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**SECOND SUBSTITUTE HOUSE BILL 1646**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Goodman, Eslick, Senn, Corry, Irwin, Griffey, Lovick, Graham, Davis, Frame, Appleton, Jenkins, Valdez, and Ormsby)

READ FIRST TIME 02/28/19.

1 AN ACT Relating to confinement in juvenile rehabilitation  
2 facilities; amending RCW 72.01.410 and 13.40.300; amending 2018 c 162  
3 s 9 (uncodified); adding a new section to chapter 72.01 RCW; creating  
4 new sections; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes state and  
7 national efforts to reform policies that incarcerate youth in the  
8 adult criminal justice system. The legislature acknowledges that  
9 transferring youth to the adult criminal justice system is not  
10 effective in reducing future criminal behavior. Youth incarcerated in  
11 the adult criminal justice system are more likely to recidivate than  
12 their counterparts housed in juvenile facilities.

13 The legislature intends to enhance community safety by  
14 emphasizing rehabilitation of juveniles convicted even of the most  
15 serious violent offenses under the adult criminal justice system.  
16 Juveniles adjudicated as adults should be served and housed within  
17 the facilities of the juvenile rehabilitation administration up until  
18 age twenty-five but released earlier if their sentence ends prior to  
19 that. This emphasis on rehabilitation up to age twenty-five reflects  
20 similar programming in other states, which has significantly reduced  
21 recidivism of juveniles confined in adult correctional facilities.

1       **Sec. 2.** RCW 72.01.410 and 2017 3rd sp.s. c 6 s 728 are each  
2 amended to read as follows:

3       (1) Whenever any ~~((child))~~ individual under the age of eighteen  
4 is convicted as an adult in the courts of this state of a crime  
5 amounting to a felony, and is committed for a term of confinement,  
6 that ~~((child))~~ individual shall be initially placed in a facility  
7 operated by the department of ~~((corrections to))~~ children, youth, and  
8 families; except, the department of corrections shall determine the  
9 ~~((child's))~~ individual's earned release date.

10       (a) If the earned release date is prior to the ~~((child's twenty-~~  
11 ~~first))~~ individual's twenty-fifth birthday, the department of  
12 corrections shall transfer the ~~((child))~~ individual to the custody of  
13 the department of children, youth, and families, or to such other  
14 institution as is now, or may hereafter be authorized by law to  
15 receive such ~~((child))~~ individual, until such time as the ~~((child))~~  
16 individual completes the ordered term of confinement or arrives at  
17 the maximum age of ~~((twenty-one years))~~ juvenile court confinement by  
18 a juvenile court for the same offense under RCW 13.40.300.

19       ~~((i))~~ (b) While in the custody of the department of children,  
20 youth, and families, the ~~((child))~~ individual must have the same  
21 treatment, housing options, transfer, and access to program resources  
22 as any other ~~((child))~~ individual committed ~~((directly))~~ to that  
23 juvenile correctional facility or institution pursuant to chapter  
24 13.40 RCW. Except as provided under (e) of this subsection,  
25 treatment, placement, and program decisions shall be at the sole  
26 discretion of the department of children, youth, and families. The  
27 ~~((youth))~~ individual shall only be transferred ~~((back))~~ to the  
28 custody of the department of corrections with the approval of the  
29 department of children, youth, and families or when the ~~((child))~~  
30 individual reaches the maximum age of ~~((twenty-one))~~ juvenile  
31 offender commitment by a juvenile court for the same offense provided  
32 under RCW 13.40.300.

33       ~~((ii))~~ (c) If the ~~((child's))~~ individual's sentence includes a  
34 term of community custody, the department of children, youth, and  
35 families shall not release the ~~((child))~~ individual to community  
36 custody until the department of corrections has approved the  
37 ~~((child's))~~ individual's release plan pursuant to RCW  
38 9.94A.729(5)(b). If ~~((a child))~~ an individual is held past his or her  
39 earned release date pending release plan approval, the department of  
40 children, youth, and families shall retain custody until a plan is

1 approved or the ~~((child))~~ individual completes the ordered term of  
2 confinement prior to the maximum age ~~((twenty-one))~~ of juvenile  
3 offender commitment by a juvenile court for the same offense provided  
4 under RCW 13.40.300.

