

HOUSE BILL REPORT

HB 3029

As Reported by House Committee On:
Education

Title: An act relating to providing education programs for juveniles in adult jails.

Brief Description: Providing education programs for juveniles in adult jails.

Sponsors: Representatives Haigh, Pettigrew, Quall, Ormsby, Appleton, Kagi, Wallace, Kenney and Darneille; by request of Superintendent of Public Instruction.

Brief History:

Committee Activity:

Education: 1/29/10, 2/2/10 [DPS].

Brief Summary of Substitute Bill

- Provides for a program of education for juveniles confined in adult jail facilities.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Quall, Chair; Maxwell, Vice Chair; Priest, Ranking Minority Member; Dammeier, Hunt, Liias, Orwall, Probst, Santos and Sullivan.

Minority Report: Do not pass. Signed by 3 members: Representatives Hope, Assistant Ranking Minority Member; Fagan and Johnson.

Staff: Cece Clynch (786-7195).

Background:

Provisions are made in statute for educational programs for juveniles confined in state adult correctional facilities, state institutions for juvenile rehabilitation, and county juvenile detention facilities. No specific statutory provision is made for educational programs for juveniles confined in adult jails.

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.

Adult Correctional Facilities Maintained by the Department of Corrections.

School districts, educational service districts, or any combination thereof are identified as the primary providers of the educational program (program) for juvenile inmates in adult correctional facilities run by the Department of Corrections (DOC). Higher education institutions or other qualified entities may contract to provide all or part of the program if no school district or educational district is willing to operate such a program.

These educational programs are for inmates under 18 years of age. Students who are 18 and have participated in such an educational program may continue in the program with the permission of the DOC and the educational provider.

The DOC provides the facilities, utilities, and security staff. The educational provider employs the teachers and furnishes the textbooks and curriculum. The DOC and the provider negotiate and execute a written contract for each school year, or such longer period as agreed upon.

By April 15 of each year, the DOC must provide notice to the district superintendent of any foreseeable facility closure or reduction in numbers of juvenile inmates under 18 or any other cause for a reduction in the school district's staff for the next school year. If the DOC fails to provide such notice, it is liable and responsible for the payment of the salary and employment related costs of each school district employee whose contract the district would have nonrenewed but for the failure to notify. Disputes regarding failure to notify must be resolved pursuant to the alternative dispute method set forth in the contract.

In an opinion issued in 2000, the Washington Supreme Court held that this statutory framework put in place by the Legislature satisfied constitutional requirements.

State Institutions for Juvenile Rehabilitation.

The Department of Social and Health Services (DSHS) and certain school districts in the state must provide a program of education for residents who have been admitted pursuant to the Juvenile Justice Act to state institutions for juvenile rehabilitation such as Green Hill, Maple Lane, Naselle Youth Camp, and the like. Although a juvenile offender may not be committed to a juvenile correctional facility beyond his or her twenty-first birthday, there are circumstances under which a juvenile may remain under the authority of DSHS beyond his or her eighteenth birthday. The educational program is for residents who are less than 21 and have not met high school graduation requirements.

The school district within which the facility is located is responsible for provision of the educational program. School districts may utilize the services of an educational service district. The school district provides the teachers, administrators, textbooks, and curriculum. The DSHS is responsible for the facilities, furnishings, utilities, and such.

Pursuant to the statutory framework, the DSHS and the district negotiate and execute a contract for each school year, or such longer period as agreed upon. By April 15 of each year, the DSHS must provide notice to the district superintendent of any foreseeable facility closure or reduction in numbers or any other cause for a reduction in the school district's staff for the next school year. If the DSHS fails to provide such notice, it is responsible for the

payment of the salary and employment related costs of each school district employee whose contract the district would have nonrenewed but for the failure to notify.

County Juvenile Detention Facilities.

