## *REVISED* STAFF REPORT

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| **Agenda Item:** |  | **Name:** | Clifton Curry |
| **Proposed No**.: | 2017-0473 | **Date:** |  |

**SUBJECT**

AN ORDINANCE related to juvenile detention; establishing requirements for the treatment of and services to juveniles in the custody of the department of adult and juvenile detention; requiring treatment and services to be provided without regard to which county detention facility houses the juvenile; and requesting the executive to appoint an independent monitor to report on the treatment of and services to juveniles at each of the county's detention facilities.

*The Law and Justice Committee reviewed this Proposed Ordinance at its November 28th meeting. At the meeting, the Councilmember Kohl-Welles introduced Striking Amendment 1 which made changes to how the use of solitary confinement/isolation of juvenile detainees should be monitored, added policy statements regarding the use of isolation, and added specific reporting requirements for the proposed monitor. In addition, Councilmember Kohl-Welles introduced Title Amendment 1, which made technical drafting changes to the Proposed Ordinance as recommended by Counsel. Amendment 1 and Title Amendment 1 were adopted. The Committee adopted the Proposed Ordinance, as amended, with a votes of four Ayes and one No (CM Lambert).*

**SUMMARY**

This proposed ordinance would ban the use of solitary confinement for youth detained by King County, regardless of the facility that the youth is held. It allows the use of solitary confinement in instances where, because of safety, security or another reason, that no less restrictive option is available. This ordinance would also require that the County provide all services for youth (such as access to education) at every facility that a youth is detained, even when the youth is not detained at the Youth Services Center, but held in one of the department’s adult facilities. Finally, the ordinance would request that the Executive engage an independent monitor to report on the implementation of the requirements in this measure.

**BACKGROUND**

Through the efforts of the County Council, Executive, and separately elected criminal justice officials, King County has taken significant steps to improve its criminal justice system for both adults and juveniles. King County has taken significant steps to improve its criminal justice system for both adults and juveniles.[[1]](#footnote-1) The County has adopted policy frameworks for the use of secure detention while also establishing policy direction to develop alternatives to secure detention, as well as the need for treatment services in the community to reduce recidivism and improve public safety.

As a result, even though the 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 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.[[2]](#footnote-2) The initiative’s goals are to:

* Reduce unnecessary and inappropriate incarceration;
* Maintain and improve public safety;
* Rely on community-based alternatives to detention and services;
* Use data and research to implement successful policies and practices;
* Reduce racial and ethnic disparities in detention populations;
* Improve conditions of confinement for incarcerated youth; and,
* Stimulate overall improvement in the juvenile justice system.

The King County Juvenile Court began implementing JDAI strategies in 1998 with the implementation of JJOMP. 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 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. Nevertheless, since 1999 the county has restricted admissions to its juvenile detention facility.[[3]](#footnote-3) Law enforcement agencies have minimum criteria that must be met before a youth can admitted to the county’s juvenile detention facility at the Seattle Youth Service Center. The county has established “Juvenile Detention Intake Criteria” that identifies the circumstances in which a youth can be brought for admission to detention—which includes standards for what types of offenses the youth is being detained, prior and pending criminal history, and other specified circumstances (e.g., the youth cannot be identified and guardians notified). Law enforcement agencies must call Juvenile Probation Screening staff (part of the King County Superior Court, not DAJD) prior to bringing a youth to the Youth Services Center to determine if the youth is eligible for detention.

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 at the Youth Services Center, which has an average daily population (ADP) of 47 youth.[[4]](#footnote-4) According to department staff, the Youth Services Center utilizes 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. Base Level youth will be out of their dorms approximately 8.75 hours a day, Tier 2 for 9.5 hours, Tier 3 for 9.75 hours, and Honor Levels for 10.75 hours. During the week, instead of programming time during the day, detained youth attend school for 6 hours per day. 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.

Nevertheless, King County houses some juveniles charged as adults in King County at the Maleng Regional Justice Center or, occasionally, at the King County Correctional Facility. According to the Executive, current department policies require that youth held at the Maleng Regional Justice Center get a minimum of 6.5 hours outside of their cells per day and youth in restrictive housing receive three hours outside of their cells per day. Juveniles housed at the Maleng Regional Justice Center or at the King County Correctional Facility are separated from the adult population as required by federal law (as described below).

