

SENATE BILL REPORT

SSB 5596

As Passed Senate, February 7, 2018

Title: An act relating to phasing out use of the valid court order exception to place youth in detention for noncriminal behavior.

Brief Description: Phasing out use of the valid court order exception to place youth in detention for noncriminal behavior.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Darneille, Hunt, Hasegawa, Kuderer and Saldaña).

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 1/30/17.

Human Services & Corrections: 1/08/18, 1/10/18 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/07/18, 26-22.

Brief Summary of First Substitute Bill

- Announces policy to phase out use of juvenile detention for status offenders by July 1, 2020.
- Eliminates option of juvenile detention for contempt of a truancy order effective July 1, 2019.
- Eliminates option of juvenile detention for contempt of an At-Risk Youth or dependency order effective July 1, 2020.
- Requires status offenders in detention to be separated from juveniles detained pursuant to criminal law violations until July 1, 2020.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5596 be substituted therefor, and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; Carlyle and Frockt.

Minority Report: Do not pass.
Signed by Senator Miloscia.

Minority Report: That it be referred without recommendation.
Signed by Senators O'Ban, Ranking Member; Walsh.

Staff: Kevin Black (786-7747)

Background: The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP) provides federal funding to local jurisdictions to support juvenile justice activities, provided that they comply with certain core requirements. One such requirement is the deinstitutionalization of status offenders. A status offender is a juvenile who is incarcerated for actions that would not be considered offenses if done by an adult. Common status offenses nationally include skipping school, running away, breaking curfew, defying parental instructions, and possession or use of alcohol or tobacco.

A 1984 amendment to the JJDP provides for an exception to the deinstitutionalization of status offenders requirement, which is known as the Valid Court Order (VCO) exception. The VCO exception allows judges to place youth adjudicated for status offenses in secure detention when the youth has disobeyed an order of the court to take an action, such as to attend school. Washington law permits courts to order secure detention for juveniles pursuant to the VCO exception in instances detailed below.

When members of a family are experiencing conflict, the parent of a child may file an At-Risk Youth (ARY) petition under certain circumstances. An ARY is a juvenile who is absent from home for at least 72 hours without parental consent, who is beyond the control of the parent such that the juvenile's behavior endangers the health, safety, and welfare of the juvenile or another person, or who has a substance use disorder for which there are no pending criminal charges. If a court grants an ARY petition, the court may order the juvenile to reside at home with the parent or to reside in an agreed out-of-home placement. The court may set further conditions of supervision including but not limited to regular school attendance, counseling, participation in substance use disorder or mental health treatment, or employment. The court may also place requirements on parents. If a juvenile fails to abide by the requirements of an ARY order, the court may find the juvenile in contempt and place the juvenile in remedial detention for up to seven days, impose up to a \$100 fine, or both.

Washington's dependency laws allow the court to issue a placement order placing a child in out-of-home care following a shelter care or fact-finding hearing alleging that the juvenile is a dependent child. A dependent child is a child who has been abandoned, abused or neglected by a person legally responsible for their care, or who has no parent or guardian capable of adequately caring for them in circumstances which cause danger of substantial damage to a child's development. A court may issue an order directing law enforcement to take a child into custody based on probable cause to believe that the child has violated a placement order.

Washington's truancy laws require schools to take a range of actions to reduce a student's unexcused absences from school. Among these obligations is filing of a truancy petition in juvenile court when a student has amassed seven unexcused absences within a month or ten unexcused absences within a school year. Truancy petitions must be stayed upon filing and referred to a community truancy board (CTB) in school districts with over 250 students. If CTB intervention fails to ameliorate the student's unexcused absences, the case must be returned to juvenile court for a hearing. If the court finds that the student has unexcused absences, that actions taken by the school district have not been successful in reducing the absences, and that court intervention is necessary, the court may issue an order requiring the child to attend school and to fulfill other requirements, such as undergoing an assessment for mental health or substance use disorder treatment needs. If the child fails to comply with this court order, the court may commit the child to remedial detention for up to seven days or impose alternatives to detention, such as community restitution.

Summary of First Substitute Bill: It is the policy of the state to entirely phase out the use of juvenile detention as a remedy for contempt of a VCO by July 1, 2020. No youth may be placed in detention as a contempt sanction or based on a warrant pursuant to laws related to ARY, truancy, or dependency after July 1, 2020.

Until July 1, 2020, any youth committed to juvenile detention under chapters relating to ARY, truancy, and dependency laws must be detained in such a manner so that no direct communication or physical contact may be made between the youth and any youth who is detained pursuant to a violation of criminal law.

Legal provisions authorizing detention for contempt of a truancy order are eliminated effective July 1, 2019. Legal provisions authorizing detention related to ARY and dependency are eliminated effective July 1, 2020.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Human Services, Mental Health & Housing): *Testimony from 2017 Regular Session.* PRO: Last year, we amended truancy laws to require exhaustive efforts to discover the root cause why a child is not in school. This will be transformative in creating a more compassionate model where school districts identify what services families need and refer them to those services. The CTB model will be fully implemented by the 2018 school year. This bill phases in the elimination of detention to occur afterwards. Most states do not use the VCO exception. Of those that do, most use it less than 100 times a year. Washington is far outside the norm, recently using it 2700 times in one year, which was 30 percent of the nation's usage. Half of these cases were in Grays Harbor County. Detention has negative consequences for youth. Potential for graduation plummets. Many of these kids are dually involved in the foster care system; their chance of graduating is 14 percent. Detention is for criminally involved youth, and has a level of fear

attached to it. When youth are exposed to this environment, they are desensitized and are at higher risk to commit crimes. Detention can worsen mental health problems and causes strain on families and relationships. Community-based services are more effective. Please include young people at the table as you work through this. Detention cannot save kids who struggle with abuse and trauma. We all want to keep kids safe. By locking them up, we send a message that they are criminals, not children in crisis. Where does it stop? If I saw it work even once, I would support it. Children in this position should be found to meet criteria for involuntary treatment, instead of being treated like lawbreakers. We need to provide more services to support court efforts.

