

SENATE BILL REPORT

SB 5278

As Reported by Senate Committee On:
Human Services, February 17, 2025
Ways & Means, February 27, 2025

Title: An act relating to emergency measures for managing juvenile populations at state juvenile correctional institutions.

Brief Description: Concerning emergency measures for managing juvenile populations at state juvenile correctional institutions. [**Revised for 2nd Substitute:** Concerning the management of individuals who are placed in juvenile rehabilitation institutions.]

Sponsors: Senators Braun, Christian, Dozier and Wilson, J..

Brief History:

Committee Activity: Human Services: 2/03/25, 2/17/25 [DPS-WM, w/oRec].
Ways & Means: 2/24/25, 2/27/25 [DP2S, w/oRec].

Brief Summary of Second Substitute Bill

- Authorizes the secretary of Department of Children, Youth, and Families (DCYF) to transfer qualifying individuals to a community facility, community transition services, or work release at the Department of Corrections (DOC), under certain circumstances.
- Allows transfers of certain individuals to DOC custody, under certain circumstances.
- Requires DCYF to review the placement of certain individuals to provide information on voluntary transfers to DOC.
- Requires DCYF to establish rules for an internal behavior management infraction system.
- Alters requirements for transfer hearings conducted by the DCYF review board.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 5278 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Frame, Vice Chair; Orwall.

Minority Report: That it be referred without recommendation.

Signed by Senators Christian, Ranking Member; Warnick.

Staff: Kelsey-anne Fung (786-7479)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5278 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Stanford, Vice Chair, Operating; Trudeau, Vice Chair, Capital; Frame, Vice Chair, Finance; Gildon, Ranking Member, Operating; Torres, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Dozier, Assistant Ranking Member, Capital; Boehnke, Braun, Cleveland, Conway, Dhingra, Hansen, Kauffman, Muzzall, Pedersen, Riccelli, Saldaña, Wagoner, Warnick, Wellman and Wilson, C..

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa.

Staff: Sarian Scott (786-7729)

Background: Juvenile Rehabilitation Institutions. The Juvenile Rehabilitation (JR) division of the Department of Children, Youth, and Families (DCYF) operates two secure residential facilities for juveniles who are convicted of crimes and sentenced to more than 30 days of confinement. The Echo Glen Children's Center in Snoqualmie serves younger males as well as female juveniles. The Green Hill School in Chehalis serves older male juveniles.

Community Residential Facilities. JR also operates eight community residential facilities across the state, which allow youth to begin transitioning back to the community. These facilities provide treatment, education, and vocational services. To be eligible for community facility placement, a youth must be placed on minimum security status, serve at least 10 percent of the individual's sentence or at least 30 days at the secure institution, whichever is greater, and all placement assessment requirements have been met and local law enforcement has been properly notified.

Community Transition Services. Community Transition Services (CTS) allows a person to serve a portion of their term of confinement residing in the community after the person has

served 60 percent and no less than 15 weeks of their term of confinement, or after a person's 25th birthday if the person's earned release date is after the person's 25th birthday but on or before their 26th birthday. A person in CTS must have access to appropriate treatment and programming as determined by DCYF. Certain individuals are not eligible for CTS.

Juvenile Rehabilitation to Age 25. In 2018 and 2019, the Legislature passed legislation commonly referred to as JR to 25, which extended the period for which individuals convicted of offenses that occurred before the person turned 18 could remain in a JR facility from age 21 to age 25. If an individual has an earned release date that extends past their 25th birthday, when the individual reaches age 25, they must be transferred from DCYF custody to the Department of Corrections (DOC), except in limited circumstances where a person may be eligible for CTS.

Current law allows for transfers to DOC before age 25 if DCYF determines that retaining custody of the person presents a significant safety risk. DCYF must review the placement of a person over age 21 to determine whether the person should be transferred to DOC. The review must occur at least before the person turns age 23 if the person's commitment period in a juvenile institution extends beyond the person's 23rd birthday.

Transfer Hearings. The secretary of DCYF, with the consent of the secretary of DOC, may transfer a juvenile from DCYF to DOC if it is established at a hearing before a review board that continued placement of the juvenile offender in DCYF presents a continuing and serious threat to the safety of others in the institution. Assaults made against a staff member that are reported to a local law enforcement agency require a hearing within ten judicial working days. Upon conviction for custodial assault, a second hearing must be conducted within five working days, where the juvenile has the burden to show cause why the transfer to DOC should not occur.

