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**SUBSTITUTE SENATE BILL 5737**

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

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

AN ACT Relating to confinement in juvenile rehabilitation facilities; amending RCW 72.01.410 and 13.40.300; amending 2018 c 162 s 9 (uncodified); adding a new section to chapter 72.01 RCW; adding a new section to chapter 9.94A RCW; adding a new section to chapter 43.216 RCW; creating a new section; 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 under the age of eighteen~~)) person is convicted as an adult in the courts of this state of a ((~~crime amounting to a~~)) felony offense committed under the age of eighteen, and is committed for a term of confinement, that ((~~child~~)) person shall be initially placed in a facility operated by the department of ((~~corrections to~~)) children, youth, and families. The department of corrections shall determine the ((~~child's~~)) person's 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~~)) person must have the same treatment, housing options, transfer, and access to program resources as any other ((~~child~~)) person committed ((~~directly~~)) to that juvenile correctional facility or institution pursuant to chapter 13.40 RCW. Except as provided under (d) of this subsection, treatment, placement, and program decisions shall be at the sole discretion of the department of children, youth, and families. The ((~~youth~~)) person shall ((~~only~~)) not be transferred ((~~back~~)) to the custody of the department of corrections ((~~with~~)) without the approval of the department of children, youth, and families ((~~or when the child~~)) until the person reaches the age of ((~~twenty-one~~)) twenty-five.

((~~(ii)~~)) (b) If the ((~~child's~~)) person's sentence includes a term of community custody, the department of children, youth, and families shall not release the ((~~child~~)) person to community custody until the department of corrections has approved the ((~~child's~~)) person's release plan pursuant to RCW 9.94A.729(5)(b). If a ((~~child~~)) person 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~~)) person completes the ordered term of confinement prior to age ((~~twenty-one~~)) twenty-five.

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

((~~(b) If the child's earned release date is on or after the child's twenty-first birthday, the department of corrections shall, with the consent of the secretary of children, youth, and families, transfer the child to a facility or institution operated by the department of children, youth, and families. Despite the transfer,~~)) (d) The department of corrections ((~~retains~~)) must retain authority over custody decisions relating to a person whose earned release date is on or after the person's twenty-fifth birthday and who is placed in a facility operated by the department of children, youth, and families under this section, and must approve any leave from the facility. When the ((~~child~~)) person turns age ((~~twenty-one~~)) twenty-five, 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~~)) person while the person is in its custody.

(2)(a) Except as provided in (b) and (c) of this subsection, ((~~an offender~~)) a person 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~~)) other persons in custody who are eighteen years of age or older, until the ((~~offender~~)) person reaches the age of eighteen.

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

(c) ((~~An offender~~)) A person 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 a person over age twenty-one in the custody of the department of children, youth, and families under this section to determine whether the person 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 person reaches age twenty-three if the person'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~~)) rehabilitation facility 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~~)) rehabilitation facility 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 juvenile offender's twenty-fifth birthday, 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) If an order of disposition imposes commitment to the department for a juvenile offender under subsection (2)(b) of this section, 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;

(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 person 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 person 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 age of twenty-five, is subject to the following provisions regarding placement:

(a) Any person with an earned release date prior to the person's twenty-fifth birthday 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 person with an earned release date after the person turns 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 a person 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 persons 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 person 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 person, staff, and other persons in the custody of the department of children, youth, and families;

(ii) The person'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 person 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.

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

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

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

(1) For an offender who is required to transfer to a department of corrections facility upon the offender's twenty-fifth birthday under RCW 72.01.410, if the offender's earned release date will take place before the offender's twenty-sixth birthday, the offender's remaining term of confinement may be served in partial confinement as home detention, provided:

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

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

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

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

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

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

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

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

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

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

(2) In furtherance of this duty, the department must assure that any school district operating within one of its facilities that is providing instruction to a student who is in need of a special education assessment has made reasonable efforts to contact a person authorized to act as a parent in order to authorize the appropriate special education assessment. If after reasonable efforts the need arises for assignment of a surrogate parent to authorize the special education assessment, such assignment of a surrogate parent must be accomplished within thirty days of the point at which the district or facility determines or reasonably should have determined that assignment of a surrogate is required.

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

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