

HOUSE BILL REPORT

HB 2277

As Reported by House Committee On:
Human Services & Early Learning
Appropriations

Title: An act relating to youth solitary confinement.

Brief Description: Concerning youth solitary confinement.

Sponsors: Representatives Peterson, Ortiz-Self, Frame, Goodman, Kilduff, Callan, Senn, Lovick, Thai, Fitzgibbon, Leavitt, Ryu, Appleton, Valdez, Davis, Ormsby, Macri, Doglio, Gregerson and Pollet; by request of Attorney General.

Brief History:

Committee Activity:

Human Services & Early Learning: 1/15/20, 1/24/20 [DPS];

Appropriations: 2/5/20, 2/8/20 [DP2S(w/o sub HSEL)].

Brief Summary of Second Substitute Bill

- Prohibits the use of juvenile solitary confinement in juvenile detention and juvenile rehabilitation institutions.
- Limits the use of juvenile room confinement or isolation to no more than 4 hours in any 24-hour period except in limited circumstances.
- Requires the Department of Children, Youth, and Families (DCYF) to adopt a model policy regarding the use of juvenile room confinement and isolation by July 1, 2021, and detention facilities or institutions to either adopt or indicate why they are not adopting this policy by December 1, 2021.
- Requires the DCYF to compile, on a monthly basis until November 1, 2022, certain information regarding juveniles confined in all juvenile rehabilitation institutions and facilities and county detention facilities who are receiving isolation or room confinement.
- Prohibits a juvenile who is subject to adult court jurisdiction from being held in an adult jail or holding facility for a period exceeding 24 hours excluding weekends and holidays, unless a court finds that it is in the interest of justice.

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 7 members: Representatives Senn, Chair; Callan, Vice Chair; Frame, Vice Chair; Goodman, Kilduff, Lovick and Ortiz-Self.

Minority Report: Do not pass. Signed by 4 members: Representatives Dent, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Corry and Klippert.

Staff: Luke Wickham (786-7146).

Background:

Juvenile Rehabilitation Institutions and County Detention Facilities.

The Department of Children, Youth, and Families (DCYF) 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.

Confinement imposed by a juvenile court up to 30 days is served in a county juvenile detention facility. Counties with more than 50,000 inhabitants are required to provide and maintain a juvenile detention facility, while counties with less inhabitants may provide and maintain such a facility.

A consortium of counties in Eastern Washington contract with Martin Hall Juvenile Detention Facility in Medical Lake for juvenile detention services.

Juvenile Rehabilitation Policy Regarding Isolation and Room Confinement.

On November 1, 2019, the DCYF updated its policy regarding isolation and room confinement. According to this policy, room confinement and isolation cannot be used as a punishment, but can only be used:

- as a time-limited response to specific behavior;
- to allow youth to regain emotional and behavioral control; and
- for the least amount of time necessary.

Room confinement is defined as any instance when a youth is separated from the youth population and placed in a room for 15 minutes or longer, which may occur to:

- protect other youth, staff, or property;
- give youth time to cool off; or
- protect the youth.

Isolation is a subcategory of confinement occurring in a room other than the one assigned for sleeping.

Youth receiving room confinement in institutions must be visually checked at least every 15 minutes on a random schedule, and this must be documented.

Youth receiving room confinement or isolation must have formal reviews every 2 hours to encourage the youth to return to the general programming and determine if they are committed to safety and emotionally regulated enough to return to programming.

Youth receiving room confinement or isolation must be provided an opportunity for:

- a daily bath or shower;
- hourly access to a toilet and sink;
- medical and mental health evaluations; and
- large muscle activity.

Summary of Substitute Bill:

The term "juvenile solitary confinement," defined as involuntarily separating a youth from the youth population and placing the youth in a room other than the room assigned for sleeping for longer than 15 minutes, is prohibited in county detention facilities and juvenile rehabilitation institutions.

