
SENATE BILL 6396

State of Washington

63rd Legislature

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By Senators Darneille, Cleveland, Kohl-Welles, Chase, and McAuliffe

Read first time 01/23/14. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to allowing youthful offenders who complete their
2 sentences prior to age twenty-one equal access to a full continuum of
3 rehabilitative and reentry services; and amending RCW 9.94A.728,
4 13.40.020, 13.40.110, 72.01.410, and 72.05.020.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9.94A.728 and 2010 c 224 s 6 are each amended to read
7 as follows:

8 No person serving a sentence imposed pursuant to this chapter and
9 committed to the custody of the department shall leave the confines of
10 the correctional facility or be released prior to the expiration of the
11 sentence except as follows:

12 (1) An offender may earn early release time as authorized by RCW
13 9.94A.729;

14 (2) An offender may leave a correctional facility pursuant to an
15 authorized furlough or leave of absence. In addition, offenders may
16 leave a correctional facility when in the custody of a corrections
17 officer or officers;

18 (3)(a) The secretary may authorize an extraordinary medical
19 placement for an offender when all of the following conditions exist:

1 (i) The offender has a medical condition that is serious and is
2 expected to require costly care or treatment;

3 (ii) The offender poses a low risk to the community because he or
4 she is currently physically incapacitated due to age or the medical
5 condition or is expected to be so at the time of release; and

6 (iii) It is expected that granting the extraordinary medical
7 placement will result in a cost savings to the state.

8 (b) An offender sentenced to death or to life imprisonment without
9 the possibility of release or parole is not eligible for an
10 extraordinary medical placement.

11 (c) The secretary shall require electronic monitoring for all
12 offenders in extraordinary medical placement unless the electronic
13 monitoring equipment interferes with the function of the offender's
14 medical equipment or results in the loss of funding for the offender's
15 medical care, in which case, an alternative type of monitoring shall be
16 utilized. The secretary shall specify who shall provide the monitoring
17 services and the terms under which the monitoring shall be performed.

18 (d) The secretary may revoke an extraordinary medical placement
19 under this subsection at any time.

20 (e) Persistent offenders are not eligible for extraordinary medical
21 placement;

22 (4) The governor, upon recommendation from the clemency and pardons
23 board, may grant an extraordinary release for reasons of serious health
24 problems, senility, advanced age, extraordinary meritorious acts, or
25 other extraordinary circumstances;

26 (5) No more than the final six months of the offender's term of
27 confinement may be served in partial confinement designed to aid the
28 offender in finding work and reestablishing himself or herself in the
29 community or no more than the final twelve months of the offender's
30 term of confinement may be served in partial confinement as part of the
31 parenting program in RCW 9.94A.6551. This is in addition to that
32 period of earned early release time that may be exchanged for partial
33 confinement pursuant to RCW 9.94A.729(5)(d). Offenders residing in a
34 juvenile correctional facility placement pursuant to RCW 72.01.410(1)
35 are not subject to the limitations in this section;

36 (6) The governor may pardon any offender;

37 (7) The department may release an offender from confinement any

1 time within ten days before a release date calculated under this
2 section;

3 (8) An offender may leave a correctional facility prior to
4 completion of his or her sentence if the sentence has been reduced as
5 provided in RCW 9.94A.870; and

6 (9) Notwithstanding any other provisions of this section, an
7 offender sentenced for a felony crime listed in RCW 9.94A.540 as
8 subject to a mandatory minimum sentence of total confinement shall not
9 be released from total confinement before the completion of the listed
10 mandatory minimum sentence for that felony crime of conviction unless
11 allowed under RCW 9.94A.540.

12 **Sec. 2.** RCW 13.40.020 and 2012 c 201 s 1 are each amended to read
13 as follows:

14 For the purposes of this chapter:

15 (1) "Community-based rehabilitation" means one or more of the
16 following: Employment; attendance of information classes; literacy
17 classes; counseling, outpatient substance abuse treatment programs,
18 outpatient mental health programs, anger management classes, education
19 or outpatient treatment programs to prevent animal cruelty, or other
20 services; or attendance at school or other educational programs
21 appropriate for the juvenile as determined by the school district.
22 Placement in community-based rehabilitation programs is subject to
23 available funds;

24 (2) "Community-based sanctions" may include one or more of the
25 following:

26 (a) A fine, not to exceed five hundred dollars;

27 (b) Community restitution not to exceed one hundred fifty hours of
28 community restitution;

29 (3) "Community restitution" means compulsory service, without
30 compensation, performed for the benefit of the community by the
31 offender as punishment for committing an offense. Community
32 restitution may be performed through public or private organizations or
33 through work crews;

