

SENATE BILL REPORT

SSB 6112

As Passed Senate, February 17, 2020

Title: An act relating to youth solitary confinement.

Brief Description: Concerning youth solitary confinement.

Sponsors: Senate Committee on Human Services, Reentry & Rehabilitation (originally sponsored by Senators Wilson, C., Darneille, Nguyen, Cleveland, Das, Frockt, Hasegawa, Hunt, Kuderer, Lovelett, Mullet, Pedersen, Randall, Salomon, Wellman, Carlyle and Saldaña; by request of Attorney General).

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/16/20, 1/28/20 [DPS-WM].

Ways & Means: 2/10/20, 2/11/20 [DPS (HSRR), DNP, w/oRec].

Floor Activity:

Passed Senate: 2/17/20, 38-10.

Brief Summary of First Substitute Bill

- Prohibits the use of solitary confinement in juvenile institutions.
- Limits the use of isolation or room confinement in juvenile institutions.
- Requires adoption of a model policy relating to juvenile solitary confinement by July 1, 2021.
- Prohibits persons under age 18 charged as adults from being held in adult jail longer than 24 hours, excluding weekend and holidays, without a court order.
- Creates reporting requirements for county juvenile detention facilities and state institutions and facilities.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 6112 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, O'Ban, Wilson, C. and Zeiger.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Muzzall, Pedersen, Van De Wege and Wagoner.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Becker, Schoesler and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senators Brown, Assistant Ranking Member, Operating; Warnick.

Staff: Kayla Hammer (786-7305)

Background: Juveniles in this state may be detained for criminal offenses in county juvenile facilities and in institutions and facilities operated by Juvenile Rehabilitation (JR). JR is a division of the Department of Youth and Families (DCYF). In more uncommon circumstances, juveniles may be confined in adult jails, subject to federal restrictions under the Juvenile Justice and Delinquency Protection Act, including sight and sound separation.

In 2017, the Metropolitan King County Council passed an ordinance banning the use of solitary confinement in county juvenile facilities. According to information supplied by the Office of the Attorney General, ten states have passed laws that ban or limit solitary confinement for juveniles.

Summary of First Substitute Bill: Use of Solitary Confinement. The use of solitary confinement to separate a juvenile or resident of a JR institution from the regular population in a JR institution or county detention facility for longer than 15 minutes for punitive reasons is prohibited.

Use of Isolation and Room Confinement. The use of total isolation and room confinement for a juvenile or resident of a JR institution or county detention facility is limited to no more than four hours per 24-hour period, unless:

- the reason for isolation or room confinement above four hours and duration is documented;
- an individualized plan to reintegrate the juvenile or JR resident is developed;
- the superintendent or superintendent's designee provides documented authorization every four hours; and
- the secretary or juvenile court administrator or their designees provided documented authorization beyond 24 hours.

A juvenile or JR resident in isolation or room confinement must be checked every 15 minutes. Every instance of isolation or room confinement longer than one hour must be documented. The juvenile or JR resident must have access to:

- clothing;
- a mattress and bedding;
- medication under staff supervision;
- a toilet and sink at least hourly;
- a bath or shower at least daily;
- necessary mental health services; and
- reading material, paper, writing material, envelopes, and treatment material unless precluded by suicide precaution level or unless the items would hinder staff efforts to resolve any problems causing isolation or room confinement.

Juveniles or JR residents who are pregnant may not be put into isolation. Maintaining appropriate gender separation does not constitute isolation.

Staff must remove a juvenile or JR resident from isolation or room confinement when the purpose of confinement is met, the desired behavior is evident, or the juvenile or JR resident is evaluated by a professional who determines the juvenile or JR resident no longer presents an imminent risk to self, staff, or the general population. Isolation may be used to prevent imminent harm based on the juvenile or JR resident's behavior if:

- less restrictive alternatives are unsuccessful;
- while awaiting transfer between facilities;
- done overnight due to behavior that disrupts the nighttime routine of others; or
- necessary to respond to an escape attempt.

Room confinement may be used to respond to behavior that disrupts the facility but does not rise to the level of imminent harm.

