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**SECOND SUBSTITUTE HOUSE BILL 2277**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Peterson, Ortiz-Self, Frame, Goodman, Kilduff, Callan, Senn, Lovick, Thai, Fitzgibbon, Leavitt, Ryu, Appleton, Valdez, Davis, Ormsby, Macri, Doglio, Gregerson, and Pollet; by request of Attorney General)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to youth solitary confinement; amending RCW  
2 13.04.116; and adding a new chapter to Title 13 RCW.

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

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

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

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

5 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
6 section apply throughout this chapter unless the context clearly  
7 requires otherwise.

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

10 (2) "Detention facility" means:

11 (a) Any detention facility as defined under RCW 13.40.020; and

12 (b) Any juvenile correctional facility under alternative  
13 administration operated by a consortium of counties under RCW  
14 13.04.035.

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

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

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

28 (6) "Juvenile" means:

29 (a) Any individual who is under the chronological age of eighteen  
30 years; and

31 (b) Any individual under the chronological age of twenty-five  
32 years who is confined in an institution, including an individual  
33 confined in an institution under RCW 72.01.410.

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

36 (8) "Room confinement" means a juvenile is separated from the  
37 youth population and placed in a room or cell that the juvenile is  
38 assigned to for sleeping, other than during normal sleeping hours or  
39 interim rest hours. "Room confinement" does not include time a youth

1 requests to spend in his or her room or rest periods in between  
2 facility programming. Juveniles are in room confinement from the  
3 moment they are separated from others until they are permitted to  
4 rejoin the population.

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

10 NEW SECTION. **Sec. 3.** PROCESS AND EXCEPTIONS. (1) The use of  
11 solitary confinement for juveniles in a detention facility or  
12 institution is prohibited.

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

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

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

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

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

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

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

38 (b) Each juvenile placed in isolation or room confinement shall  
39 be visually checked at least every fifteen minutes, and staff shall

1 attend to the needs of the juvenile at that time. Staff shall attempt  
2 to communicate with an awake juvenile during required checks to  
3 evaluate and encourage the juvenile on the goals and objectives the  
4 juvenile needs to achieve in order to be released from isolation or  
5 room confinement.

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

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

10 (i) Clothing;

11 (ii) Mattress and bedding;

12 (iii) Medication under staff supervision;

13 (iv) A toilet and sink at least hourly;

14 (v) A bath or shower at least daily;

15 (vi) Necessary mental health services; and

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

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

22 (i) The purpose of the confinement is met;

23 (ii) The desired behavior is evident; or

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

28 (f) Isolation can be used when:

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

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

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

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

38 (g) Room confinement can be used when it is necessary to prevent  
39 behavior that causes disruption of the detention facility or  
40 institution, but the behavior does not rise to the level of imminent

1 harm including, but not limited to, behavior that may constitute a  
2 violation of law.

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

5 NEW SECTION. **Sec. 4.** MODEL POLICY. (1) The department shall, by  
6 July 1, 2021, adopt a model policy prohibiting the use of solitary  
7 confinement of juveniles in detention facilities and institutions,  
8 with the goal of also limiting the use and duration of isolation and  
9 room confinement. In determining the model policy, the department  
10 must consult with appropriate stakeholders including, but not limited  
11 to, juvenile court administrators, impacted youth, and  
12 representatives of staff. At a minimum, the model policy must  
13 include:

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

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

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

1        NEW SECTION.    **Sec. 5.**    REPORTING REQUIREMENTS FOR THE DEPARTMENT.

2        (1) The department must compile, on a monthly basis until November 1,  
3        2022, the following information with respect to juveniles confined in  
4        all state institutions and facilities used for juvenile  
5        rehabilitation for whom isolation or room confinement was used in  
6        excess of one hour:

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

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

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

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

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

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

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

23        (2) Until November 1, 2022, information collected under  
24        subsection (1) of this section must be compiled into a report and  
25        submitted in compliance with section 7(1) of this act.

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

29        NEW SECTION.    **Sec. 6.**    REPORTING REQUIREMENTS FOR A COUNTY. (1) A

30        county operating a detention facility must compile, on a monthly  
31        basis until November 1, 2022, the following information with respect  
32        to the detention facility for whom isolation or room confinement was  
33        used in excess of one hour:

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

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

37            (c) The duration of each use of isolation and whether, for each  
38        instance of isolation, the use of isolation lasted more or less than  
39        four hours within a twenty-four hour period, and, for instances

1 lasting more than four hours, the length of time the juvenile  
2 remained in isolation;

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

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

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

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

13 (2) Until November 1, 2022, information collected under  
14 subsection (1) of this section must be compiled into a report and  
15 submitted in compliance with section 7(1) of this act.

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

20 NEW SECTION. **Sec. 7.** DATA REPORTING. (1) Information collected  
21 under sections 5(2) and 6(2) of this act and RCW 13.04.116(1)(c) must  
22 be reported to the department of children, youth, and families by  
23 December 1, 2021, and an updated report must be submitted to the  
24 department by November 1, 2022. The department must compile the  
25 reported data and, in compliance with RCW 43.01.036, provide a data  
26 report to the appropriate committees of the legislature by December  
27 1, 2022.

