

SENATE BILL REPORT

E2SHB 1646

As Reported by Senate Committee On:
Human Services, Reentry & Rehabilitation, March 26, 2019

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: Passed House: 3/05/19, 76-22.

Committee Activity: Human Services, Reentry & Rehabilitation: 3/21/19, 3/26/19 [DPA-WM, w/oRec].

Brief Summary of Amended Bill

- Requires persons sentenced in adult court for crimes committed as minors to be placed initially in a Juvenile Rehabilitation (JR) facility and remain there until age twenty-five.
- Allows certain youthful offenders in Department of Corrections custody to transfer to JR custody until age twenty-five, subject to an interagency review process.
- Allows youthful offenders in JR who reach age twenty-five with less than one year left on their sentence to serve the balance of their sentence on electronic home monitoring under supervision of JR.
- Reduces sentencing ranges in juvenile court for attempted drive-by shooting and attempted robbery 1 when committed at age sixteen or seventeen.
- Allows a discretionary decline hearing for a minor accused of custodial assault committed while the minor is serving a sentence until age twenty-one.
- Requires the Office of the Superintendent of Public Instruction, in collaboration with the Department of Children, Youth, and Families, to create a comprehensive plan for the education of students in juvenile

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.

rehabilitation and present it to the Governor and Legislature by September 1, 2020.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, Wilson, C. and Zeiger.

Minority Report: That it be referred without recommendation.

Signed by Senator O'Ban.

Staff: Kevin Black (786-7747)

Background: Juvenile Rehabilitation. JR is a division of the Department of Social and Health Services which is scheduled to transfer to the Department of Children, Youth and Families (DCYF) on July 1, 2019. JR operates three maximum or medium security juvenile institutions for adjudicated juveniles sentenced to serve 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.

Maximum Term of Confinement in Juvenile Rehabilitation. A person adjudicated in juvenile court may be sentenced to the custody of JR for a maximum term of up to their 21st birthday, unless the juvenile is sixteen or seventeen years of age and adjudicated for one of the following offenses:

- drive-by shooting;
- robbery 1;
- burglary 1 if the juvenile has a prior criminal history; or
- any violent offense when the juvenile is alleged to have been armed with a firearm.

In these cases, the maximum term of confinement is until the age of twenty-five.

Custody of Persons Sentenced as Adults for Offenses Committed as Minors. A person who is sentenced to a term of state custody as an adult for an offense committed as a minor must be initially placed in the custody of the Department of Corrections (DOC) to determine the person's earned release date. Thereafter, the person must be transferred to the custody of JR until up to the person's 21st birthday. While at JR the person is subject to the same treatment, housing options, transfer, and access to program resources as any other person committed to JR. If the person has not reached their early release date by age twenty-one, the person must transfer back to DOC.

Autodecline. Juvenile courts have exclusive original jurisdiction over criminal offenses committed by a person who is under eighteen unless an exception applies requiring the charge to be filed in adult court. This is known as autodecline. A person must be charged in adult court when they are charged with an offense committed at the age of sixteen or seventeen which is:

- a serious violent offense or rape of a child 1; or
- a violent offense, and the person has at least one prior offense which is a serious violent offense, at least two prior offenses which are violent offenses, or at least three prior offenses which are either class A or class B felonies.

Discretionary Decline. There are limited situations in which a juvenile court may hold a discretionary decline hearing to consider whether to transfer jurisdiction over an offense to adult court. These involve situations where a juvenile is:

- fifteen years old and charged with a serious violent offense;
- eight through fourteen years old and charged with murder 1 or murder 2; and
- convicted in adult court of a lesser offense that is not subject to autodecline and the case is transferred to juvenile court for disposition.

Cases may be transferred to adult court following a decline hearing if the court determines that decline is in the best interest of the juvenile or the public. A mandatory decline hearing must be held if a juvenile is charged with escape and the juvenile is serving a minimum juvenile sentence until age twenty-one.

Engrossed Second Substitute Senate Bill 6160. In 2018, the Legislature passed E2SSB 6160, which transferred the offenses of robbery 1, drive-by shooting, violent offenses when the juvenile is alleged to have been armed with a firearm, and certain burglary 1 offenses committed by a person aged sixteen or seventeen from exclusive adult jurisdiction to the jurisdiction of juvenile court. A special sentencing range of A++ was created for these offenses, giving them a standard range in juvenile court of 129 to 260 weeks.

Summary of Bill: The bill as referred to committee not considered.

Summary of Amended Bill: A person convicted in adult court of an offense committed as a minor who is sentenced to a term of confinement in a state facility must be initially placed in a JR facility, instead of adult prison. DOC must determine the person's initial earned release date. Such individuals must stay in JR until reaching their twenty-fifth birthday, unless they are subsequently transferred to DOC custody with the consent of JR. JR may determine when it is appropriate to transfer an individual to DOC before their twenty-fifth birthday, but if this determination is based on a safety risk, the risk must be significant. JR must review the placement of individuals within JR who are eligible for transfer to DOC at least once before the individual turns twenty-three. While placed in JR, DOC must retain authority over custody decisions and must approve any leave from the facility, but only if the person has an earned release date on or after the person's twenty-sixth birthday. These terms apply to persons serving a term of confinement in JR as of the effective date of this act who would otherwise be required to transfer to DOC at age twenty-one.