Construction, acquisition, and maintenance of a juvenile detention facility is a mandatory function of counties. In an opinion issued in 1982 the Washington Supreme Court held that education must be provided in juvenile detention facilities and that it was the responsibility of the counties to provide that education. Subsequently, in 1983 the Legislature provided by statute a program of education to be provided by the counties and the school districts for juveniles confined in these detention facilities. The duties, authority, and liabilities mirror those set forth in the statutes governing the state institutions for juvenile rehabilitation, except that the counties assume the DSHS role.

Summary of Substitute Bill:

Legislative intent is expressed to provide for the operation of education programs for juvenile inmates incarcerated in adult jails. Findings are made that these new statutory provisions fully satisfy any constitutional duty to provide education programs for juvenile inmates in adult jails and that biennial appropriations for education programs made pursuant to this new statutory framework amply provide for any constitutional duty to educate juvenile inmates in adult jails.

The program of education is to be made available by the adult jail facilities and the several school districts of the state for persons under the age of 18 who have been incarcerated in any adult jail facility. Each school district within which such a jail facility is located must provide the program of education, either singly or in concert with another district. Districts may contract with educational service districts, community and technical colleges, four-year institutions of higher education, or other qualified entities to provide all or part of the program.

The school district must supply the teachers, administrators, and textbooks. The district or educational provider must also:

- provide the educational program in accordance with program standards established by the Office of Superintendent of Public Instruction (OSPI);
- expend funds appropriated, granted, or gifted for the direct and indirect costs of maintaining and operating the program for the exclusive purpose of maintaining and operating such programs;
- provide educational services to juvenile inmates within five school days of receiving notification from an adult jail facility within the district's boundaries that an individual under the age of 18 has been incarcerated; and
- develop the curricula, instruction methods, and educational objectives subject to applicable requirements of state and federal law. For inmates under the age of 18 who have not met high school graduation requirements, appropriate courses of instruction and school-related student activities shall be provided by the district to the extent that it is practical and judged appropriate by the district and the administrator of the adult jail facility.

In the course of providing the educational program in an adult jail, districts may:

- award appropriate diplomas or certificates to juvenile inmates who successfully complete graduation requirements;
- allow students 18 years of age who have participated in an education program in an adult jail to continue in the program, under rules adopted by the OSPI; and
- spend only funds appropriated by the Legislature, allocated by the OSPI, or gifted or granted for such a program. A district may not expend excess tax levy proceeds authorized for school district purposes to pay costs of such a program.

The adult jail facility is responsible for the facilities, furnishings, technology, equipment, utilities, and for providing security staff and such other support services reasonably necessary to conduct the education program. The space, technology, equipment, and fixtures requirements may be satisfied with existing space, or through construction, lease, or rental of space. The space must be separate and apart from space occupied by nonstudent inmates while the educational services are being provided, but may be utilized for other uses during such times as the space is not being used to provide the educational program. The adult jail facility is tasked with notifying the district in which the facility is located within five school days that an eligible juvenile inmate has been incarcerated in the jail facility.

Each education provider and adult jail facility must negotiate and execute a written contract for each school year, or such longer period as may be agreed to, that delineates the respective duties and provides for dispute resolution through mediation and, if necessary, arbitration. A contract may provide for the performance of additional duties by an education provider, including those duties imposed upon the jail facility, if supplemental funding provided by the jail facility is available to fully pay the direct and indirect costs of the additional duties.

By April 15 of each year, the jail administrator must provide notice to the OSPI and the education provider of any foreseeable facility closure or reduction in numbers of juvenile inmates or any other cause for a reduction in the school district's staff for the next school year.

By September 30, 2010, districts, in coordination with adult jail facilities located within their boundaries, must submit an instructional service plan to the OSPI. Plans must meet the requirements set forth in the OSPI's rules. Once a district has submitted a plan, it is not required to resubmit unless there is a significant change to the plan. Districts and jail facilities must review the plans annually before April 15.

