
HOUSE BILL 1531

State of Washington 59th Legislature 2005 Regular Session

By Representatives Moeller, Dickerson, Rodne and Roberts

Read first time 01/27/2005. Referred to Committee on Juvenile Justice & Family Law.

1 AN ACT Relating to waiver of counsel in juvenile proceedings; and
2 amending RCW 13.40.140.

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

4 **Sec. 1.** RCW 13.40.140 and 1981 c 299 s 11 are each amended to read
5 as follows:

6 (1) A juvenile shall be advised of his or her rights when appearing
7 before the court.

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

1 therefor. The juvenile shall be fully advised of his or her right to
2 an attorney and of the relevant services an attorney can provide.

3 (3) In any proceeding in which a child has a right to the
4 assistance of counsel under constitutional, statutory, or common law,
5 or by court rule, the child may not waive this right except as provided
6 in this subsection.

7 (a) A parent, guardian, or custodian of a child may not waive the
8 child's right to the assistance of counsel.

9 (b) In any proceeding in which a child has a right to the
10 assistance of counsel under constitutional, statutory, or common law,
11 or by court rule, and the child indicates a desire to waive that right,
12 the court may not accept the waiver unless:

13 (i) The child is in the presence of counsel and has consulted with
14 counsel; and

15 (ii) The court determines that the waiver is knowing and voluntary.

16 (c) The court shall find that the waiver was knowing and voluntary
17 only if, after appropriate questioning in open court and on the record,
18 it finds that the child fully comprehends:

19 (i) The nature of the allegations and the proceedings, and the
20 range of allowable dispositions;

21 (ii) That counsel would be of valuable assistance in determining
22 and presenting any defenses to the allegations in the petition or
23 charge, or other mitigating circumstances;

24 (iii) That the right to the assistance of counsel includes the
25 right to the prompt assignment of an attorney, without charge to the
26 child or the child's parents if they are financially unable to obtain
27 private counsel;

28 (iv) That even if the child intends not to contest the petition or
29 charge, counsel may be of substantial assistance in developing and
30 presenting material that could favorably affect the disposition;

31 (v) That among the child's rights at any hearing are the right to
32 call witnesses on the child's behalf, the right to confront and cross-
33 examine witnesses, the right to obtain witnesses by compulsory process,
34 and the right to require proof of the elements of the charge or status
35 offense.

36 (d) In making its judgment, the court should consider evidence of
37 the child's school performance and any testing which the school may
38 have conducted.

1 (e)(i) Unless the court dismisses the case, if a child appears
2 without counsel for any hearing, including a waiver hearing, and the
3 child has not previously waived the right to the assistance of counsel
4 in accordance with this subsection, the court shall continue and the
5 clerk shall reschedule the hearing, and the clerk shall issue a notice
6 of the date, time, and location of the hearing at least ten days prior
7 to the date of the hearing.

8 (ii) The continuance of a hearing may not be a basis for detaining
9 the child.

10 (4) The right to counsel includes the right to the appointment of
11 experts necessary, and the experts shall be required pursuant to the
12 procedures and requirements established by the supreme court.

13 ~~((+4))~~ (5) Upon application of a party, the clerk of the court
14 shall issue, and the court on its own motion may issue, subpoenas
15 requiring attendance and testimony of witnesses and production of
16 records, documents, or other tangible objects at any hearing, or such
17 subpoenas may be issued by an attorney of record.

18 ~~((+5))~~ (6) All proceedings shall be transcribed verbatim by means
19 which will provide an accurate record.

20 ~~((+6))~~ (7) The general public and press shall be permitted to
21 attend any hearing unless the court, for good cause, orders a
22 particular hearing to be closed. The presumption shall be that all
23 such hearings will be open.

24 ~~((+7))~~ (8) In all adjudicatory proceedings before the court, all
25 parties shall have the right to adequate notice, discovery as provided
26 in criminal cases, opportunity to be heard, confrontation of witnesses
27 except in such cases as this chapter expressly permits the use of
28 hearsay testimony, findings based solely upon the evidence adduced at
29 the hearing, and an unbiased fact-finder.

30 ~~((+8))~~ (9) A juvenile shall be accorded the same privilege against
31 self-incrimination as an adult. An extrajudicial statement which would
32 be constitutionally inadmissible in a criminal proceeding may not be
33 received in evidence at an adjudicatory hearing over objection.
34 Evidence illegally seized or obtained may not be received in evidence
35 over objection at an adjudicatory hearing to prove the allegations
36 against the juvenile if the evidence would be inadmissible in an adult
37 criminal proceeding. An extrajudicial admission or confession made by
38 the juvenile out of court is insufficient to support a finding that the

1 juvenile committed the acts alleged in the information unless evidence
2 of a corpus delicti is first independently established in the same
3 manner as required in an adult criminal proceeding.

4 ~~((9))~~ (10) Waiver of any right which a juvenile has under this
5 chapter must be an express waiver intelligently made by the juvenile
6 after the juvenile has been fully informed of the right being waived.

7 ~~((10))~~ (11) Whenever this chapter refers to waiver or objection
8 by a juvenile, the word juvenile shall be construed to refer to a
9 juvenile who is at least twelve years of age. If a juvenile is under
10 twelve years of age, the court shall not accept a waiver of counsel.
11 If a juvenile is under twelve years of age, the juvenile's parent,
12 guardian, or custodian shall give any waiver or offer any objection
13 contemplated by this chapter.

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