

HOUSE BILL REPORT

HB 1096

As Reported by House Committee On:
Judiciary
Appropriations

Title: An act relating to juvenile firearms and weapons crimes.

Brief Description: Concerning juvenile firearms and weapons crimes.

Sponsors: Representatives Hurst, Hope, Takko, Hayes, Klippert, Dahlquist, Holy, Sullivan, Haigh, Blake and Parker.

Brief History:

Committee Activity:

Judiciary: 1/24/13, 2/12/13 [DPS];
Appropriations: 2/21/13, 3/1/13 [DPS(JUDI)].

Brief Summary of Substitute Bill

- Increases the penalties for juveniles found to be in Unlawful Possession of a Firearm.
- Restricts existing disposition alternatives for juvenile firearm offenses.
- Creates a disposition alternative specific to firearm offenders.
- Requires a report to the Legislature that includes a cost-benefit analysis of evidence and research-based interventions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pedersen, Chair; Hansen, Vice Chair; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Orwall and Roberts.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Klippert, Nealey and Shea.

Staff: Omeara Harrington (786-7136).

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:

Unlawful Possession of a Firearm.

First Degree.

A person is guilty of Unlawful Possession of a Firearm in the first degree if the person owns, possesses, or has in his or her control, any firearm after having previously been convicted of a serious offense. A "serious offense" includes any crime of violence, any class B felony drug offense, any class B felony with a finding of sexual motivation, any felony with a deadly weapon verdict, Vehicular Homicide and Vehicular Assault when committed while under the influence of alcohol or drugs or while driving recklessly, and a number of other specified crimes. Under the Juvenile Justice Act, Unlawful Possession of a Firearm in the first degree is a level B offense, resulting in a standard range disposition of local sanctions for the first or second offense.

Local sanctions include one or more of the following: zero to 30 days of confinement; zero to 12 months of community supervision; zero to 150 hours of community restitution; and/or a \$0 to \$500 fine. If the juvenile has two or three prior adjudications, the juvenile is subject to confinement in a Juvenile Rehabilitation Administration (JRA) facility for 15 to 36 weeks, and if there are four or more prior adjudications, a term of 52 to 65 weeks is imposed.

Second Degree.

A person is guilty of Unlawful Possession of a Firearm in the second degree if the person owns, possesses, or has in his or her control any firearm and the person:

- has previously been convicted of any felony (other than a serious offense);
- has previously been convicted of certain specified gross misdemeanors;
- has previously been involuntarily committed for mental health treatment;
- is under the age of 18 (with some exceptions); or
- is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

Under the Juvenile Justice Act, Unlawful Possession of a Firearm in the second degree is categorized as a level C offense. This results in a standard range disposition of local sanctions, with a presumptive minimum of 10 days of confinement if the violation is based on possession of a firearm as a person under 18 years old. If the juvenile has four or more prior adjudications, he or she is subject to JRA confinement for a term of 15 to 36 weeks.

Juvenile Sentencing Alternatives.

Manifest Injustice.

Washington uses a determinate sentencing structure in committing juvenile offenders. Youth committed to JRA custody have court determined minimum and maximum sentence terms. Sentence length is determined using a point system that takes offense seriousness and criminal history into account. In determining the punishment to be imposed, the court must consider both aggravating and mitigating circumstances.

Juvenile courts have the authority to sentence outside the standard range through a finding of "Manifest Injustice." A judge or juvenile court commissioner can find that the standard range sentence is either too lenient for the seriousness of the offense and order a longer term of confinement (Manifest Injustice Up), or overly punitive and order a sentence less than the

standard range (Manifest Injustice Down). The court's finding of Manifest Injustice must be supported by clear and convincing evidence. Manifest Injustice dispositions also carry determinate minimum and maximum sentence terms.

Deferred Disposition.

A disposition is the juvenile court equivalent of sentencing in adult court, and a deferred disposition in juvenile court is analogous to a deferred prosecution in adult court. The juvenile offender is found guilty at the time that the court agrees to allow a deferred disposition. A deferred disposition requires a juvenile to complete certain conditions set out by the court including probation and payment of restitution, in exchange for having the charges dismissed. A juvenile is eligible for a deferred disposition unless he or she: is charged with a sex or violent offense; has a criminal history that includes any felony; or has two or more prior adjudications.

Summary of Substitute Bill:

Unlawful Possession of a Firearm.

Unlawful Possession of a Firearm crimes are recategorized and the penalties increased under the juvenile offender sentencing standards:

- Unlawful Possession of a Firearm in the first degree is raised to offense category A-, carrying a JRA sentence of 15 to 36 weeks on a first offense, and 30 to 40 weeks if the juvenile is at least 15 years old. The terms increase incrementally depending on number of prior adjudications with a maximum of 103 to 129 weeks if the juvenile has four or more prior offenses.
- Unlawful Possession of a Firearm in the second degree is raised to offense category B+, if the charge is based on a reason other than being in possession under the age of 18, or a second or subsequent violation of unlawful possession based on minority age. This offense category carries a JRA sentence of 15 to 36 weeks for the first offense, or with one prior adjudication. The terms increase incrementally depending on number of prior adjudications with a maximum of 103 to 129 weeks if the juvenile has four or more prior offenses.
- A first adjudication for Unlawful Possession of a Firearm in the second degree on grounds of being in possession under the age of 18 remains a class C offense, carrying local sanctions, with a presumptive minimum of 10 days of confinement.

