## STAFF REPORT

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| **Agenda Item:** | 7 | **Name:** | Leah Krekel-Zoppi |
| **Proposed No**.: | 2021-0329 | **Date:** | April 5, 2022 |

**SUBJECT**

A Motion acknowledging receipt of the first of two independent monitor reports on confinement of juveniles in county detention facilities and implementation of the prohibition of solitary confinement of juveniles per the requirements of Ordinance 18637 and King County Code (K.C.C.) Chapter 2.65.

**SUMMARY**

The Council included a proviso in the 2021-2022 Biennial Budget requiring the Executive to continue to engage an independent monitor to review the impact of the changes to solitary confinement for youth in detention. This proposed motion would acknowledge the first of two required monitoring reports. These reports are a continuation of the independent monitoring related to the County’s implementation of Ordinance 18637 which placed significant new restrictions on the use of solitary confinement of youth. The report details progress made towards reducing incidents of restrictive housing[[1]](#footnote-1) for youth in detention, improving documentation and assessment of incidents of restrictive housing, and implementing recommendations from previous monitoring reports. The report appears to meet the requirements of the proviso.

**BACKGROUND**

King County adopted the Juvenile Justice Operational Master Plan,[[2]](#footnote-2) in 2000, adopting a policy to emphasize prevention, intervention, and alternatives to the use of secure detention for juvenile offenders. As a result, even as King County’s overall population has grown, the number of youths arrested, charges referred, charges filed, and the use of secure detention for juveniles has declined significantly over the past 15 years.

As part of its juvenile detention reform efforts, King County participates in the Juvenile Detention Alternatives Initiative (JDAI), which is a national juvenile justice improvement initiative geared towards changing how detention should be used for youth. JDAI has been implemented in 300 jurisdictions in 30 states and the District of Columbia.[[3]](#footnote-3) The county became a formal JDAI site in 2004 joining nine other Washington State counties (Adams, Benton, Clark, Franklin, Mason, Pierce, Snohomish, Spokane, and Whatcom). The county has experienced significant positive results from JDAI and other system changes, reducing the use of secure detention while also reducing overall juvenile crime in the county. The County uses JDAI standards for its programs and detention.

**Juvenile Detention Programs**

The King County Department of Adult and Juvenile Detention’s Juvenile Division (DAJD) has operated the county’s juvenile detention system since 2002. Under state law, King County is required to operate a detention facility for juvenile offenders. While detained, youth receive a medical assessment to determine if the youth is in crisis or needs immediate medical or mental health intervention. The youth also receives an assessment to determine the youth's appropriate placement in detention and any special issues that may need to be addressed.

Most juveniles detained in King County are housed in the Judge Patricia Clarke Children and Family Justice Center (CFJC). The County’s average daily population (ADP) of youth was 32 in the first half of 2020.[[4]](#footnote-4) According to department staff, juvenile detention staff has utilized a Behavior Management system that allows youth to earn Tier Levels based on positive behavior which increases their programming time outside of school and gym. However, this 30-year-old system is being replaced with a new system with significant changes in how discipline is used. The Seattle School District provides regular and special education, and the school is operated as part of the detention facility. Detainees also receive at least one hour of physical exercise in the facility’s gym daily.

In addition, prior to 2018, some youth who were charged as adults were housed at the department’s adult facilities rather than the County’s juvenile detention facility at the Youth Service Center.[[5]](#footnote-5) An average of five to fifteen youth were held at the Maleng Regional Justice Center, an adult detention facility. In an Executive Order signed on November 2, 2017, the Executive directed that all youth under age 18 who have been charged as adults will be housed at the Youth Services Center.[[6]](#footnote-6) All youth in adult facilities were transferred to the Youth Services Center by December 2017.

**Use of “Solitary Confinement” for Adults and Youth**

Solitary confinement is a form of imprisonment in which an inmate is isolated from any human contact, often with the exception of members of prison staff, for 22–24 hours a day. Solitary confinement can also be called room confinement, segregated housing, protective custody, restrictive housing, restricted housing, time out, restricted engagement, close confinement, special management unit, administrative detention, non-punitive isolation, or temporary isolation.

