

ESHB 1140 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/11/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 13.40
4 RCW to read as follows:

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

- 10 (a) Questions a juvenile during a custodial interrogation;
11 (b) Detains a juvenile based on probable cause of involvement in
12 criminal activity; or
13 (c) Requests that the juvenile provide consent to an evidentiary
14 search of the juvenile or the juvenile's property, dwellings, or
15 vehicles under the juvenile's control.

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

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

22 (a) The juvenile has been provided with access to an attorney for
23 consultation; and the juvenile provides an express waiver knowingly,
24 intelligently, and voluntarily made by the juvenile after the
25 juvenile has been fully informed of the rights being waived as
26 required under RCW 13.40.140;

27 (b) The statement is for impeachment purposes; or

28 (c) The statement was made spontaneously.

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

31 (a) The law enforcement officer believes the juvenile is a victim
32 of trafficking as defined in RCW 9A.40.100; however, any information

1 obtained from the juvenile by law enforcement pursuant to this
2 subsection cannot be used in any prosecution of that juvenile; or

3 (b) (i) The law enforcement officer believes that the information
4 sought is necessary to protect an individual's life from an imminent
5 threat;

6 (ii) A delay to allow legal consultation would impede the
7 protection of an individual's life from an imminent threat; and

8 (iii) Questioning by the law enforcement officer is limited to
9 matters reasonably expected to obtain information necessary to
10 protect an individual's life from an imminent threat.

11 (5) After the juvenile has consulted with legal counsel, the
12 juvenile may advise, direct a parent or guardian to advise, or direct
13 legal counsel to advise the law enforcement officer that the juvenile
14 chooses to assert a constitutional right. Any assertion of
15 constitutional rights by the juvenile through legal counsel must be
16 treated by a law enforcement officer as though it came from the
17 juvenile. The waiver of any constitutional rights of the juvenile may
18 only be made according to the requirements of RCW 13.40.140.

19 (6) For purposes of this section, the following definitions
20 apply:

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

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

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

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

33 (2) A juvenile and (~~his or her~~) the juvenile's parent,
34 guardian, or custodian shall be advised by the court or its
35 representative that the juvenile has a right to be represented by
36 counsel at all critical stages of the proceedings. Unless waived,
37 counsel shall be provided to a juvenile who is financially unable to
38 obtain counsel without causing substantial hardship to himself or
39 herself or the juvenile's family, in any proceeding where the

1 juvenile may be subject to transfer for criminal prosecution, or in
2 any proceeding where the juvenile may be in danger of confinement.
3 The ability to pay part of the cost of counsel does not preclude
4 assignment. In no case may a juvenile be deprived of counsel because
5 of a parent, guardian, or custodian refusing to pay therefor. The
6 juvenile shall be fully advised of (~~his or her~~) the juvenile's
7 right to an attorney and of the relevant services an attorney can
8 provide.

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

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

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

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

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

29 (8) A juvenile shall be accorded the same privilege against self-
30 incrimination as an adult and the protections provided in section 1
31 of this act. An extrajudicial statement which would be
32 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, including evidence obtained in
35 violation of section 1 of this act, may not be received in evidence
36 over objection at an adjudicatory hearing to prove the allegations
37 against the juvenile if the evidence would be inadmissible in an
38 adult criminal proceeding. An extrajudicial admission or confession
39 made by the juvenile out of court is insufficient to support a
40 finding that the juvenile committed the acts alleged in the

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

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

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

21 (11) Whenever this chapter refers to waiver or objection by a
22 juvenile, the word juvenile shall be construed to refer to a juvenile
23 who is at least (~~twelve~~) 12 years of age. If a juvenile is under
24 (~~twelve~~) 12 years of age, the juvenile's parent, guardian, or
25 custodian shall give any waiver or offer any objection contemplated
26 by this chapter.

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

29 The director shall:

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

32 (a) Trial court criminal indigent defense, as provided in chapter
33 10.101 RCW;

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

35 (c) Representation of indigent parents qualified for appointed
36 counsel in dependency and termination cases, as provided in RCW
37 13.34.090 and 13.34.092;

38 (d) Extraordinary criminal justice cost petitions, as provided in
39 RCW 43.330.190;

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

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

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

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

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

14 (4) Provide oversight and technical assistance to ensure the
15 effective and efficient delivery of services in the office's program
16 areas;

17 (5) Recommend criteria and standards for determining and
18 verifying indigency. In recommending criteria for determining
19 indigency, the director shall compile and review the indigency
20 standards used by other state agencies and shall periodically submit
21 the compilation and report to the legislature on the appropriateness
22 and consistency of such standards;

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

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

29 The office of public defense shall not provide direct
30 representation of clients.

31 NEW SECTION. Sec. 4. A new section is added to chapter 2.70 RCW
32 to read as follows:

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

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

3 For the purposes of this chapter:

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

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

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

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

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

27 (4) "Community restitution" means compulsory service, without
28 compensation, performed for the benefit of the community by the
29 offender as punishment for committing an offense. Community
30 restitution may be performed through public or private organizations
31 or through work crews;