5 ~~((iii))~~ (d) If the department of children, youth, and families  
6 determines that retaining custody of the ~~((child))~~ individual  
7 presents a significant safety risk, the ~~((child))~~ individual may be  
8 ~~((returned))~~ transferred to the custody of the department of  
9 corrections.

10 ~~((b))~~ (e) If the ~~((child's))~~ individual's earned release date  
11 is on or after the ~~((child's twenty-first))~~ individual's twenty-fifth  
12 birthday, the department of corrections ~~((shall))~~ may, with the  
13 consent of the secretary of the department of children, youth, and  
14 families, ~~((transfer))~~ retain the ~~((child to))~~ individual in a  
15 facility or institution operated by the department of children,  
16 youth, and families. Despite the transfer, the department of  
17 corrections retains authority over custody decisions and must approve  
18 any leave from the facility. When the ~~((child turns age twenty-one))~~  
19 individual reaches the maximum age of juvenile offender commitment by  
20 a juvenile court for the same offense provided under RCW 13.40.300,  
21 he or she must be transferred ~~((back))~~ to the department of  
22 corrections. The department of children, youth, and families has all  
23 routine and day-to-day operations authority for the ~~((child))~~  
24 individual while he or she is in its custody.

25 (2) (a) Except as provided in (b) and (c) of this subsection, an  
26 offender under the age of eighteen who is ~~((convicted in adult~~  
27 ~~criminal court and who is committed to a term of confinement at))~~  
28 transferred to the custody of the department of corrections must be  
29 placed in a housing unit, or a portion of a housing unit, that is  
30 separated from offenders eighteen years of age or older, until the  
31 offender reaches the age of eighteen.

32 (b) An offender who is transferred to the custody of the  
33 department of corrections and reaches eighteen years of age may  
34 remain in a housing unit for offenders under the age of eighteen if  
35 the secretary of corrections determines that: (i) The offender's  
36 needs and the ~~((correctional))~~ rehabilitation goals for the offender  
37 could continue to be better met by the programs and housing  
38 environment that is separate from offenders eighteen years of age and  
39 older; and (ii) the programs or housing environment for offenders  
40 under the age of eighteen will not be substantially affected by the

1 continued placement of the offender in that environment. The offender  
2 may remain placed in a housing unit for offenders under the age of  
3 eighteen until such time as the secretary of corrections determines  
4 that the offender's needs and (~~correctional~~) goals are no longer  
5 better met in that environment but in no case past the (~~offender's~~  
6 ~~twenty-first birthday~~) maximum age of juvenile offender commitment  
7 by a juvenile court for the same offense provided under RCW  
8 13.40.300.

9 (c) An offender transferred to the custody of the department of  
10 corrections who is under the age of eighteen may be housed in an  
11 intensive management unit or administrative segregation unit  
12 containing offenders eighteen years of age or older if it is  
13 necessary for the safety or security of the offender or staff. In  
14 these cases, the offender must be kept physically separate from other  
15 offenders at all times.

16 (3) The department of children, youth, and families must review  
17 the placement of an individual over age twenty-one who was placed in  
18 the custody of the department of children, youth, and families  
19 following an adult court felony conviction for an offense committed  
20 before age eighteen to determine whether the individual should be  
21 transferred to the custody of the department of corrections. The  
22 department of children, youth, and families may determine the  
23 frequency of the review required under this subsection, but the  
24 review must occur at least once before the individual reaches age  
25 twenty-three if the individual's commitment period in a juvenile  
26 institution extends beyond age twenty-three.

27 **Sec. 3.** RCW 13.40.300 and 2018 c 162 s 7 are each amended to  
28 read as follows:

29 (1) Except as provided in subsection (2) of this section, a  
30 juvenile offender may not be committed by the juvenile court to the  
31 department of children, youth, and families for placement in a  
32 juvenile correctional institution beyond the juvenile offender's  
33 twenty-first birthday.

34 (2) (a) A juvenile offender (~~convicted~~) adjudicated of an A++  
35 juvenile disposition category offense listed in RCW 13.40.0357, or  
36 found to be armed with a firearm and sentenced to an additional  
37 twelve months pursuant to RCW 13.40.193(3)(b), may be committed by  
38 the juvenile court to the department of children, youth, and families

1 for placement in a juvenile correctional institution up to the  
2 juvenile offender's twenty-fifth birthday, but not beyond.

