
SUBSTITUTE SENATE BILL 5737

State of Washington

66th Legislature

2019 Regular Session

By Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Conway, and Nguyen)

READ FIRST TIME 02/21/19.

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; adding a
4 new section to chapter 9.94A RCW; adding a new section to chapter
5 43.216 RCW; creating a new section; and providing an expiration date.

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

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

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

1 similar programming in other states, which has significantly reduced
2 recidivism of juveniles confined in adult correctional facilities.

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

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

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

20 ~~((i))~~ While in the custody of the department of children, youth,
21 and families, the ~~((child))~~ person must have the same treatment,
22 housing options, transfer, and access to program resources as any
23 other ~~((child))~~ person committed ~~((directly))~~ to that juvenile
24 correctional facility or institution pursuant to chapter 13.40 RCW.
25 Except as provided under (d) of this subsection, treatment,
26 placement, and program decisions shall be at the sole discretion of
27 the department of children, youth, and families. The ((youth)) person
28 shall ((only)) not be transferred ((back)) to the custody of the
29 department of corrections ((with)) without the approval of the
30 department of children, youth, and families ((or when the child))
31 until the person reaches the age of ((twenty-one)) twenty-five.

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

1 completes the ordered term of confinement prior to age (~~(twenty-one)~~)
2 twenty-five.

3 ~~((iii))~~ (c) If the department of children, youth, and families
4 determines that retaining custody of the (~~child~~) person in a
5 facility of the department of children, youth, and families presents
6 a significant safety risk, the (~~child may be returned~~) department
7 of children, youth, and families may transfer the person to the
8 custody of the department of corrections.

9 ~~((b) If the child's earned release date is on or after the~~
10 ~~child's twenty-first birthday, the department of corrections shall,~~
11 ~~with the consent of the secretary of children, youth, and families,~~
12 ~~transfer the child to a facility or institution operated by the~~
13 ~~department of children, youth, and families. Despite the transfer,))~~

14 (d) The department of corrections (~~retains~~) must retain authority
15 over custody decisions relating to a person whose earned release date
16 is on or after the person's twenty-fifth birthday and who is placed
17 in a facility operated by the department of children, youth, and
18 families under this section, and must approve any leave from the
19 facility. When the (~~child~~) person turns age (~~(twenty-one)~~) twenty-
20 five, he or she must be transferred (~~(back)~~) to the department of
21 corrections. The department of children, youth, and families has all
22 routine and day-to-day operations authority for the (~~child~~) person
23 while the person is in its custody.

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

32 (b) (~~An offender~~) A person who is transferred to the custody of
33 the department of corrections and reaches eighteen years of age may
34 remain in a housing unit for (~~offenders~~) persons under the age of
35 eighteen if the secretary of corrections determines that: (i) The
36 (~~offender's~~) person's needs and the (~~correctional~~) rehabilitation
37 goals for the (~~offender~~) person could continue to be better met by
38 the programs and housing environment that is separate from
39 (~~offenders~~) other persons in custody who are eighteen years of age
40 and older; and (ii) the programs or housing environment for

1 ((~~offenders~~)) persons under the age of eighteen will not be
2 substantially affected by the continued placement of the ((~~offender~~))
3 person in that environment. The ((~~offender~~)) person may remain placed
4 in a housing unit for ((~~offenders~~)) persons under the age of eighteen
5 until such time as the secretary of corrections determines that the
6 ((~~offender's~~)) person's needs and ((~~correctional~~)) goals are no
7 longer better met in that environment but in no case past the
8 ((~~offender's twenty-first~~)) person's twenty-fifth birthday.

9 (c) ((~~An offender~~)) A person transferred to the custody of the
10 department of corrections who is under the age of eighteen may be
11 housed in an intensive management unit or administrative segregation
12 unit 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 a person over age twenty-one in the custody of the
18 department of children, youth, and families under this section to
19 determine whether the person should be transferred to the custody of
20 the department of corrections. The department of children, youth, and
21 families may determine the frequency of the review required under
22 this subsection, but the review must occur at least once before the
23 person reaches age twenty-three if the person's commitment period in
24 a juvenile institution extends beyond age twenty-three.

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

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

32 (2) (a) A juvenile offender ((~~convicted~~)) adjudicated of an A++
33 juvenile disposition category offense listed in RCW 13.40.0357, or
34 found to be armed with a firearm and sentenced to an additional
35 twelve months pursuant to RCW 13.40.193(3)(b), may be committed by
36 the juvenile court to the department of children, youth, and families
37 for placement in a juvenile ((~~correctional institution~~))
38 rehabilitation facility up to the juvenile offender's twenty-fifth
39 birthday, but not beyond.

