

SENATE BILL REPORT

SB 5434

As Reported by Senate Committee On:
Human Services, February 7, 2023

Title: An act relating to the jurisdiction of juvenile court.

Brief Description: Concerning the jurisdiction of juvenile court.

Sponsors: Senators Trudeau, Wilson, C., Frame, Hasegawa, Kuderer, Nguyen and Saldaña.

Brief History:

Committee Activity: Human Services: 1/31/23, 2/07/23 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Increases the minimum age of juvenile court jurisdiction to 13 years old and increases the maximum age of incapacity of committing a crime to 12 years old.
- Establishes that children ages 8 through 12 charged with murder in the first or second degree are presumed incapable of committing the crime unless rebutted by clear and convincing evidence of sufficient capacity.
- Creates a Raise the Age Juvenile Justice Task Force to consider and provide recommendations regarding implementation of juvenile jurisdiction expansion to individuals ages 18 and 19.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 5434 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Frame and Nguyen.

Minority Report: Do not pass.

Signed by Senators Boehnke, Ranking Member; Warnick and Wilson, J..

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Delika Steele (786-7486)

Background: Under Washington State law, children under the age of 8 are legally incapable of committing a crime and may not be prosecuted in either juvenile or adult court. Children ages 8 through 11 are presumed incapable of committing a crime, but this presumption may be removed by proof they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Children ages 12 and older are presumed to have the capacity to commit a crime.

In the state of Washington, juvenile courts, a division of the state's superior court system, have jurisdiction over persons under age 18 who are alleged to have committed a crime.

There are exceptions to this jurisdiction which may require youths to be tried in adult courts. These include:

- discretionary decline—where the juvenile court or a party file a motion requesting transfer of a juvenile because the juvenile is 15 or older and charged with a serious violent offense, 14 or younger and charged with murder in the first or second degree, or charged with custodial assault after already serving a minimum juvenile sentence to age 21;
- required decline—in circumstances when the information alleges an escape, and the juvenile is serving a minimum juvenile sentence to age 21;
- auto decline—when a juvenile is 16 or 17 at the time of committing a serious violent offense, a violent offense and the juvenile has a history of committing a prior serious violent offense, two or more violent offenses, three or more of any combination of class A or B felonies, vehicular assault, or manslaughter in the second degree, or when a juvenile is 16 or 17 at the time of committing the rape of a child in the first degree

The Juvenile Rehabilitation (JR) section of the Department of Children Youth and Families (DCYF) serves Washington State's highest-risk youth. Youth may be committed to JR custody by any county juvenile court. The juvenile courts follow prescribed sentencing guidelines to determine which youth will be committed to JR. These youth typically have committed many lower-level offenses or have committed a serious crime.

Summary of Bill (First Substitute): Capacity to Commit a Crime. Children aged 12 and younger are incapable of committing a crime and are less capable of making fully informed, reasoned decisions. Children ages 8 through 12 charged with murder in the first or second degree are presumed incapable of committing a crime. This presumption may be rebutted by clear and convincing evidence they have sufficient capacity to understand the act or neglect, and to know it was wrong. The minimum age of juvenile court jurisdiction for the commission of an offense is 13 years old.

Raise the Age Juvenile Task Force. The Raise the Age Juvenile Justice Task Force (task force) is established to examine and plan for implementation of juvenile jurisdiction

expansion to encompass individuals ages 18 and 19. The president of the Senate will appoint one member from each of the two largest caucuses of the Senate to the task force. The speaker of the House of Representatives will appoint one member from each of the two largest caucuses of the House of Representatives. The remaining representatives will include:

- Department of Children, Youth, and Families Juvenile Rehabilitation (JR);
- Department of Corrections (DOC);
- Washington Association of Sheriffs and Police Chiefs;
- Office of Public Defense;
- Washington Association of Prosecuting Attorneys;
- District and Municipal Court Judges' Association;
- Administrative Office of the Courts;
- Washington State Association of Counties;
- Association of Washington Cities;
- Washington State Council of County and City Employees;
- Office of the Superintendent of Public Instruction;
- Minority and Justice Commission;
- Superior Court Judges' Association—one member representing western Washington and one member representing eastern Washington;
- Washington Association of Juvenile Court Administrators—one member representing western Washington and one member representing eastern Washington;
- Washington State School Directors' Association—a member representing a school district providing education services to a juvenile rehabilitation residential facility;
- organizations with interests in incarcerated persons—two members representing different programs and serving different constituencies; and
- organizations with interests of youth-involved in the juvenile justice system—three members from different regions of the state or representing different programs.