3 (b) A juvenile offender adjudicated of the following offenses may  
4 be committed by the juvenile court to the department of children,  
5 youth, and families for placement in a correctional institution up to  
6 the time the juvenile offender is age twenty-five years old, but not  
7 beyond:

8 (i) A serious violent offense as defined in RCW 9.94A.030;

9 (ii) A violent offense as defined in RCW 9.94A.030 and the  
10 juvenile has a criminal history consisting of: (A) One or more prior  
11 serious violent offenses; (B) two or more prior violent offenses; or  
12 (C) three or more of any combination of the following offenses: Any  
13 class A felony, any class B felony, vehicular assault, or  
14 manslaughter in the second degree, all of which must have been  
15 committed after the juvenile's thirteenth birthday and prosecuted  
16 separately; or

17 (iii) Rape of a child in the first degree.

18 (3) A juvenile may be under the jurisdiction of the juvenile  
19 court or the authority of the department of children, youth, and  
20 families beyond the juvenile's eighteenth birthday only if prior to  
21 the juvenile's eighteenth birthday:

22 (a) Proceedings are pending seeking the adjudication of a  
23 juvenile offense and the court by written order setting forth its  
24 reasons extends jurisdiction of juvenile court over the juvenile  
25 beyond his or her eighteenth birthday, except:

26 (i) If the court enters a written order extending jurisdiction  
27 under this subsection, it shall not extend jurisdiction beyond the  
28 juvenile's twenty-first birthday;

29 (ii) If the order fails to specify a specific date, it shall be  
30 presumed that jurisdiction is extended to age twenty-one; and

31 (iii) If the juvenile court previously extended jurisdiction  
32 beyond the juvenile's eighteenth birthday, and that period of  
33 extension has not expired, the court may further extend jurisdiction  
34 by written order setting forth its reasons;

35 (b) The juvenile has been found guilty after a fact finding or  
36 after a plea of guilty and an automatic extension is necessary to  
37 allow for the imposition of disposition;

38 (c) Disposition has been held and an automatic extension is  
39 necessary to allow for the execution and enforcement of the court's  
40 order of disposition, subject to the following:

1 (i) If an order of disposition imposes commitment to the  
2 department, then jurisdiction is automatically extended to include a  
3 period of up to twelve months of parole, in no case extending beyond  
4 the offender's twenty-first birthday, except;

5 (ii) (A) If an order of disposition imposes a commitment to the  
6 department for a juvenile offender (~~(convicted)~~) adjudicated of an  
7 A++ juvenile disposition category offense listed in RCW 13.40.0357,  
8 or found to be armed with a firearm and sentenced to an additional  
9 twelve months pursuant to RCW 13.40.193(3)(b), then jurisdiction for  
10 parole is automatically extended to include a period of up to twenty-  
11 four months of parole, in no case extending beyond the offender's  
12 twenty-fifth birthday; or

13 (B) If an order of disposition imposes commitment to the  
14 department for a juvenile offender under subsection (2)(b) of this  
15 section, jurisdiction for parole is automatically extended to include  
16 a period of up to twenty-four months of parole, in no case extending  
17 beyond the offender's twenty-fifth birthday;

18 (d) While proceedings are pending in a case in which jurisdiction  
19 is vested in the adult criminal court pursuant to RCW 13.04.030, the  
20 juvenile turns eighteen years of age and is subsequently found not  
21 guilty of the charge for which he or she was transferred, or is  
22 convicted in the adult criminal court of a lesser included offense,  
23 and an automatic extension is necessary to impose the disposition as  
24 required by RCW 13.04.030(1)(e)(v)(C)(II); or

25 (e) Pursuant to the terms of RCW 13.40.190 and 13.40.198, the  
26 juvenile court maintains jurisdiction beyond the juvenile offender's  
27 twenty-first birthday for the purpose of enforcing an order of  
28 restitution or penalty assessment.

29 (4) Except as otherwise provided herein, in no event may the  
30 juvenile court have authority to extend jurisdiction over any  
31 juvenile offender beyond the juvenile offender's twenty-first  
32 birthday.

33 (5) Notwithstanding any extension of jurisdiction over a person  
34 pursuant to this section, the juvenile court has no jurisdiction over  
35 any offenses alleged to have been committed by a person eighteen  
36 years of age or older.

