
SENATE BILL 5737

State of Washington

66th Legislature

2019 Regular Session

By Senators Darneille, Conway, and Nguyen

Read first time 01/30/19. Referred to Committee on Human Services,
Reentry & Rehabilitation.

1 AN ACT Relating to confinement in juvenile rehabilitation
2 facilities; amending RCW 72.01.410 and 13.40.300; adding a new
3 section to chapter 72.01 RCW; creating new sections; and providing an
4 expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes state and
7 national efforts to reform policies that incarcerate youth in the
8 adult criminal justice system. The legislature acknowledges that
9 transferring youth to the adult criminal justice system is not
10 effective in reducing future criminal behavior. Youth incarcerated in
11 the adult criminal justice system are more likely to recidivate than
12 their counterparts housed in juvenile facilities.

13 The legislature intends to enhance community safety by
14 emphasizing rehabilitation of juveniles convicted even of the most
15 serious violent offenses under the adult criminal justice system.
16 Juveniles adjudicated as adults should be served and housed within
17 the facilities of the juvenile rehabilitation administration up until
18 age twenty-five but released earlier if their sentence ends prior to
19 that. This emphasis on rehabilitation up to age twenty-five reflects
20 similar programming in other states, which has significantly reduced
21 recidivism of juveniles confined in adult correctional facilities.

1 **Sec. 2.** RCW 72.01.410 and 2017 3rd sp.s. c 6 s 728 are each
2 amended to read as follows:

3 (1) Whenever any ~~((child))~~ individual under the age of eighteen
4 is convicted as an adult in the courts of this state of a crime
5 amounting to a felony, and is committed for a term of confinement,
6 that ~~((child))~~ individual shall be initially placed in a facility
7 operated by the department of ~~((corrections))~~ children, youth, and
8 families to determine the ~~((child's))~~ individual's earned release
9 date, and the department of corrections shall determine the earned
10 release date.

11 (a) ~~((If the earned release date is prior to the child's twenty-~~
12 ~~first birthday, the department of corrections shall transfer the~~
13 ~~child to the custody of the department of children, youth, and~~
14 ~~families, or to such other institution as is now, or may hereafter be~~
15 ~~authorized by law to receive such child, until such time as the child~~
16 ~~completes the ordered term of confinement or arrives at the age of~~
17 ~~twenty-one years.~~

18 ~~((i))~~) While in the custody of the department of children, youth,
19 and families, the ~~((child))~~ individual must have the same treatment,
20 housing options, transfer, and access to program resources as any
21 other ~~((child))~~ individual committed ~~((directly))~~ to that juvenile
22 correctional facility or institution pursuant to chapter 13.40 RCW.
23 Treatment, placement, and program decisions shall be at the sole
24 discretion of the department of children, youth, and families. The
25 ~~((youth))~~ individual shall only be transferred ~~((back))~~ to the
26 custody of the department of corrections with the approval of the
27 department of children, youth, and families or when the ~~((child))~~
28 individual reaches the maximum age of ~~((twenty-one))~~ juvenile
29 offender commitment by a juvenile court for the same offense provided
30 under RCW 13.40.300.

31 ~~((ii))~~) (b) If the ~~((child's))~~ individual's sentence includes a
32 term of community custody, the department of children, youth, and
33 families shall not release the ~~((child))~~ individual to community
34 custody until the department of corrections has approved the
35 ~~((child's))~~ individual's release plan pursuant to RCW
36 9.94A.729(5)(b). If ~~((a child))~~ an individual is held past his or her
37 earned release date pending release plan approval, the department of
38 children, youth, and families shall retain custody until a plan is
39 approved or the ~~((child))~~ individual completes the ordered term of
40 confinement prior to the maximum age ~~((twenty-one))~~ of juvenile

1 offender commitment by a juvenile court for the same offense provided
2 under RCW 13.40.300.

