S-5773.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 6112**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate 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)

AN ACT Relating to youth solitary confinement; amending RCW 13.04.116; and adding a new chapter to Title 13 RCW.

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

NEW SECTION. **Sec.**  LEGISLATIVE FINDINGS. (1) The legislature finds that prolonged isolation for juveniles may cause harm. Prolonged solitary confinement has also been shown as ineffective at reducing behavioral incidents and may increase anxiety and anger in youth.

(2) Creating alternative solutions to solitary confinement for juveniles will further protect the well-being of juveniles in all detention facilities and institutions and enhance the rehabilitative goals of Washington's juvenile justice system. This act seeks to end the use of solitary confinement in juvenile facilities when used as a form of punishment or retaliation. This act also seeks to limit placement in isolation, except in the circumstances outlined in section 3 of this act. Juvenile institutions and detention facilities must implement a system of graduated interventions to avoid the use of solitary confinement. Less restrictive forms of confinement should be used to regulate the behavior of juveniles in institutions and detention facilities.

(3) The legislature intends to prevent the use of solitary confinement and, in the limited instances of isolation, ensure that the use advances the rehabilitative goals of Washington's juvenile justice system, and that it is not used as a punitive measure.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of children, youth, and families.

(2) "Detention facility" has the same meaning as in RCW 13.40.020.

(3) "Imminent harm" means immediate and impending threat of a person causing bodily injury to self or others.

(4) "Institution" has the same meaning as in RCW 13.40.020.

(5) "Isolation" means confinement that occurs (a) when a youth is separated from the youth population and placed in a room for longer than fifteen minutes for the purpose of discipline, behavior modification, or protecting the safety of the youth or others due to an imminent threat; and (b) in a room other than the room assigned to the youth for sleeping. Juveniles are in isolation from the moment they are separated from others until they have rejoined the population. Juveniles who are pregnant shall not be put into isolation. Maintaining appropriate gender separation does not constitute isolation.

(6) "Juvenile" has the same meaning as in RCW 13.40.020. For purposes of this act, "juvenile" also includes individuals confined in juvenile rehabilitation institutions of the department of children, youth, and families pursuant to RCW 72.01.410.

(7) "Juvenile court administrator" means an administrator appointed pursuant to RCW 13.04.035.

(8) "Room confinement" means a juvenile is separated from the youth population and placed in a room or cell that the juvenile is assigned to for sleeping, other than during normal sleeping hours or interim rest hours. "Room confinement" does not include time a youth requests to spend in his or her room or rest periods in between facility programming. Juveniles are in room confinement from the moment they are separated from others until they are permitted to rejoin the population.

(9) "Solitary confinement" means a youth is involuntarily separated from the youth population and placed in a room or cell other than the room assigned to the youth for sleeping for longer than fifteen minutes for punitive purposes. Different terminology does not exempt practice from being "solitary confinement."

NEW SECTION. **Sec.**  PROCESS AND EXCEPTIONS. (1) The use of solitary confinement for juveniles in an institution or in a detention facility is prohibited.

(2) A juvenile may only be placed in isolation or room confinement in an institution or in a detention facility as authorized in this section.

(a)(i) Total isolation and room confinement of a juvenile shall be limited in duration to no more than four hours in any twenty-four hour period. Detention facilities and institutions can exceed those four hours, including if the extension is necessary due to subsequent or multiple incidents, if the following requirements are met:

(A) The reason for isolation or room confinement is documented, including the basis for the extension, the date and time the juvenile was first placed in isolation or room confinement, and when the juvenile is eventually released from isolation or room confinement;

(B) An individualized plan that includes the goals and objectives to be met in order to reintegrate the juvenile to the general population is developed;

(C) The detention facility or institution superintendent or his or her designee provides documented authorization every four hours thereafter.

(ii) A medical and mental health assessment may occur after the juvenile's release so as not to extend his or her time in isolation or confinement.

(iii) If the total isolation or room confinement exceeds twenty-four hours, then the secretary, or his or her designee, of the department or the juvenile court administrator must provide documented authorization.

(b) Each juvenile placed in isolation or room confinement shall be visually checked at least every fifteen minutes, and staff shall attend to the needs of the juvenile at that time. Staff shall attempt to communicate with an awake juvenile during required checks to evaluate and encourage the juvenile on the goals and objectives the juvenile needs to achieve in order to be released from isolation or room confinement.

(c) Every instance of isolation and room confinement shall be documented in accordance with section 5 or 6 of this act.

(d) When a juvenile is placed in isolation or under room confinement, the juvenile must have access to:

(i) Clothing;

(ii) Mattress and bedding;

(iii) Medication under staff supervision;

(iv) A toilet and sink at least hourly;

(v) A bath or shower at least daily;

(vi) Necessary mental health services; and

(vii) Reading material, paper, writing material, envelopes, and treatment material, unless precluded by suicide precaution level or the items would hinder staff efforts to resolve the problems that caused isolation or room confinement.

