

HOUSE BILL REPORT

E2SSB 5290

As Passed House - Amended:

April 9, 2019

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

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Darneille, Wellman, Kuderer, Randall, Palumbo, Das, Hasegawa, McCoy, Nguyen, Saldaña and Wilson, C.).

Brief History:

Committee Activity:

Human Services & Early Learning: 3/20/19, 3/26/19 [DPA].

Floor Activity:

Passed House - Amended: 4/9/19, 52-44.

Brief Summary of Engrossed Second Substitute Bill (As Amended by House)

- Eliminates the use of detention as a court contempt sanction for truancy, dependency, and child in need of services court proceedings on July 1, 2019.
- Reduces the maximum detention period for at-risk youth (ARY) court proceedings from seven days to 72 hours, excluding weekends and holidays, beginning on the next weekday after the order.
- Eliminates the use of detention as a court contempt sanction for ARY court proceedings on July 1, 2022.
- Authorizes courts to commit a juvenile to a secure crisis residential center or a secure program offering intensive wraparound services approved by the Department of Children, Youth, and Families following the elimination of detention as a court contempt sanction for ARY proceedings on July 1, 2022.

HOUSE COMMITTEE ON HUMAN SERVICES & EARLY LEARNING

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.

Majority Report: Do pass as amended. Signed by 7 members: Representatives Senn, Chair; Callan, Vice Chair; Frame, Vice Chair; Goodman, Kilduff, Lovick and Ortiz-Self.

Minority Report: Do not pass. Signed by 5 members: Representatives Dent, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Corry and Klippert.

Staff: Luke Wickham (786-7146).

Background:

Juvenile Justice and Delinquency Prevention Act.

The Juvenile Justice and Delinquency Prevention Act (JJDP A) is a federal law that provides funding to states that follow certain protections in the care and treatment of youth in the juvenile justice system. The JJDP A requires that juveniles who have committed an offense that would not be criminal by an adult, known as a status offense, not be placed in secure detention facilities or secure correctional facilities. However, an exception to this requirement is made for juveniles who have violated a court order.

At-Risk Youth.

An at-risk youth (ARY) court process allows a parent or guardian to petition to the court if their child meets at least one of the following three requirements:

- The child is absent from home for at least 72 consecutive hours without parental consent.
- The child is beyond parental control such that his or her behavior endangers the health, safety, or welfare of the child or any other person.
- The child has a substance abuse problem for which there are no pending criminal charges relating to the substance abuse.

The purpose of filing an ARY petition is to obtain assistance and support from the juvenile court in maintaining the care, custody, and control of the child and to assist in the resolution of family conflict after alternatives to court intervention have been attempted. The ARY proceeding is a voluntary process, and a parent or guardian may request dismissal at any time.

Child in Need of Services.

A child in need of services (CHINS) court process allows a child, parent, guardian, or the Department of Children, Youth, and Families (DCYF) to petition the court if the child meets at least one of the following requirements:

- The child is beyond parental control such that the child's behavior endangers the health, safety, or welfare of the child or other person.
- The child has been reported to law enforcement as absent without consent for at least 24 consecutive hours from the parent's home, a crisis residential center, an out-of-home placement, or a court-ordered placement on two or more separate occasions and has exhibited a serious substance abuse problem or behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person.
- The child is in need of necessary services, including food, shelter, health care, clothing, educational, or services designed to maintain or reunite the family and lacks

access to or has declined to utilize these services, and whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure.

- The child is sexually exploited.

The purpose of filing a CHINS petition is to obtain a court order mandating temporary placement, for up to six months, of the child in a residence other than the home of his or her parent or guardian, because a serious conflict exists between the parent and child that cannot be resolved by delivery of services to the family during continued placement of the child in the parental home, and reasonable efforts have been made to prevent the need for removal of the child from the parental home.

The court may impose remedial sanctions including a fine of up to \$100 and confinement for up to seven days, or both, for contempt of the ARY or the CHINS court proceeding.

Compulsory School Attendance.

Children 8 to 18 years of age must attend public school unless they fall within certain exceptions, such as attending private school or receiving home-based instruction. If a parent enrolls a 6-year-old or 7-year-old child in school, the child is required to attend school, and the parent is responsible for ensuring the child attends.