32 (5) "Community supervision" means an order of disposition by the
33 court of an adjudicated youth not committed to the department or an
34 order granting a deferred disposition. A community supervision order
35 for a single offense may be for a period of up to two years for a sex
36 offense as defined by RCW 9.94A.030 and up to one year for other
37 offenses. As a mandatory condition of any term of community
38 supervision, the court shall order the juvenile to refrain from
39 committing new offenses. As a mandatory condition of community
40 supervision, the court shall order the juvenile to comply with the

1 mandatory school attendance provisions of chapter 28A.225 RCW and to
2 inform the school of the existence of this requirement. Community
3 supervision is an individualized program comprised of one or more of
4 the following:

- 5 (a) Community-based sanctions;
- 6 (b) Community-based rehabilitation;
- 7 (c) Monitoring and reporting requirements;
- 8 (d) Posting of a probation bond;

9 (e) Residential treatment, where substance abuse, mental health,
10 and/or co-occurring disorders have been identified in an assessment
11 by a qualified mental health professional, psychologist,
12 psychiatrist, co-occurring disorder specialist, or substance use
13 disorder professional and a funded bed is available. If a child
14 agrees to voluntary placement in a state-funded long-term evaluation
15 and treatment facility, the case must follow the existing placement
16 procedure including consideration of less restrictive treatment
17 options and medical necessity.

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

- 20 (A) The referral is necessary to rehabilitate the child;
- 21 (B) The referral is necessary to protect the public or the child;
- 22 (C) The referral is in the child's best interest;

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

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

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

32 (6) "Confinement" means physical custody by the department of
33 children, youth, and families in a facility operated by or pursuant
34 to a contract with the state, or physical custody in a detention
35 facility operated by or pursuant to a contract with any county. The
36 county may operate or contract with vendors to operate county
37 detention facilities. The department may operate or contract to
38 operate detention facilities for juveniles committed to the
39 department. Pretrial confinement or confinement of less than
40 ~~((thirty-one))~~ 31 days imposed as part of a disposition or

1 modification order may be served consecutively or intermittently, in
2 the discretion of the court;

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

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

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

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

19 (9) "Custodial interrogation" means express questioning or other
20 actions or words by a law enforcement officer which are reasonably
21 likely to elicit an incriminating response from an individual and
22 occurs when reasonable individuals in the same circumstances would
23 consider themselves in custody;

24 (10) "Department" means the department of children, youth, and
25 families;

26 ~~((10))~~ (11) "Detention facility" means a county facility, paid
27 for by the county, for the physical confinement of a juvenile alleged
28 to have committed an offense or an adjudicated offender subject to a
29 disposition or modification order. "Detention facility" includes
30 county group homes, inpatient substance abuse programs, juvenile
31 basic training camps, and electronic monitoring;

32 ~~((11))~~ (12) "Diversion unit" means any probation counselor who
33 enters into a diversion agreement with an alleged youthful offender,
34 or any other person, community accountability board, youth court
35 under the supervision of the juvenile court, or other entity with
36 whom the juvenile court administrator has contracted to arrange and
37 supervise such agreements pursuant to RCW 13.40.080, or any person,
38 community accountability board, or other entity specially funded by
39 the legislature to arrange and supervise diversion agreements in
40 accordance with the requirements of this chapter. For purposes of

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

10 ~~((12))~~ (13) "Foster care" means temporary physical care in a
11 foster family home or group care facility as defined in RCW 74.15.020
12 and licensed by the department, or other legally authorized care;

13 ~~((13))~~ (14) "Institution" means a juvenile facility established
14 pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

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

20 ~~((15))~~ (16) "Juvenile," "youth," and "child" mean any
21 individual who is under the chronological age of ~~((eighteen))~~ 18
22 years and who has not been previously transferred to adult court
23 pursuant to RCW 13.40.110, unless the individual was convicted of a
24 lesser charge or acquitted of the charge for which he or she was
25 previously transferred pursuant to RCW 13.40.110 or who is not
26 otherwise under adult court jurisdiction;

27 ~~((16))~~ (17) "Juvenile offender" means any juvenile who has been
28 found by the juvenile court to have committed an offense, including a
29 person ~~((eighteen))~~ 18 years of age or older over whom jurisdiction
30 has been extended under RCW 13.40.300;

31 ~~((17))~~ (18) "Labor" means the period of time before a birth
32 during which contractions are of sufficient frequency, intensity, and
33 duration to bring about effacement and progressive dilation of the
34 cervix;

35 ~~((18))~~ (19) "Local sanctions" means one or more of the
36 following: (a) 0-30 days of confinement; (b) 0-12 months of community
37 supervision; (c) 0-150 hours of community restitution; or (d) \$0-\$500
38 fine;

39 ~~((19))~~ (20) "Manifest injustice" means a disposition that would
40 either impose an excessive penalty on the juvenile or would impose a

1 serious, and clear danger to society in light of the purposes of this
2 chapter;

