
SUBSTITUTE HOUSE BILL 1140

State of Washington

67th Legislature

2021 Regular Session

By House Civil Rights & Judiciary (originally sponsored by Representatives J. Johnson, Frame, Entenman, Sells, Taylor, Santos, Stonier, Ormsby, Lekanoff, Davis, Hackney, Macri, Callan, Chopp, Pollet, Ryu, Goodman, Berg, Ramos, Bergquist, Gregerson, Wicks, Peterson, Thai, Dolan, Bateman, Simmons, Fitzgibbon, and Valdez)

1 AN ACT Relating to juvenile access to attorneys when contacted by
2 law enforcement; amending RCW 13.40.140, 2.70.020, and 13.40.020;
3 adding a new section to chapter 13.40 RCW; adding a new section to
4 chapter 2.70 RCW; creating a new section; and providing an effective
5 date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.40
8 RCW to read as follows:

9 (1) Except as provided in subsection (4) of this section, law
10 enforcement shall provide a juvenile with access to an attorney for
11 consultation, which may be provided in person, by telephone, or by
12 video conference, before the juvenile waives any constitutional
13 rights if a law enforcement officer:

- 14 (a) Questions a juvenile after providing a *Miranda* warning; or
15 (b) Briefly detains a juvenile based on reasonable suspicion of
16 involvement in criminal activity.

17 (2) The consultation required by subsection (1) of this section
18 may not be waived.

19 (3) Statements made by a juvenile after the juvenile is contacted
20 by a law enforcement officer in a manner described under subsection
21 (1) of this section are not admissible in a juvenile offender or

1 adult criminal court proceeding, except for impeachment purposes,
2 unless:

3 (a) The juvenile has been provided with access to an attorney for
4 consultation; and

5 (b) The juvenile provides an express waiver knowingly,
6 intelligently, and voluntarily made by the juvenile after the
7 juvenile has been fully informed of the rights being waived as
8 required under RCW 13.40.140.

9 (4) A law enforcement officer may question a juvenile without
10 following the requirement in subsection (1) of this section if:

11 (a) The law enforcement officer believes that the information
12 sought is necessary to protect an individual's life from an imminent
13 threat;

14 (b) A delay to allow legal consultation would impede the
15 protection of an individual's life from an imminent threat; and

16 (c) Questioning by the law enforcement officer is limited to
17 matters reasonably expected to obtain information necessary to
18 protect an individual's life from an imminent threat.

19 (5) After the juvenile has consulted with legal counsel, the
20 juvenile may advise, direct a parent or guardian to advise, or direct
21 legal counsel to advise the law enforcement officer that the juvenile
22 chooses to assert a constitutional right. Any assertion of
23 constitutional rights by the juvenile through legal counsel must be
24 treated by a law enforcement officer as though it came from the
25 juvenile. The waiver of any constitutional rights of the juvenile may
26 only be made according to the requirements of RCW 13.40.140.

27 (6) For purposes of this section, the following definitions
28 apply:

29 (a) "Juvenile" means any individual who is under the
30 chronological age of 18 years; and

31 (b) "Law enforcement officer" means any general authority,
32 limited authority, or specially commissioned Washington peace officer
33 or federal peace officer as those terms are defined in RCW 10.93.020,
34 including school resource officers as defined in RCW 28A.320.124 and
35 other public officers who are responsible for enforcement of fire,
36 building, zoning, and life and safety codes.

37 **Sec. 2.** RCW 13.40.140 and 2014 c 110 s 2 are each amended to
38 read as follows:

1 (1) A juvenile shall be advised of (~~his or her~~) the juvenile's
2 rights when appearing before the court.

