

SENATE BILL REPORT

SB 5278

As of February 3, 2025

Title: An act relating to emergency measures for managing juvenile populations at state juvenile correctional institutions.

Brief Description: Concerning emergency measures for managing juvenile populations at state juvenile correctional institutions.

Sponsors: Senators Braun, Christian, Dozier and Wilson, J..

Brief History:

Committee Activity: Human Services: 2/03/25.

Brief Summary of Bill

- Authorizes the secretary of Department of Children, Youth, and Families (DCYF) to transfer individuals from a secured institution to a community facility, under certain circumstances.
- Requires the secretary of DCYF to transfer individuals from DCYF to the custody of the Department of Corrections (DOC), under certain circumstances.
- Provides a process for a person to request to be transferred from DCYF to DOC.
- Requires a person to be transferred from DCYF to DOC if there is a staff assault or inappropriate sexual relations.
- Alters requirements for transfer hearings conducted by the DCYF review board.

SENATE COMMITTEE ON HUMAN SERVICES

Staff: Kelsey-anne Fung (786-7479)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Juvenile Rehabilitation Institutions. The Juvenile Rehabilitation (JR) division of the Department of Children, Youth, and Families (DCYF) operates two secure residential facilities for juveniles who are convicted of crimes and sentenced to more than 30 days of confinement. The Echo Glen Children's Center in Snoqualmie serves younger males as well as female juveniles. The Green Hill School in Chehalis serves older male juveniles.

Community Residential Facilities. JR also operates eight community residential facilities across the state, which allow youth to begin transitioning back to the community. These facilities provide treatment, education, and vocational services. To be eligible for community facility placement, a youth must be placed on minimum security status, serve at least 10 percent of the individual's sentence or at least 30 days at the secure institution, whichever is greater, and all placement assessment requirements have been met.

Juvenile Rehabilitation to Age 25. In 2018 and 2019, the Legislature passed legislation commonly referred to as JR to 25, which extended the period for which individuals convicted of offenses that occurred before the person turned 18 could remain in a juvenile rehabilitation facility from age 21 to age 25. If an individual has an earned release date that extends past their 25th birthday, when the individual reaches age 25, they must be transferred from DCYF custody to the Department of Corrections (DOC), except in limited circumstances where a person may be eligible for partial confinement.

Current law allows for transfers to DOC before age 25 if DCYF determines that retaining custody of the person presents a significant safety risk. DCYF must review the placement of a person over age 21 to determine whether the person should be transferred to DOC. The review must occur at least before the person turns age 23 if the person's commitment period in a juvenile institution extends beyond the person's 23rd birthday.

Transfer Hearings. The secretary of DCYF, with the consent of the secretary of DOC, may transfer a juvenile from DCYF to DOC if it is established at a hearing before a review board that continued placement of the juvenile offender in DCYF presents a continuing and serious threat to the safety of others in the institution. Assaults made against a staff member that are reported to a local law enforcement agency require a hearing within ten judicial working days. Upon conviction for custodial assault, a second hearing must be conducted within five working days, where the juvenile has the burden to show cause why the transfer to DOC should not occur.

If a juvenile is transferred to DOC, the juvenile can only remain until their maximum term of confinement imposed by the juvenile court. A juvenile transferred to DOC may be transferred back to DCYF at the discretion of the DCYF secretary and with the consent of the DOC secretary.

Residential Board Hearing Process. Internal JR policies and DCYF regulations outline the residential review board hearing process that must occur before any youth may be

transferred to DOC custody. A youth being considered for transfer to DOC must be notified in writing at least seven calendar days in advance of the hearing with the reasons for transfer, the youth's right to counsel for the hearing, a copy of the rules for the hearing, and the opportunity to access and review any files or records pertaining to the proposed transfer. JR may file an emergency motion with the court to transfer the youth to DOC pending the results of the hearing if the circumstances are so severe that JR cannot ensure the safety of the facility or others while the pre-transfer hearing is pending.

During the hearing, the parties have the right to present evidence, call and cross-examine witnesses, and make recommendations to the review board. If the transfer is contested, the burden of proof is on DCYF to show that the youth presents a continuing and serious threat to the safety of others in the institution. When the youth has been convicted of custodial assault, the youth has the burden to show why transfer to DOC should not occur.

The review board must consider all evidence presented at the hearing by assessing relevance, credibility, and usefulness of the evidence. The review board must prepare a written record of the decision and reasons within seven calendar days after the hearing, unless extended by the secretary. If the review board decides to transfer the youth to DOC, JR must provide the youth and their attorney with a notice informing them of the review board's decision and their right to appeal under the Administrative Procedure Act before the youth's departure to DOC.

Voluntary Transfers. Internal JR policy allows a youth to be transferred to DOC to serve the balance of the term of confinement if the youth self-requests to transfer to DOC.

