

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2277

66th Legislature
2020 Regular Session

Passed by the House February 13, 2020
Yeas 76 Nays 20

**Speaker of the House of
Representatives**

Passed by the Senate March 5, 2020
Yeas 36 Nays 13

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2277** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2277

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

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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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