3 (2) A juvenile and (~~his or her~~) the juvenile's parent,
4 guardian, or custodian shall be advised by the court or its
5 representative that the juvenile has a right to be represented by
6 counsel at all critical stages of the proceedings. Unless waived,
7 counsel shall be provided to a juvenile who is financially unable to
8 obtain counsel without causing substantial hardship to himself or
9 herself or the juvenile's family, in any proceeding where the
10 juvenile may be subject to transfer for criminal prosecution, or in
11 any proceeding where the juvenile may be in danger of confinement.
12 The ability to pay part of the cost of counsel does not preclude
13 assignment. In no case may a juvenile be deprived of counsel because
14 of a parent, guardian, or custodian refusing to pay therefor. The
15 juvenile shall be fully advised of (~~his or her~~) the juvenile's
16 right to an attorney and of the relevant services an attorney can
17 provide.

18 (3) The right to counsel includes the right to the appointment of
19 experts necessary, and the experts shall be required pursuant to the
20 procedures and requirements established by the supreme court.

21 (4) Upon application of a party, the clerk of the court shall
22 issue, and the court on its own motion may issue, subpoenas requiring
23 attendance and testimony of witnesses and production of records,
24 documents, or other tangible objects at any hearing, or such
25 subpoenas may be issued by an attorney of record.

26 (5) All proceedings shall be transcribed verbatim by means which
27 will provide an accurate record.

28 (6) The general public and press shall be permitted to attend any
29 hearing unless the court, for good cause, orders a particular hearing
30 to be closed. The presumption shall be that all such hearings will be
31 open.

32 (7) In all adjudicatory proceedings before the court, all parties
33 shall have the right to adequate notice, discovery as provided in
34 criminal cases, opportunity to be heard, confrontation of witnesses
35 except in such cases as this chapter expressly permits the use of
36 hearsay testimony, findings based solely upon the evidence adduced at
37 the hearing, and an unbiased fact finder.

38 (8) A juvenile shall be accorded the same privilege against self-
39 incrimination as an adult and the protections provided in section 1
40 of this act. An extrajudicial statement which would be

1 constitutionally inadmissible in a criminal proceeding may not be
2 received in evidence at an adjudicatory hearing over objection.
3 Evidence illegally seized or obtained, including evidence obtained in
4 violation of section 1 of this act, may not be received in evidence
5 over objection at an adjudicatory hearing to prove the allegations
6 against the juvenile if the evidence would be inadmissible in an
7 adult criminal proceeding. An extrajudicial admission or confession
8 made by the juvenile out of court is insufficient to support a
9 finding that the juvenile committed the acts alleged in the
10 information unless evidence of a corpus delicti is first
11 independently established in the same manner as required in an adult
12 criminal proceeding.

13 (9) Statements, admissions, or confessions made by a juvenile in
14 the course of a mental health or chemical dependency screening or
15 assessment, whether or not the screening or assessment was ordered by
16 the court, shall not be admissible into evidence against the juvenile
17 on the issue of guilt in any juvenile offense matter or adult
18 criminal proceeding, unless the juvenile has placed (~~his or her~~)
19 the juvenile's mental health at issue. The statement is admissible
20 for any other purpose or proceeding allowed by law. This prohibition
21 does not apply to statements, admissions, or confessions made to law
22 enforcement, and may not be used to argue for derivative suppression
23 of other evidence lawfully obtained as a result of an otherwise
24 inadmissible statement, admission, or confession.

25 (10) Waiver of any right which a juvenile has under this chapter
26 must be an express waiver intelligently made by the juvenile after
27 the juvenile has been fully informed of the right being waived,
28 including having access to an attorney for consultation if required
29 under section 1 of this act.

30 (11) Whenever this chapter refers to waiver or objection by a
31 juvenile, the word juvenile shall be construed to refer to a juvenile
32 who is at least (~~twelve~~) 12 years of age. If a juvenile is under
33 (~~twelve~~) 12 years of age, the juvenile's parent, guardian, or
34 custodian shall give any waiver or offer any objection contemplated
35 by this chapter.

