

SENATE BILL REPORT

ESSB 5746

As Amended by House, April 15, 2009

Title: An act relating to sentencing provisions for juveniles adjudicated of certain crimes.

Brief Description: Modifying sentencing provisions for juveniles adjudicated of certain crimes.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senator Hargrove).

Brief History:

Committee Activity: Human Services & Corrections: 2/17/09, 2/23/09 [DPS, w/oRec].

Passed Senate: 3/09/09, 48-0.

Passed House: 4/15/09, 97-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5746 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senator Kauffman.

Staff: Jennifer Strus (786-7316)

Background: In juvenile offender matters, prior felony adjudications count as one point each on the juvenile disposition grid. Each prior violation, misdemeanor, or gross misdemeanor adjudication counts as one-fourth point. A violation may include any act or omission, which if committed by an adult, that must be proved beyond a reasonable doubt, and is punishable by sanctions that do not include incarceration.

Taking a Motor Vehicle Without Permission – First Degree. If a juvenile is adjudicated of the above offense, the court must impose the following minimum sentence:

- prior criminal history score of 0 to 1/2 point – standard sentence range of no less than five days of home detention, 45 hours of community restitution, and a \$200 fine.
- prior criminal history score of 3/4 to 1-1/2 points – standard sentence range of no less than ten days of detention, 90 hours of community restitution, and a \$400 fine.

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.

- prior criminal history score of 2+ points – standard sentence range of no less than 15-36 weeks of confinement, seven days of home detention, four months of supervision, 90 hours of community restitution, and a \$400 fine.

Theft of Motor Vehicle or Possession of Stolen Vehicle. If a juvenile is adjudicated of one of the above offenses, the court must impose the following minimum sentence:

- prior criminal history score of 0 to 1/2 point – standard sentence range that includes either: no less than five days of home detention and 45 hours of community restitution or no home detention and 90 hours of community restitution.
- prior criminal history score of 3/4 to 1-1/2 points – standard sentence range that includes no less than ten days of detention, 90 hours of community restitution, and a \$400 fine.
- prior criminal history score of 2+ points – standard sentence range that includes no less than 15 to 36 weeks of confinement, seven days of home detention, four months of supervision, 90 hours of community restitution, and a \$400 fine.

Taking Motor Vehicle without Permission – Second Degree. If a juvenile is adjudicated of the above offense, the court must impose the following minimum sentence:

- prior criminal history score of 0 to 1/2 point – standard sentence range that includes either no less than one day of home detention, one month of community supervision, and 15 hours of community restitution or no home detention, one month of supervision, and 30 hours of community restitution.
- prior criminal history score of 3/4 to 1-1/2 points – standard sentence range that includes no less than one day of detention, two days of home detention, two months of supervision, 30 hours of community restitution, and a \$150 fine.
- prior criminal history score of 2+ points – standard sentence range of no less than three days of detention, seven days of home detention, three months of supervision, 45 hours of community restitution, and a \$150 fine.

Juveniles charged with a criminal offense and prosecuted in adult court must be prosecuted in adult court for any subsequent offense. This rule applies whether or not the juvenile was actually previously convicted in adult court.

There are three ways by which a juvenile accused of committing an offense can be prosecuted in adult court: discretionary decline hearing; mandatory decline hearing; and statutory exclusion.

Discretionary Decline Hearing. The prosecutor or the juvenile may make a motion requesting that the juvenile be transferred to adult court. The court will set the matter for a hearing on whether the juvenile court should decline jurisdiction in the case. The court may also, on its own motion, set the matter for a decline hearing.

Mandatory Decline Hearing. A hearing on whether a juvenile should be prosecuted in adult court must be held in the following instances:

- the juvenile is 15, 16, or 17 years old and is alleged to have committed a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony;

- the juvenile is 17 and is alleged to have committed assault in the 2nd degree, extortion in the 1st degree, indecent liberties, child molestation in the 2nd degree, kidnapping in the 2nd degree, or robbery in the 2nd degree; or
- the juvenile is alleged to have committed an escape during the time that the juvenile is serving a minimum juvenile sentence to age 21.