**Youth Charged as Adults** In Washington State, adults charged with felony crimes have their cases heard in the superior court system. For adults found guilty of a crime, sentences are prescribed by the ranges in the state’s sentencing guidelines.[[5]](#footnote-5) Depending on the seriousness of the crime and a person’s criminal history, some sentences result in confinement in prison or community supervision. The juvenile courts are a division of the superior court system. These courts have jurisdiction of youth under the age of 18 charged with criminal offenses. Like the adult system, the juvenile courts follow sentencing guidelines prescribed in statute that are also based on the seriousness of a crime and a youth’s criminal history.[[6]](#footnote-6)

Washington State law allows prosecutors to petition to transfer a youth to adult court, at the discretion of the juvenile court.[[7]](#footnote-7) 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 the following violent felonies: [[8]](#footnote-8)

* Serious violent felony (murder 1 and 2, manslaughter 1, assault 1, kidnapping 1, and rape 1);
* Violent felony (with a criminal history of one or more serious violent felonies);
* Violent felony (with a criminal history of two or more violent felonies); and,
* Violent felony (with a criminal history of three or more class A felonies, class B felonies, vehicular assault, or manslaughter 2 committed after the 13th birthday and prosecuted separately);
* Robbery 1, rape of a child 1, or drive-by shooting;
* Burglary 1 (with a criminal history of any prior felony or misdemeanor); and,
* Any violent felony with a deadly weapon.

As noted above, some youth who are charged as adults (usually “auto-declines” aged 16 and 17) have been housed at the department’s adult facilities. Most often, the youth are held at the Maleng Regional Justice Center. However, federal law requires any inmate under the age of 18 must be kept separated from adult inmates—known as “sight and sound separation.”

**Sight and Sound Separation** The federal Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974 required state’s wishing to participate in the formula grant program established under this act to ensure that juveniles alleged or found to be delinquent were not detained or confined in any institution in which they had regular contact with adult persons incarcerated for, or awaiting trial on, criminal charges. Implementation regulations followed that further defined the concept of “regular contact” and required that juveniles held in adult facilities be separated by both sight and sound barriers from the adult offenders. In 1980, the requirements of the JJDP Act were strengthened to require the complete removal of juveniles from adult jails and lockups except under circumstances to be specified through regulations promulgated by the Administrator of the Office of Juvenile Justice and Delinquency Prevention.

The Act states that “… juveniles alleged to be or found to be delinquent,” as well as status offenders and non-offenders “will not be detained or confined in any institution in which they have contact with adult inmates .…” This provision of the Act is commonly referred to as the “sight and sound separation requirement.” [[9]](#footnote-9) As a consequence, youth can be held in an adult facility, but must be kept totally separate from adult detainees. The County accomplishes this requirement by generally having juveniles in a separate living unit at the Regional Justice Center (the units usually hold 64 adult inmates and are “self-contained” with space for programing and physical exercise in addition to cells).

It has been noted in various research, that adult jails often do not offer age-appropriate servicesfor youth, such as access to education. The most recent survey of educational programs in adult jails found that 40 percent of jails provided no educational services at all, only 11 percent provided special education services, and just 7 percent provided vocational training.[[10]](#footnote-10)

**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, with a sentence ranging from hours to decades. 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.

It has been employed in various jurisdictions as a form of punishment beyond incarceration for a prisoner, usually for violations of institution regulations. However, it is also used as an additional measure of protection for vulnerable inmates. In the case of prisoners at high risk of suicide, it can be used to prevent access to items that could allow the prisoner to self-harm. Sometimes, inmates may be kept separated from other inmates because they can either be at-risk of being harmed by other inmates or that they might harm other inmates if allowed to associate with them. Solitary confinement has also been used to separate violent inmates to protect correctional staff.

While solitary confinement can be useful in certain circumstances—either for the protection of the inmate, other inmates, or staff, there has been significant research that calls into question the regular use of solitary confinement for youth. Research has shown that, for youth especially, this type of confinement can adversely affect brain the individual.

