

HOUSE BILL REPORT

ESHB 2164

As Amended by the Senate

Title: An act relating to evidence-based and research-based interventions for juvenile firearm offenders.

Brief Description: Requiring evidence-based and research-based interventions for juvenile firearm offenders in certain circumstances.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Orwall, Appleton, Carlyle and Ryu).

Brief History:

Committee Activity:

Judiciary: 1/14/14, 1/21/14 [DPS].

Floor Activity:

Passed House: 2/11/14, 98-0.

Senate Amended.

Passed Senate: 3/6/14, 44-5.

Brief Summary of Engrossed Substitute Bill

- Requires most juveniles adjudicated of unlawful possession of a firearm to participate in certain evidence-based or research-based programs, unless no appropriate qualifying program is available.
- Provides that juveniles adjudicated of firearms crimes who meet eligibility requirements may participate in evidence-based parole programming.
- Requires the Juvenile Rehabilitation Administration of the Department of Social and Health Services to compile and analyze historical data regarding juvenile firearm offenders and report its findings to the Legislature.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

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.

Staff: Omeara Harrington (786-7136).

Background:

Unlawful Possession of a Firearm.

A person is guilty of Unlawful Possession of a Firearm in the first degree if the person owns, possesses, or has in his or her control, any firearm after having previously been convicted of a serious offense. A "serious offense" includes any crime of violence and a number of other specified felonies. A person is guilty of Unlawful Possession of a Firearm in the second degree if the person owns, possesses, or has in his or her control any firearm and the person:

- has previously been convicted of any felony (other than a serious offense);
- has previously been convicted of certain specified gross misdemeanors;
- has previously been involuntarily committed for mental health treatment;
- is under the age of 18 (with some exceptions); or
- is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

Under the Juvenile Justice Act, Unlawful Possession of a Firearm in the first degree is a level B offense, resulting in a standard range disposition of local sanctions for the first or second offense. Local sanctions include one or more of the following: zero to 30 days of confinement; zero to 12 months of community supervision; zero to 150 hours of community restitution; and/or a \$0 to \$500 fine. If the juvenile has two or more prior adjudications, the juvenile is subject to confinement in a Juvenile Rehabilitation Administration (JRA) facility.

Unlawful Possession of a Firearm in the second degree is categorized as a level C offense. This results in a standard range disposition of local sanctions, with a presumptive minimum of 10 days of confinement if the violation is based on possession of a firearm as a person under 18 years old. If the juvenile has four or more prior adjudications, he or she is subject to a term of JRA confinement.

Deferred Disposition.

A juvenile offender is eligible for a deferred disposition unless he or she is charged with a sex or violent offense, has a criminal history including any felony, has a prior deferred disposition or deferred adjudication, or has two or more prior adjudications. Under a deferred disposition, the juvenile is found guilty and must complete certain conditions set out by the court, including probation and payment of restitution, in exchange for having the case dismissed.

Juvenile Parole.

Following release from JRA custody, a juvenile offender may be required to comply with a program of parole administered by the Department of Social and Health Services (department) in his or her community. Conditions of parole are specified by the department, and may include participation in treatment services, reporting, pursuit of a course of study or employment, and remaining within specific geographic boundaries, in addition to various other conditions. The decision to place an offender on parole must be based on the

department's assessment of the offender's risk for re-offense upon release, with priority for parole resources given to offenders at moderate to high risk of re-offense.

Evidence-Based and Research-Based Programs.

The Washington State Institute for Public Policy (WSIPP) has undertaken comprehensive reviews of evidence-based policy strategies in the areas of juvenile and adult criminal justice, as well as in other public policy areas. Evidence-based practices are generally defined as those programs or policies that are supported by a rigorous outcome evaluation clearly demonstrating effectiveness. A research-based practice has some research demonstrating effectiveness, but does not yet meet the standard of an evidence-based practice.

The WSIPP maintains a list of current findings for a variety of programs, including a cost analysis that examines whether the benefits from a given program exceed its costs. The list is updated periodically as new information becomes available. Several programs that are active in Washington have been evaluated and identified as cost-beneficial by the WSIPP, including Aggression Replacement Training (ART) and Functional Family Therapy (FFT), among others.

Aggression Replacement Training.