37 NEW SECTION. Sec. 4. A new section is added to chapter 72.01  
38 RCW to read as follows:

1 (1) Any individual in the custody of the department of social and  
2 health services or the department of children, youth, and families on  
3 or before the effective date of this section, who was under the age  
4 of eighteen at the time of the commission of the offense and who was  
5 convicted as an adult, must remain in the custody of the department  
6 of children, youth, and families until transfer to the department of  
7 corrections or release pursuant to RCW 72.01.410.

8 (2) Any individual in the custody of the department of  
9 corrections on the effective date of this section, who was under the  
10 age of eighteen at the time of the commission of the offense and who  
11 was convicted as an adult, and who has not yet reached the maximum  
12 age of juvenile offender commitment by a juvenile court for the same  
13 offense provided under RCW 13.40.300, is subject to the following  
14 provisions regarding placement:

15 (a) Any individual with an earned release date prior to age  
16 twenty-five is eligible for transfer to the custody of the department  
17 of children, youth, and families beginning January 1, 2020, subject  
18 to the process established in subsection (3) of this section.

19 (b) Any individual with an earned release date after age twenty-  
20 five is eligible for transfer to the custody of the department of  
21 children, youth, and families beginning January 1, 2020, subject to  
22 the process established in subsection (3) of this section.

23 (3) By February 1, 2020, the department of corrections and the  
24 department of children, youth, and families must review and determine  
25 whether an individual identified in subsection (2)(a) and (b) of this  
26 section should transfer from the department of corrections to the  
27 department of children, youth, and families through the following  
28 process:

29 (a) No later than September 1, 2019, the department of  
30 corrections and the department of children, youth, and families shall  
31 establish, through a memorandum of understanding, a multidisciplinary  
32 interagency team to conduct a case-by-case review of the transfer of  
33 individuals from the department of corrections to the department of  
34 children, youth, and families pursuant to subsection (2)(a) and (b)  
35 of this section. The multidisciplinary interagency team must include  
36 a minimum of three representatives from the department of corrections  
37 and three representatives from the department of children, youth, and  
38 families, and must provide the individual whose transfer is being  
39 considered an opportunity to consent to the transfer. In considering  
40 whether a transfer to the department of children, youth, and families

1 is appropriate, the multidisciplinary interagency team may consider  
2 any relevant factors including, but not limited to:

3 (i) The safety and security of the individual, staff, and other  
4 individuals in the custody of the department of children, youth, and  
5 families;

6 (ii) The individual's behavior and assessed risks and needs;

7 (iii) Whether the department of children, youth, and families or  
8 the department of corrections' programs are better equipped to  
9 facilitate successful rehabilitation and reentry into the community;  
10 and

11 (iv) Any statements regarding the transfer made by the individual  
12 whose transfer is being considered.

13 (b) After reviewing each proposed transfer, the multidisciplinary  
14 interagency team shall make a recommendation regarding the transfer  
15 to the secretaries of the department of children, youth, and families  
16 and the department of corrections. This recommendation must be  
17 provided to the secretaries of each department by January 1, 2020.

18 (c) The secretaries of the department of children, youth, and  
19 families and the department of corrections, or their designees, shall  
20 approve or deny the transfer within thirty days of receiving the  
21 recommendation of the multidisciplinary interagency team, and by no  
22 later than February 1, 2020.

23 (4) This section expires July 1, 2021.

24 **Sec. 5.** 2018 c 162 s 9 (uncodified) is amended to read as  
25 follows:

26 The Washington state institute for public policy must assess the  
27 impact of (~~this act~~) chapter 162, Laws of 2018, and chapter . . . ,  
28 Laws of 2019 (this act) on community safety, racial  
29 disproportionality, recidivism, state expenditures, and youth  
30 rehabilitation, to the extent possible, and submit, in compliance  
31 with RCW 43.01.036, a preliminary report to the governor and the  
32 appropriate committees of the legislature by December 1, 2023, and a  
33 final report to the governor and the appropriate committees of the  
34 legislature by December 1, 2031.

35 NEW SECTION. **Sec. 6.** If specific funding for the purposes of  
36 this act, referencing this act by bill or chapter number, is not



1 provided by June 30, 2019, in the omnibus appropriations act, this  
2 act is null and void.

--- **END** ---