Juvenile Sentencing Alternatives.

Manifest Injustice.

The court's discretion to impose a manifest injustice sentence for Unlawful Possession of a Firearm or crimes in which the juvenile was armed with a firearm is removed in most cases. If a juvenile is found to have committed the crime of Unlawful Possession of a Firearm, either in the first or second degree on any grounds, and there is a standard range sentence of over 30 days (a JRA sentence), that sentence must stand. A first offense of Unlawful Possession of a Firearm in the second degree based solely on grounds of being in possession under the age of 18 carries a mandatory minimum sentence of 10 days in confinement; however, the court may deviate from the standard range if the juvenile has no prior criminal history.

Deferred Disposition.

Unlawful Possession of a Firearm in the second degree (unless on grounds of minor age), Theft of a Firearm, and Possession of a Stolen Firearm are added to the list of crimes and circumstances that disqualify a juvenile from receiving a deferred disposition.

Firearm Disposition Alternative.

A new disposition alternative is created specific to firearm offenses. The court has discretion to impose the alternative in lieu of a standard range disposition for Unlawful Possession of a Firearm on grounds of minor age, Theft of a Firearm, or Possession of a Stolen Firearm, if certain qualifying criteria are met:

- the court must determine that the juvenile may benefit from an intensive intervention aimed at reducing aggressive or violent behavior;
- if the juvenile's standard range disposition is local sanctions, the juvenile cannot have had a prior adjudication for certain listed firearm offenses; if the offender's standard range disposition is commitment to a JRA facility, the offender cannot have had more than one prior adjudication for certain listed firearm offenses; and
- the juvenile cannot have been previously adjudicated of a violent offense.

The standard range disposition will be imposed unless the juvenile complies with certain conditions. The juvenile must participate in an intensive intervention that utilizes evidence-based practices that have been proven effective for reducing aggressive or violent behavior. Depending on the standard range disposition for the underlying offense, the juvenile must additionally either comply with six months of community supervision or one or more local sanctions.

If the juvenile had no prior adjudication for Unlawful Possession of a Firearm, Theft of a Firearm, or Possession of a Stolen Firearm, and complies with all of the terms of the sentencing alternative, the court must take action to clear the juvenile's record. Specifically, the court must dismiss the case with prejudice, vacate the judgment, and seal the record.

Report to the Legislature.

The Administrative Office of the Courts must collect and analyze data regarding evidence- and research-based interventions provided to juvenile firearm offenders. The Washington State Institute for Public Policy is required to study the data and report to the Legislature regarding recidivism and a cost-benefit analysis of provided interventions.

Substitute Bill Compared to Original Bill:

If a juvenile with no prior criminal history is before the court for a first offense of Unlawful Possession of a Firearm based on minor age and the court finds that a standard range disposition would effectuate a manifest injustice, the court may impose another disposition.

The court may defer a disposition for a juvenile charged with Unlawful Possession of a Firearm in the second degree based solely on minor age.

A new disposition alternative specific to firearm offenses is created, and may be imposed in lieu of a standard range sentence in qualifying cases. Use of the alternative is at the

discretion of the court, and requires the juvenile to undergo an intensive intervention that utilizes evidence-based practices that have been proven effective for reducing aggressive or violent behavior. If the juvenile does not comply with the alternative, the standard range disposition is imposed.

The Washington State Institute for Public Policy must submit a report to the legislature based on data provided the Administrative Office of the Courts regarding evidence- and research-based interventions and recidivism.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 14, 2013.

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) There has been an uncharacteristic amount of gun violence in this region in the last year. There is a deficit in how juvenile firearm crimes are handled, which sends the wrong message. It currently takes five offenses to impose a JRA disposition. This bill eliminates the loophole that allows judges to avoid imposing the 10-day minimum detention that the current law calls for. The other sentences are for relatively short terms. The changes will not affect kids who are using firearms for hunting.

We can intervene with juveniles, and make use of the juvenile system, which is rehabilitative rather than punitive. Young kids are making the mistakes that are expected of people their age, except they have guns with them. This intervention is an opportunity to educate youth and get them out of gangs. It is not acceptable to do nothing, and this will prevent future violence.

There is room in the JRA to handle the increase in dispositions, and there is no requirement of what the curriculum has to be once the juvenile is there.

(Opposed) This debate has been repeated multiple times. This is not a good use of resources, and is based on an outdated and discredited model. There is no evidence that this will reduce youth violence. Early entry into the system puts kids into contact with gang members and creates a cycle.

This proposal takes discretion away from the person who is in the best position to decide what disposition is appropriate. These sentences are an option under current law, and judges do not use them. These dispositions are on par with those for crimes that involve death and serious injury. If someone is ready for a deferral, they should be able to have one.