Juvenile institutions and county detention facilities must limit total isolation and room confinement of a juvenile to no more than 4 hours in any 24-hour period, except when:

- the reason for isolation and details regarding isolation are documented;
- an individualized plan is developed to reintegrate the juvenile to the general population; and
- the institution or facility superintendent provides documented authorization every 4 hours.

Placing pregnant juveniles in isolation is prohibited. Isolation is defined as confinement that occurs:

- when a youth is separated from the youth population and placed in a room for longer than 15 minutes for the purpose of discipline, behavior modification, or due to an imminent threat to the safety of the youth or others; and
- in a room other than the room assigned to the youth for sleeping.

If the total isolation or room confinement exceeds 24 hours, the Secretary of the DCYF must provide documented authorization.

Room confinement is defined as a juvenile separated from the youth population and placed in a room or cell that the juvenile is assigned to for sleeping, other than during normal sleeping hours, but does not include time a youth requests to spend in his or her room.

Juvenile institutions and county detention facilities may use isolation:

- to prevent imminent harm based on the juvenile's behavior;
- when awaiting transfer of facilities;
- overnight due to disruptive behavior that disrupts other residents; or
- when necessary to respond to an escape attempt.

Juvenile institutions and county detention facilities may use room confinement when:

- there is a repeated violation of facility or living unit rules;
- there is a refusal to follow staff directives;
- it is necessary to prevent behavior that causes disruption of the detention facility or institution.

Staff from institutions or facilities must remove the juvenile from isolation and room confinement when:

- the purpose of the confinement is met;
- the desired behavior is evident; or
- the juvenile has been evaluated by a professional who has determined the juvenile is no longer an imminent risk to self, staff, or the general population.

Staff from institutions or facilities must visually check every juvenile placed in isolation or room confinement.

When an institution or facility places a juvenile in isolation or room confinement, the juvenile must have access to:

- clothing;
- mattress and bedding;
- medication under staff supervision;
- a toilet and sink at least hourly;
- a bath or shower at least daily;
- necessary mental health services; and
- reading, writing, and treatment material unless precluded by suicide precaution level.

Each juvenile in isolation or room confinement must be visually checked every 15 minutes, and these instances must be documented. The juvenile in isolation must have access to certain things (clothing, mattress and bedding, medication, toilet, bath or shower, mental health services, and reading and writing material). The DCYF must adopt a model policy by July 1, 2021, prohibiting the use of solitary confinement of juveniles in institutions and county detention facilities with the goal of limiting the use and duration of isolation and room confinement. By December 2, 2021, institutions and facilities must adopt the model policy or notify the DCYF of the reasons that they will not adopt the model policy. The DCYF must compile certain information regarding juveniles confined in state institutions and facilities, including the number and times isolation and room confinement were used and information about such isolation and room confinement.

Model Policy.

The DCYF must adopt a model policy prohibiting the use of solitary confinement in detention facilities and institutions with the goal of limiting the use and duration of isolation and room confinement by July 1, 2021. The DCYF must consult with stakeholders in determining the model policy, and the model policy must include certain elements regarding isolation and room confinement.

By December 1, 2021, the detention facility or institution must review and either:

- adopt the model policy; or
- notify the DCYF of the reasons the facility or institution will not adopt the model policy.

Reporting Requirements.

The DCYF must compile, on a monthly basis until November 1, 2022, certain information regarding juveniles confined in all state institutions and facilities receiving isolation or room confinement in excess of one hour. After November 1, 2022, the DCYF must annually compile this information and post the information on the DCYF website.

Counties operating a juvenile detention facility must compile, on a monthly basis until November 1, 2022, certain information regarding juveniles receiving isolation or room confinement in excess of 1 hour in those facilities and report this information to the DCYF. The DCYF must compile all of this information and provide a report to the Legislature by December 1, 2022. After November 1, 2022, county juvenile detention facilities must annually compile this information and post it on the detention facility's website.

Periodic Reviews.