When a child 8 to 18 years of age has unexcused absences, schools and school districts must take certain steps to eliminate or reduce the child's absences:

- After one unexcused absence in one month, the school must inform parents in writing or by phone of potential consequences of continued absences.
- After three unexcused absences in one month, the school must schedule a conference with the parents and take steps to reduce absences.
- Before a student accumulates five unexcused absences in one month, the school district must enter into an attendance agreement with the student and parent, refer the student to a community truancy board, or file a truancy petition with the court.
- After seven unexcused absences in one month or 10 unexcused absences in one year, the district must file a truancy petition with the court if the student is under the age of 17.

A petition may be filed with respect to a student who is 17 years of age.

Similar requirements are in place with respect to 6-year-old and 7-year-old children who are enrolled in school, except that after seven unexcused absences in a month or 10 unexcused absences in a year, the school district must file a truancy petition against the parent of the child. If a child fails to comply with a truancy court order, the court may impose:

- community restitution;
- nonresidential programs with intensive wraparound services;
- a requirement that the child meet with a mentor; or
- other services that the court deems appropriate.

If the child continues to fail to comply with the truancy court order and the court makes a finding that other measures to secure compliance have been tried but have been unsuccessful and no less restrictive alternative is available, the court may order the child to be subject to

detention for no longer than seven days. Courts must give preference to imposing detention for contempt of a truancy court order in a secure crisis residential center close to the child's home rather than a juvenile detention center.

Dependency Court Proceedings.

Anyone, including the DCYF, may file a petition in court alleging that a child should be a dependent of the state due to abuse or neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. These petitions must be verified and contain a statement of facts that constitute a dependency and the names and residence of the parents, if known.

When a child is taken into custody, the court is to hold a shelter care hearing within 72 hours. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the dependency case is being resolved.

If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, provision of services by the DCYF, compliance of the parents, and whether progress has been made by the parents.

Contempt of Court.

A contempt of court finding may be made if an individual intentionally disobeys a lawful court order, among other things.

Following a contempt of court finding, a court may impose remedial sanctions if the court finds that a person failed or refused to perform an act that is within the person's power to perform. A remedial sanction is imposed for the purpose of coercing performance when the contempt involves refusing to perform an act that is in the person's power to perform.

A court may impose up to seven days of detention as a remedial sanction following a contempt of court finding in an ARY, CHINS, truancy, or dependency court action.

Family Reconciliation Services.

Family Reconciliation Services (FRS) are voluntary services provided by the DCYF for runaway adolescents, and youth in conflict with their families. The program targets adolescents between ages 12 through 17. The FRS are temporary and attempt to resolve family crises and prevent unnecessary out-of-home placement. These services include:

- short-term family counseling;
- crisis residential services;
- referrals for substance abuse treatment and counseling;
- referrals for mental health services;
- short-term placement; and
- family assessments that connect to juvenile court services.

Crisis Residential Centers.

A crisis residential center (CRC) is a secure or semi-secure facility that provides emergency, temporary residence, assessment, referrals, and permanency planning services for youth ages 12 through 17.

Youth may be admitted to a CRC when law enforcement brings a youth who is:

- absent from parental custody without consent;
- in circumstances which constitute a danger to the youth's safety;
- in violation of a local curfew ordinance;
- a runaway from placement;
- in violation of a court placement order; or
- being unlawfully harbored.

Youth may also receive services from a CRC following a truancy, CHINS, or ARY court order.

A youth's parent may remove the youth from the CRC at any time unless the CRC staff has reasonable cause to believe that the youth is experiencing abuse or neglect at home. Youth who are not court-ordered in a truancy action may only reside in a CRC for up to 72 hours, excluding Saturdays, Sundays, and holidays. Afterward, the youth may continue to stay at the CRC only if parental consent has been given, a CHINS petition has been filed, or a court order for placement is entered.

The CRCs may be secure or semi-secure. A secure CRC has locking doors, locking windows, or a secured perimeter, and it is designed and operated to prevent a child from leaving without permission of the facility staff. A semi-secure CRC is operated in a manner to reasonably assure that youth placed there will not run away.

Secure CRCs may exist within a juvenile detention facility if the program is operated in a manner that prevents in-person contact between the residents and the persons held in juvenile detention.

Secure CRCs may exist outside of juvenile detention facilities if the facility has locking doors, locking windows, or a secured perimeter, and it is designed and operated to prevent youth from leaving without permission of staff. The maximum length of stay is 15 days in a nondetention secure CRC and five days in a detention secure CRC.

There are two secure CRCs in Washington, located at the Chelan County Juvenile Detention Center and the Clallam County Juvenile Detention Center. Each of these secure CRCs have four available beds for a total of eight available beds in the state. There are four semi-secure CRCs in Washington, with a total of 52 beds.

Data Gathering.

