

# HOUSE BILL REPORT

## HB 1289

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### **As Reported by House Committee On:**

Early Learning & Human Services  
Health & Human Services Appropriations & Oversight

**Title:** An act relating to juvenile court jurisdiction over offenders.

**Brief Description:** Making changes to juvenile court jurisdiction over offenders.

**Sponsors:** Representatives Dickerson, Goodman, Pedersen, Fitzgibbon, Hunt, Carlyle, Kenney, Appleton, Eddy, Moeller, Kagi and Roberts.

### **Brief History:**

#### **Committee Activity:**

Early Learning & Human Services: 2/3/11, 2/8/11 [DPS];

Health & Human Services Appropriations & Oversight: 2/18/11, 2/21/11 [DP2S(w/o sub ELHS)].

#### **Brief Summary of Second Substitute Bill**

- Eliminates the original court jurisdiction for juveniles except for juveniles charged with the offenses of Murder in the first degree or Murder in the second degree.
- Permits a juvenile, the prosecutor, or the judge to request or set a hearing, at any time prior to sentencing, to determine whether adult court jurisdiction is in the best interest of the juvenile or the public when a juvenile's case is filed or transferred to adult court.

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### **HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kagi, Chair; Roberts, Vice Chair; Dickerson, Goodman and Orwall.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Johnson and Overstreet.

**Staff:** Linda Merelle (786-7092).

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Juvenile Court Jurisdiction.

The terms "juvenile," "youth," and "child" are synonymous under Washington law. Under Washington law, a child under the age of 8 is incapable of committing a crime. Children ages 8 through 11 are presumed to be incapable of committing an offense. That presumption may be removed by clear and convincing evidence that the child had the capacity to understand the act and to know that it was wrong. Children age 12 and older are presumed to have the capacity to commit an offense or crime, which may be rebutted by evidence regarding competency.

Generally, children aged 12 through 17 (and those aged 8 through 11 for whom the state has rebutted the presumption that they are incapable of committing an offense), are under the exclusive jurisdiction of the juvenile court. There are some critical exceptions to this rule such as when a juvenile court has issued an order declining jurisdiction or when an adult court has exclusive jurisdiction over a 16 or 17 year old.

### Adult Court Jurisdiction for Persons Under Age 18.

*Decline Hearings.* There are two kinds of decline hearings: mandatory and discretionary. A decline hearing is held before the court hears the merits of an offense charged by the state. There are eight criteria that a juvenile court should consider in deciding whether to decline or keep jurisdiction. In some cases, a court may decline jurisdiction even if all of the criteria are not met. Some of the factors to be considered are whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner, as well as the sophistication and maturity of the juvenile. A court order declining jurisdiction must articulate its findings for doing so. These findings must be supported by a preponderance of the evidence.

*Mandatory.* A decline hearing is mandatory when a juvenile is 16 or 17 years old, and the information alleges a class A felony or an anticipatory offense for which the underlying offense was a class A felony. An anticipatory offense is an attempt, solicitation, or conspiracy to commit an offense. The hearing is also mandatory if the juvenile is age 17 and the information alleges Assault in the second degree, Extortion in the first degree, Indecent Liberties, Child Molestation in the second degree, Kidnapping in the second degree, or Robbery in the second degree. It is also mandatory if the information alleges an escape and the juvenile is serving a minimum juvenile sentence to age 21.

*Discretionary.* The prosecutor, the juvenile, or the court may file a motion requesting a hearing on whether the court should transfer a juvenile to adult court for criminal prosecution.

*Original Adult Court Jurisdiction.* The adult criminal court has exclusive jurisdiction over a juvenile if the juvenile is 16 or 17 years old and is alleged to have committed one of the following:

- a serious violent offense;

- a violent offense with a criminal history of: (a) one or more prior serious violent offenses; (b) two or more prior violent offenses; or (c) three or more of any combination of any class A felony, class B felony, Vehicular Assault, or Manslaughter in the second degree. All of these must have been committed after the juvenile's thirteenth birthday and prosecuted separately;
- Robbery in the first degree with a criminal history of one or more prior felony or misdemeanor offenses;
- Burglary in the first degree with one or more prior felony or misdemeanor offenses; or
- any violent offense with a firearm allegation.

*Exceptions to Adult Court Jurisdiction.* Generally, once a juvenile has been transferred to an adult criminal court, the juvenile remains an adult for all future criminal offenses. This may be referred to as "once an adult, always an adult." This rule, however, has two exceptions. If the juvenile was convicted of a lesser charge or acquitted of the charge for which he or she was transferred, the adult court will no longer have jurisdiction. The juvenile court may also have jurisdiction if a juvenile is charged with an offense after previously being transferred, but whose transferred case is no longer pending under the adult court. For example, if a 15-year-old has been convicted and completed the terms of a sentence in adult court, and he or she later commits an offense at age 17, the 17-year-old will be under the jurisdiction of the juvenile court, unless it is an offense for which there is original adult court jurisdiction or the court determines after a decline hearing that the matter should be heard in adult court.

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**Summary of Substitute Bill:**

Only juveniles charged with the offenses of Murder in the first degree and Murder in the second degree will be subject to original adult court jurisdiction. The juvenile and the prosecutor may agree to transfer the case back to juvenile court, with the permission of the adult court. For a juvenile whose case is originally filed in adult court or who has been transferred to adult court after a decline hearing, at any time before sentencing, the juvenile, the prosecutor, or the court may request a hearing to determine whether adult court jurisdiction is in the best interests of the juvenile or the public. Good cause must be shown if a hearing is requested by the juvenile or the prosecutor.