(e) Staff must remove the juvenile from isolation and room confinement when one of the following requirements is met:

(i) The purpose of the confinement is met;

(ii) The desired behavior is evident; or

(iii) The juvenile has been evaluated by a professional who has determined the juvenile is no longer an imminent risk to self, staff, or the general population. The institution or detention facility may designate who counts as a professional.

(f) Isolation can be used when:

(i) Isolation is necessary to prevent imminent harm based on the juvenile's behavior, and less restrictive alternatives were unsuccessful;

(ii) The juvenile needs to be held in isolation awaiting transfer of facilities;

(iii) The juvenile needs to be placed in isolation overnight due to disruptive behavior that prevents the nighttime routine of other juvenile residents; or

(iv) It is necessary to respond to an escape attempt.

(g) Room confinement can be used when it is necessary to prevent behavior that causes disruption of the detention facility or institution, but the behavior does not rise to the level of imminent harm including, but not limited to, behavior that may constitute a violation of law.

(3) Nothing in this section requires that juveniles be placed with adults while in custody.

NEW SECTION. **Sec.**  MODEL POLICY. (1) The department shall, by July 1, 2021, adopt a model policy prohibiting the use of solitary confinement of juveniles in detention facilities and institutions, with the goal of also limiting the use and duration of isolation and room confinement. In determining the model policy, the department must consult with appropriate stakeholders including, but not limited to, juvenile court administrators, impacted youth, and representatives of staff. At a minimum, the model policy must include:

(a) Isolation. Isolation may only be used as a last resort when less restrictive methods have not been effective. Where needed, medical professionals must assess or evaluate any juvenile in isolation as soon as possible after the juvenile is placed in isolation, and qualified mental health professionals must evaluate and develop a care plan for juveniles placed in isolation to prevent self-harm as soon as possible after the juvenile is placed in isolation. The model policy must include measures to prevent the use of isolation, while protecting the safety and security of incarcerated juveniles and their peers, the staff of the detention facilities and institutions, other persons who work in the detention facilities and institutions, and visitors.

(b) Room confinement. Room confinement is the preferred option for maladaptive or negative behavior. Staff will use the least amount of time to meet the purpose of the intervention. The model policy must include measures to prevent the use of room confinement, while protecting the safety and security of incarcerated juveniles and their peers, the staff of the detention facilities and institutions, other persons who work in the detention facilities and institutions, and visitors.

(2) By December 1, 2021, the detention facility or institution shall review and either (a) adopt the model policy established in this section or (b) notify the department of the reasons the detention facility or institution will not adopt the model policy, including how the detention facility or institution's policies and procedures differ from the model policy.

NEW SECTION. **Sec.**  REPORTING REQUIREMENTS FOR THE DEPARTMENT. (1) The department must compile, on a monthly basis until November 1, 2022, the following information with respect to juveniles confined in all state institutions and facilities used for juvenile rehabilitation for whom isolation or room confinement was used in excess of one hour:

(a) The number of times isolation and room confinement were used;

(b) The circumstances leading to the use of isolation and room confinement;

(c) The duration of each use of isolation and whether, for each instance of isolation, the use of isolation lasted more than four hours within a twenty-four hour period;

(d) Whether or not supervisory review occurred and was documented for each instance of isolation and room confinement;

(e) The race and age of the juvenile for each instance of isolation and room confinement;

(f) Whether or not a medical assessment or review and a mental health assessment or review were conducted and documented for each instance of isolation; and

(g) If the affected juvenile was not afforded access to medication, meals, and reading material during the term of confinement for each instance of isolation and room confinement.

(2) Until November 1, 2022, information collected under subsection (1) of this section must be compiled into a report and submitted in compliance with section 8(1) of this act.

(3) After November 1, 2022, the department must annually compile the information collected under subsection (1) of this section. The information collected must be posted on the department's web site.

NEW SECTION. **Sec.**  REPORTING REQUIREMENTS FOR A COUNTY. (1) A county operating a detention facility must compile, on a monthly basis until November 1, 2022, the following information with respect to the detention facility for whom isolation or room confinement was used in excess of one hour:

(a) The number of times isolation and room confinement were used;

(b) The circumstances leading to the use of isolation and room confinement;

(c) The duration of each use of isolation and whether, for each instance of isolation, the use of isolation lasted more or less than four hours within a twenty-four hour period, and, for instances lasting more than four hours, the length of time the juvenile remained in isolation;

(d) Whether or not supervisory review occurred and was documented for each instance of isolation and room confinement;

(e) The race and age of the juvenile for each instance of isolation and room confinement;

(f) Whether or not a medical assessment or review and a mental health assessment or review were conducted and documented for each instance of isolation; and

(g) If the affected juvenile was not afforded access to medication, meals, and reading material during the term of confinement for each instance of isolation and room confinement.

