively with any other enhancement, which must be added to the sentence of a youth aged 16 or 17 who is charged with robbery 1, drive-by shooting, rape of a child 1, burglary 1, or any violent offense while armed by a firearm if the court finds that the juvenile's participation was related to membership in a criminal street gang or related to advancing the benefit, aggrandizement, gain, profit, or other advantage of a criminal street gang.

The age limit for placement in a juvenile institution is increased to 25 years of age for juveniles aged 16 or 17 who are convicted of robbery 1, drive by shooting, rape of a child 1, or who receive a 12-month firearm sentencing enhancement. For these juveniles, the length of parole is increased from 12 to 24 months, and may extend until the juvenile's 25th birthday.

The department must take appropriate actions to protect younger children in the custody of juvenile rehabilitation from older youth confined in its facilities to reduce potential risks of victimization and negative influences. The court may exercise oversight to accomplish this goal.

The Washington Institute for Public Policy (WSIPP) is directed to assess the impact of this act on community safety, racial disproportionality, recidivism, state expenditures, and youth rehabilitation to the extent possible and submit a preliminary report to the Governor and Legislature on December 1, 2023, and a final report on December 1, 2031.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 (Human Services & Corrections):**

*The committee recommended a different version of the bill than what was heard.* PRO: This idea has evolved significantly from last session. Having watched this system, there has to be a better way. One out of three individuals who come out of prison go right back in. The best time to rehabilitate someone is when they are young and the brain science tells us they are amenable to turning their lives around. Extending juvenile court jurisdiction gives the time to do effective rehabilitation. Everyone deserves a fair chance, and people can be redeemed. This is a big event. The historical concern of the prosecutors has been about 17 year olds committing serious crimes without accountability in the juvenile system. The autodecline crimes from 1997, drive a lot of racial disproportionality because they relate to firearm crimes and gang activity. The expansion of jurisdiction until age 25 is needed to maintain the support of prosecutors around the state. Juvenile courts support your efforts to connect services to juveniles in need. Juvenile courts are the right location to deliver those services. We support increasing judicial discretion by reducing autodecline. One size does not fit all, especially with youth. The sentencing changes only affect juveniles who are in the 1997 autodecline category. This bill also expands Option B diversions and restricts the scope of discretionary decline hearings.

OTHER: Most JR employees think there is value to extending jurisdiction to age 25 so that more can benefit from the positive programming. Do not forget the other infrastructure needs of JR to maintain safety. We support the rollback of the 1997 amendments to autodecline, which have driven many youth into the adult system and increased racial disparities. Please reconsider the sentencing increases, which would create a disparity compared to the adult system. We do not want to trade one harm for another by sharply increasing sentences. Eliminating autodecline allows courts to review the individual circumstances and make their own decisions after a full hearing. Decline to adult court would still be allowed in grave cases. Evidence shows that longer lengths of sentences for youth do not result in reduced recidivism. Despite the sentencing problems, this is a promising start.

**Persons Testifying (Human Services & Corrections):** PRO: Senator Patty Kuderer, Prime Sponsor; Tom McBride, Todd Dowell, WA Assn. of Prosecuting Attorneys; Tom McBride, WA Assn. of Juvenile Court Administrators; Stephen Warning, Superior Court Judges Assn.

OTHER: Matt Zuvich, WA Federation of State Employees; Nick Allen, Columbia Legal Services; Vanessa Hernandez, ACLU of WA.

**Persons Signed In To Testify But Not Testifying (Human Services & Corrections):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: We are reducing recidivism by giving these five roll back auto declines some time at juvenile rehabilitation facilities. The issue isn't length of time it's what you get from this policy change by having individuals spend time in the juvenile system. The 16 and 17 year olds are already spending there sentence at JRA until age 21 and the sentences under this bill should only push a few individuals This bill rolls back an over-reaction to previous theory about super predator children that even its author has repudiated. This will reduce recidivism and produce productive citizens for our communities, which is a priceless outcome. We need to put to work what we know about brain science. The math about the adds to JRA and the reductions from DOC don't add up. We are worried about this fiscal note as this should be a small few that stay longer at JRA.

**Persons Testifying (Ways & Means):** PRO: Todd Dowell, Washington Association of Prosecuting Attorneys; Bob Cooper, Washington Defender Association & Washington Association of Criminal Defense Lawyers; Carolyn Logue, TVW Classroom Connect, Green Hill Correctional Facility; Antonio Ginatta, Columbia Legal Services.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.