Juvenile courts are required to transmit youth-level secure detention data to the Administrative Office of the Courts (AOC) at least monthly. Juvenile courts must include:

- the name and birthdate of the youth;
- the court case number;
- the reason for admission to detention;
- the date of admission and exit; and
- the time spent in detention.

Summary of Amended Bill:

Detention as a Contempt Sanction.

The authority for courts to impose detention as a contempt sanction for truancy, dependency, and CHINS court proceedings is eliminated on July 1, 2019.

The maximum period of detention allowed as a court contempt sanction for ARY court proceedings is reduced from seven days to 72 hours, excluding weekends and holidays, on July 1, 2019. The 72-hour period begins on the next nonholiday weekday following the court order and runs to the end of the last nonholiday weekday within the 72-hour period. These sanctions may not be imposed more than twice during a 30-day period.

The bill specifies that the removal of statutory authority to impose detention as a remedial sanction for violating these proceedings does not limit the court's inherent contempt power or curtail its exercise.

At-Risk Youth Proceedings.

If a child fails to comply with an ARY court order, the court may impose:

- community restitution;
- residential and nonresidential programs with intensive wraparound services;
- a requirement that the child meet with a mentor for a specified number of times; or
- other services and interventions that the court deems appropriate.

Until July 1, 2022, the court may impose remedial sanctions including a fine of up to \$150 and confinement of up to 72 hours upon issuing formal written findings that it:

- considered, on the record, mitigating and aggravating factors used to determine the appropriateness of detention for enforcement of its order;
- affirmed that it considered all less restrictive options, and that detention is the only appropriate alternative, including its rationale and the clear, cogent, and convincing evidence used to enforce the order;
- afforded the same due process considerations that it affords all youth in a criminal contempt proceeding; and
- sought input from all relevant parties.

Beginning July 1, 2022, the court may commit an ARY youth to a secure residential program with intensive wraparound services as a sanction for contempt upon issuing the same formal written findings as listed above. This authority allows courts to place youth in a secure CRC or any program approved by the DCYF offering secure confinement and intensive wraparound services appropriate to the needs of the child. These youth may not be placed in a detention facility.

When the court finds probable cause to believe, based on a motion for contempt and a supporting declaration that a child has violated an ARY placement order, the court must direct the court clerk to command the presence of the child using a summons or other process instead of a warrant, unless the court finds probable cause to believe the youth would not appear or that an arrest is necessary to prevent serious bodily harm to the juvenile or another, in which case the court may issue a warrant. A warrant must be supported by an affidavit or sworn testimony, which must be recorded electronically or by stenographer. These warrants may not be served on a child inside of his or her school during school hours in a location

where other students are present. If a child fails to appear after being summoned, the court may issue an order directing law enforcement to take the child to detention.

Child in Need of Services Proceedings.

Parents may file a CHINS court petition before waiting two working days following a request for a family assessment to be completed by the DCYF.

Violation of a Placement Order.

A court may issue an order directing law enforcement to take a dependent child who is missing from care into custody and return the child to DCYF custody. If the DCYF is notified of the child's whereabouts and authorizes the child's location, the court must withdraw this order.

The authority for law enforcement to place children subject to dependency, truancy, CHINS, and ARY proceedings in detention following a violation of a placement order or upon a court order directing law enforcement to pick up the child is removed. For ARY proceedings only, courts may direct the presence of a youth to appear through a summons or a warrant as described above.

Administrative Office of the Courts Data Gathering.

The statewide report produced by the AOC regarding detention imposed as a violation of a court order in truancy, ARY, and CHINS proceedings shall:

- consider the written findings required under the bill for ARY contempt proceedings and provide an analysis of the rationale and evidence used and the less restrictive options considered;
- monitor the utilization of alternatives to detention;
- track trends in the use of ARY petitions;
- beginning July 1, 2022, track trends in the use of secure residential programs with intensive wraparound programs; and
- track the race and gender of youth with ARY petitions.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 29, 2019.

Effective Date of Amended Bill: This bill contains an emergency clause and takes effect July 1, 2019, except for sections 4 and 6, relating to elimination of detention for ARY, which take effect July 1, 2022.

Staff Summary of Public Testimony:

(In support) There is support of the bill as passed the Senate. Courts are required to make decisions about the placement and services for children without the authority to ensure that these services and placement options exist. Courts only use detention as a last resort for safety purposes. Courts must have a tool and intervention authority to save a child's life. There are youth who jump out of moving cars and tell judges that they are unwilling to live with their parents. There are children who engage in repeated behavior that endangers their

lives. Lives can be saved by not using detention, but lives can also be saved by using detention. The state will not be safer without detention as an option.