**Substitute Bill Compared to Original Bill:**

The substitute bill reinstates the adult court original jurisdiction for the offenses of Murder in the first degree and Murder in the second degree. The cases for those juveniles may be transferred to juvenile court with the agreement of the parties and the judge. For cases that are filed originally in the adult court, a juvenile, the prosecutor, or the judge may, before sentencing, request a hearing to determine whether the juvenile's case should remain in adult court.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 2, 2011.

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

**Staff Summary of Public Testimony:**

(In support) Predicting the future is never as accurate as knowing the present or past. In the automatic decline, the Legislature is making a prediction. It is making its best guess. If we have the facts in front of us during a decline hearing, we can make a better decision. This bill does not say that juveniles will remain in the juvenile court system after a decline hearing. It just means that judges will be able to consider the facts of the individual circumstances of their cases. Most of the children in the adult system would benefit from the programs and services available in the juvenile justice system. Most or all of these juveniles are amenable to treatment. Juveniles would be less likely to reoffend if they had access to services in the juvenile justice system. The United States Department of Justice studies show that 49 percent of transferred offenders reoffend compared to 35 percent in the juvenile system. Adult caseload will decrease. Jury trials are longer and more expensive.

(Opposed) The juveniles whose cases are originally filed in adult court are the worst of the worst. Original court jurisdiction removes disproportionality from the system and is more economic. These juveniles have committed the most serious crimes. No one is talking about taking away Washington's vibrant juvenile system. There is no difference functionally between someone who is 17 years 6 months old and 18 years and one day. We are talking about a practical decision recognizing the actual fact of offenders and offenses. Original adult court jurisdiction takes out the wild card of individual judges in different jurisdictions. The automatic decline puts the juvenile in a system where there is less disproportionality. There is a safety valve; the parties can agree that the case is not appropriate for adult court jurisdiction. The law provides both substantive and procedural due process. There is no necessity of the juvenile court to assess their ability to know consequences of violent acts. In 2005 the Legislature made an attempt to further restrict crimes. If convicted of a lesser offense, they can go back to juvenile court. The provision in the bill before this committee which allows a transfer back to juvenile court will result in a judicial tennis match between superior court judges. The difference between juvenile and adult court is really a difference in sentencing. Even if their case is originally filed in adult court, they can receive services in the Juvenile Rehabilitation Administration.

**Persons Testifying:** (In support) Representative Dickerson, prime sponsor; Stephen Warning, Superior Court Judges Association; Gavin Thornton, Columbia Legal Services; Paul Alig, Team Child; Travis Stearns, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Starcia Ague; and Michael Merringer, Washington Association of Juvenile Court Administrators.

(Opposed) Russ Hauge, Todd Dowell, and Wyman Yip, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** (In support) Emily Gause, Juvenile Law Section of the Washington State Bar Association; Jen Estroff, Children's Alliance; and Sandy Mullins, Sentencing Guidelines Commission.

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## **HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS & OVERSIGHT**

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Early Learning & Human Services. Signed by 6 members: Representatives Dickerson, Chair; Appleton, Vice Chair; Cody, Green, Kagi and Pettigrew.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Johnson, Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Harris, Overstreet and Walsh.

**Staff:** Amy Skei (786-7109).

### **Summary of Recommendation of Committee On Health & Human Services Appropriations & Oversight Compared to Recommendation of Committee On Early Learning & Human Services:**

The second substitute bill removes the option for a prosecutor or defendant to request a hearing to determine whether it would be in the best interests of the juvenile or the public to transfer a case from adult court to juvenile court. Language is added requiring implementation of the act be done within existing resources.

**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony:**

(In support) The revised fiscal note is still flawed. The purpose of this bill was to decrease recidivism and increase public safety. Contrary to the fiscal note it will also save money. An overwhelming number of studies have shown that all other factors equal, youth directed to adult court will continue to commit crime. This fiscal note did not take into account reduced recidivism. With respect to short-term costs, the Administrative Office of the Courts' portion of the fiscal note does not take into account reduced costs for trying cases in juvenile court instead of adult court. The local government fiscal note does take this into account. Confinement costs have also not been adequately considered in the fiscal note. A thorough Washington State Institute for Public Policy study concluded that confinement costs are higher under the automatic transfer statute than under the discretionary system. This bill will reduce costs.

(Opposed) The revised fiscal note represents a better understanding of this bill. The local government fiscal note includes savings for holding hearings in juvenile rather than adult court. However, there will be ongoing costs of approximately \$1 million per biennium due to holding new hearings in every case except Murder one and two. The Administrative Office of the Courts' fiscal note indicates capital costs to the counties, but, given the fiscal climate, counties will not incur capital costs. Projecting out the Sentencing Guidelines Commission's fiscal note results in 77 fewer beds by year 2025, so there will be some state savings. In addition, page five, line 22 of the bill allows for reverse declines for all cases. This would drive workload and could put a superior court judge in a position to overrule another superior court judge's decision. The original fiscal note states that 50 percent of cases that are handled through a declination hearing end up going to adult court, so there is not likely to be a significant decrease in the number of cases going to adult court. This bill would expend funds when the end result is going to be the same for most offenders.

**Persons Testifying:** (In support) Gavin Thornton, Columbia Legal Services.

(Opposed) Brian Enslow, Washington State Association of Counties; Tom McBride, Washington Association of Prosecuting Attorneys; and Carla Salp, Washington Coalition of Crime Victim Advocates.

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