Prevention and intervention is a successful model. It would be a better use of resources to add to the funds put toward good efforts last year. Money is better spent up the line on wrap-around services and gang intervention programs.

Persons Testifying: (In support) Representative Hurst, prime sponsor; Dan Satterberg, King County Prosecuting Office; Dusty Pierpoint, Lacey Police Department; and Mark Lindquist, Pierce County Prosecuting Attorneys.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington; and Travis Stearn, Washington Defense Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Hunter, Chair; Alexander, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Dahlquist, Dunshee, Fagan, Haigh, Haler, Hudgins, Hunt, Jinkins, Kagi, Maxwell, Pedersen, Ross, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 11 members: Representatives Ormsby, Vice Chair; Chandler, Assistant Ranking Minority Member; Cody, Green, Harris, Morrell, Parker, Pettigrew, Pike, Schmick and Taylor.

Staff: Mary Mulholland (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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) The overriding theme of this session is the need to educate youth. This bill would educate youth who illegally carry firearms, who may need to be educated the most and right away. The King County Prosecuting Attorney's Office prefers deferring to a specific firearm disposition alternative rather than a general disposition alternative. The firearm disposition alternative defers to a specific curriculum that will get the right message across to kids. The fiscal note may not have been modified to reflect the addition of the firearm disposition alternative. There are likely to be very few youth who have been convicted three

times of unlawful gun possession. The goal is to pay attention before someone is killed and intervene with a meaningful message to prevent youth violence. Saving one kid from a 30-year adult sentence could easily make the bill pay for its price tag.

If the bill costs \$3.4 million or \$6.1 million, the state is not going to do it. If the bill costs less than \$1 million, the state is going to have a good conversation on whether the bill is worth the investment. Luckily, that is what the bill costs. The capital expenditures section in the fiscal note talks about valid issues for an agency request, but these issues are not driven by the bill. The cost of the bill will be south of the \$956,000 estimate, which may be further reduced due to the Judiciary Committee amendment which allows youth who have committed two offenses prior to going to the Juvenile Rehabilitation Administration (JRA) as opposed to only the first offense. The Washington Association of Prosecuting Attorneys hopes that the committee spends enough time with the bill to be comfortable that it does not have a big number attached to it.

The bill costs something, but it is not exorbitant in the scheme of things. Very few, if any, juveniles commit a drive-by shooting as their first act of delinquency. Every case with a tragic outcome in which someone is killed has been led to by some progression of delinquency. Society has an obligation, when delinquency escalates to carrying firearms and firearms offenses for a third time, to send kids to a place where they can understand the ramifications of their actions and avoid long-term Department of Corrections (DOC) commitment, which is worse for their families and communities.

(Opposed) Even as amended, the bill is a bad use of funds. It flies in the face of what is known to control youth violence. The state has still not taken to heart that lesson that it should spend far up the pipeline before the youth becomes involved in a violent lifestyle. This bill started out draconian, and it is still in that category. The bill purports to offer an intervention, but an intervention happens before a youth picks up a gun. The cost of the bill will still be in the seven figures. The Legislature needs evidence and should stop ratcheting up laws one ratchet at a time. That is what leads to the current structure of mass incarceration.

There is no emergency to fix. Juvenile crime in Washington is down to record lows. Washington is a leader in juvenile justice because it has invested in preventative measures to reduce recidivism and crime among juveniles. There is no evidence that increased sentencing laws have an impact worth their cost. Longer sentences take kids away from their support systems and community resources, and are not shown to reduce recidivism or crime. In many studies, the opposite happens. The Washington State Institute for Public Policy study is a good idea, but increasing prison time for juveniles is not.

The Legislature should instead use funding to help families meet their basic needs and for prevention and diversion activities such as social or school-based programs that help prevent violence and stabilize families. The Legislature should find and fund smart alternatives and evidence-based policies in the juvenile justice system.

The bill is not good for kids and does not reduce disproportionate minority contact with the juvenile justice system for kids of color. With the obvious exception of well-trained kids

hunting and sport-shooting responsibly, everyone wants fewer children to be carrying guns or devastated by gang involvement, but this bill is not the way to do that.

There will be costs for additional trials to public defenders, prosecutors, and local detention centers when the standard sentencing ranges are increased. The Legislature has done things to create failure in youth, such as taking away Functional Family Parole a couple of years ago.

Gun violence has reached epidemic proportions in our communities. A common-sense approach is needed, but young brains respond better to a preventative approach than a repressive one.

Persons Testifying: (In support) Dan Satterberg, King County Prosecuting Attorney's Office; Tom McBride, Washington Association of Prosecuting Attorneys; and Don Pierce, Sheriffs and Police Chiefs Association.

(Opposed) Shankar Narayan, American Civil Liberties Union-Washington; Travis Stearns, Washington Defenders Association; Marcy Bowers, Statewide Poverty Action Network; Jen Estroff, Children's Alliance; Elinor Cromwell, Society of Counsel Representing Accused Persons; and Jaime Garcia, Consejo Counseling and Referral Service and Minority Executive Directors Coalition.

Persons Signed In To Testify But Not Testifying: None.