After the decline hearing, the court may order the case transferred to adult court if it finds that adult court prosecution would be in the juvenile's or the public's best interest.

Statutory Exclusion. Adult court jurisdiction is automatic when a juvenile is 16 or 17 years old on the date the alleged offense is committed and the alleged offense is one of the following:

- a serious violent offense;
- a violent offense and the juvenile has a criminal history consisting of one or more prior serious offenses, two or more prior violent offenses, or any class A felony, any class B felony, vehicular assault or manslaughter in the 2nd degree, all of which must have been committed after the juvenile's 13th birthday and prosecuted separately;
- robbery in the 1st degree, rape of a child in the 1st degree, or a drive-by shooting;
- burglary in the 1st degree committed on or after July 1, 1997, and the juvenile has a criminal history of one or more prior felony or misdemeanor offenses; or
- any violent offense committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

Summary of Engrossed Substitute Bill: The standard sentence ranges are changed for the following offenses.

Taking a Motor Vehicle Without Permission - First Degree. If a juvenile is adjudicated of the above offense, the court must impose the following minimum sentence:

- prior criminal history score of 0 to 1/2 point – standard sentence range of three months of community supervision, 45 hours of community restitution, a \$200 fine, and a requirement that the juvenile is confined to a private residence for no less than five days. The juvenile may be subject to electronic monitoring where available. If the juvenile is enrolled in school, the confinement must be served on nonschool days.
- prior criminal history score of 3/4 to 1-1/2 points –standard sentence range of no less than ten days of detention, six months of community supervision, 90 hours of community restitution, and a \$400 fine.
- prior criminal history score of 2+ points – standard sentence range of no less than 15-36 weeks of commitment to Juvenile Rehabilitation Administration (JRA), four months of parole supervision, 90 hours of community restitution, a \$400 fine, and a requirement that the juvenile is confined to a private residence for no less than seven days. The juvenile may be subject to electronic monitoring where available. If the juvenile is enrolled in school, the confinement must be served on nonschool days.

Theft of Motor Vehicle or Possession of Stolen Vehicle. If a juvenile is adjudicated of one of the above offenses, the court must impose the following minimum sentence:

- prior criminal history score of 0 to 1/2 point – standard sentence range that includes no less than three months of community supervision, 45 hours of community restitution, a \$200 fine, and either 90 hours of community restitution or a requirement

- that the juvenile remain at home such that the juvenile is confined to a private residence for no less than five days. The juvenile may be subject to electronic monitoring where available;
- prior criminal history score of 3/4 to 1-1/2 points – standard sentence range that includes no less than six months of community supervision, no less than ten days of detention, 90 hours of community restitution, and a \$400 fine.
 - prior criminal history score of 2+ points – standard sentence range that includes no less than 15 to 36 weeks of commitment to JRA, four months of parole supervision, 90 hours of community restitution, a \$400 fine, and a requirement that the juvenile is confined to a private residence for no less than seven days. The juvenile may be subject to electronic monitoring where available. If the juvenile is enrolled in school, the confinement must be served on nonschool days.

Taking Motor Vehicle without Permission - Second Degree. If a juvenile is adjudicated of the above offense, the court must impose the following minimum sentence:

- prior criminal history score of 0 to 1/2 point – standard sentence range that includes three months of community supervision, 15 hours of community restitution fine, and a requirement that the juvenile is confined to a private residence for no less than one day. The juvenile may be subject to electronic monitoring where available. If the juvenile is enrolled in school, the confinement must be served on nonschool days.
- prior criminal history score of 3/4 to 1-1/2 points – standard sentence range that includes no less than one day of detention, three months of supervision, 30 hours of community restitution, a \$150 fine, and a requirement that the juvenile is confined to a private residence for no less than two days. The juvenile may be subject to electronic monitoring where available. If the juvenile is enrolled in school, the confinement must be served on nonschool days.
- prior criminal history score of 2+ points – standard sentence range of no less than three days of detention, six months of community supervision, 45 hours of community restitution, a \$150 fine, and a requirement that the juvenile is confined to a private residence for no less than seven days. The juvenile may be subject to electronic monitoring where available. If the juvenile is enrolled in school, the confinement must be served on nonschool days.