The OSPI is tasked with allocating the money appropriated by the Legislature for this purpose to school districts that have assumed the primary responsibility to administer and provide the educational program or to the educational service district operating the program under contract. The OSPI must adopt rules regarding funding when the number of students decreases below the number associated with supporting certificated contracts or classified contracts or both. The OSPI must also adopt rules establishing the reporting, compliance, audit, and other accountability requirements necessary for implementation.

Substitute Bill Compared to Original Bill:

The provision that made the jail facility liable for salaries in the case of failure to notify the district of reductions or closure by April 15 was removed. Instead, the OSPI has been tasked with adopting rules regarding school district funding when the number of students decreases below the number associated with supporting certificated or classified staff or both.

The timeline for notice from the jail facility to the school district is changed from three business days to five school days. Educational services must commence within five school days rather than five business days of receipt of notice.

Space requirements may be satisfied by existing facilities, or by construction, leasing, or rental. While being used for educational services, the space cannot be occupied by nonstudent inmates, but this prohibition does not apply at other times.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes place 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is by request from the OSPI. There is currently no statutory framework providing for education of juveniles confined in adult jails. These juveniles may be confined for some time and their time in jail may prove to be a very teachable moment. These juveniles need to be served and there is a need for a statutory framework. There is also a need for taking great care and getting this right. It is a constitutional duty that these juveniles be provided with an educational program. This bill is patterned after the framework in place for adult correctional facilities operated by the DOC. As a rule, these juveniles are already two to three years behind in schools and really need educational services. It is estimated that the cost will be about \$1.7 million annually if the program addresses only those under 18 and \$8 million if the program must be provided for individuals under 21. Enhanced funding is needed in order to provide an education program in the adult jails. This bill addresses a gap and clarifies rights and responsibilities. Recently, the OSPI, Pierce County, and the Tacoma Public Schools have been sued with respect to the provision of education to juveniles in adult jails. In the course of this litigation, the issue of provision of services to individuals over 18 has been raised as well. This legislation goes a long way in clarifying this issue. There are a couple of fixes that should be made to the bill. Section 4, subsection (1)(e) should be changed to indicate that educational services are to be provided within 5 school days rather than just 5 days since schools take holidays and breaks. In addition, it is unnecessary and could prove very expensive to require that any space that is used for the educational program must be used only or exclusively for that purpose.

(In support with concerns) The lawsuit brought against Pierce County, the Tacoma School District, and the OSPI maintains that under the Basic Education Act educational services should be provide up to the age of 21. This bill would only make education available until

the individual in the adult jail turned 18. A study by the Washington State Institute for Public Policy indicates that education is the best way to reduce recidivism. There need to be educational services provided to address this prime opportunity to educate these individuals and get them on the right track.

(With concerns) Section 8 poses a real problem for the jails since there is no way to predict the number of arrests or the length of time until trial. There is a distinct difference between juveniles in the custody of the DOC and those in adult jails. The DOC's juvenile prisoners are not housed in adult facilities but are in juvenile facilities. There are very few juveniles in adult jails. In a county like Pacific, there may not be a single juvenile in an adult jail during a given year. Inter-local agreements between local governments should be permitted. Concerns exist with respect to the language regarding construction and technology.

(Opposed) County jails have limited space and coffers and the educational program can be successful without requiring that the space be used solely for an education program. It is unreasonable to require in section 6, subsection (8) that action be taken within three business days. This should be five to ten business days. The average stay for adult jail inmates is nine days but remanded juveniles can be in the adult jail for several months as they await trial on crimes such as murder.

Persons Testifying: (In support) Representative Haigh, prime sponsor; Susan Schreurs, Tacoma School District; and Kathleen Sande, Office of Superintendent of Public Instruction.

(In support with concerns) Gavin Thornton Columbia Legal Services.

(With concerns) Jo Arlow, Washington Association of Sheriffs and Police Chiefs; Brian Enslw, Washington State Association of Counties; and Mike West, King County Adult and Juvenile Detention.

(Opposed) Martha Karr, Pierce County Jail.

Persons Signed In To Testify But Not Testifying: None.