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

Summary of Bill (Proposed Substitute): Capacity. *Transfers to Community Facilities.* The DCYF secretary may transfer a sufficient number of individuals from the secure institution to community facilities to reduce the in-residence population to 100 percent of rated bed capacity when the secretary concludes that the in-residence population of the secure institution exceeds 105 percent of rated bed capacity.

The following individuals must not be transferred:

- a person adjudicated of a violent offense or a sex offense;
- a person that is a risk to public safety;
- a person that is a serious threat to the safety of others in the institution, as determined by a transfer hearing;
- a person that would be better served by the services provided at an institution; or
- a person with a history of infractions at an institution and who would be unable to comply with residential disciplinary standards established by DCYF.

When placing an individual at a community facility, the secretary must comply with state law related to risk assessments, student records, and notification of local law enforcement

before an individual can be placed in a community facility. The requirement that an individual spend at least 10 percent, or at least 30 days, whichever is greater, in a secure institution before being placed in a community facility may be waived.

Transfers to the Department of Corrections. The DCYF secretary must, with the consent of the secretary of DOC, transfer a sufficient number of individuals from a secure institution to DOC to reduce the in-residence population to 100 percent of rated bed capacity when the secretary concludes that the in-residence population of the secure institution exceeds 105 percent of rated bed capacity and the rehabilitative goals of the institution cannot be met.

Except for persons determined to meet the goals of juvenile rehabilitation, the following persons shall be transferred, without a transfer hearing:

- any person over the age of 18; and
- any person who has a term of confinement or earned release date that extends beyond the person's 25th birthday.

If the DCYF secretary determines the person meets the goals of juvenile rehabilitation, the person must remain in DCYF custody and not be transferred to DOC. To demonstrate a person meets the goals of juvenile rehabilitation, the person must:

- demonstrate a past commitment to rehabilitation by having no serious infractions, having no more than two minor infractions within the prior 12 months, and having not been subject to a transfer hearing; and
- demonstrate a future commitment to rehabilitation by:
 1. receiving a recommendation from the facility superintendent that is accepted by the DCYF secretary that the person meets the goals of juvenile rehabilitation; and
 2. having completed or completing a personal development milestone such as obtaining a high school diploma, high school equivalency certificate, degree of higher education; completing a job training program; or completing a rehabilitative program.

Voluntary Transfers. Any person who is at least 18 years old and is placed in a DCYF facility due to being convicted in adult court for a crime committed under the age of 18 may request to be transferred to DOC. The DCYF secretary, with the consent of the DOC secretary, may transfer any person who requests to be transferred, without a transfer hearing. The DOC and DCYF secretaries shall develop a transfer request form.

When approving or denying transfer requests, the DCYF secretary must consider the following factors:

- the nature of the request;
- the safety of the person making the request;
- the safety of the institution and the public;
- the safety of any victims;
- the severity of any offenses committed;

- whether the person's transfer to DOC will affect the rehabilitative goals of the person; and
- any other necessary information.

Transfer Due to Staff Assault or Inappropriate Sexual Relations. Any assault or serious bodily harm to staff or inappropriate sexual relations between a staff person and person in the custody of DCYF shall be deemed to be a significant safety risk. A person must be transferred from DCYF to DOC custody before reaching age 25, without a transfer hearing, if:

- the DCYF secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and the person in DCYF custody has occurred, unless the DCYF secretary determines that retaining the person at DCYF is in the best interest of the person and the facility; or
- the person assaults a DCYF employee or staff member who was performing official duties at the time of the assault.

If a juvenile under the age of 18 is transferred to DOC custody, the person must be placed in a housing unit, or a portion of a housing unit, that is separated from other persons in DOC custody who are over 18 years old, until the juvenile reaches age 18. A juvenile may remain in a housing unit for persons under age 18 if the DOC secretary determines that:

- the juvenile's needs and rehabilitation goals could continue to be better met by the programs and housing environment that is separate from persons in custody who are 18 years or older; and
- the programs or housing environment for persons under age 18 will not be substantially affected by the continued placement of the person in that environment.

A juvenile transferred to DOC who is under the age of 18 may be housed in an intensive management unit or administrative segregation unit containing persons 18 years of age or older if it is necessary for the safety and security of the juvenile or staff.

Transfer Hearings. Language requiring a hearing by the DCYF review board for assaults against staff that are reported to a local law enforcement agency is removed. Instead, the DCYF review board must hold a transfer hearing within ten judicial working days for a prison riot offense or possession of any narcotic drug or controlled substance, alcohol, cannabis, or other intoxicant, or a cell phone or other form of electronic telecommunications device offense.

