

HOUSE BILL REPORT

HB 1147

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

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

Brief Description: Creating a youthful offender sentencing alternative.

Sponsors: Representatives Dickerson, Delvin, McDonald, O'Brien, Kagi and Chase.

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/5/03, 2/20/03 [DPS].

Brief Summary of Substitute Bill

- Allows the court to impose a sentencing alternative for 16 and 17-year-old offenders automatically charged as adults, unless the offense is first or second degree murder or attempted first or second degree murder.
- Requires the offender to be in a juvenile facility under the sentencing alternative until the offender turns 21, and then, in certain cases, the court may order the offender into an adult facility until the age of 25.
- Allows the conviction to be considered a juvenile offense if the offender successfully completes the conditions of 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; Pettigrew, Vice Chair; Eickmeyer and Upthegrove.

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

Staff: Trudes Hutcheson (786-7384).

Background:

Minors Charged as Adults

Generally, youth under the age of 18 who are charged with a crime remain under the jurisdiction of the juvenile court. However, a juvenile may be charged as an adult if: (a) the juvenile court, after a hearing, declines jurisdiction over the case (called "discretionary declines"); or (b) the juvenile court is statutorily required to decline jurisdiction and transfer the case to adult criminal court (called "automatic declines").

The juvenile court must automatically decline a juvenile if the juvenile is 16 or 17 years old and is charged with: (a) a serious violent offense; (b) a violent offense and the offender has certain criminal history consisting of serious felonies; (c) robbery 1, rape of a child 1, or drive-by shooting; (d) burglary 1 and the offender has a criminal history of one or more prior felonies or misdemeanors; or (e) any violent offense and the offender is alleged to have been armed with a firearm.

Offenders under the age of 18 who are convicted as adults are placed in an adult facility managed by the Department of Corrections (DOC), but are housed separately from the adult offenders. The DOC, with the consent of the Department of Social and Health Services (DSHS), may transfer an offender under the age of 18 to a juvenile facility. Likewise, the DSHS may transfer a juvenile offender to an adult facility if the juvenile presents a risk to the safety of others in the juvenile facility.

Sentencing of Adult Offenders

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 and how they are counted.

Prior juvenile adjudications are included in calculating the offender score, but they are generally weighted less than adult convictions.

Summary of Substitute Bill:

A youthful offender sentencing alternative (YOSA) is created. An offender under the age of 18 who has been automatically declined from juvenile court jurisdiction is eligible for YOSA if:

- (a) the offender has been convicted as an adult of any charge other than first or second degree murder or attempted first or second degree murder;
- (b) the offender has no prior convictions for any serious violent offense; and
- (c) the offender has not previously been transferred to the DOC from a juvenile facility.

If the offender is eligible, the court may impose YOSA unless, after a hearing on the

motion by the court or either party, the court determines that YOSA is not appropriate.

If the court imposes YOSA, the court must enter a sentence under the SRA and suspend that sentence based on certain conditions. One of the conditions of the suspended adult sentence is that the offender be committed to a Juvenile Rehabilitation Administration (JRA) facility for the length of time the offender would have served in total confinement under the DOC or until the offender's 21st birthday, whichever is shorter.

No sooner than three months prior to the offender's 21st birthday or release date, the court must determine if the offender has complied with YOSA. The court must determine if the offender has made sufficient progress in available rehabilitative programs, has not reoffended, and has not posed a serious threat to the physical safety of others. If the court finds the offender has satisfied the criteria, the court must release the offender from the DSHS and find that the offender successfully completed YOSA. The offender's offense is considered a juvenile adjudication instead of an adult conviction. The court must also determine if a period of community custody, not to exceed 48 months, is appropriate.

Different procedures apply to offenders convicted of first or second degree rape and whose adult sentences would require the offenders to be incarcerated beyond their 21st birthday. For those offenders, if the court has found that the offender made sufficient progress in available rehabilitative programs, has not reoffended, and has not posed a serious threat to the physical safety of others, the court must release the offender from the DSHS and, if appropriate, the court may return the offender to the DOC for confinement in an adult facility until the offender's 25th birthday or for the length of time remaining on the adult sentence, whichever period is shorter.

If the court returns the offender to the DOC, the court must make another evaluation of the offender no sooner than three months before the offender's 25th birthday or release date. If the court is satisfied at that time with the offender's progress and behavior, the court must, among other things, order the offender released from the DOC. The offense is considered a juvenile adjudication. If appropriate, the court may order a period of community custody not to exceed 48 months.

The court on its own motion, or upon application by the DSHS or the DOC, may revoke YOSA at any time and order the execution of the suspended sentence if the offender fails to comply with any of the conditions imposed, fails to make sufficient progress in rehabilitative programs, constitutes a serious threat to the physical safety of others, or reoffends.

Substitute Bill Compared to Original Bill:

The original bill required the court to impose YOSA if the youthful offender was eligible, unless there was a hearing and the court found YOSA to be inappropriate. The

substitute makes imposing YOSA discretionary for the courts. The substitute also makes an offender ineligible for YOSA if the offender was convicted as an adult for attempted murder in the first or second degree.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Sections 1, 4 and 7 take effect 90 days after adjournment of session in which the bill is passed. Sections 3 and 6 take effect July 1, 2004. Sections 2 and 5 expire July 1, 2004.

Testimony For: Some youthful offenders are in the adult system for the same offenses committed by juveniles in the juvenile system. The juvenile system has more mental health services available than the Department of Corrections. Research shows that juveniles need intensive mental health services. Rehabilitation is not the primary goal in the Department of Corrections. Tailored rehabilitative programs are effective in reducing recidivism in juveniles. Research shows that kids are less likely to reoffend in a juvenile facility than kids in adult facilities. There are safeguards in the bill. With automatic decline, there is no consideration given to a juvenile's individual circumstances.

Testimony Against: The current law is working fine. None of the counties want this. It will cost counties money because it would require the prosecutors to bring in expert witnesses to testify about whether YOSA is appropriate for the youthful offender. It will require the courts to hold hearings, and the Department of Social and Health Services to make reports. When the laws were changed, citizens wanted to treat juveniles as adults. The juveniles who are charged as adults commit serious offenses. This is a solution looking for a problem.

Testified: (In support) Representative Dickerson, prime sponsor; Martha Hardin, Superior Court Judges Association; Delight Roberts, The Children's Alliance; and Michele Shaw.

(Opposed) Greg Hubbard, Kitsap County Prosecutor's Office; and Tom McBride, Washington Association of Prosecuting Attorneys.