

November 30, 2017

King County Council
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Re: Proposed Ordinance No. 2017-0473 – proposed ordinance related to juvenile isolation

Dear Councilmembers:

I am writing regarding the proposed ordinance that passed out of the Law and Justice Committee on Tuesday, November 28, and will be considered by the full Council on December 11. I have included information requested by Councilmember Gossett during the Committee hearing, and I address a few important points that arose during the Committee's discussion of the proposed ordinance. We thank Councilmembers Gossett, Kohl-Welles, and particularly Councilmember Dembowski for bringing this important piece of legislation forward.

As you may know, Columbia Legal Services represents youth who were subjected to long term isolation while incarcerated at the Maleng Regional Justice Center (RJC) and King County Jail in a class lawsuit against King County. When we filed suit, each of these youth and others had been in solitary confinement for months. At the time of filing, they were locked alone in their cells and only allowed out for one hour every three days. They were alone even during that one hour out. At times in September, they had been limited to no more than 15 minutes out of their cells every three days. Unfortunately, these practices appear to have gone on for quite some time at the RJC and King County Jail.

Because of the limited visitation allowed at the RJC and the cost of telephone calls from that facility, many of the youth subject to isolation had little to no contact with parents, siblings and other loved ones. And while parents may have known that their children were in isolation, they were powerless to do anything about it.



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To make matters worse, the youth held in isolation received only 10 to 15 minutes of face to face educational instruction a day from a teacher through their locked, steel cell doors. They were then left with a work packet to complete alone in their cells.

While the ordinance is an important step forward, it does not completely address the policies and practices that led to the conditions under which youth were and continue to be held at the RJC or King County Jail. The ordinance and the discussion at the hearing on Tuesday raised a set of important issues that the Council should consider as it moves forward with this ordinance and other important reforms to the way in which the system treats children charged with crimes in King County.

First, the children held at the RJC and King County Jail are there awaiting trial and do not have the financial resources to be bailed out. While the crimes with which they have been charged are serious, these children are placed in isolation and denied a proper education before they have been convicted of any crime. Moreover, many of the youth are held in jail because they or their family cannot post a sizeable bail bond; an amount that though very significant is one that a family of means would be able to cover. Furthermore, roughly half of the children held at the RJC or King County Jail will eventually plead guilty to a juvenile charge, meaning that their incarceration in an adult facility was unnecessary. Undoubtedly, the conditions to which these children were subjected would not have occurred had they been from Medina or Madison Park.

Second, because the vast majority of children charged as adults in King County are children of color, the children held under these conditions are also disproportionately children of color. The children at the RJC and King County Jail have been charged as adults pursuant to Washington's "auto-decline" law. This law allows prosecutors to unilaterally remove a 16- or 17-year-old from the juvenile court system and place him in the adult criminal justice system, depending on the charge the prosecutor chooses to bring. Last year, 86% of the children charged as adults by King County prosecutors were children of color. *See Juvenile Justice Annual Report: Automatic Adult Jurisdiction 2016 Decisions*, King County Prosecuting Attorney's Office, at 8 (February 2017). Columbia Legal Services' analysis of case filings indicates that every child charged as an adult in 2015 was a child of color. The application of the auto-decline law has resulted in the long term isolation of children of color at the RJC and King County Jail.

We ask that the Council address the racist impacts of the use of the auto-decline law in King County. Support for reform or elimination of the auto-decline law is one of the recommendations from the Trupin Report which the Law and Justice Committee reviewed at the same Committee meeting on Tuesday. King County should step forward and actively support such efforts.

Third, even if all of the auto-declined youth are held at the Youth Service Center going forward, youth will still be subject to the same isolation practices at the RJC and King County Jail, because the ordinance does not address the use of isolation against youth who have recently turned 18. The brain science referenced in the ordinance proves that an 18th birthday is no more than a date and without any neurological or psychological significance. In fact, complete neurological and cognitive maturity is not reached until a person's mid-20s. The Washington State Supreme Court has recently recognized this important principle. In *State v. O'Dell*, 183

Wn.2d 680 (2015), the Supreme Court recognized that youth can be a mitigating factor in a criminal sentencing even for a youth who is 18 at the time of the crime.

A youth who is injured by isolation as a 17-year-old suffers the same injury after he turns 18. In fact, it is common practice at the RJC to move a child on his 18th birthday from isolation in the “youth pod” into isolation in an “adult pod”. As presently drafted the ordinance does nothing to stop the punitive, long term isolation of youth who have recently turned 18. King County must stop utilizing cruel isolation practices that injure all youth, even those who are 18 or older.

Fourth, we agree with the comments of our colleagues with the ACLU and Teamchild on how the ordinance should be strengthened. An essential component of any appropriate policy is that isolation in any form should only be used as a last resort to keep a youth from harming others and must end as soon as the child is in control of his or her behavior. Isolation should not be utilized against youth who are potentially suicidal or threatening self-harm. Any children in serious mental health crises who cannot be managed in appropriate communal settings should be transferred to a psychiatric facility that is able to provide adequate mental health treatment and medical support. Whenever a youth is placed in isolation qualified mental health practitioners must be involved immediately and an appropriate plan developed that will address the underlying causes of the dangerous behaviors. Finally, all DADJ staff must be trained in how to manage youth and utilize appropriate de-escalation techniques.

Staff training on the management of youthful detainees is particularly important for staff at the RJC and King County Jail who will continue to interact with youth who are too old to be held at the Youth Services Center. During Tuesday’s Committee Hearing, an official with King County mentioned that corrections staff at the adult facilities lacked training on how to manage youth, which has led to more conflict and misbehavior than is experienced at the Youth Services Center. As discussed above, even if all of the auto-declined youth are held at the Youth Services Center, corrections officers at the adult facilities will nonetheless have daily interactions with youth who have turned 18. All DADJ staff members must be appropriately trained and equipped to manage youth and be adequately supervised in those interactions. In the absence of such training and supervision, the chronic and unnecessary use of isolation will cause on-going, illegal injury to youth held at the RJC and King County Jail. While the ordinance suggests that the County adopt some requirements, it does not mandate them. It should.

Thank you for your ongoing engagement with these very important issues. I am happy to answer any questions that you or your staff may have.

Sincerely,

/s

Nick Straley
Columbia Legal Services

cc: Marka Steadman, Law and Justice Committee Assistant
Clerk of the Council
King County Prosecuting Attorney’s Office