
HOUSE BILL 1724

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By Representatives Roberts, Kagi, Pettigrew, Goodman, Green, Reykdal, Cody, Jinkins, Appleton, Freeman, Moeller, Ryu, Pollet, Moscoso, and Bergquist

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1 AN ACT Relating to statements made by juveniles during assessments
2 or screenings for mental health or chemical dependency treatment; and
3 amending RCW 13.40.020 and 13.40.140.

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

5 **Sec. 1.** RCW 13.40.020 and 2012 c 201 s 1 are each amended to read
6 as follows:

7 For the purposes of this chapter:

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

15 (2) "Community-based rehabilitation" means one or more of the
16 following: Employment; attendance of information classes; literacy
17 classes; counseling, outpatient substance abuse treatment programs,
18 outpatient mental health programs, anger management classes, education
19 or outpatient treatment programs to prevent animal cruelty, or other

1 services; or attendance at school or other educational programs
2 appropriate for the juvenile as determined by the school district.
3 Placement in community-based rehabilitation programs is subject to
4 available funds;

5 ~~((+2))~~ (3) "Community-based sanctions" may include one or more of
6 the following:

- 7 (a) A fine, not to exceed five hundred dollars;
- 8 (b) Community restitution not to exceed one hundred fifty hours of
9 community restitution;

10 ~~((+3))~~ (4) "Community restitution" means compulsory service,
11 without compensation, performed for the benefit of the community by the
12 offender as punishment for committing an offense. Community
13 restitution may be performed through public or private organizations or
14 through work crews;

15 ~~((+4))~~ (5) "Community supervision" means an order of disposition
16 by the court of an adjudicated youth not committed to the department or
17 an order granting a deferred disposition. A community supervision
18 order for a single offense may be for a period of up to two years for
19 a sex offense as defined by RCW 9.94A.030 and up to one year for other
20 offenses. As a mandatory condition of any term of community
21 supervision, the court shall order the juvenile to refrain from
22 committing new offenses. As a mandatory condition of community
23 supervision, the court shall order the juvenile to comply with the
24 mandatory school attendance provisions of chapter 28A.225 RCW and to
25 inform the school of the existence of this requirement. Community
26 supervision is an individualized program comprised of one or more of
27 the following:

- 28 (a) Community-based sanctions;
- 29 (b) Community-based rehabilitation;
- 30 (c) Monitoring and reporting requirements;
- 31 (d) Posting of a probation bond;

32 ~~((+5))~~ (6) "Confinement" means physical custody by the department
33 of social and health services in a facility operated by or pursuant to
34 a contract with the state, or physical custody in a detention facility
35 operated by or pursuant to a contract with any county. The county may
36 operate or contract with vendors to operate county detention
37 facilities. The department may operate or contract to operate
38 detention facilities for juveniles committed to the department.

1 Pretrial confinement or confinement of less than thirty-one days
2 imposed as part of a disposition or modification order may be served
3 consecutively or intermittently, in the discretion of the court;

4 ~~((+6+))~~ (7) "Court," when used without further qualification, means
5 the juvenile court judge(s) or commissioner(s);

6 ~~((+7+))~~ (8) "Criminal history" includes all criminal complaints
7 against the respondent for which, prior to the commission of a current
8 offense:

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

13 (b) The criminal complaint was diverted by a prosecutor pursuant to
14 the provisions of this chapter on agreement of the respondent and after
15 an advisement to the respondent that the criminal complaint would be
16 considered as part of the respondent's criminal history. A
17 successfully completed deferred adjudication that was entered before
18 July 1, 1998, or a deferred disposition shall not be considered part of
19 the respondent's criminal history;

20 ~~((+8+))~~ (9) "Department" means the department of social and health
21 services;

22 ~~((+9+))~~ (10) "Detention facility" means a county facility, paid for
23 by the county, for the physical confinement of a juvenile alleged to
24 have committed an offense or an adjudicated offender subject to a
25 disposition or modification order. "Detention facility" includes
26 county group homes, inpatient substance abuse programs, juvenile basic
27 training camps, and electronic monitoring;

28 ~~((+10+))~~ (11) "Diversion unit" means any probation counselor who
29 enters into a diversion agreement with an alleged youthful offender, or
30 any other person, community accountability board, youth court under the
31 supervision of the juvenile court, or other entity except a law
32 enforcement official or entity, with whom the juvenile court
33 administrator has contracted to arrange and supervise such agreements
34 pursuant to RCW 13.40.080, or any person, community accountability
35 board, or other entity specially funded by the legislature to arrange
36 and supervise diversion agreements in accordance with the requirements
37 of this chapter. For purposes of this subsection, "community
38 accountability board" means a board comprised of members of the local