If a juvenile is transferred to DOC, the juvenile can only remain until their maximum term of confinement imposed by the juvenile court. A juvenile transferred to DOC may be transferred back to DCYF at the discretion of the DCYF secretary and with the consent of the DOC secretary.

Residential Board Hearing Process. Internal JR policies and DCYF regulations outline the residential review board hearing process that must occur before any youth may be transferred to DOC custody. A youth being considered for transfer to DOC must be notified in writing at least seven calendar days in advance of the hearing with the reasons for transfer, the youth's right to counsel for the hearing, a copy of the rules for the hearing, and the opportunity to access and review any files or records pertaining to the proposed transfer. JR may file an emergency motion with the court to transfer the youth to DOC pending the results of the hearing if the circumstances are so severe that JR cannot ensure the safety of the facility or others while the pre-transfer hearing is pending.

During the hearing, the parties have the right to present evidence, call and cross-examine

witnesses, and make recommendations to the review board. If the transfer is contested, the burden of proof is on DCYF to show that the youth presents a continuing and serious threat to the safety of others in the institution. When the youth has been convicted of custodial assault, the youth has the burden to show why transfer to DOC should not occur.

The review board must consider all evidence presented at the hearing by assessing relevance, credibility, and usefulness of the evidence. The review board must prepare a written record of the decision and reasons within seven calendar days after the hearing, unless extended by the secretary. If the review board decides to transfer the youth to DOC, JR must provide the youth and their attorney with a notice informing them of the review board's decision and their right to appeal under the Administrative Procedure Act before the youth's departure to DOC.

Voluntary Transfers. Internal JR policy allows a youth to be transferred to DOC to serve the balance of the term of confinement if the youth self-requests to transfer to DOC.

Work Release. The work release program at DOC is a partial confinement program where eligible incarcerated individuals may serve up to the last 12 months of their term of confinement in a work release facility, known as a reentry center. Work release may be authorized to allow the individual to participate in full-time or part-time employment at specialized programs; participate in a vocational training program, including attendance at an accredited college; to secure services to support transition back to the community; or as a sanction for violating community supervision conditions.

Summary of Bill (Second Substitute): Rated Bed Capacity. DCYF must promulgate rules related to rated bed capacity of JR institutions that must include single occupancy rooms, 10 percent of facility beds reserved for intensive management unit beds and for flexibility of movement, appropriate bathroom and shower ratio to youth, adequate education space to ensure all youth can maintain a full class schedule, and adequate indoor and outdoor recreation space to safely manage population groups. Rated bed capacity is defined as the number of in-residence individuals at a JR institution that should not be exceeded in order to provide treatment aligned with juvenile justice standards.

Before transferring individuals to DOC, DCYF must take discretionary actions to reduce the in-residence population of any JR institution when the in-residence population exceeds 105 percent of rated bed capacity, on a case-by-case basis, with highest priority for transferring a sufficient number of persons from a community facility to CTS first, and then transferring a sufficient number of persons from the JR institution to community facilities or CTS second.

DCYF must monitor the number of persons residing in each institution, and when that number reaches 90 percent of rated bed capacity, begin planning and identifying methods to avoid exceeding rated bed capacity, including but not limited to, notifying individuals who may be released or transferred to CTS or community facilities; discussing with DOC any

early release options for individuals convicted in adult court of offenses that occurred before turning 18; and notifying county juvenile court administrators, the Legislature, and the Governor of current rated bed capacity and any reduction measures or plans. DCYF must submit an annual report to the Legislature and the Governor with specified information on transfers that occurred in the prior 12 months.

Transfers to Community Facilities, Community Transition Services, and Work Release. The DCYF secretary may transfer a sufficient number of individuals from community facilities to CTS when the in-residence population of a secure JR institution exceeds 105 percent of rated bed capacity. After transferring individuals to CTS, the secretary may transfer a sufficient number of individuals from a secure JR institution to community facilities or CTS to reduce the in-residence population of the secure JR institution to 100 percent of rated bed capacity.

The following individuals must not be transferred to a community facility:

- a person that is deemed a high risk to reoffend;
- a person that would be better served by the services provided at an institution; or
- a person who would be unable to comply with residential disciplinary standards established by DCYF.

When placing an individual at a community facility, the requirement that an individual spend at least 10 percent, or at least 30 days, whichever is greater, in a secure institution before being placed in a community facility does not apply. Notification requirements for local law enforcement and schools may be less than 30 days.

