



STATE OF WASHINGTON

**SENTENCING GUIDELINES COMMISSION**

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December 12, 2008

**MEMORANDUM**

**TO:** SGC

**FROM:** Jean Soliz-Conklin

**RE:** Juvenile Justice Committee Proposals for 2009 Legislature

**ACTION REQUESTED:** The Commission is asked to select proposals to the 2009 legislature.

**Background**

The SGC created a Juvenile Justice Committee to fulfill the mandates of RCW 9.94A.850, which requires the Commission to regularly evaluate and make recommendations on:

- the effectiveness of juvenile disposition standards and related statutes.
- revisions or modifications to juvenile disposition standards

The Juvenile Justice Committee is co-chaired by Commissioners Sherry Appleton (State Representative) and Ned Delmore (Juvenile Court Administrator). The committee met regularly through 2008, as a group and in subgroups. Numerous community experts joined the various subcommittees.

**Proposals**

The Juvenile Justice Committee has a large workplan, but selected only a few ideas and subject areas to bring forward at this time. Some of the proposals do not have full committee support, so the presenters are purposely chosen to represent differing perspectives. The Juvenile Justice Committee members know about the breadth of experience on the Commission and look forward to a full discussion at the SGC meeting.

## SGC Juvenile Justice Committee List of Proposals by Issue

### A. Declination: Mandatory and Discretionary Adult Jurisdiction over Certain Juvenile Offenses

**Proposal #1: Set the minimum age for declination as age 15, with an exception if the offense is an "A+" felony. A+ felonies are defined as: Murder 1 and Murder 2 (RCW 13.40.0357).**

Currently, any party or the court may set a hearing to request that juvenile court jurisdiction be declined so the criminal case can be heard in adult court. This discretionary jurisdiction decision is based on factors set by case law.

**Concept:** This proposal would prohibit any juvenile under 15 years old from being transferred to adult court unless the charge is for an A+ felony.

**Rationale:** Scientific research regarding juvenile brain development has shown that juveniles are both less culpable than adults for their actions and more amenable to rehabilitation than adults. In recognition of this scientific evidence, this proposal is intended to recognize both findings by retaining juveniles in the juvenile system where they will have access to more robust rehabilitative programming. This is balanced by allowing the prosecution to seek transfer to adult court of juveniles over 12 years old and under 15 years old who are charged with the most serious violent crimes.

**Proposal #2: Modify the exclusive original jurisdiction statute (RCW 13.04.030) to remove subpart (1)(e)(v)(D), which currently requires original adult court jurisdiction for a burglary in the first degree where the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses. See Table 1.**

**Concept:** RCW 13.04.030 discusses exceptions to exclusive original jurisdiction for juvenile courts. Currently, juveniles who are sixteen or seventeen on the date of the offense and have committed certain offenses are automatically under the adult court jurisdiction with some exceptions.

One exception to a juvenile court jurisdiction is a sixteen or seventeen year old who has committed burglary first degree on or after July 1, 1997, when the juvenile has a criminal history of one or more felony or misdemeanor offenses. This proposal removes this provision. It does not prohibit the prosecution from seeking a discretionary decline of a juvenile aged 15 or older who has been charged with burglary first degree.

**Rationale:** This proposal is based on the notion that mandatory adult court jurisdiction should be limited, at a minimum, to those cases in which a juvenile is charged with a serious crime and/or has a serious criminal history. Eliminating subpart (1)(e)(v)(D) would bring this statute closer to that goal for two reasons. First, as currently written, the law would require adult court jurisdiction based on a previous misdemeanor conviction, which is the least serious criminal conviction under Washington law. Second, there is no

need to separate out burglary in the first degree. As a class A felony, burglary in the first degree falls within the definition of a "violent offense," and therefore is already captured in subparts (1)(e)(v)(B) and (1)(3)(v)(E). *See Table 1.*

**Proposal #3: Allow the court to waive exclusive original jurisdiction upon agreement of the prosecutor and defense counsel, if the court finds that certain criteria are satisfied**

**Concept:** On a case-by-case basis, there may be agreement between prosecution and defense that a juvenile who, under current law, must be tried in adult court, would more appropriately be retained in juvenile court. Currently, there is no statutory mechanism to allow or approve this waiver. A change in the process could allow parties to agree to the waiver with court approval.

**Rationale:** There are circumstances which would warrant juvenile court jurisdiction on the original crime charged even though that crime would otherwise require original adult court jurisdiction. This change would allow the transfer back to juvenile court without the prosecution having to justify a reduction in the charge.