1 (b) A juvenile offender adjudicated of the following offenses may
2 be committed by the juvenile court to the department of children,
3 youth, and families for placement in a correctional institution up to
4 the juvenile offender's twenty-fifth birthday, but not beyond:

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

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

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

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

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

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

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

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

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

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

38 (i) If an order of disposition imposes commitment to the
39 department, then jurisdiction is automatically extended to include a

1 period of up to twelve months of parole, in no case extending beyond
2 the offender's twenty-first birthday, except;

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

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

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

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

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

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

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

37 (1) Any person in the custody of the department of social and
38 health services or the department of children, youth, and families on
39 or before the effective date of this section, who was under the age

1 of eighteen at the time of the commission of the offense and who was
2 convicted as an adult, must remain in the custody of the department
3 of children, youth, and families until transfer to the department of
4 corrections or release pursuant to RCW 72.01.410.

5 (2) Any person in the custody of the department of corrections on
6 the effective date of this section, who was under the age of eighteen
7 at the time of the commission of the offense and who was convicted as
8 an adult, and who has not yet reached the age of twenty-five, is
9 subject to the following provisions regarding placement:

10 (a) Any person with an earned release date prior to the person's
11 twenty-fifth birthday is eligible for transfer to the custody of the
12 department of children, youth, and families beginning January 1,
13 2020, subject to the process established in subsection (3) of this
14 section.

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

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

26 (a) No later than September 1, 2019, the department of
27 corrections and the department of children, youth, and families shall
28 establish, through a memorandum of understanding, a multidisciplinary
29 interagency team to conduct a case-by-case review of the transfer of
30 persons from the department of corrections to the department of
31 children, youth, and families pursuant to subsection (2)(a) and (b)
32 of this section. The multidisciplinary interagency team must include
33 a minimum of three representatives from the department of corrections
34 and three representatives from the department of children, youth, and
35 families, and must provide the person whose transfer is being
36 considered an opportunity to consent to the transfer. In considering
37 whether a transfer to the department of children, youth, and families
38 is appropriate, the multidisciplinary interagency team may consider
39 any relevant factors including, but not limited to:

1 (i) The safety and security of the person, staff, and other
2 persons in the custody of the department of children, youth, and
3 families;

4 (ii) The person's behavior and assessed risks and needs;

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

9 (iv) Any statements regarding the transfer made by the person
10 whose transfer is being considered.

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

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

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

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

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

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 9.94A
34 RCW to read as follows:

35 (1) For an offender who is required to transfer to a department
36 of corrections facility upon the offender's twenty-fifth birthday
37 under RCW 72.01.410, if the offender's earned release date will take
38 place before the offender's twenty-sixth birthday, the offender's

1 remaining term of confinement may be served in partial confinement as
2 home detention, provided:

3 (a) The offender has not been found by the United States attorney
4 general to be subject to a deportation detainer or order and does not
5 become subject to a deportation order during the period of the
6 sentence;

7 (b) The department in consultation with the department of
8 children, youth, and families determines that such a placement is in
9 the best interests of the offender; and

10 (c) The safeguards available are sufficient to protect community
11 safety.

12 (2) All offenders placed on home detention under subsection (1)
13 of this section shall provide an approved residence and living
14 arrangement prior to transfer to home detention.

15 (3) While in the community on home detention, the department
16 shall:

17 (a) Require the offender to be placed on electronic home
18 monitoring; and

19 (b) Assign a community corrections officer to monitor the
20 offender's compliance with the conditions of partial confinement and
21 programming requirements, if any.

22 (4) The department has the authority to return any offender
23 serving partial confinement under subsection (1) of this section to
24 total confinement if the offender is not complying with sentence
25 requirements.

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.216
27 RCW to read as follows:

28 (1) The department has a duty to comply with RCW 28A.155.090 by
29 assuring that persons in the custody of a juvenile institution who
30 are enrolled in school and who are in need of a special education
31 assessment receive a timely assessment as required by state and
32 federal law.

33 (2) In furtherance of this duty, the department must assure that
34 any school district operating within one of its facilities that is
35 providing instruction to a student who is in need of a special
36 education assessment has made reasonable efforts to contact a person
37 authorized to act as a parent in order to authorize the appropriate
38 special education assessment. If after reasonable efforts the need
39 arises for assignment of a surrogate parent to authorize the special

1 education assessment, such assignment of a surrogate parent must be
2 accomplished within thirty days of the point at which the district or
3 facility determines or reasonably should have determined that
4 assignment of a surrogate is required.

5 (3) The department shall review the educational records of all
6 children receiving instruction within a juvenile rehabilitation
7 facility for the purpose of establishing whether any children in its
8 care are in need of special education assessments and ensure that
9 they receive them. The department shall report its findings to the
10 appropriate committees of the legislature by October 1, 2019.

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