

# HOUSE BILL REPORT

## ESSB 5122

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**As Reported by House Committee On:**  
Children, Youth & Families  
Appropriations

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

**Brief Description:** Concerning the jurisdiction of juvenile court.

**Sponsors:** Senate Committee on Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Das, Hasegawa, Kuderer, Nguyen, Pedersen, Robinson, Saldaña and Wilson, C.).

**Brief History:**

**Committee Activity:**

Children, Youth & Families: 3/15/21, 3/18/21 [DPA];  
Appropriations: 3/30/21, 4/1/21 [DPA(CYF)].

**Brief Summary of Engrossed Substitute Bill**  
**(As Amended By Committee)**

- Increases the age range that children are presumed incapable of committing a crime, from under age 8 to under age 13.
- Establishes that children ages 8 through 12 charged with Murder in the first or second degree are presumed incapable of committing crime, but that presumption may be rebutted by clear and convincing evidence that the child has sufficient capacity to understand the act or neglect, and to know that it was wrong.
- Creates a Raise the Age Juvenile Justice Task Force that must consider and provide recommendations regarding expansion of juvenile jurisdiction to encompass persons ages 18 and 19.

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### HOUSE COMMITTEE ON CHILDREN, YOUTH & FAMILIES

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*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.*

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Senn, Chair; Harris-Talley, Vice Chair; Rule, Vice Chair; Callan, Goodman, Ortiz-Self and Wicks.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Dent, Ranking Minority Member; Chase, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Eslick, Klippert and Young.

**Staff:** Luke Wickham (786-7146).

**Background:**

*Age of Capacity to Commit a Crime.*

Children under age 8 are incapable of committing crime in Washington. Children from age 8 to under age 12 are presumed incapable of committing crime, but that presumption may be removed by proof that he or she has sufficient capacity to understand the act or neglect and to know that it was wrong.

Courts have held that the determination of capacity must be made in reference to the specific act charged, and this determination is fact-specific. In addition to the nature of the crime, other elements may be relevant in determining whether the child knew the act was wrong including:

- the child's age and maturity;
- whether the child exhibited a desire for secrecy;
- whether the child admonished the victim not to tell;
- prior conduct similar to that charged;
- any consequences attached to that prior conduct; and
- acknowledgement that the behavior is wrong and could lead to detention.

*Juvenile Court.*

In the State of Washington, juvenile courts are a division of the state's superior court system. Juvenile courts have jurisdiction over persons under age 18 who are alleged to have committed a crime. However, there are several exceptions to that jurisdiction where state law requires youth to be tried in adult courts. There are three situations where adult criminal courts may have jurisdiction over persons under age 18:

- The juvenile court declines jurisdiction to adult court following a discretionary decline hearing which a court can initiate on its own motion or any party may file a motion requesting the court transfer the juvenile to adult court only if:
  - the respondent is at least age 15 and is charged with a serious violent offense;
  - the respondent is age 14 or younger and is charged with Murder in the first or second degree; or
  - the respondent is any age and is charged with custodial assault and, at the time the respondent is charged, is already serving a minimum juvenile sentence to age 21.

- The juvenile court is required to hold a decline hearing in circumstances when the information alleges an escape and the juvenile is serving a minimum juvenile sentence to age 21.
- Adult criminal courts have exclusive jurisdiction over juveniles age 16 or 17 on the date of the offense when the offense is:
  - a serious violent offense;
  - a violent offense and the juvenile has a criminal history consisting of a prior serious violent offense, two or more prior violent offenses, or three or more of any combination of class A felonies, class B felonies, Vehicular Assault, or Manslaughter in the second degree; or
  - Rape of a Child in the first degree.

Juvenile court dispositions are subject to statutory sentencing guidelines. Juvenile offenses are categorized using letters E through A++ to indicate the seriousness level of the offense. A statutory grid establishes the standard sentencing range for a particular offense based on the offense category and an individual's prior adjudications. Each prior felony adjudication counts as one point, and each prior violation, misdemeanor, or gross misdemeanor counts as one-fourth point. Fractional points are rounded down.

The sentencing category called local sanctions is the least serious category for juvenile sentencing purposes. Local sanctions include a range of up to 30 days in confinement, up to 12 months of community service, up to 150 hours of community service, and up to a \$500 fine. When a juvenile court sentences a juvenile offender to local sanctions, the court must impose a determinate sentence within the standard range. Confinement imposed by a juvenile court up to 30 days is served in a county juvenile detention facility.

