

HOUSE BILL REPORT

E2SHB 1646

As Passed Legislature

Title: An act relating to confinement in juvenile rehabilitation facilities.

Brief Description: Concerning confinement in juvenile rehabilitation facilities.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Goodman, Eslick, Senn, Corry, Irwin, Griffey, Lovick, Graham, Davis, Frame, Appleton, Jinkins, Valdez and Ormsby).

Brief History:

Committee Activity:

Human Services & Early Learning: 2/1/19, 2/6/19 [DPS];
Appropriations: 2/20/19, 2/25/19 [DP2S(w/o sub HSEL)].

Floor Activity:

Passed House: 3/5/19, 76-22.
Senate Amended.
Passed Senate: 4/15/19, 29-19.
House Concurred.
Passed House: 4/18/19, 56-38.
Passed Legislature.

Brief Summary of Engrossed Second Substitute Bill

- Extends the maximum age of confinement for individuals convicted in adult court of a crime that was committed while under age 18 from up to age 21 to up to age 25.
- Creates a process for reviewing the transfer of individuals in the custody of the Department of Corrections to the Department of Children, Youth, and Families (DCYF) custody.
- Allows persons in the custody of the DCYF with an earned release date between age 25 and 26 to serve the remainder of his or her sentence in partial confinement on electronic home monitoring.
- Reduces the offense category for attempted Drive-By Shooting and attempted Robbery 1 committed at age 16 or 17 is reduced from an A+ to an A offense.
- Modifies the types of cases where a court can decline juvenile court jurisdiction following a discretionary decline hearing.

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.

HOUSE COMMITTEE ON HUMAN SERVICES & EARLY LEARNING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Senn, Chair; Callan, Vice Chair; Frame, Vice Chair; Dent, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Corry, Goodman, Griffey, Kilduff, Lovick and Ortiz-Self.

Minority Report: Do not pass. Signed by 2 members: Representatives McCaslin, Assistant Ranking Minority Member; Klippert.

Staff: Luke Wickham (786-7146).

HOUSE COMMITTEE ON APPROPRIATIONS

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 Human Services & Early Learning. Signed by 24 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 8 members: Representatives Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Volz and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative MacEwen, Assistant Ranking Minority Member.

Staff: Kelci Karl-Robinson (786-7116).

Background:

Juvenile Rehabilitation Institutions.

The Department of Social and Health Services (DSHS) operates three juvenile institutions for juveniles convicted of crimes and sentenced to more than 30 days of confinement. Echo Glen Children's Center in Snoqualmie serves younger male offenders and female offenders. Green Hill School in Chehalis serves older male offenders. Naselle Youth Camp in Naselle provides services to male offenders and offers a forestry work program.

On July 1, 2019, the juvenile rehabilitation functions of the DSHS will transfer to the Department of Children, Youth, and Families (DCYF).

Adult Court Jurisdiction Over Juveniles.

In the State of Washington, juvenile courts are a division of the state's superior court system. Juvenile courts have jurisdiction over persons under the age of 18 who are alleged to have committed a crime. However, there are several exceptions to that jurisdiction where state law

requires youth to be tried in adult courts. There are three situations where adult criminal courts may have jurisdiction over persons under age 18:

- The juvenile court declines jurisdiction to adult court following a discretionary decline hearing which a court can initiate on its own motion, or any party may file a motion requesting the court transfer the juvenile to adult court only if:
 - the respondent is at least age 15 and is charged with a serious violent offense; or
 - the respondent is age 14 or younger and is charged with Murder in the first or second degree.
- The juvenile court is required to hold a decline hearing in circumstances when the information alleges an escape and the juvenile is serving a minimum juvenile sentence to age 21.
- Adult criminal courts have exclusive jurisdiction over juveniles age 16 or 17 on the date of the offense when the offense is:
 - a serious violent offense;
 - a violent offense and the juvenile has a criminal history consisting of a prior serious violent offense, two or more prior violent offenses, or three or more of any combination of class A felonies, class B felonies, Vehicular Assault, or Manslaughter in the second degree; or
 - Rape of a Child in the first degree.

Once a juvenile is declined to adult jurisdiction, he or she will be subject to adult jurisdiction for all future alleged crimes unless the juvenile is found not guilty. If the juvenile is found not guilty of the charge for which he or she was transferred to adult court or is convicted of a lesser offense, the juvenile court will have jurisdiction of the remaining charges in the case.