Juveniles prosecuted in adult court who are later charged with an offense that is not an offense for which there is an automatic or statutory adult court jurisdiction requirement could be prosecuted in juvenile court for the subsequent offense.

When the statutory exclusion of juveniles to adult court would apply, the prosecutor, the juvenile, and the juvenile's attorney may agree to juvenile court jurisdiction and waive the application of the statutory exclusion. The court must agree to the waiver of adult court jurisdiction and removal of the case to juvenile court. In determining whether to approve the removal to juvenile court, the court must consider the following factors:

- the seriousness of the alleged offense and the extent to which the juvenile was involved;
- whether the offense was committed in an aggressive, violent, premeditated, or willful manner; and
- whether the alleged offense is against persons or property, greater weight being given to offenses against persons, especially if personal injury resulted from the offense.

A hearing on whether a juvenile should be prosecuted in adult court must be held in the following instances:

- the juvenile is 16 or 17 years old and is alleged to have committed a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony;
- the juvenile is 17 and is alleged to have committed assault in the 2nd degree, extortion in the 1st degree, indecent liberties, child molestation in the 2nd degree, kidnapping in the 2nd degree, or robbery in the 2nd degree; or
- the juvenile is alleged to have committed an escape during the time that the juvenile is serving a minimum juvenile sentence to age 21.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The largest part of this bill is clarification of some of the changes made during the 2007 session in the Omnibus Auto Theft bill. After that bill passed, and juvenile court administrators and courts implemented the changes affecting juvenile offenders, they discovered that the implementation of the bill was not uniform across the state. For example, the portion of the sentence that would require that a juvenile be committed to JRA requires that the juvenile be supervised upon his or her release from JRA. The bill clarifies that the supervision be parole supervision and not community supervision because it is the parole officers that should be doing the supervision not community probation folks. The portion dealing with the use of home detention was interpreted differently across the state. Generally, home detention is not used with juveniles and is understood to mean electronic monitoring or house arrest when applied to adults. Only about half the counties use electronic home monitoring because of a variety of reasons; therefore, in those counties that do not, juveniles were sentenced to incarceration in the juvenile detention facilities and in other counties, juveniles were electronically monitored. The result of this implementation was that some juveniles were treated more strictly than others for the same offense. This bill would assist in making sure the implementation is more uniform across the state.

CON: The juvenile justice system is to be concerned with rehabilitation, and mandatory minimum sentences in the Juvenile Code go against that philosophy. The portions of the bill requiring home detention should remain in the bill and the portions about electronic home monitoring can be removed.

Persons Testifying: PRO: Pete Peterson, Washington Association of Juvenile Court Administrators.

CON: Don Pierce, Washington Association of Sheriffs and Police Chiefs; Michael Kahrs, Washington Association of Criminal Defense Lawyers.

House Amendment(s): Reinstates the mandatory minimum fines imposed upon juveniles sentenced for the offenses of taking a motor vehicle without permission, theft of a motor vehicle, and possession of a stolen motor vehicle.

Permits the court to use its discretion whether to approve a waiver of exclusive adult court jurisdiction for 16 or 17 year olds where the parties agree to such waiver and removes the requirement that the court consider only specific facts when determining whether to approve such waiver.

Allows juvenile offenders who have previously been transferred to adult court jurisdiction as a result of a decline hearing to return to the jurisdiction of the juvenile court if the juvenile is either acquitted or convicted of a lesser offense than that considered by the court at the decline hearing.

Removes the requirement of additional home detention or electronic monitoring upon a juvenile's release from incarceration at a juvenile rehabilitation administration facility as part of that juvenile's standard range sentence.