JDAI detention facility standards prohibit the use of room confinement for reasons other than as a temporary response to behavior that threatens immediate harm to a youth or others. The standards reflect the advice of dozens of practitioners and nationally recognized experts that room confinement should not be used for discipline, punishment, administrative convenience, or other reasons.[[7]](#footnote-7) Further, the Council of Juvenile Correctional Administrators reports that isolating or confining a youth in their room should be used only to protect the youth from harming themself or others and if used, should be for a short period and supervised.[[8]](#footnote-8)

**Restricting the Use of Solitary Confinement in King County**

In December 2017, the King County Council adopted Ordinance 18673 which banned solitary confinement for youth except in specific limited circumstances.[[9]](#footnote-9) This legislation had three elements:

The first element created King County Code Chapter 2.65, banning the use of solitary confinement for youth detained by King County “except as necessary to prevent significant physical harm to the juvenile detained or to others when less restrictive alternatives would be ineffective,” regardless of the facility that the youth is held. The ordinance defines "solitary confinement" as the placement of an incarcerated person in a locked room or cell alone with minimal or no contact with persons other than guards, correctional facility staff, and attorneys. The ordinance further notes that using different terminology for this practice, such as room confinement, segregated housing, protective custody, restrictive housing, restricted housing, time out, restricted engagement, close confinement, special management unit, administrative detention, non-punitive isolation, temporary isolation or reflection cottage, among others, does not exempt a practice from being considered solitary confinement.

Secondly, this ordinance also placed the requirement on the department’s juvenile division to ensure that all juveniles detained in any King County detention facility are given reasonable access to the defense bar, juvenile probation counselors and social service providers and educators in a timely manner.

Finally, the ordinance requests that the Executive appoint an independent monitor or monitors who have expertise in juvenile detention operations and corrections, officer safety and security and on trauma-informed behavioral modification practices to monitor and report on the implementation of this ordinance.

While county code bans the use of solitary confinement, it allows the practice in instances of safety and security when no less restrictive option is available. According to department staff, youth have not been subject to solitary confinement at the Youth Services Center since the early 1990’s. The department’s current practice for youth mirrors the national standards as promulgated by JDAI and the Council of Juvenile Correctional Administrators. However, youth have been confined to their room for disciplinary purposes, known as “room confinement.” When the “auto-decline” youth were moved to juvenile detention facilities they became subject to these restrictions on the use of isolation and solitary confinement. In addition, the auto-decline youth now have access to all services for youth in detention when detained in juvenile facilities (such as access to education).

K.C.C. 2.65.010 defines the term “juvenile” to include any person currently confined in a King County detention facility for a charge that was filed in juvenile court or based on conduct that occurred before the person’s 18th birthday, and where confinement begins before their 18th birthday. Therefore, the Ordinance applies to:

* All juveniles held in juvenile facilities;
* Youths who turn 18 (age out) and are transferred to an adult facility; and,
* Youth who are older than age 18 and are booked on a juvenile probation/parole matter[[10]](#footnote-10)

**Prior Monitor Reports**

The Executive engaged the first independent monitor and independent monitoring services began on July 1, 2018.[[11]](#footnote-11) The Council accepted the monitor’s first report in December 2018.[[12]](#footnote-12) Recommendations in the report included: policy revisions to implement mandates under the Ordinance, monthly tracking of restrictive housing data, reconsideration of the inmate classification scheme, and distribution to appropriate staff of a list of adult facility detainees who fall under the Ordinance. A second report was issued in January 2019.[[13]](#footnote-13)

In 2019, a new independent monitoring team of Kathryn Olson[[14]](#footnote-14) and Bob Scales[[15]](#footnote-15),[[16]](#footnote-16) were contracted to provide reports in compliance with a proviso added to the 2019-2020 Biennial Budget Ordinance.[[17]](#footnote-17) The team's first report covered July – December 2019.[[18]](#footnote-18) Recommendations in that report included consideration of whether the King County Council should amend Ordinance 18637 to exclude youth in their room voluntarily or engaged in one-on-one programming from the definition of restrictive housing, enhancing youth activity and restrictive housing tracking forms, creating an exit plan for any youth placed in restrictive housing, and integrating restrictive housing policing and procedures with the Behavior Management System. A second report covered January – June 2020.[[19]](#footnote-19) Recommendations in that report included: resetting the Juvenile Division's restorative practices program and developing individual case management plans, documenting specific and thorough details of behavior resulting in restrictive housing, providing more specific information about programs available to AAOs (Adult Age Outs), formalizing informal support services being provided to AAOs, and reinstating education opportunities for AAOs that were interrupted by COVID-19 impacts. The report also reiterated the recommendation to create an exit plan for any youth placed in restrictive housing.

