

# SENATE BILL REPORT

## ESSB 5122

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As of Third Reading

**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:** Human Services, Reentry & Rehabilitation: 1/19/21, 1/29/21 [DPS-WM, w/oRec].

**Brief Summary of Engrossed 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.
- Adds a clear and convincing evidence standard to overcome the presumption of individuals ages 8 through 12 of being incapable of committing a crime.
- 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.

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### SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Majority Report:** That Substitute Senate Bill No. 5122 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Saldaña and Wilson, C.

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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.*

**Minority Report:** That it be referred without recommendation.

Signed by Senators Gildon, Ranking Member; Dozier.

**Staff:** Julie Tran (786-7283)

**Background:** Juvenile Rehabilitation Institutions. On July 1, 2019, the Juvenile Rehabilitation division (JR) transferred from the Department of Social and Health Services to the Department of Children, Youth and Families (DCYF). JR operates three juvenile institutions for juveniles, who are convicted of crimes and serving more than 30 days of confinement.

The Echo Glen Children's Center in Snoqualmie serves younger males as well as female offenders. The Green Hill School in Chehalis serves older male offenders. The Naselle Youth Camp serves male offenders and provides services such as the forestry work program.

Capacity to Commit a Crime. 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.

**Summary of Engrossed First Substitute Bill:** Capacity to Commit a Crime. Children under age 13 are incapable of committing crime. Children ages 8 through 12 who are charged with murder 1 or 2 are presumed incapable of committing a crime. This presumption may be rebutted by clear and convincing evidence that the individual had sufficient capacity to understand the act or neglect, and to know that it was wrong. Children age 13 and older are presumed to have the capacity to commit a crime. The minimum age of juvenile court jurisdiction for the commission of an offense is 13 years old.

Raise the Age Juvenile Justice 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 task force includes legislative members from both the Senate and House of Representatives and members representing:

- Juvenile Rehabilitation Administration;
- 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 juvenile justice system—three members from different regions of the state or representing different programs.

A report will be submitted before December 1, 2022, that includes:

- 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 individuals ages 18 and 19; and
- a clearly defined path for geographic consistency given varying local resources, staff, physical plant limitations, training, services, and partnering needs.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Youth are to be developed and not a problem to solve. The brains of young people are still forming. We are compounding the injustices and magnifying the racial inequities that exist throughout our legal systems. There are successful models for 18-24 rehabilitation programs that do not rely on

criminalizing behavior as the only way to get services. Our current system flies in the face of adolescent brain development and shared commitment to protect our most vulnerable. We can do better as a community and a state.

CON: Expanding juvenile jurisdiction to include those aged 18 and 19 is problematic. Age 18 is a logical start when an individual becomes an adult. This policy could be addressed with the statewide criminal sentencing task force. This bill will dramatically increase the risk to the marginalized youth and exacerbate the risk to these individuals as they would be preyed upon by adults. Juvenile system needs a serious system and making juveniles less accountable is not the answer.

OTHER: This bill allows the juvenile legal system to serve the right youth, exclude those who would be harmed, and include those who would benefit the most from a rehabilitative system. It aligns the way we treat children with research on recidivism and child development. It is also good for public safety. The health impact review shows strong evidence that this bill would decrease legal criminal involvement, improve health outcomes, and reduce recidivism. Emerging adults have better health outcomes when they are housed in juvenile rehabilitation facilities compared to adult correction facilities.

This bill moving 19 year olds to juvenile court jurisdiction is a major policy change that requires comprehensive planning and preparation. There are fiscal impacts and staffing concerns as the county juvenile courts will have an influx of cases. Moving adults to juvenile courts is not just happening on paper, it will cost more as juvenile rehabilitative services are more expensive and require more labor.

**Persons Testifying:** PRO: Senator Jeannie Darneille, Prime Sponsor; Sean Goode, CHOOSE 180; Katherine Hurley, King County Department of Public Defense.

CON: Matt Murray, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys; Ken Roske, Pasco Police Chief; Patricia Byers, City of Yakima.

OTHER: Kimberly Ambrose, University of Washington School of Law; Judith Ramseyer, Superior Court Judges' Association; Jack Murphy, Washington Association of Juvenile Court Administrators; Cait Lang-Perez, Washington State Board of Health; Juliana Roe, Washington State Association of Counties; Lael Chester, Emerging Adult Justice Project, Columbia University Justice Lab.

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