A person who was sentenced in adult court for a crime committed prior to age 18 may be transferred from a secure JR institution to a work release facility operated by DOC, without a transfer hearing, when the in-residence population of any secure JR institution exceeds 105 percent of rated bed capacity. To be eligible for direct transfer to a DOC work release facility, the person must be over age 21, be within 18 months of their earned release date, and be determined by DOC that direct transfer to work release would be an appropriate placement for the person.

Transfers to Department of Corrections. Initial placement at DCYF for a person convicted as an adult for a crime committed under age 18 may not occur if the facility is at or above 105 percent of rated bed capacity and the person is over the age of 21 at the time of placement with an earned release date after age 26.

DCYF may not transfer a person to the custody of DOC until the person reaches age 25 unless one of the following exceptions applies:

- If DCYF establishes at a transfer hearing before a review board that continued placement of the person at DCYF presents a significant safety risk to others in the facility, DCYF may transfer the person to DOC; or
- If, after taking actions to transfer individuals to community facilities, CTS, or a work

release facility and exhausting any remaining transfer authority provided to DCYF, the population of the JR institution exceeds 105 percent of rated bed capacity and the rehabilitative goals of the institution cannot be met, DCYF may transfer a person who is over age 21, or under age 21 but over age 18 and has served at least three years at DCYF, who consistently refuses to participate in available rehabilitative programming, or engage in planning for such programming, provided the person receives a transfer hearing prior to transfer.

Transfer hearings when population exceeds 105 percent of rated bed capacity must take into account the person's engagement in programming, treatment needs, goals, future plans, length of confinement, classification, current behavior, mental and emotional health, and any disabilities or special needs impacting the safety or suitability of transferring the person to DOC; be minimally disruptive; and ensure the person has at least seven days' calendar notice to prepare for the hearing.

Rehabilitative goals include, but are not limited to, appropriate bathroom and shower ratio to youth, adequate education space to ensure all youth can maintain a full class schedule, and adequate indoor and outdoor recreation space to safely manage population groups.

Voluntary Transfers. DCYF must review the placement of a person over age 21 to provide information regarding voluntary transfer to DOC custody. DCYF may determine the frequency of the review, but the review must occur at least once before the person reaches age 23 if the person's commitment period in a juvenile institution extends beyond the person's 25th birthday.

At the review, DCYF and DOC must provide information in writing to the person on all available placement options at DOC, and the person's specific eligibility for those placement options based on their classification and custody level determination made by DOC in writing prior to any voluntary transfer decision. The person must be provided an opportunity to consult with counsel during the review to confirm the person is making a knowing, voluntary, and fully informed request. Transfer hearings are not required for voluntary transfers.

After the review, a person who requests to be transferred to DOC must be transferred directly into the placement agreed upon by the secretaries of DCYF and DOC. A person who has been transferred to DOC may request to be transferred and returned to DCYF one time within 12 months of transferring, provided the in-residence population of the JR institution is below 100 percent rated bed capacity at the time DCYF receives the request. If 100 percent rated bed capacity is exceeded, the request must be placed on hold until the in-residence population returns below 100 percent rated bed capacity, at which time DCYF must process the transfer request with the coordination of DOC.

Transfer Hearings. Language requiring a hearing by the DCYF review board for assaults against staff that are reported to a local law enforcement agency is removed. Instead, DCYF

must establish rules for defining and developing an internal behavioral management infraction system and procedures to respond to a continuing and serious threat to the safety of others in the institution. The rules must provide guidance on when the following circumstances present a continuing and serious threat and warrant imposing a disciplinary infraction: assault involving serious bodily harm and possession of any contraband that puts the safety of others or the security of the institution at risk. DCYF must set a rule specifying the amount of time for when the review board must hold a hearing.

The requirement to conduct a second hearing upon conviction for custodial assault within five judicial working days is removed. The burden on the juvenile to show cause why the transfer to an adult correctional facility should not occur upon conviction for custodial assault is removed.

Department of Corrections Authority. A person in the custody of DCYF due to being sentenced in adult court for a crime committed prior to age 18 is eligible to be released by DOC if:

- the person's earned release date is within six months of the person's 25th birthday;
- the person has not been deemed a high risk to reoffend; and
- the person has not committed any serious infractions as defined by the DCYF internal behavioral management infraction system.