**Proviso Requirements**

As part of budget deliberations for the 2021-2022 Biennial Budget,[[20]](#footnote-20) the King County Council added a proviso that required that the Executive to continue the use of an independent monitor to review the impact of the changes to solitary confinement on youth and DAJD operations.[[21]](#footnote-21) The proviso required that:

*Of this appropriation, $200,000 shall not be expended or encumbered until the executive transmits two reports on the implementation of Ordinance 18637, Sections 2 through 5, as they relate to confinement of juveniles in county detention facilities, each accompanied by a motion that should acknowledge receipt of the applicable report. Each motion should reference the subject matter, the proviso's ordinance number, ordinance section and proviso number in both the title and body of the motion. Upon passage of each motion, $100,000 is released for encumbrance or expenditure.*

*The two reports required by this proviso should build on all of the prior reports submitted on practices related to the confinement of juveniles required by Ordinance18637, Section 6. The two reports required by this proviso shall be prepared by an appointed, independent monitor or monitors who, either alone or together, have extensive knowledge of the processes and procedures by which the reports required by Ordinance18637 were generated and, in accordance with Ordinance 18637, Section 6, the monitor or monitors shall have expertise in adolescent development, juvenile detention operations and corrections, officer safety and security and trauma-informed behavioral modification practices. The monitor or monitors shall include in the report analysis of the implementation of Ordinance 18637, Sections 2 through 5, by the department of adult and juvenile detention juvenile division, and the report shall also include, but not be limited to:*

 *A. A review of the* *number of times solitary confinement was used during the evaluation period;*

 *B.* *An evaluation of the documentation of the circumstances for the use of*

*solitary confinement;*

 *C. A determination whether, for each instance solitary confinement was used, it did not exceed four hours;*

 *D.* *An evaluation of the documentation of supervisory review before the use of solitary confinement;*

 *E. An evaluation of the documentation that youth in solitary confinement have been assessed or reviewed by medical professionals;*

 *F. An evaluation of the documentation of how youth subject to solitary*

*confinement had full access to education, programming and ordinary necessities, such as medication, meals and reading material, when in solitary confinement; and*

 *G. An assessment of the progress by the department of adult and juvenile*

*detention juvenile division on implementing the recommendations outlined in the four previous monitor reports.*

*In preparing and completing the reports required by this proviso, the monitor or*

*monitors shall consult with stakeholders, including representatives of the King County Juvenile Detention Guild (Department of Adult and Juvenile Detention – Juvenile representing employees in the department of adult and juvenile detention juvenile division.*

*The first report should cover July 1, 2020, through June 30, 2021. The second report should cover July 1, 2021, through March 31, 2022. The executive should electronically file the first report and a motion required by this proviso no later than September 15, 2021, and the second report and a motion required by this proviso no later than June 15, 2022, with the clerk of the council, who shall retain an electronic copy and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff for the law and justice committee, or its successor.*

**ANALYSIS**

Proposed Motion 2021-0329 would acknowledge receipt of the first of two independent monitor reports on confinement of juveniles, as required by Ordinance 19210, Proviso P1, Section 50. The Independent Monitoring Team Report, which is Attachment A of the proposed motion, covers the period from July 2020 through June 2021 and was prepared by the monitoring team of Kathryn Olson[[22]](#footnote-22) and Bob Scales.[[23]](#footnote-23),[[24]](#footnote-24) The report builds on the two previous independent monitoring reports the team provided in response to a proviso in the 2019-2020 Biennial Budget.