Kids who are in the middle of a dependency case are at the center of a family crisis. Many of these youth run away. Some of these kids are then trafficked, use drugs, and engage in other unsafe behavior. To let these kids out of detention is not going to change that child's life. Courts do not want to put youth in detention, but taking that authority away before an alternative intervention is available is unfair to these children.

Ending detention of youth for status offenders to force the issue of providing alternative services neglects the youth saved by maintaining detention as an option.

There is not a legal problem with removing detention as an option for violating a court order, but a funding problem. In 2009 Snohomish County lost the secure CRC that served many of these youth. There used to be 66 secure CRC beds across the state.

Courts are in the best systemic position to provide services, and the problem is a lack of funding to deliver services to youth. Because most counties do not have a secure CRC, there is no other choice than to put these youth in detention.

Youth in Spokane County entering detention had Adverse Childhood Experiences scores over 4.3, and those youth were able to access services following a detention stay. Detention provides an opportunity for youth to be in a safe place for a moment. There needs to be a way to hold onto youth for a moment because there are no other alternatives.

When a child is detained, the hope is that services are arranged for that youth or reunification plans are made to transition that youth into an appropriate placement. Generally, this detention lasts for 24 hours or less.

A Washington State Institute for Public Policy report from 2000 indicates positive results following placement in CRCs.

This is not about compliance; this is about safety. Without detention, there will be no available options that ensure a youth's safety.

Instead of talking about legal problems, the conversation should be about restoring alternative options to detention. Without detention as an option, judges will be forced to look children in the eye without an option to keep them safe.

Detention is sometimes necessary as a last resort. The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) representatives testified in front of Congress regarding reporting status offender detention data, indicating that many states fraudulently underreported this data. Much of the conduct captured under the proceedings handled by this bill is considered criminal conduct in other states. For these reasons, Washington is not as extreme an outlier as it has appeared.

Detention forces many youth to change their path.

Detention warrants are essential to ensure the safety of a youth subject to an ARY. A warrant allows a youth to be detained until help can be provided. Without that help, youth may be harmed.

(Opposed) The goal of the bill is to establish a pathway toward the elimination of jail for status offenders. The community truancy boards have been a successful start to this pathway. Washington is number one in the country in detaining youth for noncriminal behavior. In 2013 Washington incarcerated 30 percent of the nation's status offenders. The vast majority of states use this response less than 100 times per year. In Washington, there are now about 1,500 instances of incarcerating status offenders, incarcerating about 850 youth. Beds, qualified staff, and evidence-based programs are needed in the state. There is a budget proviso to develop a plan for establishing these beds and services. Whatever the alternative needed for this population, there is still a need to repair the disproportionate impact of incarcerating status offenders. Forty-five percent of the individuals detained for status offenses were girls, and 48.9 percent of the children incarcerated were white, while white youth made up 70 percent of the population. Five hundred and fifty-seven of the detained youth were Hispanic. Youth of color were 51 percent of the individuals incarcerated for status offenses, while they make up only 30 percent of the population. Eliminating status offender detention is supported by the National Association of Juvenile and Family Courts.

The striking amendment provides clarity regarding the options available to a court in response to a youth violating an ARY court order. The striking amendment also helps bring Washington into compliance with OJJDP Act requirements. Detention of status offenders should be eliminated.

King County is opposed to the bill in the current form but in support of the striking amendment. There is no reliable evidence that detaining status offenders improves behavior. The demographics of youth affected by incarceration of status offenders is startling. In King County, 66 percent of the youth detained as a sanction for violating a court order are youth of color.

Girls make up about 37 percent of youth involved in status offenses, but 47 percent of those in detention for those proceedings. Incarceration leads to mental health issues and self-harming behavior. Many of these girls have been abused or victimized. Many courts and judges believe they are keeping girls safe by detaining them, but research shows that incarceration exacerbates mental health issues.

Our state knows better, and we should do better.

Research shows that using detention as a consequence is a costly and inappropriate response to noncriminal behavior. Detaining these youth is not acceptable. There should be increased funding for services and CRCs.

Being in jail is a traumatizing experience in and of itself. When young people are released, they often go deeper underground and avoid services for fear of being jailed. The "Becca Bill" would not have saved Rebecca Hedman, who the "Becca Bill" is named after. The enemy is not the parents, and the enemy is not the judge; the enemy is the predator who further separates the youth following his or her release. This complex issue should be

removed from the courts altogether, and efforts should be focused on intensive wraparound services.