3 ~~((iii))~~ (c) If the department of children, youth, and families
4 determines that retaining custody of the ~~((child))~~ individual
5 presents a significant safety risk, the ~~((child))~~ individual may be
6 ~~((returned))~~ transferred to the custody of the department of
7 corrections.

8 ~~((b))~~ (d) If the ~~((child's))~~ individual's earned release date
9 is on or after the ~~((child's twenty-first birthday))~~ maximum age of
10 juvenile offender commitment by a juvenile court for the same offense
11 provided under RCW 13.40.300, the department of corrections shall,
12 with the consent of the secretary of the department of children,
13 youth, and families, ~~((transfer))~~ retain the ~~((child to))~~ individual
14 in a facility or institution operated by the department of children,
15 youth, and families. Despite the transfer, the department of
16 corrections retains authority over custody decisions and must approve
17 any leave from the facility. When the ~~((child turns age twenty-one))~~
18 individual reaches the maximum age of juvenile offender commitment by
19 a juvenile court for the same offense provided under RCW 13.40.300,
20 he or she must be transferred ~~((back))~~ to the department of
21 corrections. The department of children, youth, and families has all
22 routine and day-to-day operations authority for the ~~((child))~~
23 individual while he or she is in its custody.

24 (2) (a) Except as provided in (b) and (c) of this subsection, an
25 offender under the age of eighteen who is ~~((convicted in adult~~
26 ~~criminal court and who is committed to a term of confinement at))~~
27 transferred to the custody of the department of corrections must be
28 placed in a housing unit, or a portion of a housing unit, that is
29 separated from offenders eighteen years of age or older, until the
30 offender reaches the age of eighteen.

31 (b) An offender who is transferred to the custody of the
32 department of corrections and reaches eighteen years of age may
33 remain in a housing unit for offenders under the age of eighteen if
34 the secretary of corrections determines that: (i) The offender's
35 needs and the ~~((correctional))~~ rehabilitation goals for the offender
36 could continue to be better met by the programs and housing
37 environment that is separate from offenders eighteen years of age and
38 older; and (ii) the programs or housing environment for offenders
39 under the age of eighteen will not be substantially affected by the
40 continued placement of the offender in that environment. The offender

1 may remain placed in a housing unit for offenders under the age of
2 eighteen until such time as the secretary of corrections determines
3 that the offender's needs and (~~correctional~~) goals are no longer
4 better met in that environment but in no case past the (~~offender's~~
5 ~~twenty-first birthday~~) maximum age of juvenile offender commitment
6 by a juvenile court for the same offense provided under RCW
7 13.40.300.

8 (c) An offender transferred to the custody of the department of
9 corrections who is under the age of eighteen may be housed in an
10 intensive management unit or administrative segregation unit
11 containing offenders eighteen years of age or older if it is
12 necessary for the safety or security of the offender or staff. In
13 these cases, the offender must be kept physically separate from other
14 offenders at all times.

15 (3) The department of children, youth, and families must review
16 the placement of an individual over age twenty-one who was placed in
17 the custody of the department of children, youth, and families
18 following an adult court felony conviction for an offense committed
19 before age eighteen to determine whether the individual should be
20 transferred to the custody of the department of corrections. The
21 department of children, youth, and families may determine the
22 frequency of the review required under this subsection, but the
23 review must occur at least once before the individual turns age
24 twenty-three if the individual's commitment period in a juvenile
25 institution extends beyond age twenty-three.

26 **Sec. 3.** RCW 13.40.300 and 2018 c 162 s 7 are each amended to
27 read as follows:

28 (1) Except as provided in subsection (2) of this section, a
29 juvenile offender may not be committed by the juvenile court to the
30 department of children, youth, and families for placement in a
31 juvenile correctional institution beyond the juvenile offender's
32 twenty-first birthday.

