
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1646

State of Washington

66th Legislature

2019 Regular Session

By House Appropriations (originally sponsored by Representatives Goodman, Eslick, Senn, Corry, Irwin, Griffey, Lovick, Graham, Davis, Frame, Appleton, Jenkins, Valdez, and Ormsby)

READ FIRST TIME 02/28/19.

1 AN ACT Relating to confinement in juvenile rehabilitation
2 facilities; amending RCW 72.01.410 and 13.40.300; amending 2018 c 162
3 s 9 (uncodified); adding a new section to chapter 72.01 RCW; creating
4 new sections; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes state and
7 national efforts to reform policies that incarcerate youth in the
8 adult criminal justice system. The legislature acknowledges that
9 transferring youth to the adult criminal justice system is not
10 effective in reducing future criminal behavior. Youth incarcerated in
11 the adult criminal justice system are more likely to recidivate than
12 their counterparts housed in juvenile facilities.

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

1 **Sec. 2.** RCW 72.01.410 and 2017 3rd sp.s. c 6 s 728 are each
2 amended to read as follows:

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

10 (a) If the earned release date is prior to the ~~((child's twenty-~~
11 ~~first))~~ individual's twenty-fifth birthday, ~~((the department of~~
12 ~~corrections shall transfer))~~ the ~~((child to))~~ individual shall remain
13 in the custody of the department of children, youth, and families,
14 ~~((or to such other institution as is now, or may hereafter be~~
15 ~~authorized by law to receive such child,))~~ until such time as the
16 ~~((child))~~ individual completes the ordered term of confinement or
17 arrives at the maximum age of ~~((twenty-one years))~~ juvenile court
18 confinement by a juvenile court for the same offense under RCW
19 13.40.300.

20 ~~((i))~~ (b) While in the custody of the department of children,
21 youth, and families, the ~~((child))~~ individual must have the same
22 treatment, housing options, transfer, and access to program resources
23 as any other ~~((child))~~ individual committed ~~((directly))~~ to that
24 juvenile correctional facility or institution pursuant to chapter
25 13.40 RCW. Except as provided under (e) of this subsection,
26 treatment, placement, and program decisions shall be at the sole
27 discretion of the department of children, youth, and families. The
28 ~~((youth))~~ individual shall only be transferred ~~((back))~~ to the
29 custody of the department of corrections with the approval of the
30 department of children, youth, and families or when the ~~((child))~~
31 individual reaches the maximum age of ~~((twenty-one))~~ juvenile
32 offender commitment by a juvenile court for the same offense provided
33 under RCW 13.40.300.

34 ~~((ii))~~ (c) If the ~~((child's))~~ individual's sentence includes a
35 term of community custody, the department of children, youth, and
36 families shall not release the ~~((child))~~ individual to community
37 custody until the department of corrections has approved the
38 ~~((child's))~~ individual's release plan pursuant to RCW
39 9.94A.729(5)(b). If ~~((a child))~~ an individual is held past his or her
40 earned release date pending release plan approval, the department of

1 children, youth, and families shall retain custody until a plan is
2 approved or the ~~((child))~~ individual completes the ordered term of
3 confinement prior to the maximum age ~~((twenty-one))~~ of juvenile
4 offender commitment by a juvenile court for the same offense provided
5 under RCW 13.40.300.

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

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

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

33 (b) An offender who is transferred to the custody of the
34 department of corrections and reaches eighteen years of age may
35 remain in a housing unit for offenders under the age of eighteen if
36 the secretary of corrections determines that: (i) The offender's
37 needs and the ~~((correctional))~~ rehabilitation goals for the offender
38 could continue to be better met by the programs and housing
39 environment that is separate from offenders eighteen years of age and
40 older; and (ii) the programs or housing environment for offenders

1 under the age of eighteen will not be substantially affected by the
2 continued placement of the offender in that environment. The offender
3 may remain placed in a housing unit for offenders under the age of
4 eighteen until such time as the secretary of corrections determines
5 that the offender's needs and (~~correctional~~) goals are no longer
6 better met in that environment but in no case past the (~~offender's~~
7 ~~twenty-first birthday~~) maximum age of juvenile offender commitment
8 by a juvenile court for the same offense provided under RCW
9 13.40.300.

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

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

28 **Sec. 3.** RCW 13.40.300 and 2018 c 162 s 7 are each amended to
29 read as follows:

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

35 (2)(a) A juvenile offender (~~convicted~~) adjudicated of an A++
36 juvenile disposition category offense listed in RCW 13.40.0357, or
37 found to be armed with a firearm and sentenced to an additional
38 twelve months pursuant to RCW 13.40.193(3)(b), may be committed by
39 the juvenile court to the department of children, youth, and families

1 for placement in a juvenile correctional institution up to the
2 juvenile offender's twenty-fifth birthday, but not beyond.

3 (b) A juvenile offender adjudicated of the following offenses may
4 be committed by the juvenile court to the department of children,
5 youth, and families for placement in a correctional institution up to
6 the juvenile offender's twenty-fifth birthday, but not beyond:

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

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

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

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

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

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

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

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

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

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

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

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

13 (B) If an order of disposition imposes commitment to the
14 department for a juvenile offender under subsection (2)(b) of this
15 section, jurisdiction for parole is automatically extended to include
16 a period of up to twenty-four months of parole, in no case extending
17 beyond the offender's twenty-fifth birthday;

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

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

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

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

37 NEW SECTION. Sec. 4. A new section is added to chapter 72.01
38 RCW to read as follows:

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

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

15 (a) Any individual with an earned release date prior to the
16 individual's twenty-fifth birthday is eligible for transfer to the
17 custody of the department of children, youth, and families beginning
18 January 1, 2020, subject to the process established in subsection (3)
19 of this section.

20 (b) Any individual with an earned release date after the
21 individual's twenty-fifth birthday is eligible for transfer to the
22 custody of the department of children, youth, and families beginning
23 January 1, 2020, subject to the process established in subsection (3)
24 of this section.

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

31 (a) No later than September 1, 2019, the department of
32 corrections and the department of children, youth, and families shall
33 establish, through a memorandum of understanding, a multidisciplinary
34 interagency team to conduct a case-by-case review of the transfer of
35 individuals from the department of corrections to the department of
36 children, youth, and families pursuant to subsection (2)(a) and (b)
37 of this section. The multidisciplinary interagency team must include
38 a minimum of three representatives from the department of corrections
39 and three representatives from the department of children, youth, and
40 families, and must provide the individual whose transfer is being

1 considered an opportunity to consent to the transfer. In considering
2 whether a transfer to the department of children, youth, and families
3 is appropriate, the multidisciplinary interagency team may consider
4 any relevant factors including, but not limited to:

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

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

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

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

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

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

25 (4) This section expires July 1, 2021.

26 **Sec. 5.** 2018 c 162 s 9 (uncodified) is amended to read as
27 follows:

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

37 NEW SECTION. **Sec. 6.** If specific funding for the purposes of
38 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 2019, in the omnibus appropriations act, this
2 act is null and void.

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