**B. Modify the "Once an Adult, Always an Adult Rule"**

**Proposal #1: Eliminate the "once an adult always an adult" rule in RCW 13.40.020(14).**

Currently, a person under 18 is not considered a juvenile if they have been previously declined to adult court following a declination hearing or if the juvenile remains under adult court jurisdiction due to a previous charge involving original adult court jurisdiction, regardless of whether the juvenile was found not guilty of the prior charge.

**Concept:** This proposal would reinstate the juvenile status to a person under the age of 18 who is no longer under adult court jurisdiction. Adult court jurisdiction would be determined by current offense and current individual factors (identified mental illness, developmental disability, etc.), not prior adult court history.

**Rationale:** This proposal is based on the notion that absent a charge for which original adult court jurisdiction is mandatory, a juvenile should not be tried as an adult without a review and finding by the court that a transfer to adult court is appropriate at that time. When making a determination on declination, the court requires a number of factors related to the nature and severity of the crime and the individual circumstances of the juvenile. Both may change drastically from offense to offense or over time.

Regarding the former, the new offense may be minor in comparison to the original charge which served as the basis of a declination to adult court. Current law also does not account for the fact that the juvenile may have been found not guilty of the original

offense for which s/he was declined or guilty of a lesser offense for which declination was not available.

Regarding the latter, the circumstances of a particular juvenile may also change between charged offenses – including the development or identification of mental illnesses or developmental disabilities which were unknown at the time of the original declination. Current law would not allow the court an opportunity to consider that evidence, even if it would support a finding that the juvenile would be amenable to rehabilitation in the juvenile system.

(Alternative) Proposal #2: Provide for a decline hearing in circumstances where a youth was transferred to adult court for a prior offense without a hearing under exclusive adult court jurisdiction provisions and the youth commits a second offense which may be transferred to adult court.

**Concept:** If the youth is charged with another crime which qualifies for discretionary transfer to adult court and no prior declination hearing has taken place, the offender is entitled to a hearing to the appropriateness of transfer to adult jurisdiction.

**Rationale:** Currently, once a juvenile is declined to adult court jurisdiction, he or she is automatically transferred for all future criminal actions, even if he or she has never had a hearing where the court can examine the factors related to transfer.

### **C. Juveniles Sentenced to Life Without the Possibility of Parole**

**Proposal #1: Change the law to eliminate the sentencing of juveniles to life without the possibility of parole. Prospectively, the change would require that offenders who committed their crime before age 18 may be sentenced up to a level 15 seriousness level only. (This would eliminate life without parole sentences currently mandated at level 16; death sentences for juveniles have already been prohibited by the U.S. Supreme Court.) There are numerous ways that retroactive change could be instituted. For example, the legislature could set a minimum sentence which would apply to each offender, as well as a time table for periodic review of those sentences.**

**Concept:** Washington Law allows the sentencing of juveniles to life without the possibility of parole. The only crime that allows for a sentence to life without parole for juveniles is aggravated first degree murder. (RCW 9.94A.515). This proposal would make an exception for juveniles and sentence them to a seriousness level 15 instead of 16. Level 15 offenses currently include Murder 1, Homicide by Abuse, and Malicious Explosion 1. Level 15 includes a range from 23 years 4 months to 40 years based on offender score. In addition, courts would retain the authority to impose an exceptional sentence beyond the statutory range pursuant to RCW 9.94A.535 and RCW 9.94A.537 as well as to run multiple sentences consecutively.

The change would also apply to juveniles who have previously been sentenced to life without the possibility of parole. Currently it is estimated that there are 28 offenders that committed their offenses while they were a juvenile, who are serving life without the possibility of parole. For each, the sentence of life without the possibility of parole was a mandatory minimum sentence; in other words, the sentencing court had no option to utilize a lesser sentence.

**Rationale:** As noted above, juvenile brain development research has shown that juveniles are less culpable than adults and more amenable than adults to rehabilitation. The sentence of life without the possibility of parole for juveniles ignores that lesser culpability as well as the possibility of rehabilitation. This change would ensure that courts have the authority to sentence young offenders to lengthy sentences which hold them accountable for their actions but also provide youth with an incentive to work towards rehabilitation while in prison. Access to meaningful, periodic review of a sentence would not ensure release of any youthful offender.