33 (2)(a) A juvenile offender (~~convicted~~) adjudicated of an A++
34 juvenile disposition category offense listed in RCW 13.40.0357, or
35 found to be armed with a firearm and sentenced to an additional
36 twelve months pursuant to RCW 13.40.193(3)(b), may be committed by
37 the juvenile court to the department of children, youth, and families
38 for placement in a juvenile correctional institution up to the
39 juvenile offender's twenty-fifth birthday, but not beyond.

1 (b) A juvenile offender adjudicated of the following offenses may
2 be committed by the juvenile court to the department of children,
3 youth, and families for placement in a correctional institution up to
4 the time the juvenile offender is age twenty-five years old, but not
5 beyond:

6 (i) A serious violent offense as defined in RCW 9.94A.030;

7 (ii) A violent offense as defined in RCW 9.94A.030 and the
8 juvenile has a criminal history consisting of: (A) One or more prior
9 serious violent offenses; (B) two or more prior violent offenses; or
10 (C) three or more of any combination of the following offenses: Any
11 class A felony, any class B felony, vehicular assault, or
12 manslaughter in the second degree, all of which must have been
13 committed after the juvenile's thirteenth birthday and prosecuted
14 separately; or

15 (iii) Rape of a child in the first degree.

16 (3) A juvenile may be under the jurisdiction of the juvenile
17 court or the authority of the department of children, youth, and
18 families beyond the juvenile's eighteenth birthday only if prior to
19 the juvenile's eighteenth birthday:

20 (a) Proceedings are pending seeking the adjudication of a
21 juvenile offense and the court by written order setting forth its
22 reasons extends jurisdiction of juvenile court over the juvenile
23 beyond his or her eighteenth birthday, except:

24 (i) If the court enters a written order extending jurisdiction
25 under this subsection, it shall not extend jurisdiction beyond the
26 juvenile's twenty-first birthday;

27 (ii) If the order fails to specify a specific date, it shall be
28 presumed that jurisdiction is extended to age twenty-one; and

29 (iii) If the juvenile court previously extended jurisdiction
30 beyond the juvenile's eighteenth birthday, and that period of
31 extension has not expired, the court may further extend jurisdiction
32 by written order setting forth its reasons;

33 (b) The juvenile has been found guilty after a fact finding or
34 after a plea of guilty and an automatic extension is necessary to
35 allow for the imposition of disposition;

36 (c) Disposition has been held and an automatic extension is
37 necessary to allow for the execution and enforcement of the court's
38 order of disposition, subject to the following:

39 (i) If an order of disposition imposes commitment to the
40 department, then jurisdiction is automatically extended to include a

1 period of up to twelve months of parole, in no case extending beyond
2 the offender's twenty-first birthday, except;

3 (ii) (A) If an order of disposition imposes a commitment to the
4 department for a juvenile offender (~~(convicted)~~) adjudicated of an
5 A++ juvenile disposition category offense listed in RCW 13.40.0357,
6 or found to be armed with a firearm and sentenced to an additional
7 twelve months pursuant to RCW 13.40.193(3)(b), then jurisdiction for
8 parole is automatically extended to include a period of up to twenty-
9 four months of parole, in no case extending beyond the offender's
10 twenty-fifth birthday; or

11 (B) Under subsection (2)(b) of this section, in which case
12 commitment may not extend beyond age twenty-five;

13 (d) While proceedings are pending in a case in which jurisdiction
14 is vested in the adult criminal court pursuant to RCW 13.04.030, the
15 juvenile turns eighteen years of age and is subsequently found not
16 guilty of the charge for which he or she was transferred, or is
17 convicted in the adult criminal court of a lesser included offense,
18 and an automatic extension is necessary to impose the disposition as
19 required by RCW 13.04.030(1)(e)(v)(C)(II); or

20 (e) Pursuant to the terms of RCW 13.40.190 and 13.40.198, the
21 juvenile court maintains jurisdiction beyond the juvenile offender's
22 twenty-first birthday for the purpose of enforcing an order of
23 restitution or penalty assessment.