Aggression Replacement Training is a 10-week, 30-hour intervention administered to groups of eight to 10 youth three times per week. Aggression Replacement Training utilizes repetitive learning techniques and guided group discussion to help the youth develop anger-control skills, employ more appropriate behaviors, and correct anti-social thinking. A juvenile offender is generally eligible for ART if it is determined, based on the results of the formal assessment tool administered by the juvenile courts, that the youth has a moderate to high risk for re-offense and is aggressive or has social skills or attitudes and beliefs that lead to anti-social behavior.

Functional Family Therapy.

Functional Family Therapy is a structured, home-based family intervention involving 12 weekly visits. Functional Family Therapy uses a multi-step approach to enhance protective factors (that reduce likelihood of participation in criminal activities) and reduce risk factors (that increase likelihood of participation in criminal activities) in the family. A juvenile offender is generally eligible for FFT if the formal assessment tool indicates a moderate to high risk for re-offense and significant family problems.

Summary of Engrossed Substitute Bill:

A juvenile court disposition or deferred disposition for unlawful possession of a firearm must include a requirement that the juvenile participate in a qualifying evidence-based or research-based program, where available, except upon a written finding by the court that participation in a program would be inappropriate. The court's finding that program participation would be inappropriate must be based on the outcome of the juvenile's formal risk assessment, and specifically must be based on factors other than the juvenile's overall risk classification.

The description of "qualifying program" includes: (1) ART; (2) FFT; or (3) any program applicable to the juvenile firearm offender population that has been identified in the current list compiled by the WSIPP as evidence-based or research-based and cost-beneficial.

A juvenile adjudicated of unlawful possession of a firearm, possession of a stolen firearm, theft of a firearm, or drive-by shooting and sentenced to JRA confinement may participate in ART, FFT, or Functional Family Parole aftercare following release if the juvenile meets eligibility requirements for these services. When assessing offenders for placement in evidence-based parole programs, the assessment must examine the ongoing treatment needs of the juvenile, in addition to the risk for re-offense.

The JRA must compile and analyze historical data regarding persons who made initial contact with the criminal justice system between 2005 and 2013, and were found to have committed a juvenile offense of unlawful possession of a firearm. In particular, the JRA must examine data regarding previous and subsequent criminal history, interventions provided to offenders, and known gang association of offenders. The Department of Corrections and the Caseload Forecast Council must provide the JRA with any information necessary to complete the analysis, which may include individual identifier level data. The JRA must report its findings to the Legislature by October 1, 2014.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment retains the provisions of the underlying bill, with the following changes and additions:

(1) Language in the underlying bill is retained stating that a juvenile court disposition or deferred disposition for unlawful possession of a firearm must include a requirement that the juvenile participate in a qualifying program, unless the court enters a written finding based on the outcome of the risk assessment that a program would be inappropriate. However, language stating that the finding must be based on factors other than the juvenile's overall risk classification is removed.

(2) A statutory section regarding juvenile records is added and amended. It is expressly stated that access to caseload forecast data may be permitted by the Caseload Forecast Council for research purposes, but only if the anonymity of all persons mentioned in the records or information will be preserved.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a very complicated issue, and this bill is the product of a workgroup. The risk assessment given to juvenile offenders typically does not recognize juveniles who

possess firearms as moderate or high risk, so they are usually ineligible for referral to an evidence-based program. A juvenile carrying a firearm is a very serious situation and requires a serious response. Currently it takes five offenses for a commitment to the JRA. Intervention should happen at an earlier point, because some juveniles will reoffend with more serious offenses.

This bill represents the correct approach to juvenile justice. Prevention and intervention strategies that are evidence-based and locally controlled should be utilized, and Washington has excellent programs for juvenile offenders. The bill may need amendment to provide more discretion allowing judges to not refer a juvenile to a program if that would be inappropriate under the circumstances. It makes more sense to remove some juveniles from the system as quickly as possible.

(With concerns) It is important to maintain fidelity to the model, and place the right juvenile in the right program. If referral is no longer based on need, the program is no longer an evidence-based program. Studies have shown increased recidivism in low risk juveniles who have been placed in programs.

(Opposed) None.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Carla Lee, King County Prosecuting Attorney's Office; Travis Stearns, Washington Defenders Association; Chris Kaasa, American Civil Liberties Union of Washington; and Don Pierce, Sheriffs and Police Chiefs Association.

(With concerns) Steve Warning, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.