**Independent Monitoring Team Report July 2020 – June 2021**

According to the report, the assessment for the reporting period was conducted through document reviews, interviews, meetings, observations, and data analysis. The independent monitors note that, similar to the prior reporting period, DAJD faced a number of challenges, including significant property damage in July 2020 by demonstrators protesting in the aftermath of George Floyd's murder, a second flood of the facility in fall of 2020, and high staff turnover with 29 Juvenile Detention Offices (DJOs) leaving employment at the CFJC in 2020 and the first half of 2021. The report notes that despite such challenges, the DAJD has made progress regarding restrictive housing for juveniles, including:

* Implementing a new Restrictive Housing Assessment Checklist form in July 2020 in response to previous independent monitor recommendations;
* Taking steps towards replacing the Behavior Management System, which previously included short periods of solitary confinement as a disciplinary approach, with the Carey Guide program which relies on evidence-based practices for cognitive behavioral interventions and skill building;
* Initiating a project, guided by an outside facilitator, to identify steps and processes necessary to come into compliance with RCW 13.22 which, similar to Ordinance 18637, restricts the use of solitary confinement as a disciplinary practice for juvenile detainees; and
* More promptly and consistently reviewing and correcting restrictive housing paperwork completed by JDOs.

***Proviso Requirement A & B: Number of times circumstances for solitary confinement was used during the evaluation period***

Table 1 shows the number of youth placed in restrictive housing at the CFJC during the reporting period. This represents a significant decline across all categories compared to prior reporting periods. For example, incidents of restrictive housing involving safety risk averaged 35 times per quarter in 2019 and 19 times per quarter in the first half of 2020, compared to an average of 7 times per quarter during the reporting period.

**Table 1: Number of Youth Placed in Restrictive Housing**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Reason Category** | **2020 Q3** | **2020 Q4** | **2021 Q1** | **2021 Q2** |
| **Safety Risk** | 8 | 3 | 7 | 9 |
| **One-on-One Programming** | 34 | 26 | 49 | 18 |
| **Operational Needs/ COVID-19 intake quarantine** | 10 | 3 | 7 | 2 |
| **Total** | **52** | **32** | **63** | **29** |

For AAOs, there was one reported instance of restrictive housing in the third quarter of 2020 that lasted three minutes, and two incidents in the first quarter of 2021 which were in medical housing for three days and 16 hours as a COVID-19 precaution.

***Proviso Requirement C: Whether any incidents of solitary confinement exceeded four hours***

The report indicates there were at least five incents of restrictive housing exceeding four hours, when five youth involved in a single disruptive incident in which staff determined there was a safety risk, each spent six and a half hours in restrictive housing. The report notes that when the average daily population is higher, as it was at the time of that incident, the amount of time staff can provide individual attention to each youth is limited, which can increase the amount of time to resolve an incident involving multiple youth in restrictive housing. The report notes that in the first half of 2021, 96.4 percent of the time youth spent in restrictive housing was while engaging in one-on-one programming, which can be beneficial and therapeutic to the youth, yet still meets the code definition of solitary confinement and must be documented as assessed.

***Proviso Requirement D & E: Evaluation of the documentation of review***

The report shows that assessments were completed for instances involving risk of imminent and significant physical harm in 42 out of 48 incidents in 2020, and 15 out of 16 incidents during the first half of 2021.

***Proviso Requirement F: Evaluation of the documentation of youth access to programing and necessities***

The report noted that many programs typically available to youth at CFJC and AAOs was disrupted initially by the COVID-19 pandemic, some programs pivoted to being available remotely and/or were restored towards the end of the reporting period when COVID-19 restrictions were lifted. Additionally, as noted above, youth were engaged in one-on-one programming during nearly all (96.4 percent) of their time spent in restrictive housing.

***Proviso Requirement G: Assessment of DAJD progress implementing recommendations***

See the bulleted points above. The report also states that given all the work DAJD is currently undertaking to implement new juvenile justice polices and practices and implement the JMS, the independent monitoring team is not making any new recommendations at this time.

***Responsiveness to Proviso Requirements***

The report appears to be responsive to the proviso requirements.