Jail is confinement for people accused or convicted of a crime and is not being used for its defined purpose when status offenders are detained. Mandating imprisonment is hauntingly familiar for African Americans. Jail is a trauma-inducer, not a trauma-reducer. Jail also reinforces the fear that adults are just trying to punish youth and not help them.

Everyone wants children and youth to be safe. No one wants to see a child in a situation where something bad is going to happen to them. That does not equate to having youth in detention. The CRCs could be used to help serve individuals. Expanding behavioral health services will help serve these youth.

The best way forward is to eliminate the use of detention for status offenses and increase funding for services.

To correctly serve youth, the underlying problems that are leading youth to run away or avoid services must be identified. Too many times with adolescents, the focus is on the youth's current behavior without looking at the underlying issues causing the behavior.

It is not within the power of the court to place neglected or abused children in detention for violating a court order. By doing so, Washington is in direct violation of federal law. By putting children in detention for running away from a child welfare placement, courts are exposing children to further sexual abuse and institutionalization.

Youth internalize the label "at-risk youth." Youth need more time with services. The system should help youth at risk and not punish them.

There is a crisis with youth, and funding is needed for services. There is a lack of employment available for youth aging out of foster care. Incarceration leads to more incarceration. Youth cannot be scared straight.

In Grays Harbor County, 38 percent of the juveniles incarcerated are status offenders, and 30 percent of status offenders in that county will be incarcerated at some point during a court proceeding.

The experience of attorneys defending youth in court is that status offenders are handcuffed and shackled when transported to court.

The noncompliance with federal law could exacerbate the funding problem if federal funding is withheld.

Detaining youth for status offenses causes harm. Some youth are placed in detention in response to a filing of a CHINS petition when no other placement is available. It is inappropriate for the state to lock up an individual in response to that youth requesting help.

Jailing youth for status offenses is discriminatory and ineffective; children deserve better.

This bill does not remove a court's inherent contempt authority and does not eliminate service options for these youth. There is a three-year phase-out where the state can determine what secure alternatives may be used for ARY proceedings. There are secure CRCs in two counties, and detention rates are higher than average in those two counties.

Youth with issues at home should not be placed into detention. Those resources should be used for services, not detention.

Throwing children in jail for noncriminal behavior will only exacerbate the issues these youth face.

(Other) The intent of the striking amendment has support. Courts use detention as a contempt sanction, not to coerce compliance with court orders, but as an emergency response to maintain the safety of youth. To fully address this issue, resources are needed for CRCs, secure CRCs, and behavioral health services.

The DCYF opposes the bill as passed the Senate, but supports the striking amendment proposed by Representative Frame. Secure alternatives to detention are needed, and this bill gives lawmakers three years to work on alternatives. Jailing status offenders is not appropriate.

Persons Testifying: (In support) Senator Darneille, prime sponsor; Michelle Ressa, Jennifer Forbes, and Eric Lucas, Superior Court Judges Association; Brooke Powell, Snohomish County Juvenile Court; Jack Murphy, Douglas County Juvenile Court; Nancy Ivory-Sanders, Thurston County Juvenile Court; Sylvia Kushniryuk; Kellie Crawford; and Susan Fenton.

(Opposed) Celia Jackson, King County; Ann Muno, Justice for Girls Coalition; Gordon McHenry, Jr., The Washington State Partnership Council on Juvenile Justice; Jim Theofelis, A Way Home Washington; Shrounda Selivanoff, Washington State Office of Public Defense Parents Representation Program; Laurie Lippold, Partners for Our Children; Cynthia Delostrinos, Washington State Minority and Justice Commission; Johnathan Hemphill, Kim Hines, Maia Doxy, Angel Mullen, and Liz Trautman, The Mockingbird Society; Lee Newgent, Civil Survival; Eric Gonzalez Alfaro, American Civil Liberties Union of Washington; Colleen Shea-Brown, Legal Counsel for Youth and Children; Shoshana Wineburg, YouthCare; Brandy Sincyr, Columbia Legal Services; Lucinda Young, Washington Education Association; and Cydney Moore, American Civil Liberties Union Burien People Power.

(Other) Patrick Dowd, Office of the Family & Children's Ombuds; and Frank Ordway, Department of Children, Youth, and Families.

Persons Signed In To Testify But Not Testifying: Zack Zibrosky, The Mockingbird Society; Adira Wiseman, Russian Jewish Cultural Center Heritage; and Edward Wiseman.