Juveniles convicted of felony crimes in adult court are placed in a Department of Corrections (DOC) facility to determine that child's earned release date. If that earned release date is before a youth's twenty-first birthday, the DOC shall transfer the youth to a juvenile institution operated by the DSHS. If a child's earned release date is on or after the individual's twenty-first birthday, the DOC shall, with the consent of the DSHS, transfer the individual to a DSHS facility until the individual turns 21 years old, at which time the individual shall be transferred back to the DOC custody.

If a juvenile is 16 or 17 years old, and he or she is charged with a traffic, fish, boating, or game offense, or an infraction, the case is referred to district or municipal court.

Juvenile Offender Sentencing.

Juvenile court dispositions are subject to statutory sentencing guidelines.

Juvenile offenses are categorized using letters E through A++ to indicate the seriousness level of the offense with E being the least serious and A++ being the most serious offense category. A statutory grid establishes the standard sentencing range for a particular offense based on the offense category and an individual's prior adjudications. Each prior felony adjudication counts as one point and each prior violation, misdemeanor, or gross misdemeanor counts as one-fourth point. Fractional points are rounded down.

The sentencing category called local sanctions is the least serious category for juvenile sentencing purposes. Local sanctions include a range of up to 30 days in confinement, up to 12 months of community service, up to 150 hours of community service, and up to a \$500 fine. When a juvenile court sentences a juvenile offender to local sanctions, the court must impose a determinate sentence within the standard range. Confinement imposed by a juvenile court up to 30 days is served in a county juvenile detention facility.

Any confinement imposed that is greater than 30 days is served through commitment at a DSHS juvenile rehabilitation facility.

If the court concludes that disposition within the standard range would effectuate a manifest injustice, the court must impose a disposition outside the standard range. A court's finding of manifest injustice must be supported by clear and convincing evidence.

Generally, a juvenile offender cannot be committed by the juvenile court beyond age 21. However, juvenile courts may commit individuals up to age 25 if the individual is age 16 or 17 at the time of a Drive-by Shooting or Robbery in the first degree offense, or if the juvenile is sentenced to a 12-month firearm enhancement.

Serious Violent Offense.

A serious violent offense is an offense category which includes:

- Murder in the first degree;
- Homicide by Abuse;
- Murder in the second degree;
- Manslaughter in the first degree;
- Assault in the first degree;
- Kidnapping in the first degree;
- Rape in the first degree;
- Assault of a Child in the first degree; or
- an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies.

Violent Offense.

A violent offense is an offense category which includes:

- class A felonies or an attempt to commit a class A felony;
- criminal solicitation of or criminal conspiracy to commit a class A felony;
- Manslaughter in the first degree;
- Manslaughter in the second degree;
- Indecent Liberties if committed by forcible compulsion;
- Kidnapping in the second degree;
- Arson in the second degree;
- Assault in the second degree;
- Assault of a Child in the second degree;
- Extortion in the first degree;
- Robbery in the second degree;
- Drive-by Shooting;

- Vehicular Assault when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner; and
- Vehicular Homicide when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug, or by the operation of any vehicle in a reckless manner.

Summary of Engrossed Second Substitute Bill:

Individuals convicted in adult court of a crime that was committed while under age 18 are placed in the initial custody of the DCYF instead of the DOC. Individuals convicted in adult court of a crime that was committed while under age 18 may remain in the custody of the DCYF until the individual reaches age 25.

The DCYF is required to review the placement of an individual over age 21 who was placed in the custody of the DCYF following a conviction in adult court for a crime that was committed while under age 18 to determine whether the individual should be transferred to the DOC. This must happen at least once before the individual's twenty-third birthday.

Individuals in the custody of the DOC on the effective date of the bill who were convicted in adult court of a crime that was committed while under age 18 who have not reached the maximum age of juvenile court confinement are eligible for transfer to the DCYF starting January 1, 2020, based on the following:

- By September 1, 2019, the DCYF and the DOC must establish a multidisciplinary team including three representatives from each agency and consider certain factors for a recommendation regarding transfer to the DCYF by January 1, 2020.
- By February 1, 2020, the DOC and the DCYF must review and determine whether these individuals should transfer to the DCYF.