3 ~~((20))~~ (21) "Monitoring and reporting requirements" means one
4 or more of the following: Curfews; requirements to remain at home,
5 school, work, or court-ordered treatment programs during specified
6 hours; restrictions from leaving or entering specified geographical
7 areas; requirements to report to the probation officer as directed
8 and to remain under the probation officer's supervision; and other
9 conditions or limitations as the court may require which may not
10 include confinement;

11 ~~((21))~~ (22) "Offense" means an act designated a violation or a
12 crime if committed by an adult under the law of this state, under any
13 ordinance of any city or county of this state, under any federal law,
14 or under the law of another state if the act occurred in that state;

15 ~~((22))~~ (23) "Physical restraint" means the use of any bodily
16 force or physical intervention to control a juvenile offender or
17 limit a juvenile offender's freedom of movement in a way that does
18 not involve a mechanical restraint. Physical restraint does not
19 include momentary periods of minimal physical restriction by direct
20 person-to-person contact, without the aid of mechanical restraint,
21 accomplished with limited force and designed to:

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

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

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

27 ~~((23))~~ (24) "Postpartum recovery" means (a) the entire period a
28 woman or youth is in the hospital, birthing center, or clinic after
29 giving birth and (b) an additional time period, if any, a treating
30 physician determines is necessary for healing after the youth leaves
31 the hospital, birthing center, or clinic;

32 ~~((24))~~ (25) "Probation bond" means a bond, posted with
33 sufficient security by a surety justified and approved by the court,
34 to secure the offender's appearance at required court proceedings and
35 compliance with court-ordered community supervision or conditions of
36 release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means
37 a deposit of cash or posting of other collateral in lieu of a bond if
38 approved by the court;

39 ~~((25))~~ (26) "Respondent" means a juvenile who is alleged or
40 proven to have committed an offense;

1 ~~((26))~~ (27) "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
4 for medical treatment for physical injury to persons, lost wages
5 resulting from physical injury, and costs of the victim's counseling
6 reasonably related to the offense. Restitution shall not include
7 reimbursement for damages for mental anguish, pain and suffering, or
8 other intangible losses. Nothing in this chapter shall limit or
9 replace civil remedies or defenses available to the victim or
10 offender;

11 ~~((27))~~ (28) "Restorative justice" means practices, policies,
12 and programs informed by and sensitive to the needs of crime victims
13 that are designed to encourage offenders to accept responsibility for
14 repairing the harm caused by their offense by providing safe and
15 supportive opportunities for voluntary participation and
16 communication between the victim, the offender, their families, and
17 relevant community members;

18 ~~((28))~~ (29) "Restraints" means anything used to control the
19 movement of a person's body or limbs and includes:

20 (a) Physical restraint; or

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

24 ~~((29))~~ (30) "Screening" means a process that is designed to
25 identify a child who is at risk of having mental health, substance
26 abuse, or co-occurring mental health and substance abuse disorders
27 that warrant immediate attention, intervention, or more comprehensive
28 assessment. A screening may be undertaken with or without the
29 administration of a formal instrument;

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

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

35 ~~((32))~~ (33) "Sex offense" means an offense defined as a sex
36 offense in RCW 9.94A.030;

37 ~~((33))~~ (34) "Sexual motivation" means that one of the purposes
38 for which the respondent committed the offense was for the purpose of
39 ~~((his or her))~~ the respondent's sexual gratification;

1 (~~(34)~~) (35) "Surety" means an entity licensed under state
2 insurance laws or by the state department of licensing, to write
3 corporate, property, or probation bonds within the state, and
4 justified and approved by the superior court of the county having
5 jurisdiction of the case;

6 (~~(35)~~) (36) "Transportation" means the conveying, by any means,
7 of an incarcerated pregnant youth from the institution or detention
8 facility to another location from the moment she leaves the
9 institution or detention facility to the time of arrival at the other
10 location, and includes the escorting of the pregnant incarcerated
11 youth from the institution or detention facility to a transport
12 vehicle and from the vehicle to the other location;

13 (~~(36)~~) (37) "Violation" means an act or omission, which if
14 committed by an adult, must be proven beyond a reasonable doubt, and
15 is punishable by sanctions which do not include incarceration;

16 (~~(37)~~) (38) "Violent offense" means a violent offense as
17 defined in RCW 9.94A.030;

18 (~~(38)~~) (39) "Youth court" means a diversion unit under the
19 supervision of the juvenile court.

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

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

ESHB 1140 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/11/2021

25 On page 1, line 2 of the title, after "enforcement;" strike the
26 remainder of the title and insert "amending RCW 13.40.140, 2.70.020,
27 and 13.40.020; adding a new section to chapter 13.40 RCW; adding a
28 new section to chapter 2.70 RCW; creating a new section; and
29 providing an effective date."

EFFECT: Changes the requirement that an individual under 18 have
access to an attorney for consultation if a law enforcement officer
questions the individual after providing a Miranda warning to

requiring access to an attorney for consultation during a custodial interrogation; changes the evidentiary standard for when law enforcement shall provide an individual under the age of 18 with access to an attorney for consultation if a law enforcement officer detains the individual based on reasonable suspicion of involvement in criminal activity to probable cause of involvement in criminal activity; defines the term "custodial interrogation;" and removes the definition of "*Miranda* warning."

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