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**SENATE BILL 5737**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Darneille, Conway, and Nguyen

AN ACT Relating to confinement in juvenile rehabilitation facilities; amending RCW 72.01.410 and 13.40.300; adding a new section to chapter 72.01 RCW; creating new sections; and providing an expiration date.

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

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

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

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

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

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

~~(i)~~)) While in the custody of the department of children, youth, and families, the ((~~child~~)) individual must have the same treatment, housing options, transfer, and access to program resources as any other ((~~child~~)) individual committed ((~~directly~~)) to that juvenile correctional facility or institution pursuant to chapter 13.40 RCW. Treatment, placement, and program decisions shall be at the sole discretion of the department of children, youth, and families. The ((~~youth~~)) individual shall only be transferred ((~~back~~)) to the custody of the department of corrections with the approval of the department of children, youth, and families or when the ((~~child~~)) individual reaches the maximum age of ((~~twenty-one~~)) juvenile offender commitment by a juvenile court for the same offense provided under RCW 13.40.300.

((~~(ii)~~)) (b) If the ((~~child's~~)) individual's sentence includes a term of community custody, the department of children, youth, and families shall not release the ((~~child~~)) individual to community custody until the department of corrections has approved the ((~~child's~~)) individual's release plan pursuant to RCW 9.94A.729(5)(b). If ((~~a child~~)) an individual is held past his or her earned release date pending release plan approval, the department of children, youth, and families shall retain custody until a plan is approved or the ((~~child~~)) individual completes the ordered term of confinement prior to the maximum age ((~~twenty-one~~)) of juvenile offender commitment by a juvenile court for the same offense provided under RCW 13.40.300.

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

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

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

(b) An offender who is transferred to the custody of the department of corrections and reaches eighteen years of age may remain in a housing unit for offenders under the age of eighteen if the secretary of corrections determines that: (i) The offender's needs and the ((~~correctional~~)) rehabilitation goals for the offender could continue to be better met by the programs and housing environment that is separate from offenders eighteen years of age and older; and (ii) the programs or housing environment for offenders under the age of eighteen will not be substantially affected by the continued placement of the offender in that environment. The offender may remain placed in a housing unit for offenders under the age of eighteen until such time as the secretary of corrections determines that the offender's needs and ((~~correctional~~)) goals are no longer better met in that environment but in no case past the ((~~offender's twenty-first birthday~~)) maximum age of juvenile offender commitment by a juvenile court for the same offense provided under RCW 13.40.300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Under subsection (2)(b) of this section, in which case commitment may not extend beyond age twenty-five;

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

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

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

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

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

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

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

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

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

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

(a) No later than September 1, 2019, the department of corrections and the department of children, youth, and families shall establish, through a memorandum of understanding, a multidisciplinary interagency team to conduct a case-by-case review of the transfer of individuals from the department of corrections to the department of children, youth, and families pursuant to subsection (2)(a) and (b) of this section. The multidisciplinary interagency team must include a minimum of three representatives from the department of corrections and three representatives from the department of children, youth, and families, and must provide the individual whose transfer is being considered an opportunity to consent to the transfer. In considering whether a transfer to the department of children, youth, and families is appropriate, the multidisciplinary interagency team may consider any relevant factors including, but not limited to:

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

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

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

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

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

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

(4) This section expires July 1, 2021.

NEW SECTION. **Sec.**  The Washington state institute for public policy must assess the impact of this act on community safety, racial disproportionality, and youth rehabilitation and submit a report, in compliance with RCW 43.01.036, to the governor and the appropriate committees of the legislature by December 1, 2024.

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