(2) Until November 1, 2022, information collected under subsection (1) of this section must be compiled into a report and submitted in compliance with section 8(1) of this act.

(3) After November 1, 2022, a county operating a detention facility must annually compile the information collected under subsection (1) of this section. The information collected must be posted on the detention facility's web site.

**Sec.**  RCW 13.04.116 and 2017 3rd sp.s. c 6 s 603 are each amended to read as follows:

(1) A juvenile shall not be confined in a jail or holding facility ((~~for adults~~)), as those terms are defined in RCW 70.48.020, except:

(a) For a period not exceeding twenty-four hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; ((~~or~~))

(b) For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; or

(c) An individual under eighteen years of age who has been transferred previously to adult court may not be held in a jail or holding facility, as those terms are defined in RCW 70.48.020, for a period exceeding twenty-four hours excluding weekends and holidays, unless a court finds, after a hearing and in writing, that it is in the interest of justice.

(i) If a court determines that it is in the interest of justice to permit an individual under eighteen years of age who has been transferred previously to adult court to be held in any jail or holding facility, as those terms are defined in RCW 70.48.020, the individual shall not have sight or sound contact with adult inmates, unless the court also finds, after a hearing and in writing, that it is in the interest of justice to permit sight or sound contact with adult inmates.

(ii) In determining whether it is in the interest of justice to permit an individual under eighteen years of age who has been transferred previously to adult court to be held in any jail or holding facility, as those terms are defined in RCW 70.48.020, or have sight or sound contact with adult inmates, a court shall consider:

(A) The age of the individual;

(B) The physical and mental maturity of the individual;

(C) The present mental state of the individual, including whether the individual presents an imminent risk of harm to himself or herself;

(D) The nature and circumstances of the alleged offense;

(E) The individual's history of prior delinquent acts;

(F) The relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the individual, but also to protect the safety of the public, as well as other detained youth; and

(G) Any other relevant factor.

(iii) If a court determines that it is in the interest of justice to permit an individual under eighteen years of age who has been transferred previously to adult court to be held in any jail or holding facility, as those terms are defined in RCW 70.48.020, or have sight or sound contact with adult inmates:

(A) The court shall hold a hearing not less frequently than once every thirty days to review whether it is still in the interest of justice to permit the individual to be so held or have such sight or sound contact; and

(B) The individual shall not be held in any jail or holding facility, as those terms are defined in RCW 70.48.020, or permitted to have sight or sound contact with adult inmates, for more than one hundred eighty days, unless the court, in writing, determines there is good cause for an extension or the individual expressly waives this limitation.

(iv) An individual under eighteen years of age who has been transferred previously to adult court has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court at any hearing held to determine whether to place the individual in a jail or holding facility, as those terms are defined in RCW 70.48.020, or to continue the individual's placement in such facility.

(2) ((~~For purposes of this section a juvenile is an individual under the chronological age of eighteen years who has not been transferred previously to adult courts.~~

~~(3)~~)) The department shall monitor and enforce compliance with this section. The department may use information gathered pursuant to its responsibilities pursuant to this subsection for purposes of the report required in section 8(1) of this act with respect to individuals under eighteen years of age who have been transferred previously to adult court in the custody of a jail or holding facility, as those terms are defined in RCW 70.48.020. The department must include information regarding each individual who is the subject of any order issued pursuant to subsection (1)(c) of this section in each report required by section 8 of this act. A detention facility, as defined in RCW 13.40.020, and the governing unit for the jail or holding facility, as those terms are defined in RCW 70.48.020, must provide necessary assistance to the department in gathering the information. This information must include:

(a) The race, age, and gender of each individual;

(b) The circumstances requiring the individual to be placed and held in the jail or holding facility, as those terms are defined in RCW 70.48.020; and

(c) The length of time the individual was held in the jail or holding facility, as those terms are defined in RCW 70.48.020.

((~~(4)~~)) (3) This section shall not be construed to expand or limit the authority to lawfully detain juveniles.

NEW SECTION. **Sec.**  DATA REPORTING. (1) Information collected under sections 5(2) and 6(2) of this act must be reported to the department of children, youth, and families by December 1, 2021, and an updated report must be submitted to the department by November 1, 2022. The department must compile the reported data and, in compliance with RCW 43.01.036, provide a data report to the appropriate committees of the legislature by December 1, 2022.

(2) Beginning in January 2023, the department shall conduct periodic reviews of policies, procedures, and use of solitary confinement, isolation, and room confinement for each detention facility. Every three years, the department shall prepare a report to the legislature summarizing its reviews.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  Sections 1 through 6, 8, and 9 of this act constitute a new chapter in Title 13 RCW.

**--- END ---**