34 (4) "Community supervision" means an order of disposition by the
35 court of an adjudicated youth not committed to the department or an
36 order granting a deferred disposition. A community supervision order
37 for a single offense may be for a period of up to two years for a sex

1 offense as defined by RCW 9.94A.030 and up to one year for other
2 offenses. As a mandatory condition of any term of community
3 supervision, the court shall order the juvenile to refrain from
4 committing new offenses. As a mandatory condition of community
5 supervision, the court shall order the juvenile to comply with the
6 mandatory school attendance provisions of chapter 28A.225 RCW and to
7 inform the school of the existence of this requirement. Community
8 supervision is an individualized program comprised of one or more of
9 the following:

10 (a) Community-based sanctions;

11 (b) Community-based rehabilitation;

12 (c) Monitoring and reporting requirements;

13 (d) Posting of a probation bond;

14 (5) "Confinement" means physical custody by the department of
15 social and health services in a facility operated by or pursuant to a
16 contract with the state, or physical custody in a detention facility
17 operated by or pursuant to a contract with any county. The county may
18 operate or contract with vendors to operate county detention
19 facilities. The department may operate or contract to operate
20 detention facilities for juveniles committed to the department.
21 Pretrial confinement or confinement of less than thirty-one days
22 imposed as part of a disposition or modification order may be served
23 consecutively or intermittently, in the discretion of the court;

24 (6) "Court," when used without further qualification, means the
25 juvenile court judge(s) or commissioner(s);

26 (7) "Criminal history" includes all criminal complaints against the
27 respondent for which, prior to the commission of a current offense:

28 (a) The allegations were found correct by a court. If a respondent
29 is convicted of two or more charges arising out of the same course of
30 conduct, only the highest charge from among these shall count as an
31 offense for the purposes of this chapter; or

32 (b) The criminal complaint was diverted by a prosecutor pursuant to
33 the provisions of this chapter on agreement of the respondent and after
34 an advisement to the respondent that the criminal complaint would be
35 considered as part of the respondent's criminal history. A
36 successfully completed deferred adjudication that was entered before
37 July 1, 1998, or a deferred disposition shall not be considered part of
38 the respondent's criminal history;

1 (8) "Department" means the department of social and health
2 services;

3 (9) "Detention facility" means a county facility, paid for by the
4 county, for the physical confinement of a juvenile alleged to have
5 committed an offense or an adjudicated offender subject to a
6 disposition or modification order. "Detention facility" includes
7 county group homes, inpatient substance abuse programs, juvenile basic
8 training camps, and electronic monitoring;

9 (10) "Diversion unit" means any probation counselor who enters into
10 a diversion agreement with an alleged youthful offender, or any other
11 person, community accountability board, youth court under the
12 supervision of the juvenile court, or other entity except a law
13 enforcement official or entity, with whom the juvenile court
14 administrator has contracted to arrange and supervise such agreements
15 pursuant to RCW 13.40.080, or any person, community accountability
16 board, or other entity specially funded by the legislature to arrange
17 and supervise diversion agreements in accordance with the requirements
18 of this chapter. For purposes of this subsection, "community
19 accountability board" means a board comprised of members of the local
20 community in which the juvenile offender resides. The superior court
21 shall appoint the members. The boards shall consist of at least three
22 and not more than seven members. If possible, the board should include
23 a variety of representatives from the community, such as a law
24 enforcement officer, teacher or school administrator, high school
25 student, parent, and business owner, and should represent the cultural
26 diversity of the local community;

27 (11) "Foster care" means temporary physical care in a foster family
28 home or group care facility as defined in RCW 74.15.020 and licensed by
29 the department, or other legally authorized care;

30 (12) "Institution" means a juvenile facility established pursuant
31 to chapters 72.05 and 72.16 through 72.20 RCW;

32 (13) "Intensive supervision program" means a parole program that
33 requires intensive supervision and monitoring, offers an array of
34 individualized treatment and transitional services, and emphasizes
35 community involvement and support in order to reduce the likelihood a
36 juvenile offender will commit further offenses;

37 (14) "Juvenile," "youth," and "child" mean any individual who is
38 under the chronological age of eighteen years and who has not been

1 previously transferred to adult court pursuant to RCW 13.40.110, unless
2 the individual was convicted of a lesser charge or acquitted of the
3 charge for which he or she was previously transferred pursuant to RCW
4 13.40.110 or who is not otherwise under adult court jurisdiction, or
5 who is serving an adult sentence with the department of social and
6 health services pursuant to RCW 72.01.410(1);