36 **Sec. 3.** RCW 2.70.020 and 2012 c 257 s 1 are each amended to read
37 as follows:

38 The director shall:

1 (1) Administer all state-funded services in the following program
2 areas:

3 (a) Trial court criminal indigent defense, as provided in chapter
4 10.101 RCW;

5 (b) Appellate indigent defense, as provided in this chapter;

6 (c) Representation of indigent parents qualified for appointed
7 counsel in dependency and termination cases, as provided in RCW
8 13.34.090 and 13.34.092;

9 (d) Extraordinary criminal justice cost petitions, as provided in
10 RCW 43.330.190;

11 (e) Compilation of copies of DNA test requests by persons
12 convicted of felonies, as provided in RCW 10.73.170;

13 (f) Representation of indigent respondents qualified for
14 appointed counsel in sexually violent predator civil commitment
15 cases, as provided in chapter 71.09 RCW; and

16 (g) Provide access to attorneys for juveniles contacted by a law
17 enforcement officer for whom a legal consultation is required under
18 section 1 of this act;

19 (2) Submit a biennial budget for all costs related to the
20 office's program areas;

21 (3) Establish administrative procedures, standards, and
22 guidelines for the office's program areas, including cost-efficient
23 systems that provide for authorized recovery of costs;

24 (4) Provide oversight and technical assistance to ensure the
25 effective and efficient delivery of services in the office's program
26 areas;

27 (5) Recommend criteria and standards for determining and
28 verifying indigency. In recommending criteria for determining
29 indigency, the director shall compile and review the indigency
30 standards used by other state agencies and shall periodically submit
31 the compilation and report to the legislature on the appropriateness
32 and consistency of such standards;

33 (6) Collect information regarding indigent defense services
34 funded by the state and report annually to the advisory committee,
35 the legislature, and the supreme court;

36 (7) Coordinate with the supreme court and the judges of each
37 division of the court of appeals to determine how appellate attorney
38 services should be provided.

39 The office of public defense shall not provide direct
40 representation of clients.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 2.70 RCW
2 to read as follows:

3 Subject to the rules of discovery, the office of public defense
4 is authorized to collect identifying information for any youth who
5 speaks with a consulting attorney pursuant to section 1 of this act;
6 provided, however, that such records are exempt from public
7 disclosure.

8 **Sec. 5.** RCW 13.40.020 and 2019 c 444 s 9 are each amended to
9 read as follows:

10 For the purposes of this chapter:

11 (1) "Assessment" means an individualized examination of a child
12 to determine the child's psychosocial needs and problems, including
13 the type and extent of any mental health, substance abuse, or co-
14 occurring mental health and substance abuse disorders, and
15 recommendations for treatment. "Assessment" includes, but is not
16 limited to, drug and alcohol evaluations, psychological and
17 psychiatric evaluations, records review, clinical interview, and
18 administration of a formal test or instrument;

19 (2) "Community-based rehabilitation" means one or more of the
20 following: Employment; attendance of information classes; literacy
21 classes; counseling, outpatient substance abuse treatment programs,
22 outpatient mental health programs, anger management classes,
23 education or outpatient treatment programs to prevent animal cruelty,
24 or other services including, when appropriate, restorative justice
25 programs; or attendance at school or other educational programs
26 appropriate for the juvenile as determined by the school district.
27 Placement in community-based rehabilitation programs is subject to
28 available funds;

29 (3) "Community-based sanctions" may include one or more of the
30 following:

31 (a) A fine, not to exceed (~~five hundred dollars~~) \$500;

32 (b) Community restitution not to exceed (~~one hundred fifty~~) 150
33 hours of community restitution;

34 (4) "Community restitution" means compulsory service, without
35 compensation, performed for the benefit of the community by the
36 offender as punishment for committing an offense. Community
37 restitution may be performed through public or private organizations
38 or through work crews;

1 (5) "Community supervision" means an order of disposition by the
2 court of an adjudicated youth not committed to the department or an
3 order granting a deferred disposition. A community supervision order
4 for a single offense may be for a period of up to two years for a sex
5 offense as defined by RCW 9.94A.030 and up to one year for other
6 offenses. As a mandatory condition of any term of community
7 supervision, the court shall order the juvenile to refrain from
8 committing new offenses. As a mandatory condition of community
9 supervision, the court shall order the juvenile to comply with the
10 mandatory school attendance provisions of chapter 28A.225 RCW and to
11 inform the school of the existence of this requirement. Community
12 supervision is an individualized program comprised of one or more of
13 the following:

14 (a) Community-based sanctions;

15 (b) Community-based rehabilitation;

16 (c) Monitoring and reporting requirements;

17 (d) Posting of a probation bond;

18 (e) Residential treatment, where substance abuse, mental health,
19 and/or co-occurring disorders have been identified in an assessment
20 by a qualified mental health professional, psychologist,
21 psychiatrist, co-occurring disorder specialist, or substance use
22 disorder professional and a funded bed is available. If a child
23 agrees to voluntary placement in a state-funded long-term evaluation
24 and treatment facility, the case must follow the existing placement
25 procedure including consideration of less restrictive treatment
26 options and medical necessity.

27 (i) A court may order residential treatment after consideration
28 and findings regarding whether:

29 (A) The referral is necessary to rehabilitate the child;

30 (B) The referral is necessary to protect the public or the child;

31 (C) The referral is in the child's best interest;

32 (D) The child has been given the opportunity to engage in less
33 restrictive treatment and has been unable or unwilling to comply; and

34 (E) Inpatient treatment is the least restrictive action
35 consistent with the child's needs and circumstances.

36 (ii) In any case where a court orders a child to inpatient
37 treatment under this section, the court must hold a review hearing no
38 later than ~~((sixty))~~ 60 days after the youth begins inpatient
39 treatment, and every ~~((thirty))~~ 30 days thereafter, as long as the
40 youth is in inpatient treatment;

1 (6) "Confinement" means physical custody by the department of
2 children, youth, and families in a facility operated by or pursuant
3 to a contract with the state, or physical custody in a detention
4 facility operated by or pursuant to a contract with any county. The
5 county may operate or contract with vendors to operate county
6 detention facilities. The department may operate or contract to
7 operate detention facilities for juveniles committed to the
8 department. Pretrial confinement or confinement of less than
9 (~~thirty-one~~) 31 days imposed as part of a disposition or
10 modification order may be served consecutively or intermittently, in
11 the discretion of the court;

12 (7) "Court," when used without further qualification, means the
13 juvenile court judge(s) or commissioner(s);

14 (8) "Criminal history" includes all criminal complaints against
15 the respondent for which, prior to the commission of a current
16 offense:

17 (a) The allegations were found correct by a court. If a
18 respondent is convicted of two or more charges arising out of the
19 same course of conduct, only the highest charge from among these
20 shall count as an offense for the purposes of this chapter; or

21 (b) The criminal complaint was diverted by a prosecutor pursuant
22 to the provisions of this chapter on agreement of the respondent and
23 after an advisement to the respondent that the criminal complaint
24 would be considered as part of the respondent's criminal history. A
25 successfully completed deferred adjudication that was entered before
26 July 1, 1998, or a deferred disposition shall not be considered part
27 of the respondent's criminal history;

28 (9) "Department" means the department of children, youth, and
29 families;

30 (10) "Detention facility" means a county facility, paid for by
31 the county, for the physical confinement of a juvenile alleged to
32 have committed an offense or an adjudicated offender subject to a
33 disposition or modification order. "Detention facility" includes
34 county group homes, inpatient substance abuse programs, juvenile
35 basic training camps, and electronic monitoring;

36 (11) "Diversion unit" means any probation counselor who enters
37 into a diversion agreement with an alleged youthful offender, or any
38 other person, community accountability board, youth court under the
39 supervision of the juvenile court, or other entity with whom the
40 juvenile court administrator has contracted to arrange and supervise