Nonlegislative members of the task force are members of a class one group under Washington State's law on the compensation of members of part-time boards and commissions. The members may be eligible for stipends and reasonable allowances for child and adult care reimbursement.

A report will be submitted to the Governor and Legislature on or before December 1, 2025, that includes but is not limited to:

- recommended legislative action;
- necessary funding, essential personnel and programmatic resources, specific milestones related to operations and policy;
- measures necessary to avoid a negative impact on the state's child protection response;
- a timeline for structural and system changes within the juvenile justice system for JR, DCYF, DOC, and the juvenile court;
- an operations and business plan defining benchmarks and possible resource allocation changes;

- review of estimated costs avoided by local and state governments with the reduction of recidivism and an analysis of cost savings reinvestment options;
- estimated new costs incurred to provide juvenile justice services to persons 18 and 19 years old; and
- a clearly defined path for geographic consistency given varying local resources, staff, physical plant limitations, training, services, and partnering needs.

EFFECT OF CHANGES MADE BY HUMAN SERVICES COMMITTEE (First Substitute):

Lowers the minimum age of juvenile court jurisdiction to 13 years old, and lowers the maximum age of incapacity of committing a crime to 12 years old. Lowers the presumption of incapacity for children charged with murder in the first or second degree to children ages 8 through 12 rather than those 8 through 13. Changes the juvenile jurisdiction expansion from including individuals 18, 19, and 20 to only including individuals aged 18 and 19.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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: This is a legacy bill which passed through the senate on the first go around. The basis for the criminal legal system and accountability is someone understanding what they are doing. An eight year old cannot fully understand. Being in the system can impact the trajectory of someone's life and once they enter the system it's likely that they will continue to have contact with the system. Intentional policy that wraps our arms around our young people should be established. Children who hurt other kids are also hurt and we need to help them. No one wants to call law enforcement on their children and there should be better options. The system should be kept in line with the science. Decisions shouldn't be based on the worst case scenario.

Children are trying to take the perspective of others, but they're very focused on self-interest and peer acceptance. It's not until ages 13 and above that they really begin to develop a moral compass. Younger children don't have the capacity to understand all the charges and the implications of a criminal legal process. We need to treat kids as kids. Criminalizing children conditions them to believe that they are bad people and encourages them to commit bad acts. Who are we as a society if we do not take care of our children? We must look into why the system is eager to invest millions of dollars in punishing our children instead of investing in and nourishing their well-being. Arresting these kids does not help them and there are much more effective interventions outside the system. Young

people learn from their mistakes when we address root causes via counseling, housing, stability, and community.

CON: Brain development in young people and kids are indeed very different. The older version of the bill that Senator Darnell offered two years ago was a product of extensive negotiations and collaboration with the judicial system, partners in the Legislature, and the community. This bill is fundamentally different than the older version of the bill. There are some very serious offenses that young juveniles commit and under this bill they would not be subject to juvenile court. If you want to remove this lower age gap from juvenile court jurisdiction then evaluation services, treatment intervention, victims' services, and mechanisms to require compliance must be funded. Gang members seek 14-year-old girls to be trafficked for sex and boys to be trafficked for violence. Gangs exploit the juvenile court system changes. There is a worry that this bill won't allow programs to continue that promote intervention. There is a high financial cost for having different facilities for different age groups and different sexes. It might be intervention with the system that keeps them out in the future. We have 13 year olds who can make autonomous medical decisions so why can't they be held accountable for their behavioral actions.

Persons Testifying: PRO: Senator Yasmin Trudeau, Prime Sponsor; Sarah Walker; Karen Pillar, TeamChild; Roxana Gomez, ACLU of Washington; Katie Hurley, King County Dept of Public Defense; Divya Natarajan, Washington Chapter of the American Academy of Pediatrics; Dominique Davis, Community Passageways; Julissa Sanchez, Choose 180; Alexandra Narvaez, Legal Counsel for Youth and Children.

CON: Matt Murray, Yakima Police Department; Judge Jennifer Forbes, Superior Court Judges' Association; Jack Murphy, Washington Association of Juvenile Court Administrators; Russell Brown, WA Association of Prosecuting Attorneys; Taylor Gardner, WASPC; Patricia Byers, Yakima City Council Member; Holly Cousens, Yakima City Council Member.

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