## STAFF REPORT

|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item:** | 8 | **Name:** | Clifton Curry |
| **Proposed No**.: | 2018-0411 | **Date:** | November 27, 2018 |

**SUBJECT**

A MOTION acknowledging receipt of a report describing practices related to confinement of juveniles in compliance with Ordinance 18409, Section 55, as amended by Ordinance 18766, Section 23, Proviso P12.

**SUMMARY**

As part of its deliberations on the Second Omnibus Budget Supplemental, the Council added a proviso that required that the Executive to engage an independent monitor to review the impact of the changes to solitary confinement on the youth in detention. This proposed motion would accept the first monitoring report related to the County’s implementation of Ordinance 18637 which placed significant new restrictions on the use of solitary confinement of youth. The Executive engaged the required independent monitor and independent monitoring services began on July 1, 2018. The first of these reports was due September 1, 2018 (the second is due in 2019). The Executive transmitted the required report on August 20, 2018. As required, the report provides information on the use of solitary confinement in July 2018, looking at the cumulative use and whether it was used for more than four hours in any given instance. The monitor concluded that there were some data issues with the documentation, some inconsistencies in how confinement was applied, and that it was sometimes difficult for the monitor to determine whether youth were remained in their rooms for longer than four hours. The monitor also noted that for some of the youth as they were being booked and processed into detention, that there may be occasions when the youth are held in a cell for longer than four hours because of staffing issues, during shift changes, or because of the number of youth being processed. As required by the proviso, the monitor noted that youth reported that they could access health and mental health professionals, probation officers, attorneys, and visitors. The monitor also reviewed the department’s implementation of a new behavior management system that will not use room confinement as a disciplinary sanction and will limit its use by policy to align with Ordinance 18637.

**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 King County Juvenile Court began implementing JDAI strategies in 1998 with the implementation of Juvenile Justice Operational Master Plan. 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. 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 53 youth.[[3]](#footnote-3) According to department staff, the Youth Services Center 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. Most often, an average of eight to fifteen youth were held at the Maleng Regional Justice Center. 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.[[4]](#footnote-4) All of the youth in adult facilities were transferred to the Youth Services Center by December 2017.[[5]](#footnote-5)

**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.

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.

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.[[6]](#footnote-6) Further, 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.[[7]](#footnote-7)

**Restricting the Use of Solitary Confinement In King County** In December 2018, the Council adopted Ordinance 18673 which placed significant restrictions on when youth could be placed in solitary confinement or isolation.[[8]](#footnote-8) This legislation had three specific elements.

The first element banned 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 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. However, youth have been confined to their room for disciplinary purposes. When the “auto-decline” youth were moved to the Youth Services Center 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 at the YSC (such as access to education).

**Proviso Requirements** As part of its deliberations on Ordinance 18766, the Council added a proviso that required that the Executive to engage an independent monitor to review the impact of the changes to solitary confinement on the youth and operations at the YSC. The proviso requires that:

*Of this appropriation, $100,000 shall be expended or encumbered only after the executive transmits the first of two reports described in Ordinance 18637 on practices related to the confinement of juveniles and a motion that should acknowledge receipt of the report is passed by the council. The motion shall reference the subject matter, the proviso's ordinance, ordinance section and proviso number in both the title and body of the motion.*

*Each report on practices related to the confinement of juveniles shall be prepared by an appointed, independent monitor or monitors who, either alone or together, have expertise in adolescent development, juvenile detention operations and corrections, officer safety and security and trauma-informed behavioral modification practices. In accordance with Ordinance 18637, Section 6, the monitor or monitors shall report to the council on the implementation of Ordinance 18637, Sections 2 through 5, and each 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; an evaluation of the documentation of the circumstances for the use of solitary confinement;*

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

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

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

*E.  A 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.*

*Also in accordance with Ordinance 18637, Section 6, in preparing and completing the required reports, the monitor or monitors shall consult with stakeholders, including representatives of the King County Juvenile Detention Guild (Department of Adult and Juvenile Detention - Juvenile Detention) representing employees in the department of adult and juvenile detention juvenile division in preparing and completing the required reports.*

The first of these reports was due September 1, 2018 (the second is due in 2019). The Executive transmitted the required report on August 20, 2018.

**ANALYSIS:**

This proposed motion would accept the first monitoring report related to the County’s implementation of Ordinance 18637. The Executive engaged the required independent monitor and independent monitoring services began on July 1, 2018. The independent monitor is Ms. Stephanie Vetter,[[9]](#footnote-9) 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. According to the report, Ms. Vetter has conducted similar monitoring in adult and juvenile detention centers and has provided training and coaching to many juvenile probation and custody officials over the past 20 years in multiple states.

As required, the report provides information on the use of solitary confinement (the monitor reviewed instances of the use of solitary confinement but also looked at the use of “program modifications” or PMs for youth to document a disciplinary action[[10]](#footnote-10)) looking at the cumulative use and whether it was used for more than four hours in any given instance. The report notes that there is no automated means of collecting this data, and that she relied on hand-written materials kept by YSC staff.[[11]](#footnote-11) As a result, the monitor reviewed all PMs in July 2018, looking at why the PM was given and also developing demographic information on the individuals who received PMs.