Juveniles Charged as Adults Held in Adult Jail. A person under age 18 who is charged as an adult may not be held in adult jail for more than 24 hours, excluding weekends and holidays. Sight and sound separation from adult inmates must be observed. A court may find after a hearing and consideration of specified factors relating to it that it is in the interest of justice to hold a person under age 18 in an adult jail for longer than this period, or to allow them to have sight and sound contact with adult inmates. If the court issues such an order, it must review its order no less than every 30 days while the person remains in adult jail and must enter additional written findings if the stay extends beyond 180 days. County detention facilities must assist DCYF in gathering information relating to persons under age 18 held in adult jails for incorporation in DCYF's reporting requirements under this act.

Creation of a Model Policy. JR must adopt a model policy prohibiting solitary confinement in juvenile facilities by July 1, 2021. All detention facilities and institutions must review and either adopt the policy or notify JR and describe their reasons for not adopting the policy by December 1, 2021.

Reporting Requirements. JR and county detention facilities must compile information on a monthly basis about the use of isolation and room confinement, including demographic information, until November 1, 2022, and then annually thereafter. DCYF must provide a

report to the Legislature by December 1, 2022. DCYF must conduct periodic reviews of policies, procedures, and the use of solitary confinement and report to the Legislature every three years, starting in January 2023.

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 Original Bill (Human Services, Reentry & Rehabilitation): *The committee recommended a different version of the bill than what was heard.* PRO: Nationally there is a growing consensus that solitary confinement is both unconstitutional and inhumane. We have no way to track or monitor use of isolation or to ensure consistency across institutions. Solitary confinement is harmful to youth who are still developing and vulnerable. It is not effective as punishment. In 2015, Ohio reduced solitary confinement and also reduced violence. Use of solitary confinement increases violence and increases risk of suicide. This is a critical next step in juvenile justice system reform. King County reduced isolation in 2017 and passed an ordinance. We are committed to a public health approach. The bill should provide exceptions for routine separations and individualized interventions used to provide one on one counseling. Solitary confinement is torture, as confirmed by the United Nations in 2011, and has been ended in federal custody. Side effects can cause mental disorders, sleep disorders, and physical changes. These are the children of the state. Solitary confinement interferes with educational interests and ability to learn. This bill is not in conflict with federal sight and sound restrictions and accommodates emergency situations. How a society treats its youth is revealing. We heal our youth through compassionate rehabilitation. Children should not be isolated. JR is severely understaffed and often does not have enough staff for programming. Effective programming that engages youth will reduce room confinement. Please fund the staffing recommended by a recent consultant report. Adult jails should not be exempt from the terms of this bill. Kids have nothing to do in their cells for hours, days, and weeks. No television, no radio, and five minutes access to a tutor. The reporting requirement is essential because nobody knows what is happening across the state. Jails do not need to be exempt; just prohibit placement of children in adult facilities. JR has reduced but not eliminated the use of isolation.

CON: We are concerned about this bill's application to jails. For most jails, it is a rare exception when a juvenile is placed in adult jail, except when children are charged as adults or by specific order of a judge. We have to isolate youth in jails to comply with sight and sound separation. We do not want to have additional reporting requirements.

OTHER: We are working with the sponsor and are optimistic that with additional progress we will be able to support the final bill.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Senator Claire Wilson, Prime Sponsor; Mike West, King County; Kendrick Washington, ACLU of Washington; Davie Ross, Black and Brown Minds Matter Movement; Andrew Hong, March

For Our Lives Washington; Brittany Gregory, Attorney General's Office; Matt Zuvich, Washington Federation of State Employees; Nick Straley, Columbia Legal Services; Frank Ordway, Department of Children, Youth and Families.

CON: James McMahan, Washington Association of Sheriffs & Police Chiefs.

OTHER: Jack Murphy, Washington Association of Juvenile Court Administrators.

Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: Youth solitary confinement is viewed as an archaic policy and this bill will codify a current policy. In order to comply with this policy, adequate staffing is needed to address understaffing and overtime which has been a crisis at the agency in past year. Solitary confinement has been reported to lead to depression and hopelessness in youth. Investing in this now could result in savings down the road in mental health services.

Persons Testifying (Ways & Means): PRO: Emily Murphy, Echo Glen Students; Matt Zuvich, Washington Federation of State Employees; Brittany Gregory, Deputy Legislative Director, Washington State Attorney General's Office; Alison Krutsinger, Department of Children, Youth, and Families.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.