7 (15) "Juvenile offender" means any juvenile who has been found by
8 the juvenile court to have committed an offense, including a person
9 eighteen years of age or older over whom jurisdiction has been extended
10 under RCW 13.40.300, or who is serving an adult sentence with the
11 department of social and health services pursuant to RCW 72.01.410(1);

12 (16) "Labor" means the period of time before a birth during which
13 contractions are of sufficient frequency, intensity, and duration to
14 bring about effacement and progressive dilation of the cervix;

15 (17) "Local sanctions" means one or more of the following: (a) 0-
16 30 days of confinement; (b) 0-12 months of community supervision; (c)
17 0-150 hours of community restitution; or (d) \$0-\$500 fine;

18 (18) "Manifest injustice" means a disposition that would either
19 impose an excessive penalty on the juvenile or would impose a serious,
20 and clear danger to society in light of the purposes of this chapter;

21 (19) "Monitoring and reporting requirements" means one or more of
22 the following: Curfews; requirements to remain at home, school, work,
23 or court-ordered treatment programs during specified hours;
24 restrictions from leaving or entering specified geographical areas;
25 requirements to report to the probation officer as directed and to
26 remain under the probation officer's supervision; and other conditions
27 or limitations as the court may require which may not include
28 confinement;

29 (20) "Offense" means an act designated a violation or a crime if
30 committed by an adult under the law of this state, under any ordinance
31 of any city or county of this state, under any federal law, or under
32 the law of another state if the act occurred in that state;

33 (21) "Physical restraint" means the use of any bodily force or
34 physical intervention to control a juvenile offender or limit a
35 juvenile offender's freedom of movement in a way that does not involve
36 a mechanical restraint. Physical restraint does not include momentary
37 periods of minimal physical restriction by direct person-to-person

1 contact, without the aid of mechanical restraint, accomplished with
2 limited force and designed to:

3 (a) Prevent a juvenile offender from completing an act that would
4 result in potential bodily harm to self or others or damage property;

5 (b) Remove a disruptive juvenile offender who is unwilling to leave
6 the area voluntarily; or

7 (c) Guide a juvenile offender from one location to another;

8 (22) "Postpartum recovery" means (a) the entire period a woman or
9 youth is in the hospital, birthing center, or clinic after giving birth
10 and (b) an additional time period, if any, a treating physician
11 determines is necessary for healing after the youth leaves the
12 hospital, birthing center, or clinic;

13 (23) "Probation bond" means a bond, posted with sufficient security
14 by a surety justified and approved by the court, to secure the
15 offender's appearance at required court proceedings and compliance with
16 court-ordered community supervision or conditions of release ordered
17 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
18 cash or posting of other collateral in lieu of a bond if approved by
19 the court;

20 (24) "Respondent" means a juvenile who is alleged or proven to have
21 committed an offense;

22 (25) "Restitution" means financial reimbursement by the offender to
23 the victim, and shall be limited to easily ascertainable damages for
24 injury to or loss of property, actual expenses incurred for medical
25 treatment for physical injury to persons, lost wages resulting from
26 physical injury, and costs of the victim's counseling reasonably
27 related to the offense. Restitution shall not include reimbursement
28 for damages for mental anguish, pain and suffering, or other intangible
29 losses. Nothing in this chapter shall limit or replace civil remedies
30 or defenses available to the victim or offender;

31 (26) "Restorative justice" means practices, policies, and programs
32 informed by and sensitive to the needs of crime victims that are
33 designed to encourage offenders to accept responsibility for repairing
34 the harm caused by their offense by providing safe and supportive
35 opportunities for voluntary participation and communication between the
36 victim, the offender, their families, and relevant community members;

37 (27) "Restraints" means anything used to control the movement of a
38 person's body or limbs and includes:

- 1 (a) Physical restraint; or
- 2 (b) Mechanical device including but not limited to: Metal
- 3 handcuffs, plastic ties, ankle restraints, leather cuffs, other
- 4 hospital-type restraints, tasers, or batons;

5 (28) "Secretary" means the secretary of the department of social
6 and health services. "Assistant secretary" means the assistant
7 secretary for juvenile rehabilitation for the department;

8 (29) "Services" means services which provide alternatives to
9 incarceration for those juveniles who have pleaded or been adjudicated
10 guilty of an offense or have signed a diversion agreement pursuant to
11 this chapter;

12 (30) "Sex offense" means an offense defined as a sex offense in RCW
13 9.94A.030;