**INVITED**

* John Diaz, Director, Department of Adult and Juvenile Detention
* Allen Nance, Director, Juvenile Division, Department of Adult and Juvenile Detention
* Steve Larsen, Chief of Administration, Department of Adult and Juvenile Detention
* Kathryn Olson, Independent Monitor

**ATTACHMENTS**

1. Proposed Motion 2021-0329 (and its attachments)
2. Transmittal Letter
1. The report uses the term "restrictive housing" consistent with terminology in state law RCW 13.22, in place of the term "solitary confinement" used in Ordinance 18637 and K.C.C. 2.65 [↑](#footnote-ref-1)
2. Motion 10478 and Ordinance 13916 [↑](#footnote-ref-2)
3. Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, <http://www.aecf.org/work/juvenile-justice/jdai/> [↑](#footnote-ref-3)
4. Detention and Alternatives Report, Department of Adult and Juvenile Detention, June 2020. [↑](#footnote-ref-4)
5. Washington State law allows prosecutors to petition to transfer a youth to adult court, at the discretion of the juvenile court. This type of transfer is known as a *discretionary decline* of jurisdiction. In addition to discretionary transfer, the 1994 Washington State Legislature passed the Youth Violence Reduction Act establishing an *automatic decline* (which is also known as “auto-decline”) of jurisdiction to the adult court for certain youth. Youth ages 16 and 17 are automatically “declined” to the adult court when charged with violent felonies. Prior to 2017, some youth who were charged as adults (usually “auto-declines” aged 16 and 17) had been housed at the department’s adult facilities. However, federal law requires any inmate under the age of 18 must be kept separated from adult inmates—known as “sight and sound separation.” [↑](#footnote-ref-5)
6. King County Executive Order “Youth Charged as adults to be housed at the Youth Services Center,” November 2, 2017 [↑](#footnote-ref-6)
7. JDAI Tools and Resources, Conditions of Confinement, Use of Room Solitary Confinement/Isolation,

<http://www.jdaihelpdesk.org/SitePages/conditionsofconfinement.aspx> [↑](#footnote-ref-7)
8. The Council of Juvenile Correctional Administrators, Toolkit: Reducing the Use of Isolation, Council of Juvenile Correctional Administrators, March 2015

<http://cjca.net/attachments/article/751/CJCA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf> [↑](#footnote-ref-8)
9. Ordinance 18637, adopted December 21, 2017. [↑](#footnote-ref-9)
10. These latter two categories are identified in the adult facilities as “Adult Age Outs” (AAOs). [↑](#footnote-ref-10)
11. Stephanie Vetter, Senior Consultant and JDAI Advisor, Center for Children's Law and Policy, working as a private contractor and juvenile justice expert in the areas of JDAI, the federal Prison Rape Elimination Act, adolescent development, juvenile detention operations and corrections, officer safety and security, and trauma informed behavioral modification practices. [↑](#footnote-ref-11)
12. Motion 15256 [↑](#footnote-ref-12)
13. 2019-RPT0011 [↑](#footnote-ref-13)
14. Change Integration Consulting, LLC [↑](#footnote-ref-14)
15. Police Strategies, LLC [↑](#footnote-ref-15)
16. According to the report, the independent monitoring team, "have deep and broad background and expertise in law; the criminal justice system; law enforcement operations, policy, training, labor relations, and community relations; records auditing; advising on data tracking and reporting systems; juvenile justice; reducing racial/ethnic disparities in the criminal justice system; knowledge of PREA and JDAI, trauma informed care, and impacts on policies and practices; restorative justice techniques; and federal, state and local government and criminal justice organizations. They have worked in a wide range of jurisdictions with multiple stakeholders and strive to foster accountability and transparency in the monitoring and reporting process." [↑](#footnote-ref-16)
17. Ordinance 18835, Section 52, as amended by Ordinance 18930, Section 36, Proviso P8 [↑](#footnote-ref-17)
18. Motion 15680 [↑](#footnote-ref-18)
19. Motion 15788 [↑](#footnote-ref-19)
20. Ordinance 19210 [↑](#footnote-ref-20)
21. Proviso P1, Section 50 [↑](#footnote-ref-21)
22. Change Integration Consulting, LLC [↑](#footnote-ref-22)
23. Police Strategies, LLC [↑](#footnote-ref-23)
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