General. This act may be known and cited as the Juvenile Rehabilitation Overcrowding Relief Act, or J-RORA.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- For rated bed capacity, specifies that 10 percent of beds must be reserved for flexibility, rather than 5 percent, and requires inclusion of appropriate bathroom and shower ratio to youth, adequate education space, and adequate indoor and outdoor recreation space.
- Removes language that a person with a conviction for escape from a juvenile rehabilitation institution or community facility is ineligible to be transferred to a community facility.
- Allows notice to be provided less than 30 days before transfer to a community facility.
- Prohibits a person with an earned release date after age 26 who is age 21 at the time of placement, rather than age 23, from being initially placed at DCYF when capacity exceeds 105 percent.
- Reduces the capacity percentage from 120 to 105 for when DCYF may transfer persons to DOC.
- Changes the criteria for early release by DOC if the person's earned release date is within six months of the person's 25th birthday, rather than six months after the person's 26th birthday.

EFFECT OF CHANGES MADE BY HUMAN SERVICES COMMITTEE (First Substitute):

- Requires DCYF to promulgate rules related to rated bed capacity that must include single occupancy rooms and five percent reserved beds for flexibility.
- Directs DCYF to monitor the population, and when population is at 90 percent rated bed capacity, begin planning and identifying methods to avoid exceeding capacity including, but not limited to, notifying individuals who may be released or transferred to community facilities or CTS, discussing with DOC any early release options for persons sentenced in adult court, notifying county juvenile court administrators, the Legislature, and the Governor on capacity reduction measures, and submitting an annual report on transfers that occurred in the prior 12 months.
- Allows, when population exceeds 105 percent rated bed capacity, for the DCYF secretary to transfer, without a transfer hearing, qualifying persons from community facilities to CTS first, then transfer individuals from an institution to community facilities or CTS second. Exempts transfers to community facility from minimum secured confinement requirements. Thirty-day local law enforcement and school notification requirements may be waived.
- Allows, when population exceeds 105 percent rated bed capacity, for eligible persons convicted in adult court for a crime committed before age 18 to be transferred to work release at DOC.
- Prohibits persons from being initially placed at DCYF when a person is convicted in adult court for a crime committed before age 18, the population at the JR facility is over 105 percent capacity, and the person is over age 23 and has an earned release date after age 26.
- Allows transfers for persons sentenced in adult court if DCYF establishes at a transfer hearing that continued placement of the person presents a significant safety risk.
- After transferring persons to community facilities, CTS, or work release, and exhausting any remaining authority, if population exceeds 120 percent rated bed capacity and rehabilitative goals cannot be met, allows transfer to DOC for persons who are over 21, or under 21 but over 18 and served at least three years at DCYF, who consistently refuse to participate or engage in available programming, after a transfer hearing that takes into account certain factors.
- Requires DCYF to review the placement of persons over 21, and at least before turning age 23, to provide information regarding voluntary transfer to DOC. Requires DCYF and DOC to provide information in writing on availability of placement options at DOC and the person's eligibility based on their classification and custody level determinations. Provides access to counsel, and allows the person to request to return to DCYF one time within 12 months of transferring, provided the JR institution is not over 100 percent rated bed capacity.
- Requires DCYF to establish rules for defining and developing an internal behavior management infraction system to respond to a continuing and serious threat. Requires the rules to provide guidance on when assault involving serious bodily harm and possession of contraband that puts the safety of others or the security of institution at

risk constitute a continuing and serious threat and warrant imposing a disciplinary infraction.

- Removes the requirement to conduct a second hearing upon conviction for custodial assault within five judicial working days, and removes the burden on the juvenile to show cause why the transfer should not occur after conviction for custodial assault.
- Allows a person who was sentenced in adult court to be eligible to be released by DOC if the person's earned release date is within six months after their 26th birthday, they are not deemed a high risk to reoffend, and have not committed any serious infractions as defined by DCYF's internal behavioral management infraction system.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Human Services): *The committee recommended a different version of the bill than what was heard.* PRO: The state is not delivering on the promise it made when JR to 25 legislation was adopted because of the overpopulation at Green Hill. This bill addresses the overcrowding by allowing different avenues for the agency to make reasoned decisions about where they could move folks to reduce the population. Proper tools need to be provided to the agency to implement this policy if the state is going to have any hope of delivery on its promise of rehabilitation services.

When DOC or JR systems fail, public safety is jeopardized. The JR intake freeze had impacts on local jurisdictions and backed up the system. This bill will ensure adequate capacity exists in state systems.

