

July 31, 2024

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

JEROME TA'AFULISIA, JAMES  
TA'AFULISIA, DIANTE PELLUM, on  
behalf of themselves and all others  
similarly situated,

Respondents,

v.

WASHINGTON STATE  
DEPARTMENT OF CHILDREN,  
YOUTH, AND FAMILIES; and ROSS  
HUNTER, in his official capacity as  
Secretary of the Department of  
Children, Youth, and Families,

Petitioners.

No. 58919-2-II

RULING DENYING  
EMERGENCY MOTION FOR  
STAY

Emphasizing rehabilitation over punishment, in 2019 the legislature determined that young adults convicted of adult offenses that were committed when under 18 years of age should be held in juvenile detention and provided with the same

resources and opportunities that are provided to other juvenile offenders. Without providing any notice or opportunity to be heard, the Department of Children, Youth, and Families removed 43 such people from an overcrowded juvenile detention facility and placed them in adult prison. The Department took this action despite a settlement agreement and statutory language requiring the Department to make an individualized determination and hearing before implementing any such transfer. The Thurston County Superior Court found this transfer unlawful and ordered the Department to return these young adults back to juvenile facility.

The Department now seeks an emergency stay, which requires this court to consider whether the issues are debatable and whether the equities favor a stay. Here, the legislature has already weighed the equities and determined that these young adults should be held in juvenile facilities barring individual circumstances to the contrary. This court takes no role in shaping policy and must therefore respect that legislative determination and deny the Department's stay request. Nothing in this ruling prevents the Department from conducting individualized transfer hearings as needed in the meantime.

I. BACKGROUND

In 2019, with bipartisan sponsorship and support, the legislature passed House Bill 1646, a measure concerning confinement in juvenile rehabilitation

facilities.<sup>1</sup> LAWS OF 2019, ch. 322. In passing the bill, the legislature determined that incarcerating young adults in adult prisons made recidivism more likely. *Id.* ch. 322, § 1. Accordingly, the legislature acted “to enhance community safety by emphasizing rehabilitation of juveniles convicted even of the most serious violent offenses under the adult criminal justice system.” *Id.* The amended law provides that young adults convicted of adult offenses will be housed in juvenile facilities until age 25. RCW 72.01.410(1)(b). And the law establishes a hearing procedure to allow the Department to transfer young adults who cause safety issues at a juvenile facility. RCW 72.01.410(1)(c); RCW 13.40.280.

In 2022, several young adults at the juvenile facility Green Hill School sued the Department, alleging that the Department was transferring young adults to adult prison without any of the required procedural protections. *See Resp. to Emerg. Mot. for Stay*, Exhibit A at 1-25. The case ended in a settlement agreement. *Emerg. Mot. for Stay*, Appendix at 41. The agreement applies to young adults sentenced for crimes committed as juveniles “who have been, currently are, or will be committed to [the Department’s] custody.” *Emerg. Mot. to Stay*, Appendix at 42.

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<sup>1</sup> Available at <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/1646-S2.SL.pdf?cite=2019%20c%20322%20C2%A7%2010> (last visited Jul. 30, 2024).

On July 12, 2024, the Department transferred 43 young adults from the Green Hill School facility in order to resolve overcrowding issues. The Department claims that overcrowding led to injuries to staff and residents at the facility, with one administrator stating that the “level of aggression and fighting among residents and violence toward staff is greater than anything I have ever seen in my 29-year tenure.” Emerg. Mot. for Stay, Appendix at 216. The Department suggests that the “only way” to solve this issue was to reduce the population at the facility. Emerg. Mot. for Stay at 2.

Respondents filed a motion for a preliminary injunction in Thurston County Superior Court, which the court granted. The court found the removal unlawful and ordered the Department to return the 43 young adults back to the juvenile facility by August 2, 2024. *Id.* The Department filed a notice of discretionary review, and now seeks an emergency stay of that order. Respondents oppose the stay.

## II. ANALYSIS

Under RAP 8.3, an appellate court may grant a stay or injunctive relief to ensure effective and equitable review. “The purpose of [these rules] is to permit appellate courts to grant preliminary relief in aid of their appellate jurisdiction so as to prevent the destruction of the fruits of a successful appeal.” *Wash. Fed’n of State Emps, Council 28, AFL-CIO. v. State*, 99 Wn.2d 878, 883, 665 P.2d 1337 (1983). The exercise of discretion in such circumstances “is in no way meant to resolve the merits of the

underlying” litigation. *Id.* Such relief generally requires a showing (1) that the appeal raises a debatable issue, and (2) that the harm without a stay outweighs the harm that would result from it. In balancing the parties’ relative harm, this Court considers whether the requested relief is necessary to maintain the status quo and preserve the fruits of a successful appeal in light of the equities of the situation. *See Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985).

Although debatability is said to be a low hurdle to clear when requesting a stay on appeal, here the Department has little law on its side. As noted above, the statutory scheme requires a hearing before removing a young adult from a juvenile facility. And the settlement agreement requires such a hearing. The Department suggests their actions were at least debatably valid because other statutes provide for transfers without a hearing, such as RCW 72.01.050. But that statute just generally lays out the powers of the Department’s Secretary, and the more specific statutory provisions clearly control. Indeed, most of the Department’s argument is not based on the law but focused on the overcrowding issues. Given that the legislative policy changed five years ago, those concerns ring hollow.

But debatability aside, the equities here clearly favor Respondents. As noted above, the legislature has already balanced the competing interests on where young adults who committed serious adult crimes as juveniles should be housed, and it weighed the equities to generally favor juvenile detention. The need for access to

rehabilitation programs, in the legislature's view, outweighs any potential harms in housing these young adults at a juvenile facility. And the lack of any individual safety assessment, notice, or opportunity to be heard harms all 43 Respondents by forcing them to be in adult prison pending the outcome of these proceedings.

And as to preserving the fruits of the appeal, here the status quo is *not* that these 43 individuals are already in adult prison. Through legislative action and in accordance with the settlement agreement they were held in a juvenile facility with access to related programs and services. Without warning, the Department removed them to adult prison. The Department's unilateral action did not change the status quo. Thus, when considering whether the stay request will maintain the status quo the answer is clearly that a stay will do the opposite. A stay would keep them separated from the programs and services they were enjoying, while invoking the harsh realities of adult prison. In sum, the equities favor maintaining the legislature's preference unless and until the Department can prove otherwise on appeal.

### III. CONCLUSION

The Department fails to show that the equities favor maintaining its forced removal of 43 individuals from juvenile to adult incarceration without notice or opportunity to be heard. Whether the Department's rash decision was the "only way" to solve its overcrowding problem can be determined after more careful

consideration on another day, but for now the equities support the superior court's determination. Accordingly, it is hereby

ORDERED that the Department's emergency motion for a stay is denied.



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Karl R. Triebel  
Court Commissioner

cc: Timothy N. Lang  
Kristen Stallion Valore  
Daniel S. Norman  
Laurel A. Jones  
Amy L. Crewdson  
Sarah R. Nagy  
Hon. Anne Egeler