Any confinement imposed that is greater than 30 days is served through commitment at a Department of Social and Health Services juvenile rehabilitation facility.

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**Summary of Amended Bill:**

The ages of children who are incapable of committing crimes is increased from under age 8 to under age 13. Children ages 8 through 12 charged with Murder in the first or second degree are presumed incapable of committing crime, but that presumption may be rebutted by clear and convincing evidence that they have sufficient capacity to understand the act or neglect, and to know that it was wrong.

The authority for youth courts is limited to individuals ages 13 through 17, instead of 8 through 17.

*Raise the Age Juvenile Justice Task Force.*

A Raise the Age Juvenile Justice Task Force (Task Force) is created with the following members:

- two Senators (one from each caucus);
- two members of the House of Representatives (one from each caucus);
- an individual representing the:
  - Juvenile Rehabilitation Administration;
  - Department of Corrections;
  - 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 (WSAC), with one member representing the association generally and another member representing the association with expertise in county facilities;
  - 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, with one member from Eastern Washington and one member from Western Washington;
  - Washington Association of Juvenile Court Administrators, with one member from Eastern Washington and one member from Western Washington;
  - Washington State School Directors' Association, with one member representing a school district that provides education services to a juvenile rehabilitation residential facility;
  - Department of Health (DOH);
  - statewide organization representing public defense attorneys;
  - Department of Children, Youth, and Families (DCYF);
  - communities who have been impacted or served by the juvenile justice system (two members);
  - medical community with expertise in adolescent brain development;
  - interests of incarcerated persons, with two representatives each representing different programs and serving different constituencies; and
  - interests of youth involved in the juvenile justice system, with three representatives from different regions of the state or representing different programs.

The legislative membership is required to convene the first meeting of the Task Force no later than September 1, 2021, and additional Task Force meetings must be held at least once a month. The Task Force must choose its chair from among the legislative membership.

Staff support for the Task Force must be provided by the Office of Juvenile Justice.

The Task Force must consider and provide recommendations regarding implementation of juvenile jurisdiction to encompass persons ages 18 and 19 and expansion of juvenile court

jurisdiction to include persons above age 19. The Task Force must report to the Governor and the Legislature on the status and plan for the expansion, including necessary funding, essential personnel and programmatic resources, measures necessary to avoid a negative impact on the state's child protection response, and specific milestones related to operation and policy by December 1, 2022.

**Amended Bill Compared to Engrossed Substitute Bill:**

The amended bill adds the following persons to the Task Force:

- an individual representing the WSAC with expertise in county facilities;
- an individual representing the DOH;
- an individual representing the statewide organization representing public defense attorneys;
- an individual representing the DCYF;
- two individuals representing communities who have been impacted or served by the juvenile justice system; and
- an individual from the medical community with expertise in adolescent brain development.

The amended bill requires the Task Force to take into consideration research and case law regarding adolescent brain development and make recommendations regarding expansion of juvenile court jurisdiction to include ages above age 19.

The amended bill requires that the Task Force report include anticipated county and state facility changes and modifications, including a timeline or planning needed to successfully expand juvenile court jurisdiction.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) This bill originated in a form that increased the age range for juvenile court to include individuals ages 18 and 19. The Superior Court Judges and the Juvenile Court Administrators had concerns about that version of the bill, and this version takes into consideration those concerns by replacing that requirement with a Task Force related to increasing juvenile court jurisdiction to include individuals ages 18 and 19.

A health impact review was completed on a previous version of this bill indicating that this change would have positive impacts on these young people's lives, increasing their health outcomes.

There are children right now age 12 who are brought to juvenile court to answer for criminal charges whose feet do not touch the ground when sitting in courtroom chairs. These children can barely understand the court proceedings, while these proceedings carry lifelong harmful consequences which diminish their potential. The brains of young people are still forming, and research shows that the frontal cortex, which governs impulse control, is the last to develop. Because of this, children are often unable to make good choices and are subject to peer pressure. This bill recognizes those truths by increasing the age range where children are presumed incapable of committing a crime from under age 8 to under age 13. It also creates the Task Force. That Task Force is essential as young people are currently being prosecuted in settings that are not developmentally appropriate, instead, the current settings devalue young people. These young adults often receive the most harmful response.