CON: When the Legislature originally passed JR to 25, it was in response to scientific developments that kids' brains are fundamentally different, which means that they should reside with those who are at an equivalent developmental phase and that their age makes them uniquely positioned to be rehabilitated. The JR system is failing youth right now as it is overcrowded and the treatment and education systems are not working where they should be, but the solution is not to turn backs on the youth or on the science behind JR to 25. The solution is to invest in the system, invest in returning young people to their communities without subjecting them to further harm of the adult carceral system, invest in upstream solutions to prevent people from coming into JR, and to not back away from this policy. Sending youth to DOC would be the most harmful way to address the capacity issues at JR.

The mandatory provisions of the bill render any discretionary powers meaningless in practice. This bill would create a system where the pretransfer process exists for only some

youth, some of the time, but not others. The Legislature enshrined process rights in statute for youth facing transfer and if this process is eliminated in some instances, the process becomes a meaningless check on agency power. Youth will be taken away from one day to the next, with no warning, and suddenly removed from programming, education, health care, and peer support. Anxiety and uncertainty about being whisked away will be introduced into their lives, disincentivizing them from engaging in their rehabilitation. There are better ways to deal with overcrowding than punitive transfers like expanding access to community transition services. The overcrowding at Green Hill is not the youth's fault.

The bill's mandatory transfer due to capacity may conflict with current law that allows the DCYF secretary to recommend reductions to the Governor when the population exceeds 105 percent of rated bed capacity. The bill also includes a provision that youth must be deemed significant safety risks if inappropriate sexual relations occur between a staff person and a person in DCYF custody. Custodial sexual misconduct applies when the perpetrator is an employee or contract personnel of a correctional agency and the victim is a resident of a state, county, or city adult or juvenile correctional facility. Those youth are not safety risks but victims of a crime. This would be punishing young people for actions they cannot legally consent to and criminalize them for their own victimization. There is an imbalance of power between an employee and an incarcerated individual, who lacks power and cannot consent.

Youth are leaving Green Hill with adult felony convictions, which is not the fault of youth who find themselves under Lewis County jurisdiction based on the decisions of the government. Prison riot charges can be filed as a result of a fight involving more than two people in a correctional institution; however, statewide this charge is used almost exclusively against the young people at Green Hill. Although there are 13,700 people in DOC custody, and 315 people in JR custody, 61 percent of all prison riot charges over the past 7.5 years have been filed in Lewis County. This is on the account of the prosecutorial discretion exercised in the county where Green Hill is. The youth at Green Hill are acutely at risk for picking up new charges while in the care of JR.

OTHER: Rated bed capacity figures are not defined in statute so DCYF engaged national experts to make recommendations on safe operational capacity to mitigate overcrowding using bed availability, access to showers and restrooms, and ratios of programming space. This should be in rule in case there are changes, emergencies, or new construction so it would not require a law change. There should be relief valves for the juvenile sentence population and adult sentence population.

The transfer authority and placement review of 21 to 23-year-olds should be clarified. DOC and DCYF should partner to be really clear and intentional in future planning with young people about all the less restrictive options that may exist to them across both continuums. Transparency about options could help incentivize or engage some in more voluntary transfer or placement options in the DOC system.

Persons Testifying (Human Services): PRO: Senator John Braun, Prime Sponsor; James McMahan, WA Assoc Sheriffs & Police Chiefs.

CON: Grete Schultz, TeamChild; Sarah Nagy, Columbia Legal Services; Keri-Anne Jetzer, WA State Sentencing Guidelines Commission; Elizabeth Mustin, WA State Office of Public Defense; William Hairston, Center for Children & Youth Justice.

OTHER: Allison Krutsinger, Dept of Children, Youth, and Families.

Persons Signed In To Testify But Not Testifying (Human Services):

CON: Esther Matthews.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* OTHER: This truly does not address nor solve the crisis that the JR system is in. Population continues to grow and capacity is not there. This bill helps alleviate and mitigate some of that through smoothing of the voluntary transfer process. It encourages better collaboration between DCYF and DOC. We remain concerned that some of the measures are not able to be triggered until we reach 120 percent capacity. That would be 216 at Green Hill today, whereas we are at 230 and have been for about a year now. We have three technical concerns. JR finds itself in an urgent crisis that makes our existing public safety challenges even more immediate. We liked the original version of the bill better. A well run JR system ultimately saves the state money, keeping youth at JR until age 25, and not exposing youth to the adult carceral system. Making it easier to transfer young people to the DOC is not the answer to overcrowding.

Persons Testifying (Ways & Means):

OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs; Allison Krutsinger, Dept of Children, Youth, and Families; Grete Schultz, TeamChild.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.