The DCYF is required, beginning January 2023, to conduct periodic reviews of policies, procedures, and use of solitary confinement, isolation, and room confinement. The DCYF is required to prepare a report to the Legislature at least once every three years summarizing its reviews.

Juveniles Held in Adult Jails or Holding Facilities.

A juvenile who is subject to adult court jurisdiction may not be held in an adult jail or holding facility for a period exceeding 24 hours excluding weekends and holidays, unless a court finds that it is in the interest of justice. Juveniles in adult jails or holding facilities may not have sight or sound contact with adult inmates unless the court finds that it is in the interest of justice to permit such contact.

The court must hold a hearing every 30 days to review whether sight or sound contact with adults and placement in a jail or holding facility is still in the interest of justice.

Juveniles must not be held in an adult jail or holding facility or allowed to have sight or sound contact with adults for more than 180 days unless the court makes a finding of good cause or the juvenile waives the limitation.

Juveniles have a right to counsel during hearings to determine placement in a jail or holding facility.

Substitute Bill Compared to Original Bill:

The substitute bill prohibits placing juveniles who are pregnant in isolation. A definition for "juvenile court administrator" is added, and the definition of "juvenile" is modified to mean any individual who is under age 18, and any individual under age 25 who is confined in a juvenile institution.

The substitute bill exempts interim rest periods and rest periods between facility programming from the definition of "room confinement."

The substitute bill modifies the definition of "solitary confinement" to mean youth involuntarily separated from the youth population and placed in a room or cell other than the room assigned to the youth for sleeping for longer than 15 minutes for punitive purposes.

The substitute bill allows a medical and mental health assessment to occur after the juvenile's release from room confinement or isolation so as not to extend his or her time in isolation or confinement.

The substitute bill requires the DCYF or juvenile court administrator to provide documented authorization for any isolation or room confinement exceeding 24 hours.

The substitute bill specifies that the prohibition on solitary confinement and limitations on isolation or room confinement applies to detention facilities and institutions.

The substitute bill requires visual checks of juveniles placed in room confinement or isolation every 15 minutes instead of every 30 minutes. The use of room confinement is permitted when it is necessary to prevent behavior that causes disruption of the detention facility or institution but the behavior does not rise to the level of imminent harm.

The substitute bill requires the DCYF to compile state institution and facility juvenile confinement information on a monthly basis until November 1, 2022, instead of June 2022, regarding isolation lasting more than 4 hours in a 24-hour period. After November 1, 2022, the DCYF must annually compile this information and post it on the DCYF website. The DCYF may use information regarding juveniles confined in a jail or holding facility in their report.

The substitute bill requires detention facilities and governing units for jails or holding facilities to provide assistance to the DCYF in gathering certain information about juveniles confined in a jail or holding facility.

The substitute bill removes the requirement that the DCYF is provided full and complete access to all records and documents and allow access for site visits requested to provide oversight over state institutions, county juvenile detention facilities, and jails.

The substitute bill removes the requirement that the DCYF review each facility every three years.

The substitute bill prohibits a juvenile who is subject to adult court jurisdiction from being held in an adult jail or holding facility for a period exceeding 24 hours, excluding weekends and holidays, unless a court finds that it is in the interest of justice. Juveniles in jails or holding facilities may not have sight or sound contact with adult inmates unless the court finds that it is in the interest of justice to permit such contact. The court must hold a hearing every 30 days to review whether the sight or sound contact with adults and the placement in a jail or holding facility is still in the interest of justice. Juveniles cannot be held in a jail or holding facility or allowed to have sight or sound contact with adults for more than 180 days unless the court makes a finding of good cause or the juvenile waives the limitation. Juveniles have a right to counsel during hearings to determine placement in a jail or holding facility.