This bill is underpinned by the science of adolescent brain development and helping youth and young people.

There were concerns related to the cost and ability to implement the previous version of this bill, but the Task Force created in this bill will help address those issues in a thoughtful manner. There are practical considerations with increasing the age limit of juvenile court related to the sight and sound separation requirements that require separation between individuals age 18 and over and those under age 18.

The insurance industry knows that individuals under age 25 should be treated differently in a way that the juvenile justice system has not internalized. A larger percentage of young people ages 18 through 24 respond to programming even more than younger children.

Black and brown people often are perceived to be four years older than the chronological age. With the current response, there are black and brown people criminalized for normal adolescent behavior.

The type of behavior change necessary for the violent act of a child age 11 should not be the responsibility of law enforcement and courts.

(Opposed) There are issues with sections 3,4, and 5 of the bill. There are a small, but disturbing, number of severe offenses committed by young people. If the criminal justice system is not the appropriate response for this group, it is unclear what the response will be.

Law enforcement typically chooses not to arrest young children unless the circumstances are severe. When a young person has been co-opted into criminal activity, the criminal

justice system is an obtuse tool, but one of the only tools that can be used in response to these situations.

If law enforcement is unable to respond to what would otherwise be criminal activity, there may not be other options for law enforcement.

(Other) The Task Force makes good sense related to expansion of the juvenile court jurisdiction. It is not unique that Washington is looking at this. Many states are looking at how to address the emerging adult population. There are issues related to mixing 13- and 19-year olds. There are some reasons to maintain the juvenile court jurisdiction at its current maximum age and deal with emerging adults in a different way.

Regarding the provision related to the capacity of individuals under age 13, in 2019 there were over 700 individuals age 11 and below who were arrested. This included assault, weapons charges, and other serious offenses. It is difficult to know what the response will be if those individuals cannot be charged with an offense. Some individuals at age 12 look like they are 16. Of the 700 individuals who were arrested, about 10 percent of those youth ended up with a juvenile disposition. If there is reason to move forward with this proposal, this should be added to the Task Force.

The only charges that are permissible for individuals under age 13 would be Murder in the first or second degree. A child under age 13 accused of committing any other offense would not be able to be arrested or have a criminal justice response.

**Persons Testifying:** (In support) Senator Darneille, prime sponsor; Judith Ramseyer, Superior Court Judges' Association; Juliana Roe, Washington State Association of Counties; Katie Hurley, King County Department of Public Defense; and Sean Goode, CHOOSE 180.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Children, Youth & Families. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen,



Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

**Staff:** Yvonne Walker (786-7841).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Children, Youth & Families:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) Prosecuting kids under the age of 13 is harmful to them and the community. The current system is also disproportionately used to prosecute youth of color. The investment of money to create a Task Force is critical as it will save a great deal of money in the long run by providing a more developmentally appropriate pathway for young people. This bill not only relates to the core issue of fairness, but also the decriminalization of young people. Young people are more likely to comply with the legal system when they feel the system is treating them fairly.

(Opposed) The intent of the legislation is good, but the section that prohibits prosecuting certain juveniles is concerning. There is acknowledgement that there is a very small percentage of young people age 13 years old and younger that commit serious crimes. However, the elimination of consequences for bad behavior will decrease court involvement and deprive any involvement to intervene with this age group. In most instances, the criminal law is never enforced for most actions between youth and law enforcement. However, for that small number of young people who commit serious crimes, the leverage of the criminal justice system can be an effective way to intervene while accounting for public safety. In the absence of statewide inpatient mental health care facilities that are appropriate for young children, this intervention can be critical.

(Other) Although there is support for the Task Force, there is also concern with the section of the bill that makes those youth under the age of 13 incapable of committing a crime except for Murder in the first and second degree. This sets up 12-year-old youths to be untouchable by the law and in many communities, youth are often dragged into gang activity. This bill also prohibits allowing a prosecutor to defer or divert certain cases. The



provision of the bill relating to youth who are incapable of committing a crime should be removed or included in the study required by the Task Force.

**Persons Testifying:** (In support) Katie Hurley, King County Department of Public Defense.

(Opposed) Sanjay Walvekar, Washington Association of Sheriffs and Police Chiefs; and Patricia Byers, City of Yakima.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.