1 community in which the juvenile offender resides. The superior court
2 shall appoint the members. The boards shall consist of at least three
3 and not more than seven members. If possible, the board should include
4 a variety of representatives from the community, such as a law
5 enforcement officer, teacher or school administrator, high school
6 student, parent, and business owner, and should represent the cultural
7 diversity of the local community;

8 ~~((+11+))~~ (12) "Foster care" means temporary physical care in a
9 foster family home or group care facility as defined in RCW 74.15.020
10 and licensed by the department, or other legally authorized care;

11 ~~((+12+))~~ (13) "Institution" means a juvenile facility established
12 pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

13 ~~((+13+))~~ (14) "Intensive supervision program" means a parole
14 program that requires intensive supervision and monitoring, offers an
15 array of individualized treatment and transitional services, and
16 emphasizes community involvement and support in order to reduce the
17 likelihood a juvenile offender will commit further offenses;

18 ~~((+14+))~~ (15) "Juvenile," "youth," and "child" mean any individual
19 who is under the chronological age of eighteen years and who has not
20 been previously transferred to adult court pursuant to RCW 13.40.110,
21 unless the individual was convicted of a lesser charge or acquitted of
22 the charge for which he or she was previously transferred pursuant to
23 RCW 13.40.110 or who is not otherwise under adult court jurisdiction;

24 ~~((+15+))~~ (16) "Juvenile offender" means any juvenile who has been
25 found by the juvenile court to have committed an offense, including a
26 person eighteen years of age or older over whom jurisdiction has been
27 extended under RCW 13.40.300;

28 ~~((+16+))~~ (17) "Labor" means the period of time before a birth
29 during which contractions are of sufficient frequency, intensity, and
30 duration to bring about effacement and progressive dilation of the
31 cervix;

32 ~~((+17+))~~ (18) "Local sanctions" means one or more of the following:
33 (a) 0-30 days of confinement; (b) 0-12 months of community supervision;
34 (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

35 ~~((+18+))~~ (19) "Manifest injustice" means a disposition that would
36 either impose an excessive penalty on the juvenile or would impose a
37 serious, and clear danger to society in light of the purposes of this
38 chapter;

1 ~~((+19))~~ (20) "Monitoring and reporting requirements" means one or
2 more of the following: Curfews; requirements to remain at home,
3 school, work, or court-ordered treatment programs during specified
4 hours; restrictions from leaving or entering specified geographical
5 areas; requirements to report to the probation officer as directed and
6 to remain under the probation officer's supervision; and other
7 conditions or limitations as the court may require which may not
8 include confinement;

9 ~~((+20))~~ (21) "Offense" means an act designated a violation or a
10 crime if committed by an adult under the law of this state, under any
11 ordinance of any city or county of this state, under any federal law,
12 or under the law of another state if the act occurred in that state;

13 ~~((+21))~~ (22) "Physical restraint" means the use of any bodily
14 force or physical intervention to control a juvenile offender or limit
15 a juvenile offender's freedom of movement in a way that does not
16 involve a mechanical restraint. Physical restraint does not include
17 momentary periods of minimal physical restriction by direct person-to-
18 person contact, without the aid of mechanical restraint, accomplished
19 with limited force and designed to:

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

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

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

25 ~~((+22))~~ (23) "Postpartum recovery" means (a) the entire period a
26 woman or youth is in the hospital, birthing center, or clinic after
27 giving birth and (b) an additional time period, if any, a treating
28 physician determines is necessary for healing after the youth leaves
29 the hospital, birthing center, or clinic;

30 ~~((+23))~~ (24) "Probation bond" means a bond, posted with sufficient
31 security by a surety justified and approved by the court, to secure the
32 offender's appearance at required court proceedings and compliance with
33 court-ordered community supervision or conditions of release ordered
34 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
35 cash or posting of other collateral in lieu of a bond if approved by
36 the court;

37 ~~((+24))~~ (25) "Respondent" means a juvenile who is alleged or
38 proven to have committed an offense;

1 ~~((+25+))~~ (26) "Restitution" means financial reimbursement by the
2 offender to the victim, and shall be limited to easily ascertainable
3 damages for injury to or loss of property, actual expenses incurred for
4 medical treatment for physical injury to persons, lost wages resulting
5 from physical injury, and costs of the victim's counseling reasonably
6 related to the offense. Restitution shall not include reimbursement
7 for damages for mental anguish, pain and suffering, or other intangible
8 losses. Nothing in this chapter shall limit or replace civil remedies
9 or defenses available to the victim or offender;

10 ~~((+26+))~~ (27) "Restorative justice" means practices, policies, and
11 programs informed by and sensitive to the needs of crime victims that
12 are designed to encourage offenders to accept responsibility for
13 repairing the harm caused by their offense by providing safe and
14 supportive opportunities for voluntary participation and communication
15 between the victim, the offender, their families, and relevant
16 community members;

17 ~~((+27+))~~ (28) "Restraints" means anything used to control the
18 movement of a person's body or limbs and includes:

19 (a) Physical restraint; or

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

23 ~~((+28+))~~ (29) "Screening" means a process that is designed to
24 identify a child who is at risk of having mental health, substance
25 abuse, or co-occurring mental health and substance abuse disorders that
26 warrant immediate attention, intervention, or more comprehensive
27 assessment. A screening may be undertaken with or without the
28 administration of a formal instrument;

29 (30) "Secretary" means the secretary of the department of social
30 and health services. "Assistant secretary" means the assistant
31 secretary for juvenile rehabilitation for the department;

32 ~~((+29+))~~ (31) "Services" means services which provide alternatives
33 to incarceration for those juveniles who have pleaded or been
34 adjudicated guilty of an offense or have signed a diversion agreement
35 pursuant to this chapter;

36 ~~((+30+))~~ (32) "Sex offense" means an offense defined as a sex
37 offense in RCW 9.94A.030;

1 (~~(+31+)~~) (33) "Sexual motivation" means that one of the purposes
2 for which the respondent committed the offense was for the purpose of
3 his or her sexual gratification;

4 (~~(+32+)~~) (34) "Surety" means an entity licensed under state
5 insurance laws or by the state department of licensing, to write
6 corporate, property, or probation bonds within the state, and justified
7 and approved by the superior court of the county having jurisdiction of
8 the case;

9 (~~(+33+)~~) (35) "Transportation" means the conveying, by any means,
10 of an incarcerated pregnant youth from the institution or detention
11 facility to another location from the moment she leaves the institution
12 or detention facility to the time of arrival at the other location, and
13 includes the escorting of the pregnant incarcerated youth from the
14 institution or detention facility to a transport vehicle and from the
15 vehicle to the other location;

16 (~~(+34+)~~) (36) "Violation" means an act or omission, which if
17 committed by an adult, must be proven beyond a reasonable doubt, and is
18 punishable by sanctions which do not include incarceration;

19 (~~(+35+)~~) (37) "Violent offense" means a violent offense as defined
20 in RCW 9.94A.030;

21 (~~(+36+)~~) (38) "Youth court" means a diversion unit under the
22 supervision of the juvenile court.

23 **Sec. 2.** RCW 13.40.140 and 1981 c 299 s 11 are each amended to read
24 as follows:

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

27 (2) A juvenile and his or her parent, guardian, or custodian shall
28 be advised by the court or its representative that the juvenile has a
29 right to be represented by counsel at all critical stages of the
30 proceedings. Unless waived, counsel shall be provided to a juvenile
31 who is financially unable to obtain counsel without causing substantial
32 hardship to himself or herself or the juvenile's family, in any
33 proceeding where the juvenile may be subject to transfer for criminal
34 prosecution, or in any proceeding where the juvenile may be in danger
35 of confinement. The ability to pay part of the cost of counsel does
36 not preclude assignment. In no case may a juvenile be deprived of

1 counsel because of a parent, guardian, or custodian refusing to pay
2 therefor. The juvenile shall be fully advised of his or her right to
3 an attorney and of the relevant services an attorney can provide.

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

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

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

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

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

24 (8) A juvenile shall be accorded the same privilege against self-
25 incrimination as an adult. An extrajudicial statement which would be
26 constitutionally inadmissible in a criminal proceeding may not be
27 received in evidence at an adjudicatory hearing over objection.
28 Evidence illegally seized or obtained may not be received in evidence
29 over objection at an adjudicatory hearing to prove the allegations
30 against the juvenile if the evidence would be inadmissible in an adult
31 criminal proceeding. An extrajudicial admission or confession made by
32 the juvenile out of court is insufficient to support a finding that the
33 juvenile committed the acts alleged in the information unless evidence
34 of a corpus delicti is first independently established in the same
35 manner as required in an adult criminal proceeding.

36 (9) Statements, admissions, or confessions made by a juvenile in
37 the course of a mental health or chemical dependency screening or
38 assessment, whether or not the screening or assessment was ordered by

1 the court, shall not be admissible into evidence against the juvenile
2 on the issue of guilt in any juvenile offense matter or adult criminal
3 proceeding, unless the juvenile has placed his or her mental health at
4 issue. The statement is admissible for any other purpose or proceeding
5 allowed by law. This prohibition does not apply to statements,
6 admissions, or confessions made to law enforcement, and may not be used
7 to argue for derivative suppression of other evidence lawfully obtained
8 as a result of an otherwise inadmissible statement, admission, or
9 confession.

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

13 ((+10+)) (11) Whenever this chapter refers to waiver or objection
14 by a juvenile, the word juvenile shall be construed to refer to a
15 juvenile who is at least twelve years of age. If a juvenile is under
16 twelve years of age, the juvenile's parent, guardian, or custodian
17 shall give any waiver or offer any objection contemplated by this
18 chapter.

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