When a person who is convicted in adult court and placed in JR has an earned release date that is after the person's twenty-fifth birthday but before the person's twenty-sixth birthday, DCYF may transfer the person to electronic home monitoring under the supervision of DCYF to serve the remainder of the person's term of confinement instead of transferring the person to DOC if DCYF determines that such placement is in the best interests of the person and the community. The person must be subject to similar conditions, restrictions, and access to programs and resources as other similarly-situated persons under DCFY supervision. If

the person placed on electronic home monitoring commits a violation requiring the return of the person to total confinement, they must be transferred to the custody and supervision of DOC for the remainder of their sentence.

Persons in DOC custody as of the effective date of this act who were convicted as adults for offenses committed as minors and who are under twenty-five as of January 1, 2020, are eligible for transfer to JR until they turn twenty-five. DOC and DCYF must establish a multidisciplinary interagency team by September 1, 2019, to perform a case-by-case review. The team may recommend that a person transfer to JR after considering the input of the person and other factors including safety, the behavior, assessed risks, and needs of the person, and which agency is better equipped to facilitate successful rehabilitation and reentry for the person. The interagency team must make recommendations for these persons by January 1, 2020, which must be approved or denied by the agency secretaries within 30 days of receipt of the recommendation and no later than February 1, 2020.

The sentencing range in juvenile court for attempted drive-by shooting and attempted robbery 1 committed at age sixteen or seventeen are lowered from A+ (180 weeks to age twenty-one) to A (103-129 weeks).

The option for a juvenile court to hold a discretionary decline hearing when an offense committed by a minor is automatically returned to juvenile court for sentencing is eliminated, and jurisdiction of the juvenile court is extended to allow for disposition.

Juvenile court may hold a discretionary decline hearing on its own motion or upon the motion of the prosecutor or respondent when a juvenile is charged with custodial assault and is already serving a sentence in JR until age twenty-one.

DCYF must meet regularly with the school districts that educate students who are in the custody of the medium and maximum security institutions of JR, to help coordinate activities in areas of common interest, such as communication with parents. The Office of the Superintendent of Public Instruction (OSPI) must facilitate these meetings upon request by DCYF.

OSPI must create a comprehensive plan in collaboration with DCYF for the education of students in JR and provide it to the Governor and relevant committees of the Legislature by September 1, 2020.

The Washington State Institute for Public Policy (WSIPP) must:

- assess the impact of E2SSB 6160 (2018) and this act upon community safety, racial disproportionality, recidivism, state expenditures, and youth rehabilitation; and
- conduct a cost-benefit analysis, including health and recidivism effects, of increasing confinement in JR to include persons sentenced in adult court for offenses committed under the age of twenty-one.

WSIPP must submit a preliminary report to the Governor and Legislature by December 1, 2023, and a final report by December 1, 2031.

EFFECT OF HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE AMENDMENT(S):

- Clarifies that DOC is not required to maintain authority over a person who is transferred to electronic home monitoring by DCYF under DCYF to serve the balance of their sentence before their twenty-sixth birthday.
- Removes increase of juvenile court jurisdiction until age twenty-five for specified offenses when adjudicated in juvenile court.
- Specifies that the comprehensive plan for the education of students in JR must be created by OSPI in collaboration with DCYF and extends the due date until September 1, 2020.
- Expands WSIPP report to include a cost-benefit analysis, including health and recidivism effects, of increasing confinement in JR to include persons sentenced in adult court for offenses committed under the age of twenty-one.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act for sections one through six.

Fiscal Note: Available. New fiscal note requested on March 20, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is many years in the making, starting with a trip to Oregon, where minors adjudicated as adults have been staying in juvenile facilities until age twenty-five since 1991. We were concerned about older youth being bad influences but found the exact opposite. Older youth developing skills and life plans are role models who exert a good influence on the nineteen and twenty-year-olds by their example. The recidivism rate for the same cohort of youth in Washington is 68 percent compared to 22 percent in Oregon. We can improve public safety, reduce public costs, and reduce crime. Rental car companies will not rent to people under the age of twenty-five because our brains are not fully developed. Young people under twenty-five commit most of the crimes. People of that age are impulsive and subject to negative peer influences. They think short term and do not understand the consequences of their behavior. The rehabilitative programming provided in JR sets them up to succeed in life and not disrupt communities. I went from being a kid with nothing to lose to having plans for my future. I took a plea offer for four and a half years in JR (juvenile life) instead of one and a half years in DOC to avoid receiving an adult record. At first I did not know how to behave and could only express myself by acting out. JR worked with me, instead of dealing with me as would have happened in DOC. Kids need time to develop and mature. I changed. Now I have a job and group home date to transition to the community. Because of my sentence, I will transition to DOC for the last ten months of my confinement, when I could instead transfer to a group home and work on an education and a job. I have found my passion in advocating for youth on the state and national level and in the process I have found people who truly care about me. This bill gives us hope to rid recidivism from our reality. We need to put more healing in our justice system. Just time in confinement alone is a setup for

recidivism. We represent lots of kids who are prepared to step up and made a change in the future.

OTHER: We support developing a comprehensive plan for education in JR but please amend the bill to extend the timeline until September 2020. Please make a technical amendment to resolve a conflict relating to who has authority over persons on electronic monitoring. We think JR should have the authority since it has the most familiarity with the youth. JR institutions need additional staffing to be successful engaging youth and keeping people safe. Please look at current staff recruitment and retention problems.

Persons Testifying: PRO: Representative Roger Goodman, Prime Sponsor; Carolyn Logue, TVW Classroom Connect; Garrett Comer, Green Hill Student; Corde Journee, Green Hill Student; Aaron Toleafoa, Green Hill Student.

OTHER: Matt Zuvich, Washington Federation of State Employees; Martin Mueller, OSPI; Alex MacBain, DOC; Marybeth Queral, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: No one.