CON: This relates to at-risk youth, not just truancy. Kids are not placed in detention lightly. In dependency cases, we authorize bench warrants for runaway kids and hold them so that the social worker can meet with them and figure out the root problem. They don't stay more than 24 hours. We don't have any involuntary beds available outside detention facilities. We need to have all the tools in our toolbox. Grays Harbor County and formerly Okanogan County are the outliers. This is a life and death issue in some circumstances. Courts need to intercede and get kids off the streets into a safe place overnight.

Persons Testifying (Human Services, Mental Health & Housing): PRO: Senator Jeannie Darneille, Prime Sponsor; Annie Blackledge, The Mockingbird Society; Jim Theofelis, A Way Home WA.

CON: Judge Kitty-Ann van Doorninck, Superior Court Judges Assn.; Tom McBride, WA Assn. of Juvenile Court Administrators.

Persons Signed In To Testify But Not Testifying (Human Services, Mental Health & Housing): No one.

Staff Summary of Public Testimony on First Substitute (Human Services & Corrections): PRO: The whole country has turned the corner on detaining youth status offenders. They are ahead of us in Washington where we use this more than others by a large factor. We should look to the example of other states. We are working on a package of legislation to recognize that there are options to work with families, recognize what their problems really are, and provide relief for those problems, rather than incarcerating a child. The evidence shows incarcerating children is detrimental. Congress is working on legislation that would bar this practice on a national level. Coercion doesn't work. We have learned a lot about juvenile brain science, and how youth are amendable to treatment and to change. We appreciate the effort to separate status offenders from other juvenile offenders. I was placed in juvenile detention at the age of 14 as a status offender for truancy. I stayed a week, and it changed me forever. I spent the next three years bouncing in and out of juvie, developing an institutionalized mentality. Detention became a place to go to get attention, and I developed a criminal record. These events have created barriers to my advancement in employment, and stigma. Please explore alternatives such as giving youth a supportive group of service providers who can figure out what the youth actually needs. Constant stays in detention can lead to changes in mental health, poor school performance, and more. I was placed in foster care at 15 at a group home with youth on parole for sex offenses, so I ran away. I was placed in detention for violating my placement order, leading to a regular cycle of detention. What I wanted was to have my placement re-evaluated and feel like my social

worker was actually listening to me. Kids need support, and someone who cares. We support phasing out detention over two years to allow counties time to implement new approaches and share promising practices with their peers. Five counties use detention in less than 5 percent of truancy, CHINS, and at-risk youth cases; unfortunately other counties are using detention in 25 to 30 percent of these cases. Status offenders were placed in detention 1781 times in Washington in 2016, which is more than 13 percent of all detentions. Let's build on the success of the community truancy board model and strengthen services available to families and youth in crisis. We need to solve underlying issues, rather than punishing behavior. Accountability is not the right word; youth detained for status offenses have things going on in their lives which have brought them to this point. Can you hold someone accountable for trying to feel safe? Status offenders are not criminals, they are people having challenges who need supportive adults.

CON: My court was operating in 1989 before the Becca Laws were implemented in our county. They created a tremendous improvement in the lives of children and families. Previously, the only opportunity to intervene was when the juvenile committed a crime or was removed from home for abuse or neglect. The justice system couldn't address young people who were taking drugs, running away from home, and incorrigible for one reason or another. Law enforcement officials, community leaders, and parents were stymied by out of control children engaging in risky behaviors. Those who cannot remember the past are condemned to repeat it; let's not go back to the 1990's when juvenile crime was rampant. Judges need to be able to enforce their orders. Mental health counseling, drug treatment, and family programs are all preferable to detention but you need to have this tool to enforce orders by remedial, not punitive, sanctions. Status offenders may be released from detention by complying with conditions. We are working diligently to keep children out of detention using community truancy boards. This has effectively limited the number of kids who come to court and are eligible for detention. The option of detention must be maintained to address chronic noncompliance. Without the option of detention, there is no final accountability. Deterrence is a huge part of it.

Persons Testifying (Human Services & Corrections): PRO: Senator Jeannie Darneille, Prime Sponsor; Bob Cooper, Washington Association of Criminal Defense Lawyers, Washington Defender Association; Zack Zibrosky, The Mockingbird Society; Briana Winslow, The Mockingbird Society; Liz Trautman, The Mockingbird Society.

CON: Alan Hancock, Island Cy. Superior Court Judge, Superior Court Judges Association; Andrew Somers, Island County Juvenile Court Administrator, Washington Association of Juvenile Court Administrators.

Persons Signed In To Testify But Not Testifying (Human Services & Corrections): PRO: Vazaskia Crockrell, Office of Juvenile Justice.