14 (31) "Sexual motivation" means that one of the purposes for which
15 the respondent committed the offense was for the purpose of his or her
16 sexual gratification;

17 (32) "Surety" means an entity licensed under state insurance laws
18 or by the state department of licensing, to write corporate, property,
19 or probation bonds within the state, and justified and approved by the
20 superior court of the county having jurisdiction of the case;

21 (33) "Transportation" means the conveying, by any means, of an
22 incarcerated pregnant youth from the institution or detention facility
23 to another location from the moment she leaves the institution or
24 detention facility to the time of arrival at the other location, and
25 includes the escorting of the pregnant incarcerated youth from the
26 institution or detention facility to a transport vehicle and from the
27 vehicle to the other location;

28 (34) "Violation" means an act or omission, which if committed by an
29 adult, must be proven beyond a reasonable doubt, and is punishable by
30 sanctions which do not include incarceration;

31 (35) "Violent offense" means a violent offense as defined in RCW
32 9.94A.030;

33 (36) "Youth court" means a diversion unit under the supervision of
34 the juvenile court.

35 **Sec. 3.** RCW 13.40.110 and 2009 c 454 s 3 are each amended to read
36 as follows:

37 (1) Discretionary decline hearing - The prosecutor, respondent, or

1 the court on its own motion may, before a hearing on the information on
2 its merits, file a motion requesting the court to transfer the
3 respondent for adult criminal prosecution and the matter shall be set
4 for a hearing on the question of declining jurisdiction.

5 (2) Mandatory decline hearing - Unless waived by the court, the
6 parties, and their counsel, a decline hearing shall be held when:

7 (a) The respondent is sixteen or seventeen years of age and the
8 information alleges a class A felony or an attempt, solicitation, or
9 conspiracy to commit a class A felony;

10 (b) The respondent is seventeen years of age and the information
11 alleges assault in the second degree, extortion in the first degree,
12 indecent liberties, child molestation in the second degree, kidnapping
13 in the second degree, or robbery in the second degree; or

14 (c) The information alleges an escape by the respondent and the
15 respondent is serving a minimum juvenile sentence to age twenty-one.

16 (3) The court after a decline hearing may order the case
17 transferred for adult criminal prosecution upon a finding that the
18 declination would be in the best interest of the juvenile or the
19 public. The court shall consider the relevant reports, facts,
20 opinions, and arguments presented by the parties and their counsel.

21 (4) When the respondent is transferred for criminal prosecution or
22 retained for prosecution in juvenile court, the court shall set forth
23 in writing its finding which shall be supported by relevant facts and
24 opinions produced at the hearing.

25 (5) When the respondent is transferred to adult criminal court and
26 is sentenced to a term of confinement the respondent shall be committed
27 to the custody of the department of social and health services until
28 such time as the juvenile completes the ordered term of confinement or
29 arrives at the age of twenty-one years, whereupon the juvenile shall be
30 committed to the custody of the department of corrections.

31 **Sec. 4.** RCW 72.01.410 and 2002 c 171 s 1 are each amended to read
32 as follows:

33 (1) Whenever any child under the age of eighteen is convicted in
34 the courts of this state of a crime amounting to a felony, and is
35 committed for a term of confinement (~~in a correctional institution~~
36 ~~wherein adults are confined, the secretary of corrections, after making~~
37 ~~an independent assessment and evaluation of the child and determining~~

1 ~~that the needs and correctional goals for the child could better be met~~
2 ~~by the programs and housing environment provided by the juvenile~~
3 ~~correctional institution, with the consent of the secretary of social~~
4 ~~and health services, may transfer such child to a juvenile correctional~~
5 ~~institution)), that child shall be placed in a facility or institution~~
6 ~~operated by the department of social and health services for the~~
7 ~~treatment and rehabilitation of juvenile offenders, or to such other~~
8 ~~facility or institution as is now, or may hereafter be authorized by~~
9 ~~law to receive such child, until such time as the child completes the~~
10 ~~ordered term of confinement or arrives at the age of twenty-one years,~~
11 ~~whereupon the child shall be ((returned)) transferred to the~~
12 ~~((institution of original commitment)) custody of the department of~~
13 ~~corrections. ((Retention within a juvenile detention facility or~~
14 ~~return to an adult correctional facility shall regularly be reviewed by~~
15 ~~the secretary of corrections and the secretary of social and health~~
16 ~~services with a determination made based on the level of maturity and~~
17 ~~sophistication of the individual, the behavior and progress while~~
18 ~~within the juvenile detention facility, security needs, and the~~
19 ~~program/treatment alternatives which would best prepare the individual~~
20 ~~for a successful return to the community. Notice of such transfers~~
21 ~~shall be given to the clerk of the committing court and the parents,~~
22 ~~guardian, or next of kin of such child, if known.))~~

23 (2) If the child is anticipated to complete his or her sentence
24 before arriving at the age of twenty-one years, the child shall have
25 the same treatment, housing options, transfer, and access to program
26 resources as any other child committed directly to that juvenile
27 correctional facility or institution pursuant to chapter 13.40 RCW.