28 (2) Beginning in January 2023, the department shall conduct  
29 periodic reviews of policies, procedures, and use of solitary  
30 confinement, isolation, and room confinement in juvenile detention  
31 facilities and institutions. Every three years, the department shall  
32 prepare a report to the legislature summarizing its reviews.

33 **Sec. 8.** RCW 13.04.116 and 2017 3rd sp.s. c 6 s 603 are each  
34 amended to read as follows:

35 (1) A juvenile shall not be confined in a jail or holding  
36 facility for adults, except:

37 (a) For a period not exceeding twenty-four hours excluding  
38 weekends and holidays and only for the purpose of an initial court

1 appearance in a county where no juvenile detention facility is  
2 available, a juvenile may be held in an adult facility provided that  
3 the confinement is separate from the sight and sound of adult  
4 inmates; (~~or~~)

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

9 (c) For a juvenile who is subject to exclusive adult criminal  
10 court jurisdiction under RCW 13.04.030 or who has been transferred to  
11 adult criminal court under RCW 13.40.110, the juvenile may not be  
12 held in a jail or holding facility for a period exceeding twenty-four  
13 hours excluding weekends and holidays, unless a court finds, after a  
14 hearing and in writing, that it is in the interest of justice.

15 (i) If a court determines that it is in the interest of justice  
16 to permit a juvenile who is subject to exclusive adult criminal court  
17 jurisdiction under RCW 13.04.030 or who has been transferred to adult  
18 criminal court under RCW 13.40.110 to be held in a jail or holding  
19 facility, the juvenile may not have sight or sound contact with adult  
20 inmates, unless the court also finds, after a hearing and in writing,  
21 that it is in the interest of justice to permit sight or sound  
22 contact with adult inmates. In making the determination regarding  
23 sight or sound contact with adult inmates under this subsection, the  
24 court shall consider:

25 (A) The age of the juvenile;

26 (B) The physical and mental maturity of the juvenile;

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

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

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

31 (F) The relative ability of the available adult and juvenile  
32 detention facilities to meet the specific needs of the juvenile,  
33 protect the safety of the public, and protect other detained  
34 juveniles; and

35 (G) Any other relevant factors.

36 (ii) If a court determines that it is in the interest of justice  
37 to permit a juvenile who is subject to exclusive adult criminal court  
38 jurisdiction under RCW 13.04.030 or who has been transferred to adult  
39 criminal court under RCW 13.40.110 to be held in a jail or holding



1 facility or have sight or sound contact with adult inmates under this  
2 section:

3 (A) The court shall hold a hearing at least once every thirty  
4 days to review whether it is still in the interest of justice to  
5 permit the juvenile to be held in a jail or holding facility, as  
6 defined under RCW 70.48.020, or have sight or sound contact with  
7 adult inmates; and

8 (B) The juvenile shall not be held in any jail or holding  
9 facility or permitted to have sight or sound contact with adult  
10 inmates, for more than one hundred eighty days, unless:

11 (I) The court, in writing, determines that there is good cause to  
12 allow an extension beyond one hundred eighty days; or

13 (II) The juvenile expressly waives this limitation.

14 (iii) A juvenile who is subject to exclusive adult criminal court  
15 jurisdiction under RCW 13.04.030 or who has been transferred to adult  
16 criminal court under RCW 13.40.110 has the right to be represented by  
17 counsel, and if indigent, to have counsel appointed for him or her by  
18 the court at any hearing held to determine whether to place the  
19 juvenile in a jail or holding facility or to continue the juvenile's  
20 placement in such a facility.

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

24 ~~(3))~~ The department shall monitor and enforce compliance with  
25 this section. The department may use information regarding juveniles  
26 confined in a jail gathered under the authority granted by this  
27 subsection in the report required in section 7(1) of this act with  
28 respect to juveniles in the custody of a jail or holding facility.

29 A detention facility and a governing unit for a jail or holding  
30 facility must provide assistance to the department in gathering  
31 information regarding juveniles confined in a jail or holding  
32 facility. This information must include:

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

34 (b) The circumstances requiring the juvenile to be placed in the  
35 jail or holding facility; and

36 (c) The length of time the juvenile was held in the jail or  
37 holding facility.

38 ~~((4))~~ (3) This section shall not be construed to expand or  
39 limit the authority to lawfully detain juveniles.

1       (4) For purposes of this section, the following definitions  
2 apply:

3       (a) "Detention facility" has the same meaning as provided under  
4 RCW 13.40.020.

5       (b) "Governing unit" has the same meaning as provided under RCW  
6 70.48.020.

7       (c) "Holding facility" has the same meaning as provided under RCW  
8 70.48.020.

9       (d) "Jail" has the same meaning as provided under RCW 70.48.020.

10       NEW SECTION. Sec. 9. If any part of this act is found to be in  
11 conflict with federal requirements that are a prescribed condition to  
12 the allocation of federal funds to the state, the conflicting part of  
13 this act is inoperative solely to the extent of the conflict and with  
14 respect to the agencies directly affected, and this finding does not  
15 affect the operation of the remainder of this act in its application  
16 to the agencies concerned. Rules adopted under this act must meet  
17 federal requirements that are a necessary condition to the receipt of  
18 federal funds by the state.

19       NEW SECTION. Sec. 10. Sections 1 through 7 and 9 of this act  
20 constitute a new chapter in Title 13 RCW.

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