The American Academy of Child and Adolescent Psychiatry advises that even short periods of isolation for youth in detention can have serious long-term mental health impact, including trauma, psychosis, depression, anxiety, and increased risk of suicide and self-harm. The Academy’s Juvenile Justice Reform Committee states that seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective. The Academy notes that solitary confinement should be distinguished from brief interventions such as "time out," which may be used as a component of a behavioral treatment program in facilities serving children and/or adolescents, or seclusion, which is a short term emergency procedure.[[11]](#footnote-11)

The use of solitary confinement or isolation health impact on incarcerated persons (adults and juveniles) is also is governed by federal, state and local laws and subject to regulations developed by the Joint Commission, the National Commission of Correctional Healthcare, the American Correctional Association and other accrediting entities. The Joint Commission specifically prohibits the use of seclusion "as a means of coercion, discipline, convenience or staff retaliation." They also note that a lack of resources should never be a rationale for solitary confinement.[[12]](#footnote-12)

Further, research has shown that solitary confinement does not reduce behavioral incidents and may increase aggressive or violent behavior by youth; making the practice, when used as a safety tool, counter-productive. In a federal 2008 study, review of nationwide data report indicate that transfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system.[[13]](#footnote-13)

Currently, the federal prison system is banned from using solitary confinement for youth.[[14]](#footnote-14) The Office of Juvenile Justice and Delinquency Prevention, which is part of the United States Department of Justice, has made eliminating the use of solitary confinement on youth at the state and local level a priority.[[15]](#footnote-15)

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.[[16]](#footnote-16)

Finally, The Council of Juvenile Correctional Administrators reports that isolating or confining a youth in his/her room should be used only to protect the youth from harming him/herself or others and if used, should be for a short period and supervised.[[17]](#footnote-17)

**Executive Order Transferring Youth Detainees from Adult Facilities** In an Executive Order signed on November 2, 2017, the Executive directed that all youth under 18 who have been charged as adults will be housed at the Youth Services Center, subject to discharge of full bargaining obligations with unions.[[18]](#footnote-18)

The Executive reports that youth at the Maleng Regional Justice Center in Kent will be transferred to the Youth Services Center as logistics allow. The Executive notes that five youth were transferred on October 26, 2017. On November 2, 2017, there were fifteen youth still at the Maleng Regional Justice Center. However, the Executive plans that, by March 1, 2018, no youth will be housed at the Maleng Regional Justice Center, except under emergency situations.

The Executive notes that, by March 1, 2018, all declined youth will be housed at the Youth Services Center. The Executive also reports that in the interim, the Department of Adult and Juvenile Detention will continue to review restrictive housing policies and take steps to enhance programming for youth at the Maleng Regional Justice Center and ensure the appropriate policies are in place around restrictive housing at the Regional Justice Center. [[19]](#footnote-19)

**ANALYSIS:**

This proposed ordinance has three specific elements. The first element would ban the use of solitary confinement for youth detained by King County, 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.

While the ordinance bans the use of solitary confinement, it allows the practice in instances where, because of safety, security or another reason, 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. According to the department, youth at the Youth Services Center can receive “dorm confinement” which restricts the youth to their living unit for any time that is not part of regular programming (the youth attends school, services, and the gym), but is not isolated. Youth detained at the department’s adult facilities, however, have been subject to restrictive housing rules—which can include isolation—when needed for safety reasons. This ordinance would formalize the policies at the Youth Services Center and provide new requirements for youth detained at the department’s adult facilities. When the “auto-decline” youth are moved to the Youth Services Center they will be subject to current policies that do not include solitary confinement.

Secondly, this ordinance would also place 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. If enacted, this provision appears to require that the County provide all services for youth (such as access to education) at every facility that a youth is detained, even when the youth is not detained at the Youth Services Center, but held in one of the department’s adult facilities. As noted above, there is a difference between programming for youth at the Youth Services Center and at adult facilities. This ordinance would mandate that the department’s Juvenile Division ensure that programming available to youth at the Youth Services Center will also be provided at the adult jails. To accomplish this requirement will most likely require that the department work out new agreements with educational providers to ensure that youth in adult facilities receive the same number of educational hours.

Finally, the ordinance also requests that the executive appoint an independent monitor or monitors who, either alone or together, 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. The ordinance requests two reports the first by June 15, 2018 and the second by November 15, 2018.

On November 6, 2017, the Council approved Ordinance 18602 (2nd 2017-18 Omnibus Budget Supplemental) which contains a proviso withholding $200,000 of the department’s budget appropriation authority and requires the preparation and transmission of these reports, and the acceptance of each report by motion before the funds will be released.

This ordinance has been reviewed by Council legal staff who did not identify any issues.

**AMENDMENT:**

As a result of the legal review of this ordinance, legal counsel identified a need for a title amendment. The attached title amendment will address these concerns and ensure the title of the ordinance reflects the body.