The report indicates that there were 45 incidents of youth behavior resulting in PMs, with the incidents ranging from instances when youth were disrespectful to staff (16 incidents), acted in a way that showed “aggression towards peers” (11 PMs), acted in a way that showed behaviors that were gang-related (6 PMs), refused school (2 PMs), and 10 PMs identified as “other.” The monitor noted that, in the review, auto-decline youth accounted for approximately 25 percent of the detention population in July 2018 and accounted for approximately 25 percent of the PMs, indicating that these youth were not causing a disproportionate number of disciplinary issues.[[12]](#footnote-12) In contrast, the monitor did find that youth of color appeared to receive a disproportionate number of PMs. For example, during the review period, African-American youth made up 47 percent of the detention population, but accounted for 62 percent of the PMs. The report notes that it is not possible to use these findings to determine trends, but that they should be used as a baseline for future review.

Based on the review of PMs in July 2018, the monitor concluded that there were some data issues with the documentation of PMs, inconsistencies in how PMs were applied, and that it was sometimes difficult to determine whether youth were remained in their rooms for longer than four hours (the monitor, in some instances, could not determine from the documentation whether a youth stayed in their room for extended periods out of choice or because of the PM). The monitor also noted that for some youth being booked and processed into the YSC, that there may have been occasions when the youth were held in a cell for longer than four hours because of staffing issues, during shift changes, or because of the number of youth being processed.

The monitor did note, as required by the proviso, that youth reported that they could access health and mental health professionals, probation officers, attorneys, and visitors. In addition, the Accountability Tracking Sheets for those youth also reflect access to medical visits. The monitor noted that file reviews, classroom observations, and teacher interviews will be conducted in future monitoring visits to more fully evaluate youth access.

**Monitor Summary and Recommendations** The monitor noted that “a high quality and consistent Behavior Management System is integral to the elimination of PMs (and any associated solitary confinement as discipline).” This includes clear information about facility rules and expectations, accounting for any disabilities and language needs. Equally important to this type of system “is that youth have the opportunity to share their side of the story prior to receiving any disciplinary sanctions as part of the BMS. The staff person determining an accountability sanction should be unbiased and not involved in the underlying incident.” Disciplinary decisions should be thoroughly explained and youth should have the ability to appeal. According to the monitor, “when implemented well, the process involves staff and youth working jointly to identify the root of behaviors, address needs, and build skills that assist in future problem solving and decision making.”

The report notes that the YSC is in the midst of a major shift in philosophy and approach towards its juvenile residents, which will be supported by programming and facility design in the new Children and Family Justice Center. The report shows that, with the implementation of a new Behavior Management System, the traditional corrections approach will be replaced with trauma-informed, therapeutic practices that are based in research, are more individualized, and promote restorative justice. The report concludes that the new system will not use room confinement as a disciplinary sanction and will limit its use by policy to align with Ordinance 18637.

In addition, the report contains 10 other recommendations that would improve data collection and provide for a more consistent application of policy.

This report appears to meet the requirements of the proviso.

**INVITED:**

* Brenda Bauer, Interim Director, Department of Adult and Juvenile Detention
* Pam Jones, Director, Juvenile Division, Department of Adult and Juvenile Detention

**ATTACHMENTS:**

1. Proposed Motion 2018-0411, with attachment
2. Transmittal Letter
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. Detention and Alternatives Report, Department of Adult and Juvenile Detention, September 2018. [↑](#footnote-ref-3)
4. King County Executive Order “Youth Charged as adults to be housed at the Youth Services Center,” November 2, 2017 [↑](#footnote-ref-4)
5. 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-5)
6. JDAI Tools and Resources, Conditions of Confinement, Use of Room Solitary Confinement/Isolation, <http://www.jdaihelpdesk.org/SitePages/conditionsofconfinement.aspx> [↑](#footnote-ref-6)
7. 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-7)
8. Adopted December 21, 2017. [↑](#footnote-ref-8)
9. Currently, Senior Consultant and JDAI Advisor, Center for Children's Law and Policy. [↑](#footnote-ref-9)
10. Program Modifications (PMs) are the main mechanism used at YSC to respond to youth infractions and misbehaviors and used in addition to verbal warnings and cool-down periods. PMs are a sanction (for disciplinary purposes) that result in a loss of normal programming time and free time for youth. Program Modifications and “Shifts” are used interchangeably and refer to a youth’s normal programming being altered. It is during the PMs that periods of solitary confinement can occur while youth are in their cell. To determine whether or not solitary confinement had been used during the evaluation period and how it manifests at YSC, all PMs for July 2018 were reviewed. [↑](#footnote-ref-10)
11. One of the recommendations of the report is to improve forms and look for ways to have a more comprehensive reporting structure. [↑](#footnote-ref-11)
12. The report indicates that “Based on the committee’s analysis it does not appear that youth charged with the most serious crimes are creating security incidents at higher rates than youth who are charged with less serious crimes, which is important to note for purposes of housing and classification, and speaks to the high quality detention programming, education, and staffing made available to detained youth at YSC.” [↑](#footnote-ref-12)