

SENATE BILL REPORT

SB 5737

As Reported by Senate Committee On:
Human Services, Reentry & Rehabilitation, February 20, 2019

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

Brief Description: Concerning confinement in juvenile rehabilitation facilities.

Sponsors: Senators Darneille, Conway and Nguyen.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 2/06/19, 2/20/19 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Allows juveniles subject to autodecline who are adjudicated in juvenile court to be committed to the custody of Juvenile Rehabilitation (JR) until age twenty-five.
- Requires persons sentenced in adult court for crimes committed as minors to be placed initially in JR and remain there up to the age of twenty-five.
- Provides a review procedure allowing for persons currently in Department of Corrections (DOC) custody who are serving sentences for offenses committed as minors to transfer to JR until age twenty-five.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 5737 be substituted therefor, and the substitute bill do pass 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)

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.

Background: 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 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 and Discretionary Decline. 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.

This is known as autodecline. A discretionary decline hearing may be scheduled in juvenile court to determine if the charges should be transferred to adult court if the person is charged with an offense committed at the age of fifteen which is a serious violent offense, or if the person is charged with the offense of murder 1 or murder 2 committed at any age fifteen and under.

Special Education. Special education is public education provided to children who through an evaluation process are determined eligible due to a disability. Special education serves approximately 130,000 students in Washington. The federal Individuals with Disabilities Education Act (IDEA) provides that schools must guarantee that all children with disabilities between the ages of three and twenty-one must receive a free, appropriate public education. State law requires the Office of the Superintendent of Public Instruction (OSPI) promulgate rules to implement IDEA and ensure appropriate access to general education curriculum and

statewide assessments for all students with disabilities. OSPI is required to assist school districts in meeting their legal obligations under IDEA and its implementing regulations.

Procedures for Obtaining Parental Consent for Education Services. Regulations promulgated by OSPI provide procedures for assuring that minors in the state of Washington receive education services that require parental consent. These regulations provide a hierarchy of individuals who may provide parental consent for education:

- a biological or adoptive parent;
- a foster parent;
- a guardian who is generally authorized to act as a minor's parent;
- an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the minor lives, or who is legally responsible for the minor's welfare; or
- a surrogate parent appointed in accordance with state law.

A surrogate parent is a person legally authorized to act on behalf of a person who may act as a parent in absence of the availability of others who can fill the role. School districts are required to ensure that the rights of all students are protected through the designation of a surrogate parent when after reasonable efforts no person who can act as a parent is identified, the minor is a ward of the state, or the minor is an unaccompanied homeless youth. A surrogate parent must be provided within 30 days of a district's determination that a surrogate parent is required. Each residential institution provides educational services to juveniles in their care in cooperation with local school districts.

Summary of Bill (First Substitute): Persons charged with offenses which, in conjunction with their age and criminal history, make them subject to autodecline are authorized to be committed to a juvenile institution until age twenty-five if they are adjudicated in juvenile court.

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. 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-fifth birthday.

When a person who is convicted as an adult 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, DOC may transfer the person to partial confinement on electronic home monitoring if:

- the person is not subject to a deportation detainer or deportation order;
- DOC in consultation with DCYF determines such placement is in the person's best interests; and
- safeguards are available which are sufficient to protect community safety.

Such a person must be assigned a community corrections officer during the period of partial confinement and DOC may impose and monitor conditions of partial confinement and programming requirements. DOC has the authority to place such a person serving in partial confinement in total confinement if the person is not complying with sentence requirements.

The terms of this act apply prospectively and to persons in the custody of JR as of the effective date. 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 age 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 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 team must make recommendations by January 1, 2020, that must be approved or denied by the agency secretaries within 30 days of receipt of the recommendation and no later than February 1, 2020.

DCYF has a duty to ensure that persons in the custody of a JR facility who are in need of a special education assessment receive a timely assessment. DCYF must ensure that any school district operating within a JR facility that is providing instruction to a student who is in need of a special education assessment makes reasonable efforts to contact a person authorized to act as a parent in order to authorize the special education assessment. If, after reasonable efforts, the need arises for assignment of a surrogate parent to authorize the special education assessment, such assignment of a surrogate parent must be accomplished within 30 days of the point at which the district or facility determines or reasonably should have determined that assignment of a surrogate is required. DCYF must review the educational records of all minors receiving instruction within a JR facility to determine whether any students are in need of special education assessments and ensure that they receive them. DCYF must report its findings to the appropriate committees of the Legislature by October 1, 2019.

The Washington State Institute for Public Policy must assess the impact of E2SSB 6160 (2018) and this act upon community safety, racial disproportionality, recidivism, state expenditures, and youth rehabilitation and submit a preliminary report to the Governor and Legislature by December 1, 2023, and a final report by December 1, 2031.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):

- Requires DCYF to ensure that any school district operating within a JR facility obtains special education assessments for students who need them, to review the current special education assessment needs of all students, and to report to the Legislature.
- Allows DOC to transfer a person placed in JR who was sentenced as an adult to partial confinement with electronic home monitoring instead of transferring them to a DOC institution upon the person's twenty-fifth birthday

- Limits DOC's retention of authority over custody decisions relating to a person sentenced as an adult who is in the custody of JR to persons who have an earned release date after their twenty-fifth birthday.
- Technical amendments and statutory cleanup.

Appropriation: None.

Fiscal Note: Requested on January 30, 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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill builds on changes made last year. The policy reflects brain science relating to impulse control and decision-making, recognizing that the parts of the brain that deal with these things do not fully form until the mid-20s. There is a point in a child's life when they suddenly start making good decisions. There are significant benefits to a young person to stay in JR versus going into the differently-programmed adult system. This program was developed in Oregon. I was charged as an adult and sentenced to over ten years. I have had great opportunities in JR including earning my welding certification. This will help youth be rehabilitated and break the cycle. I will have nine months to do in DOC after I turn twenty-one and have to transfer from JR. I completed my high school diploma, have gained job experience, and participated in the Partnership Council for Juvenile Justice. All my accomplishments in JR could be undermined by the atmosphere in DOC and the lack of access to programs. You have the power to change so many lives and futures. This will make a big impact on making youth lives better and more successful. Coming into JR as a teen and being released as an adult is scary because we do not know how to take care of ourselves on our own. Time in JR will prepare us better for returning to society. If you are not fully prepared, it is a setup for recidivism. You do not have to steal and rob to get the things you need as an adult. More time in JR is an opportunity to mentor younger kids going through what we went through. I was released at twenty-one from Green Hill after serving a five-year sentence. Sentencing a juvenile to anything over ten years is just raising a career criminal. There are mentors in JR that can teach youth how to succeed; this does not happen in DOC. This bill almost guarantees a safer future for the community. Oregon has lower recidivism rates due to this program. Staff at Green Hill taught me how to cook and shop, things you just do not learn in adult prison.

Persons Testifying: PRO: Senator Jeannie Darneille, Prime Sponsor; Carolyn Logue, TVW Classroom Connect; Aaron Toleafoa, Green Hill student; Isaac Miller, Green Hill student; Edgar Calixto, Green Hill student; Jacob Carmickle, former Green Hill student.

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