In addition to a conviction for custodial assault, conviction of prison riot or possession of any narcotic drug or controlled substance, alcohol, cannabis, or other intoxicant, or a cell phone or other form of electronic telecommunications device are added as offenses requiring the DCYF review board to conduct a second hearing within five judicial working days to recommend that the juvenile be transferred if the review board determines the person represents a continuing and serious threat to the safety of others.

Rules. DCYF must promulgate rules establishing the safe operational capacity of all juvenile correctional institutions and community facilities under its control. DCYF shall revise these rules as necessary.

General. This act may be known and cited as the Juvenile Rehabilitation Overcrowding Relief Act or J-RORA.

Appropriation: None.

Fiscal Note: Available.

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 Proposed Substitute: PRO: The state is not delivering on the promise it made when JR to 25 legislation was adopted because of the overpopulation at Green Hill. This bill addresses the overcrowding by allowing different avenues for the agency to make reasoned decisions about where they could move folks to reduce the population. Proper tools need to be provided to the agency to implement this policy if the state is going to have any hope of delivery on its promise of rehabilitation services.

When DOC or JR systems fail, public safety is jeopardized. The JR intake freeze had impacts on local jurisdictions and backed up the system. This bill will ensure adequate capacity exists in state systems.

CON: When the Legislature originally passed JR to 25, it was in response to scientific developments that kids' brains are fundamentally different, which means that they should reside with those who are at an equivalent developmental phase and that their age makes them uniquely positioned to be rehabilitated. The JR system is failing youth right now as it is overcrowded and the treatment and education systems are not working where they should be, but the solution is not to turn backs on the youth or on the science behind JR to 25. The solution is to invest in the system, invest in returning young people to their communities without subjecting them to further harm of the adult carceral system, invest in upstream solutions to prevent people from coming into JR, and to not back away from this policy. Sending youth to DOC would be the most harmful way to address the capacity issues at JR.

The mandatory provisions of the bill render any discretionary powers meaningless in practice. This bill would create a system where the pretransfer process exists for only some youth, some of the time, but not others. The Legislature enshrined process rights in statute for youth facing transfer and if this process is eliminated in some instances, the process becomes a meaningless check on agency power. Youth will be taken away from one day to the next, with no warning, and suddenly removed from programming, education,

health care, and peer support. Anxiety and uncertainty about being whisked away will be introduced into their lives, disincentivizing them from engaging in their rehabilitation. There are better ways to deal with overcrowding than punitive transfers like expanding access to community transition services. The overcrowding at Green Hill is not the youth's fault.

The bill's mandatory transfer due to capacity may conflict with current law that allows the DCYF secretary to recommend reductions to the Governor when the population exceeds 105 percent of rated bed capacity. The bill also includes a provision that youth must be deemed significant safety risks if inappropriate sexual relations occur between a staff person and a person in DCYF custody. Custodial sexual misconduct applies when the perpetrator is an employee or contract personnel of a correctional agency and the victim is a resident of a state, county, or city adult or juvenile correctional facility. Those youth are not safety risks but victims of a crime. This would be punishing young people for actions they cannot legally consent to and criminalize them for their own victimization. There is an imbalance of power between an employee and an incarcerated individual, who lacks power and cannot consent.

Youth are leaving Green Hill with adult felony convictions, which is not the fault of youth who find themselves under Lewis County jurisdiction based on the decisions of the government. Prison riot charges can be filed as a result of a fight involving more than two people in a correctional institution; however, statewide this charge is used almost exclusively against the young people at Green Hill. Although there are 13,700 people in DOC custody, and 315 people in JR custody, 61 percent of all prison riot charges over the past 7.5 years have been filed in Lewis County. This is on the account of the prosecutorial discretion exercised in the county where Green Hill is. The youth at Green Hill are acutely at risk for picking up new charges while in the care of JR.

OTHER: Rated bed capacity figures are not defined in statute so DCYF engaged national experts to make recommendations on safe operational capacity to mitigate overcrowding using bed availability, access to showers and restrooms, and ratios of programming space. This should be in rule in case there are changes, emergencies, or new construction so it would not require a law change. There should be relief valves for the juvenile sentence population and adult sentence population.

The transfer authority and placement review of 21 to 23 year olds should be clarified. DOC and DCYF should partner to be really clear and intentional in future planning with young people about all the less restrictive options that may exist to them across both continuums. Transparency about options could help incentivize or engage some in more voluntary transfer or placement options in the DOC system.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor; James McMahan, WA Assoc Sheriffs & Police Chiefs.

CON: Grete Schultz, TeamChild; Sarah Nagy, Columbia Legal Services; Keri-Anne Jetzer, WA State Sentencing Guidelines Commission; Elizabeth Mustin, WA State Office of Public Defense; William Hairston, Center for Children & Youth Justice.

OTHER: Allison Krutsinger, Dept of Children, Youth, and Families.

Persons Signed In To Testify But Not Testifying:

CON: Esther Matthews.