1 such agreements pursuant to RCW 13.40.080, or any person, community
2 accountability board, or other entity specially funded by the
3 legislature to arrange and supervise diversion agreements in
4 accordance with the requirements of this chapter. For purposes of
5 this subsection, "community accountability board" means a board
6 comprised of members of the local community in which the juvenile
7 offender resides. The superior court shall appoint the members. The
8 boards shall consist of at least three and not more than seven
9 members. If possible, the board should include a variety of
10 representatives from the community, such as a law enforcement
11 officer, teacher or school administrator, high school student,
12 parent, and business owner, and should represent the cultural
13 diversity of the local community;

14 (12) "Foster care" means temporary physical care in a foster
15 family home or group care facility as defined in RCW 74.15.020 and
16 licensed by the department, or other legally authorized care;

17 (13) "Institution" means a juvenile facility established pursuant
18 to chapters 72.05 and 72.16 through 72.20 RCW;

19 (14) "Intensive supervision program" means a parole program that
20 requires intensive supervision and monitoring, offers an array of
21 individualized treatment and transitional services, and emphasizes
22 community involvement and support in order to reduce the likelihood a
23 juvenile offender will commit further offenses;

24 (15) "Juvenile," "youth," and "child" mean any individual who is
25 under the chronological age of (~~eighteen~~) 18 years and who has not
26 been previously transferred to adult court pursuant to RCW 13.40.110,
27 unless the individual was convicted of a lesser charge or acquitted
28 of the charge for which he or she was previously transferred pursuant
29 to RCW 13.40.110 or who is not otherwise under adult court
30 jurisdiction;

31 (16) "Juvenile offender" means any juvenile who has been found by
32 the juvenile court to have committed an offense, including a person
33 (~~eighteen~~) 18 years of age or older over whom jurisdiction has been
34 extended under RCW 13.40.300;

35 (17) "Labor" means the period of time before a birth during which
36 contractions are of sufficient frequency, intensity, and duration to
37 bring about effacement and progressive dilation of the cervix;

38 (18) "Local sanctions" means one or more of the following: (a)
39 0-30 days of confinement; (b) 0-12 months of community supervision;
40 (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

1 (19) "Manifest injustice" means a disposition that would either
2 impose an excessive penalty on the juvenile or would impose a
3 serious, and clear danger to society in light of the purposes of this
4 chapter;

5 (20) "Miranda warning" means a verbal warning provided by a law
6 enforcement officer advising the individual that the individual has
7 the right to remain silent, the right to consult with legal counsel
8 and have legal counsel present during questioning, and the right to
9 have legal counsel appointed if the individual cannot afford legal
10 counsel;

11 (21) "Monitoring and reporting requirements" means one or more of
12 the following: Curfews; requirements to remain at home, school, work,
13 or court-ordered treatment programs during specified hours;
14 restrictions from leaving or entering specified geographical areas;
15 requirements to report to the probation officer as directed and to
16 remain under the probation officer's supervision; and other
17 conditions or limitations as the court may require which may not
18 include confinement;

19 (~~(21)~~) (22) "Offense" means an act designated a violation or a
20 crime if committed by an adult under the law of this state, under any
21 ordinance of any city or county of this state, under any federal law,
22 or under the law of another state if the act occurred in that state;

23 (~~(22)~~) (23) "Physical restraint" means the use of any bodily
24 force or physical intervention to control a juvenile offender or
25 limit a juvenile offender's freedom of movement in a way that does
26 not involve a mechanical restraint. Physical restraint does not
27 include momentary periods of minimal physical restriction by direct
28 person-to-person contact, without the aid of mechanical restraint,
29 accomplished with limited force and designed to:

30 (a) Prevent a juvenile offender from completing an act that would
31 result in potential bodily harm to self or others or damage property;

32 (b) Remove a disruptive juvenile offender who is unwilling to
33 leave the area voluntarily; or

34 (c) Guide a juvenile offender from one location to another;

35 (~~(23)~~) (24) "Postpartum recovery" means (a) the entire period a
36 woman or youth is in the hospital, birthing center, or clinic after
37 giving birth and (b) an additional time period, if any, a treating
38 physician determines is necessary for healing after the youth leaves
39 the hospital, birthing center, or clinic;

