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**SUBSTITUTE HOUSE BILL 2907**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Early Learning & Human Services (originally sponsored by Representatives Goodman, Frame, Kagi, and Doglio)

AN ACT Relating to confinement in juvenile rehabilitation facilities; amending RCW 72.01.410, 72.01.410, 13.40.300, and 13.40.300; creating new sections; providing an effective date; 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 and one-half but released earlier if their sentence ends prior to that. This emphasis on rehabilitation up to age twenty-five and one-half reflects similar programming in other states, which has significantly reduced recidivism of juveniles confined in adult correctional facilities.

**Sec.**  RCW 72.01.410 and 2015 c 156 s 2 are each amended to read as follows:

(1) Whenever any child 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 shall be ((~~initially~~)) placed in a facility operated by the department of ((~~corrections~~)) social and health services to determine the child'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 social and health services, 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 social and health services, 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 social and health services. The ((~~youth~~)) individual shall only be transferred ((~~back~~)) to the custody of the department of corrections with the approval of the department of social and health services 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 social and health services ((~~shall not~~)) is required to consult the department of corrections prior to the individual's release ((~~the child~~)) to community custody ((~~until the department of corrections has approved the child'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 social and health services 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 social and health services 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 social and health services((~~, transfer~~)) shall retain the ((~~child to~~)) individual in a facility or institution operated by the department of social and health services with the consent of the department of corrections. ((~~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 social and health services 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.

**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 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 shall be ((~~initially~~)) placed in a facility operated by the department of ((~~corrections~~)) children, youth, and families to determine the child'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~~)) 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~~)) is required to consult the department of corrections prior to the individual's release ((~~the child~~)) to community custody ((~~until the department of corrections has approved the child'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~~)) shall retain the ((~~child to~~)) individual in a facility or institution operated by the department of children, youth, and families with the consent of the department of corrections. ((~~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.

**Sec.**  RCW 13.40.300 and 2005 c 238 s 2 are each amended to read as follows:

(1) ((~~In no case may~~)) Except as provided in subsection (2) of this section, a juvenile offender may not be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday.

(2) A juvenile offender adjudicated of a serious violent offense as defined under RCW 9.94A.030 may be committed by the juvenile court to the department of social and health services for placement in a correctional institution up to the time the juvenile offender is age twenty-five and one-half years old, but not beyond.

(3) A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services 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;

(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. 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 under subsection (2) of this section in which case commitment may not extend beyond age twenty-five and one-half years; or

(d) While proceedings are pending in a case in which jurisdiction has been transferred to 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)(E).

((~~(2)~~)) (4) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

((~~(3) In no event may~~)) (5) Except as provided in this section and for purposes of enforcing an order of restitution or penalty assessment, the juvenile court ((~~have authority to~~)) may not extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday ((~~except for the purpose of enforcing an order of restitution or penalty assessment~~)).

((~~(4)~~)) (6) 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.

**Sec.**  RCW 13.40.300 and 2017 3rd sp.s. c 6 s 613 are each amended to read as follows:

(1) ((~~In no case may~~)) 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 juvenile offender adjudicated of a serious violent offense as defined under RCW 9.94A.030 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 and one-half years old, but not beyond.

(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;

(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. 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 under subsection (2) of this section in which case commitment may not extend beyond age twenty-five and one-half years; or

(d) While proceedings are pending in a case in which jurisdiction has been transferred to 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)(E).

((~~(2)~~)) (4) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

((~~(3) In no event may~~)) (5) Except as provided in this section and for purposes of enforcing an order of restitution or penalty assessment, the juvenile court ((~~have authority to~~)) may not extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday ((~~except for the purpose of enforcing an order of restitution or penalty assessment~~)).

((~~(4)~~)) (6) 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.**  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, 2027.

NEW SECTION. **Sec.**  This act applies to all individuals currently in the custody or who will be in the custody of the juvenile rehabilitation division of the department of social and health services on or before the effective date of this section following an adult court conviction. It does not apply to individuals who were in the custody of the juvenile rehabilitation division of the department of social and health services and were transferred to the custody of the department of corrections before the effective date of this section. In all other respects, this act applies prospectively.

NEW SECTION. **Sec.**  Sections 3 and 5 of this act take effect July 1, 2019.

NEW SECTION. **Sec.**  Sections 2 and 4 of this act expire July 1, 2019.

**--- END ---**