28 (3)(a) Except as provided in (b) and (c) of this subsection, an
29 offender under the age of eighteen who is convicted in adult criminal
30 court and who is ((committed to)) transferred from a juvenile
31 rehabilitation operated facility or institution to serve the remainder
32 of a term of confinement at the department of corrections must be
33 placed in a housing unit, or a portion of a housing unit, that is
34 separated from offenders eighteen years of age or older, until the
35 offender reaches the age of eighteen.

36 (b) An offender who reaches eighteen years of age may remain in a
37 housing unit for offenders under the age of eighteen if the secretary
38 of corrections determines that: (i) The offender's needs and the

1 correctional goals for the offender could continue to be better met by
2 the programs and housing environment that is separate from offenders
3 eighteen years of age and older; and (ii) the programs or housing
4 environment for offenders under the age of eighteen will not be
5 substantially affected by the continued placement of the offender in
6 that environment. The offender may remain placed in a housing unit for
7 offenders under the age of eighteen until such time as the secretary of
8 corrections determines that the offender's needs and correctional goals
9 are no longer better met in that environment but in no case past the
10 offender's twenty-first birthday.

11 (c) An offender transferred from a juvenile rehabilitation operated
12 facility or institution and under the age of eighteen may be housed in
13 an intensive management unit or administrative segregation unit
14 containing offenders eighteen years of age or older if it is necessary
15 for the safety or security of the offender or staff. In these cases,
16 the offender shall be kept physically separate from other offenders at
17 all times.

18 **Sec. 5.** RCW 72.05.020 and 2010 c 181 s 7 are each amended to read
19 as follows:

20 As used in this chapter, unless the context requires otherwise:

21 (1) "Community facility" means a group care facility operated for
22 the care of juveniles committed to the department under RCW 13.40.185.
23 A county detention facility that houses juveniles committed to the
24 department under RCW 13.40.185 pursuant to a contract with the
25 department is not a community facility.

26 (2) "Department" means the department of social and health
27 services.

28 (3) "Juvenile" means a person under the age of twenty-one who has
29 been sentenced to a term of confinement under the supervision of the
30 department under RCW 13.40.185, or who is serving an adult sentence
31 with the department of social and health services pursuant to RCW
32 72.01.410(1).

33 (4) "Labor" means the period of time before a birth during which
34 contractions are of sufficient frequency, intensity, and duration to
35 bring about effacement and progressive dilation of the cervix.

36 (5) "Physical restraint" means the use of any bodily force or
37 physical intervention to control an offender or limit a juvenile

1 offender's freedom of movement in a way that does not involve a
2 mechanical restraint. Physical restraint does not include momentary
3 periods of minimal physical restriction by direct person-to-person
4 contact, without the aid of mechanical restraint, accomplished with
5 limited force and designed to:

6 (a) Prevent a juvenile offender from completing an act that would
7 result in potential bodily harm to self or others or damage property;

8 (b) Remove a disruptive juvenile offender who is unwilling to leave
9 the area voluntarily; or

10 (c) Guide a juvenile offender from one location to another.

11 (6) "Postpartum recovery" means (a) the entire period a youth is in
12 the hospital, birthing center, or clinic after giving birth and (b) an
13 additional time period, if any, a treating physician determines is
14 necessary for healing after the youth leaves the hospital, birthing
15 center, or clinic.

16 (7) "Restraints" means anything used to control the movement of a
17 person's body or limbs and includes:

18 (a) Physical restraint; or

19 (b) Mechanical device including but not limited to: Metal
20 handcuffs, plastic ties, ankle restraints, leather cuffs, other
21 hospital-type restraints, tasers, or batons.

22 (8) "Service provider" means the entity that operates a community
23 facility.

24 (9) "Transportation" means the conveying, by any means, of an
25 incarcerated pregnant woman or youth from the institution or community
26 facility to another location from the moment she leaves the institution
27 or community facility to the time of arrival at the other location, and
28 includes the escorting of the pregnant incarcerated woman or youth from
29 the institution or community facility to a transport vehicle and from
30 the vehicle to the other location.

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