1 ~~((24))~~ (25) "Probation bond" means a bond, posted with
2 sufficient security by a surety justified and approved by the court,
3 to secure the offender's appearance at required court proceedings and
4 compliance with court-ordered community supervision or conditions of
5 release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means
6 a deposit of cash or posting of other collateral in lieu of a bond if
7 approved by the court;

8 ~~((25))~~ (26) "Respondent" means a juvenile who is alleged or
9 proven to have committed an offense;

10 ~~((26))~~ (27) "Restitution" means financial reimbursement by the
11 offender to the victim, and shall be limited to easily ascertainable
12 damages for injury to or loss of property, actual expenses incurred
13 for medical treatment for physical injury to persons, lost wages
14 resulting from physical injury, and costs of the victim's counseling
15 reasonably related to the offense. Restitution shall not include
16 reimbursement for damages for mental anguish, pain and suffering, or
17 other intangible losses. Nothing in this chapter shall limit or
18 replace civil remedies or defenses available to the victim or
19 offender;

20 ~~((27))~~ (28) "Restorative justice" means practices, policies,
21 and programs informed by and sensitive to the needs of crime victims
22 that are designed to encourage offenders to accept responsibility for
23 repairing the harm caused by their offense by providing safe and
24 supportive opportunities for voluntary participation and
25 communication between the victim, the offender, their families, and
26 relevant community members;

27 ~~((28))~~ (29) "Restraints" means anything used to control the
28 movement of a person's body or limbs and includes:

29 (a) Physical restraint; or

30 (b) Mechanical device including but not limited to: Metal
31 handcuffs, plastic ties, ankle restraints, leather cuffs, other
32 hospital-type restraints, tasers, or batons;

33 ~~((29))~~ (30) "Screening" means a process that is designed to
34 identify a child who is at risk of having mental health, substance
35 abuse, or co-occurring mental health and substance abuse disorders
36 that warrant immediate attention, intervention, or more comprehensive
37 assessment. A screening may be undertaken with or without the
38 administration of a formal instrument;

39 ~~((30))~~ (31) "Secretary" means the secretary of the department;

1 ~~((31))~~ (32) "Services" means services which provide
2 alternatives to incarceration for those juveniles who have pleaded or
3 been adjudicated guilty of an offense or have signed a diversion
4 agreement pursuant to this chapter;

5 ~~((32))~~ (33) "Sex offense" means an offense defined as a sex
6 offense in RCW 9.94A.030;

7 ~~((33))~~ (34) "Sexual motivation" means that one of the purposes
8 for which the respondent committed the offense was for the purpose of
9 ~~((his or her))~~ the respondent's sexual gratification;

10 ~~((34))~~ (35) "Surety" means an entity licensed under state
11 insurance laws or by the state department of licensing, to write
12 corporate, property, or probation bonds within the state, and
13 justified and approved by the superior court of the county having
14 jurisdiction of the case;

15 ~~((35))~~ (36) "Transportation" means the conveying, by any means,
16 of an incarcerated pregnant youth from the institution or detention
17 facility to another location from the moment she leaves the
18 institution or detention facility to the time of arrival at the other
19 location, and includes the escorting of the pregnant incarcerated
20 youth from the institution or detention facility to a transport
21 vehicle and from the vehicle to the other location;

22 ~~((36))~~ (37) "Violation" means an act or omission, which if
23 committed by an adult, must be proven beyond a reasonable doubt, and
24 is punishable by sanctions which do not include incarceration;

25 ~~((37))~~ (38) "Violent offense" means a violent offense as
26 defined in RCW 9.94A.030;

27 ~~((38))~~ (39) "Youth court" means a diversion unit under the
28 supervision of the juvenile court.

29 NEW SECTION. **Sec. 6.** If specific funding for the purposes of
30 this act, referencing this act by bill or chapter number, is not
31 provided by June 30, 2021, in the omnibus appropriations act, this
32 act is null and void.

33 NEW SECTION. **Sec. 7.** This act takes effect January 1, 2022.

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