24 (4) Except as otherwise provided herein, in no event may the
25 juvenile court have authority to extend jurisdiction over any
26 juvenile offender beyond the juvenile offender's twenty-first
27 birthday.

28 (5) Notwithstanding any extension of jurisdiction over a person
29 pursuant to this section, the juvenile court has no jurisdiction over
30 any offenses alleged to have been committed by a person eighteen
31 years of age or older.

32 NEW SECTION. Sec. 4. A new section is added to chapter 72.01
33 RCW to read as follows:

34 (1) Any individual in the custody of the department of social and
35 health services or the department of children, youth, and families on
36 or before the effective date of this section, who was under the age
37 of eighteen at the time of the commission of the offense and who was
38 convicted as an adult, must remain in the custody of the department

1 of children, youth, and families until transfer to the department of
2 corrections or release pursuant to RCW 72.01.410.

3 (2) Any individual in the custody of the department of
4 corrections on the effective date of this section, who was under the
5 age of eighteen at the time of the commission of the offense and who
6 was convicted as an adult, and who has not yet reached the maximum
7 age of juvenile offender commitment by a juvenile court for the same
8 offense provided under RCW 13.40.300, is subject to the following
9 provisions regarding placement:

10 (a) Any individual with an earned release date prior to age
11 twenty-five is eligible for transfer to the custody of the department
12 of children, youth, and families beginning January 1, 2020, subject
13 to the process established in subsection (3) of this section.

14 (b) Any individual with an earned release date after age twenty-
15 five is eligible for transfer to the custody of the department of
16 children, youth, and families beginning January 1, 2020, subject to
17 the process established in subsection (3) of this section.

18 (3) By February 1, 2020, the department of corrections and the
19 department of children, youth, and families must review and determine
20 whether an individual identified in subsection (2)(a) and (b) of this
21 section should transfer from the department of corrections to the
22 department of children, youth, and families through the following
23 process:

24 (a) No later than September 1, 2019, the department of
25 corrections and the department of children, youth, and families shall
26 establish, through a memorandum of understanding, a multidisciplinary
27 interagency team to conduct a case-by-case review of the transfer of
28 individuals from the department of corrections to the department of
29 children, youth, and families pursuant to subsection (2)(a) and (b)
30 of this section. The multidisciplinary interagency team must include
31 a minimum of three representatives from the department of corrections
32 and three representatives from the department of children, youth, and
33 families, and must provide the individual whose transfer is being
34 considered an opportunity to consent to the transfer. In considering
35 whether a transfer to the department of children, youth, and families
36 is appropriate, the multidisciplinary interagency team may consider
37 any relevant factors including, but not limited to:

38 (i) The safety and security of the individual, staff, and other
39 individuals in the custody of the department of children, youth, and
40 families;

1 (ii) The individual's behavior and assessed risks and needs;
2 (iii) Whether the department of children, youth, and families or
3 the department of corrections' programs are better equipped to
4 facilitate successful rehabilitation and reentry into the community;
5 and

6 (iv) Any statements regarding the transfer made by the individual
7 whose transfer is being considered.

8 (b) After reviewing each proposed transfer, the multidisciplinary
9 interagency team shall make a recommendation regarding the transfer
10 to the secretaries of the department of children, youth, and families
11 and the department of corrections. This recommendation must be
12 provided to the secretaries of each department by January 1, 2020.

13 (c) The secretaries of the department of children, youth, and
14 families and the department of corrections, or their designees, shall
15 approve or deny the transfer within thirty days of receiving the
16 recommendation of the multidisciplinary interagency team, and by no
17 later than February 1, 2020.

18 (4) This section expires July 1, 2021.

19 NEW SECTION. **Sec. 5.** The Washington state institute for public
20 policy must assess the impact of this act on community safety, racial
21 disproportionality, and youth rehabilitation and submit a report, in
22 compliance with RCW 43.01.036, to the governor and the appropriate
23 committees of the legislature by December 1, 2024.

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