1. Juvenile Justice Operational Master Plan Ordinance 13916, adopted August 7, 2000 and the Adult Justice Operational Master Plan Ordinance 14430, adopted July 22, 2002. [↑](#footnote-ref-1)
2. Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, <http://www.aecf.org/work/juvenile-justice/jdai/> [↑](#footnote-ref-2)
3. RCW 13.04.135 and 13.16.130. [↑](#footnote-ref-3)
4. Detention and Alternatives Report, Department of Adult and Juvenile Detention, October 2017 <http://www.kingcounty.gov/~/media/courts/detention/documents/KC_DAR_Scorecard_10_2017.ashx?la=en> [↑](#footnote-ref-4)
5. RCW 9.94A, Sentencing reform Act of 1981. [↑](#footnote-ref-5)
6. RCW 13.40.0357. [↑](#footnote-ref-6)
7. RCW 13.40.110. [↑](#footnote-ref-7)
8. RCW 13.04.030. In 1999, the Washington Supreme Court determined that the adult court cannot retain jurisdiction if the charges against the juvenile are amended and no longer meet automatic transfer criteria. [↑](#footnote-ref-8)
9. Juveniles in Corrections, OJJDP National report Series Bulletin, June 2004 <https://www.ncjrs.gov/html/ojjdp/202885/page14.html>

The Act also states that “… no juvenile shall be detained or confined in any jail or lockup for adults .…” This provision is known as the jail and lockup removal requirement. Regulations exempt juveniles being tried as criminals for felonies or who have been convicted as criminal felons from the jail and lockup removal requirement. In institutions other than adult jails or lockups or in jails and lockups under temporary hold exceptions, confinement of juvenile offenders is permitted if juveniles and adult inmates cannot see each other and no conversation between them is possible. This reflects the sight and sound separation requirement. Some temporary hold exceptions to jail and lockup removal exist: a 6-hour grace period that allows adult jails and lockups to hold alleged delinquents in secure custody until other arrangements can be made (including 6 hours before and after court appearances) and a 48-hour exception, exclusive of weekends and holidays, for rural facilities that meet statutory conditions. Finally, some jurisdictions have established juvenile detention centers that are collocated with adult jails or lockups. Under federal requirements, a collocated juvenile facility must meet specific criteria to establish that it is a separate and distinct facility. The regulations allow time-phased use of program areas in collocated facilities [↑](#footnote-ref-9)
10. Harlow, Caroline Wolf, *Education and Correctional Populations*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report, Table 3 on p. 4, available at http://www.ojp.gov/bjs/pub/pdf/ecp.pdf. (January 2003) [↑](#footnote-ref-10)
11. American Academy of Child and Adolescent Psychiatry, “Solitary Confinement of Juvenile Offenders” <http://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx> [↑](#footnote-ref-11)
12. National Commission on Correctional Health Care, “Solitary Confinement (Isolation),” <https://www.ncchc.org/solitary-confinement> [↑](#footnote-ref-12)
13. Centers for Disease Control and Prevention, “Task Force Recommends Against Policies and Laws Facilitating Transfer of Youth to the Adult Justice System to Reduce Violence among Transferred Youth,” Guide to Community Preventive Services, available at http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf. (April 13, 2007) and Richard Redding, Office of Justice Programs, OJJDP Juvenile Justice Bulletin, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?” available at http://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf. (August 2008) [↑](#footnote-ref-13)
14. U.S. Department of Justice report and Recommendations Concerning the Use of Restrictive Housing Final Report, January 2016, <https://www.justice.gov/archives/dag/file/815551/download> [↑](#footnote-ref-14)
15. Office Juvenile Justice and Delinquency Prevention, April 19, 2016, <https://www.justice.gov/archives/opa/blog/ojjdp-supports-eliminating-solitary-confinement-youth> [↑](#footnote-ref-15)
16. JDAI Tools and Resources, Conditions of Confinement, Use of Room Solitary Confinement/Isolation, <http://www.jdaihelpdesk.org/SitePages/conditionsofconfinement.aspx> [↑](#footnote-ref-16)
17. 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-17)
18. King County Executive Order “Youth Charged as adults to be housed at the Youth Services Center,” November 2, 2017 [↑](#footnote-ref-18)
19. King County Executive Order “Youth Charged as adults to be housed at the Youth Services Center,” November 2, 2017 new release, <http://kingcounty.gov/elected/executive/constantine/news/release/2017/November/02-executive-order-juvenile-justice.aspx> [↑](#footnote-ref-19)