

SENATE BILL REPORT

SB 6443

As of February 3, 2020

Title: An act relating to convictions for offenses that were committed at age sixteen or seventeen and placed in exclusive jurisdiction of the juvenile court in 2018.

Brief Description: Concerning convictions for offenses that were committed at age sixteen or seventeen and placed in exclusive jurisdiction of the juvenile court in 2018.

Sponsors: Senators Kuderer, Das, Darneille, Wilson, C. and Nguyen.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/29/20.

Brief Summary of Bill

- Allows a person who was convicted in adult court between 1997 and 2018 for an offense committed at the age of 16 or 17 which is no longer in the exclusive jurisdiction of adult court to petition for vacation of their sentence and transfer of jurisdiction to juvenile court for the purpose of disposition.
- Requires petitioners to stipulate to facts and disposition without trial in juvenile court according to current juvenile justice laws.
- Requires the Department of Corrections to notify eligible persons of their right to file a petition under this act.
- Appropriates \$1,000,000 for legal representation for persons eligible to file a petition under this act.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Kevin Black (786-7747)

Background: Juvenile Court Jurisdiction and Autodecline. 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:

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.

- 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; or
- rape of a child 1.

The Juvenile Justice Act 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 for most offenses and 129 weeks to 260 weeks for offenses subject to the A++ sentencing range. Local sanctions means 0 to 30 days in custody, one year or less on probation, 150 hours of community restitution, or a fine up to \$500.

History of Autodecline. The first juvenile courts in Washington were authorized in statute in 1914 for use by counties with a population over 30,000, and were described as a locally designated branch of the superior court. A formal system of juvenile courts with exclusive original jurisdiction over certain offenses was enacted in 1977. The terms of the 1977 act allowed discretionary decline of jurisdiction by the juvenile court and transfer to superior court—adult court—for any person aged 16 or 17 who is charged with a class A felony offense or one of six specified class B felony offenses. Autodecline was enacted in 1994 by legislation that exempted the juvenile court of original jurisdiction over offenses committed by a youth aged 16 or 17 that are classified as serious violent offenses or violent offenses when the youth has specified criminal history, and vested that original jurisdiction in adult court.

Legislation enacted in 1997 and effective on July 1, 1997, expanded autodecline to include the following additional offenses when committed by a youth aged 16 or 17:

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

Effective June 7, 2018, the Legislature enacted E2SSB 6160, which removed all of these offenses from autodecline except for rape of a child 1. A new A++ sentencing range of 129 to 260 weeks was created in juvenile court and applied to youth aged 16 or 17 years old who are charged with one of these offenses. The 2018 legislation was not retroactive.

Offense Classifications. 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.

Alford Pleas. An *Alford* plea is a form of guilty plea in which the defendant does not admit guilt, but stipulates to entry of judgment based on facts contained in police reports, acknowledging there is a substantial likelihood they will be found guilty at trial, in order to take advantage of a plea offer. The right of a criminal defendant to enter a guilty plea without acknowledging guilt was established by *North Carolina v. Alford*, 400 U.S. 25 (1970).

Summary of Bill: A person convicted under exclusive original adult criminal jurisdiction between July 1, 1997, and June 7, 2018, for an offense committed at the age of 16 or 17 may petition the court of conviction to vacate the judgment and sentence and transfer the case for disposition in juvenile court if the conviction was for one of the following offenses:

- robbery 1;
- drive-by shooting;
- burglary 1 when the juvenile has a criminal history consisting of one or more felony or misdemeanor offenses; or
- any violent offense if the juvenile is alleged to have been armed with a firearm.

Upon receipt of the petition, the court must vacate the judgment and sentence and transfer the case to juvenile court for disposition if:

- there are no pending appeals;
- the petitioner stipulates to the existence of facts necessary to support adjudication in judicial court, which if the person maintained a plea of not guilty or plead guilty using an *Alford* plea may be in the form of an *Alford* plea;
- the convictions are not currently subject to exclusive adult jurisdiction;
- the petitioner stipulates to an automatic extension of jurisdiction for the purpose of imposing disposition and supervision up to age 25; and
- the petitioner stipulates to disposition within the laws of juvenile court.