**(Alternative) Proposal #2: Request that DOC provide programming to offenders who committed their crime before age 18, regardless of their status as a Level 16 life-sentenced felon.**

**Rationale:** When juveniles are sentenced to life without parole their access to programs and services is extremely limited. This produces two areas of concern. First, when juveniles are sentenced to life without parole and have little or nothing constructive to do while incarcerated, they can become a higher security threat. Second, juveniles are unable to make a case for clemency without programs. Additionally, research shows juveniles are more receptive to rehabilitative efforts because of their evolving brain and social development, so programming can be more effective than with adults.

#### **D. Modify the Relief from Registration Requirements for Juveniles**

**Proposal: Require the Washington State Patrol to annually notify offenders sentenced for a sex offense and required to register for an offense committed prior to their 18<sup>th</sup> birthday about the statutory right to relief from registration requirements under RCW 9A.44.145. Provide a right to counsel for youth seeking relief from registration.**

**Concept:** Create a new section which separates out the relief of registration statutes for juvenile sex offenders. Include a right to counsel for juveniles who wish to petition the court for relief. Amend current law to send notice annually to notify offenders sentenced for a sex offense and required to register for an offense committed prior to their 18<sup>th</sup> birthday about the statutory right to relief from registration requirements. No changes to the requirements for relief from registration are proposed.

**Rationale:**

Currently, the law allows juveniles convicted of sex offense to petition to be relieved from the registration requirement. The committee determined that these opportunities to be relieved were not being utilized by juveniles because they did not know about them or could not afford the process. Public defense funds are not provided for this process. The Washington State Patrol maintains the central sex offender registration registry.

**NOTE:** Washington State does not have a separate sex offender registration and notification process for juveniles. The Juvenile Justice Committee also found that the current registration and notification requirements create numerous issues that interfere with the rehabilitation of youth. Those findings will be in the form of recommendations to the Sex Offender Policy Board, which has been directed by the legislature to make recommendations about the adult and juvenile sex offender registration system by November, 2009.

**TABLE 1: DECLINE HEARINGS AND EXCLUSIVE ADULT JURISDICTION**

	Under age 15	15 Years of Age	16 Years of Age	17 Years of Age
Decline Motion	Optional	Optional	<ol style="list-style-type: none"> <li>1) Class "A" Felony</li> <li>2) Attempt to Commit Class "A" Felony</li> <li>3) Solicitation to Commit Class "A" Felony</li> <li>4) Conspiracy to Commit Class "A" Felony</li> </ol>	
Exclusive Adult Jurisdiction	Never	Optional	<ol style="list-style-type: none"> <li>1) Serious Violent Offense</li> <li>2) Violent Offense With One or More Prior Serious Violent Offense</li> <li>3) Violent Offense With Two (2) or more Prior Violent Offenses</li> <li>4) Violent Offense With a Firearm Enhancement</li> <li>5) Violent Offense With Any Three (3) or more of the Following, Each Prosecuted Separately and Committed After Respondent's 13<sup>th</sup> Birthday                             <ul style="list-style-type: none"> <li>Class "A" Felony</li> <li>Class "B" Felony</li> <li>Vehicular Assault</li> <li>Manslaughter 2</li> </ul> </li> <li>6) Robbery 1</li> <li>7) Child Rape 1</li> <li>8) Drive-by Shooting</li> </ol>	<ol style="list-style-type: none"> <li>Robbery 2</li> <li>Assault 2</li> <li>Kidnapping 2</li> <li>Child Molestation 2</li> <li>Indecent Liberties</li> <li>Extortion 1</li> </ol>

Deleted: 9) Burglary 1 With Any Prior Misdemeanor or Felony Offense

**\* If Any Respondent escapes from a JRA commitment until age 21, a Decline Hearing Shall be set**

**Serious Violent Offenses:** Any of the following, whether complete, attempt, solicitation, or conspiracy: Murder 1, Murder 2, Homicide by Abuse, Manslaughter 1, Assault 1, Rape 1, Kidnapping 1, Assault of a Child 1, Any comparable Federal or out-of-state conviction classified as a serious violent offense

**Violent Offenses:** Class "A" Felony (which includes Burglary 1), Attempt, Solicitation, or Conspiracy to Commit Class "A" Felony, Manslaughter 1, Manslaughter 2, Indecent Liberties w/Forcible Compulsion, Kidnapping 2, Arson 2, Assault 2, Assault of a Child 2, Robbery 2, Extortion 1, Vehicular Assault (DWI or Reckless), Vehicular Homicide (DWI or Reckless), Any comparable Federal or out-of-state conviction classified as a violent offense