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) This state needs to make sure that youth are not adversely impacted by solitary confinement. At least 10 other states have prohibited solitary confinement as a punishment. The negative effects of solitary confinement can be exacerbated when applied to juveniles because their brains are still developing. There are no consistent requirements across the state regarding juvenile solitary confinement. The bill does contemplate emergencies when juveniles could be separated from the general population. King County has limited the use of solitary confinement since the passage of an ordinance on this topic in 2017. There are a few challenges regarding the ability of counties to implement this legislation. This includes not exempting from the definition of "isolation" entry examinations and meetings with attorneys. This bill will provide better outcomes for kids. This bill aligns with other legislative efforts to provide better quality of service provided to youth who are confined. The DCYF has reduced the instances of isolation and room confinement. The primary concern for the DCYF is determining the funding necessary to implement this legislation. It is important to inspire, but this is an issue that simply cannot be left to chance. In 2005 the United States Supreme Court held that this country would no longer stand with the tyrants of the world in instituting capital punishment for juveniles. Political leaders of both parties successfully banned the federal use of solitary confinement. Solitary confinement is a form of cruel and unusual punishment and torture. Even if it is believed that solitary confinement should be used, the consequences of solitary confinement in the form of behavior of those youth must be dealt with. King County confined a number of youth in their adult jails until litigation was initiated leading to an ordinance. Many youth were not released from their cells for 48 hours. Many of these youth never received any mental health services. This was happening in King County up until three years ago. The changes in King County would never have happened without a diligent investigation into practices in that county. The reporting requirements of this bill are necessary to determine what is happening across the state because currently the practices being used across the state are not known. If there is a problem with applying this bill to adult jails, the solution is to prohibit placement of youth in adult jails. Sufficient programming and staff will help prevent the need for room confinement. Juvenile rehabilitation is still in a place where overtime is necessary to accommodate the current staffing needs. If increased demands are made on juvenile rehabilitation facilities, the burden on staff will increase.

(Opposed) Solitary confinement is not a good practice, but there is opposition to the application of this legislation to adult jails. In the rare instances where juveniles are placed in adult jails, generally juveniles must be separated from the general population because those juveniles are required by federal law to have sight and sound separation from the adult population.

(Other) The juvenile court administrators support the limited use of isolation and room confinement. There are concerns with Section 8, the data reporting section, of this bill.

Persons Testifying: (In support) Representative Peterson, prime sponsor; Brittany Gregory, Office of the Attorney General; Allen Nance, King County Department of Adult and Juvenile Detention; Frank Ordway, Department of Children, Youth, and Families; Kendrick Washington, American Civil Liberties Union of Washington; Nick Straley, Columbia Legal Services; and Matt Zuvich, Washington Federation of State Employees.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Tom McBride, Washington Association of Juvenile Court Administrators.

Persons Signed In To Testify But Not Testifying: None.

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; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; MacEwen, Assistant Ranking Minority Member; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 7 members: Representatives Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff and Schmick.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Human Services & Early Learning:

The limitation on solitary confinement, isolation, and room confinement is amended to apply to any juvenile correctional facility under alternative administration operated by a consortium of counties.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 3, 2020.

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) This bill is in the spirit of resetting how youth are treated within juvenile facilities. The Juvenile Rehabilitation Administration already has a similar confinement policy in place; however, they do not have adequate staff to currently comply with this new policy. There have been juveniles in lock up for up to three weeks. These youth eventually became depressed and expressed anxiety and trauma as a result of being placed in total confinement. Placing a youth in an empty room with no resources has more hurtful effects than helpful effects. If current staff became more engaged with the youth, confinement would not be necessary. Instead of punishment, the staff should teach juveniles ways to manage their behavior. This bill is a good investment for the future. Washington needs to eliminate the archaic system of juvenile solitary confinement.

(Opposed) None.

Persons Testifying: Matt Zuvich, Washington Federation of State Employees; Emily Murphy and Roxana Gomez, Echo Glen Children's Center; Brittany Gregory, Office of the Attorney General; Frank Ordway, Department of Children, Youth, and Families; and Arthur West.

Persons Signed In To Testify But Not Testifying: None.