If a cause number contains charges that are both currently subject to adult jurisdiction and charges restored to juvenile court jurisdiction in 2018, the charges may be severed to allow for vacation and disposition in juvenile court of only those charges currently subject to original juvenile court jurisdiction. The court must review a petition under this act within 30 days of receipt. No filing fee may be charged to file a petition under this act. The court may take testimony. The petitioner may indicate whether the petitioner intends to appear in person for the review hearing. A person who would otherwise be eligible to petition who is appealing their conviction may request dismissal of the appeal for the purpose of filing the petition and in this circumstance only file a new appeal raising only issues contained in the original appeal which have not been rendered moot by the transfer and disposition in juvenile court.

The Department of Corrections, in collaboration with the Administrative Office of the Courts and the Office of Public Defense, must notify all eligible persons of their right to petition by June 30, 2020, including instructions for obtaining legal assistance, making stipulations, and submitting the appropriate forms.

An appropriation of \$500,000 for fiscal year 2021 and \$500,000 for fiscal year 2022 is made from the general fund to the Office of Public Defense to provide funds to legal advocacy organizations for legal assistance needed to support petitions under this act.

Appropriation: The bill contains appropriations totaling \$500,000 per year from the general fund for fiscal year 2021 and fiscal year 2022.

Fiscal Note: Requested on January 16, 2020.

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: PRO: There was broad bipartisan support to transfer these offenses out of autodecline in 2018. Because of brain science, adolescents are prone to make mistakes. However, they are also most prone to be rehabilitated if we put the services into them. The bill was prospective only so left a number of folks behind. This look back will help those individuals as well, who deserve a second chance. This is about fairness and applying justice evenly. Because of the recidivism rate for people coming from the adult system, this is a public safety measure because it will make re-offense less likely. Youth whose cases are transferred to adult court will still face consequences. They will be able to seal their record quicker and reduce the collateral consequences to employment and housing. There have been 1,163 people convicted under these four crime categories and 25 percent are still under 25 and serving time. Youth who are still serving time will be the most directly impacted. A race impact analysis shows that youth of color are disproportionately impacted by autodecline laws. The policy supporting autodecline is based on myths about youths and crime that have been debunked. Robbery 1 has been a significant driver of both the autodecline law and its racial disparities. We need to acknowledge the harms of the past and not just have prospective application. This bill will give hope to those still bound by the mistakes of their past. I am earning my associate's degree at Green Hill School and am the first youth to not transfer to DOC at 21. I hope people can see us as us, and not as the crimes we have committed. Juveniles do not think like adults until they are adults. DOC does not provide treatment directed at youth. This bill gives youth an opportunity to succeed and become future leaders. Being resentenced as a youth makes a big difference even if the incarceration time does not change. There is no proof or evidence that autodecline creates better circumstances for the community or the youth. The offenses were committed by teenagers who deserve a second chance.

CON: We have concerns about the technical aspects of the bill processes to recharge and transfer cases in juvenile court. The current bill proposes to vacate convictions, which is not allowed for violent offenses under current law. Vacating the judgment and sentence would remove the conditions associated with sentence such as no contact orders. There would be a gap between the superior court and juvenile court hearings so there is a need to address conditions of release. Transferring the case to juvenile court would create new appeal rights, and if there is severance it would create a new file. It is difficult to look back at resolved cases and determine what the interests were when charges were amended in the past. There is a work load for prosecutors. There are constitutional concerns if the respondent is not required to appear in juvenile court.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Oliana Luke, University of Washington Law School Race and Justice Clinic; Stephanie Verdoia, University of Washington Law School Race and Justice Clinic; Aaron Toleafoa, Green Hill student; Edgar

Caslixto, Green Hill student; Joe Huntley, Green Hill student; Nathon Brooks, Green Hill student; Antonio Ginatta, Columbia Legal Services; Jaime Hawk, ACLU of Washington.

CON: Russell Brown, Washington Association of Prosecuting Attorneys; Shawn Sant, Franklin County Prosecutor.

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