The Washington State Institute for Public Policy (WSIPP) must assess the impact of the act on community safety, racial disproportionality, and youth rehabilitation and submit a preliminary report to the Governor and the Legislature by December 1, 2023, and a final report by December 1, 2031. These reports must also include a cost-benefit analysis of extending authority for the DCYF to maintain custody over individuals who commit offenses under age 21.

A person in the custody of the DCYF with an earned release date between age 25 and 26 may serve the remainder of his or her sentence in partial confinement on electronic home monitoring under the authority and supervision of the DCYF provided that the department finds that such placement is in the best interest of the person and the community. If a person placed on electronic home monitoring commits a violation requiring the return to total confinement, the person must be transferred to the custody and supervision of the DOC for the remainder of his or her sentence.

The DCYF must meet regularly with school districts that educate students in the custody of a juvenile rehabilitation facility to help coordinate activities in common interest. The Office of the Superintendent of Public Instruction must also create a comprehensive plan for the

education of students in juvenile rehabilitation and provide this plan to the Governor and Legislature by September 1, 2020.

The offense category for attempted Drive-By Shooting and attempted Robbery 1 committed at age 16 or 17 is reduced from an A+ to an A offense.

The ability for a court to hold a decline hearing to determine whether to retain the case in juvenile court for remaining charges in in any case in which the juvenile is found not guilty in adult criminal court is eliminated.

Discretionary decline is expanded to include individuals charged with custodial assault while serving a minimum sentence to age 21.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Human Services & Early Learning):

(In support) This bill does not change sentencing. It changes the setting where individuals are held. Currently, many 21 year olds transfer from juvenile institutions to adult prison. Most people are not fully grown up until later in life. People age 16-25 commit the majority of crimes. There will be better outcomes for youth and public safety if we allow individuals to remain in juvenile institutions. Oregon allows placement of individuals until age 25 and has achieved great outcomes. Programming in juvenile rehabilitation facilities is more developmentally appropriate than the adult system. Juvenile rehabilitation targets behavioral modification. The DOC youth in juvenile rehabilitation facilities demonstrate less problematic behaviors than the younger youth in the institutions. Older individuals often act as mentors to the younger youth in the juvenile institution. If problems occur with older individuals, the DCYF has discretion to transfer individuals from a juvenile institution to an adult facility. This bill's strategy is smart on crime. The reality is that 16 and 17 year olds should be treated differently than older individuals. There should be more options for rehabilitative interventions up to age 25. Every single young person we are talking about will return to our communities. This is the best opportunity to reach those individuals so communities will be safer and healthier. Juvenile institutions are youth-oriented and provide vocational training.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill has a direct impact on the youth residents at Juvenile Rehabilitation's (JR) Green Hill School. An adolescent brain is not fully developed until the mid-20s; while the prefrontal cortex is still in development, youth are less likely to consider the long-term consequences of their choices. Youth that experience multiple environmental stressors,

including domestic violence, drug abuse, and gang activity, are more likely to be influenced by their surrounding environment. The bill would allow youth to finish their sentence at JR instead of the Department of Corrections (DOC). At the DOC, youth are more likely to be assaulted and commit suicide. Youth-focused treatment and programming at JR includes completion of a high school diploma, job preparation, welding, auto shop, and drug and alcohol treatment. Residents at JR have the opportunity to step down into a community facility where individuals can obtain a job and family members are more easily able to visit. If youth are able to take advantage of the programs that assist in transitioning to the community, youth will be less likely to reoffend and more likely to become productive members of society. The JR programs assist youth in becoming positive role models and breaking the cycle of incarceration. In comparing 18 to 19 year olds who committed similar offenses in Washington, 28 percent of youth released from JR re-committed crimes versus 46 percent of youth released from the DOC.

(Opposed) None.

Persons Testifying (Human Services & Early Learning): Representative Goodman, prime sponsor; Eric Trupin, University of Washington Department of Psychiatry and Behavioral Sciences; Mary Lou Dickerson; Jimmy Hung, King County Prosecutor's Office; Carolyn Logue, TVW Capitol Classroom; Jacob Carmickle; Aaron Toleafoa; and Billy Underwood.

Persons Testifying (Appropriations): Carolyn Logue, TVW Classroom Connect; Joseph Huntley; Nashawn Cotman; and Guillermo Padilla.

Persons Signed In To Testify But Not Testifying (Human Services & Early Learning): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.