
Community & Economic Development Committee

ESHB 1267

Brief Description: Concerning investigation of potential criminal conduct arising from police use of force, including custodial injuries, and other officer-involved incidents.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Entenman, Hackney, Senn, Dolan, Leavitt, Berry, Fitzgibbon, , Simmons, Ramel, Ortiz-Self, Ramos, Chopp, Davis, Thai, Bergquist, Peterson, Kloba, Callan, Lekanoff, Macri, Goodman, Gregerson, Johnson, J., , Slatter, Ryu, Berg, Harris-Talley, Sells, Tharinger, Orwall, Pollet, Santos and Ormsby; by request of Office of the Governor).

Brief Summary of Bill

- Requires law enforcement to provide juveniles with access to an attorney prior to any waiver of the juvenile's constitutional rights when law enforcement: (1) questions a juvenile after providing a *Miranda* warning; (2) requests a juvenile consent to a search; or (3) briefly detains a juvenile based on reasonable suspicion.
- Establishes that statements made by a juvenile during or after the foregoing scenarios are inadmissible unless the juvenile is provided with access to an attorney and the juvenile makes a valid waiver of the juvenile's rights.
- Establishes exceptions to protect an individual's life from an imminent threat.
- Requires the Director of the Office of Public Defense to provide access to an attorney for juveniles when required by this act.

Hearing Date:

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

Staff: Emily Poole (786-7106).

Background:

Constitutional Rights.

Individuals, whether they are adults or juveniles, are generally protected by a series of constitutional rights when they interact with law enforcement officers.

The Right to be Free from Unreasonable Search and Seizure.

Under both the Washington and United States Constitutions, warrantless searches are per se unreasonable. However, an individual may waive their right against a warrantless search by granting law enforcement consent to conduct a search.

The Right to Remain Silent.

The Fifth Amendment to the United States Constitution provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." To counteract the inherent compulsion of custodial interrogation, police must administer *Miranda* warnings. *Miranda* requires that the defendant be warned prior to any questioning that they have the right to remain silent, that anything they say can be used against them in a court of law, that they have the right to the presence of an attorney, and that if they cannot afford an attorney one will be appointed for them prior to any questioning if they so desire. Once a suspect invokes their right to remain silent, police may not continue the interrogation or make repeated efforts to wear down the suspect.

The Right to Counsel.

The Right to Counsel in a Custodial Interrogation: When an individual is taken into custody and subjected to questioning, the privilege against self-incrimination is implicated. Procedural safeguards are employed to protect the privilege. The individual must be warned they have a right to the presence of an attorney- and an opportunity to exercise this right must be afforded throughout the interrogation.

The Right to Counsel in Adversarial Proceedings: A criminal defendant is entitled to the assistance of counsel at critical stages of litigation. A critical stage is one in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or in which the outcome of the case is otherwise substantially affected.

The Right to Appointment of Counsel: Individuals subject to custodial interrogation or criminal prosecution who are unable to afford counsel have a constitutional right to have counsel appointed for them at public expense.

Waiver of Constitutional Rights.

An individual can waive their rights by, e.g., consenting to a search by law enforcement, or by agreeing to speak with law enforcement without consulting with an attorney.

A waiver of a constitutional right is valid only if it is voluntary, knowing, and intelligent. A waiver is voluntary if it is the product of a free and deliberate choice rather than intimidation, coercion, or deception. A waiver is knowing and intelligent if it is made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Courts consider the totality of the circumstances in evaluating whether these requirements are met.

Washington Court Rules.

The Washington Superior Court Criminal Rules extend the the right to counsel beyond the constitutional minimums. The rules provide the right to a lawyer extends to all criminal proceedings for offenses punishable by loss of liberty. The right to a lawyer accrues as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest. The court rules provide that, unless the right is waived, a lawyer must be provided to any person who is financially unable to obtain one without causing substantial hardship.

Rights of Juveniles.

Courts may consider an individual's maturity, intelligence, education, and experience when evaluating whether a waiver of a constitutional right was voluntary, knowing, and intelligent. In Washington, the rights of a juvenile under 12 years old may only be waived by a parent, guardian, or custodian. A juvenile at least 12 years old may waive their own rights.

Summary of Bill:

Juvenile Access to An Attorney.

Law enforcement must provide a juvenile with access to an attorney, in person or by phone or video, before the juvenile waives any constitutional rights if a law enforcement officer:

1. questions a juvenile after providing a *Miranda* warning;
2. requests a juvenile provide consent to a search; or
3. briefly detains the juvenile based on reasonable suspicion of criminal activity.

"*Miranda* warning" is defined as a verbal warning provided by a law enforcement officer advising the individual that the individual has the right to remain silent, the right to consult with legal counsel and have legal counsel present during questioning, and the right to have legal counsel appointed if the individual cannot afford legal counsel.

Statements made by a juvenile after the juvenile is contacted by law enforcement in any of the above three scenarios are inadmissible in juvenile or adult court proceedings unless the juvenile:

1. is provided with access to an attorney; and
2. makes an express, knowing, intelligent, and voluntary waiver after being fully informed of their rights.

Any assertion of constitutional rights by the juvenile through legal counsel must be treated by a law enforcement officer as though it came from the juvenile.

The Juvenile Justice Act is modified to recognize the requirements of this act, and to exclude evidence obtained in violation of the requirements of this act.

Exceptions to the Juvenile-Access-to-an-Attorney Requirement.

A law enforcement officer may question a juvenile without providing access to an attorney when:

1. the information sought is necessary to protect an individual's life from an imminent threat;
2. delay would impede protection of an individual's life from an imminent threat; and
3. questioning is limited to obtain information necessary to protect an individual's life from an imminent threat.

Provision of Access to Counsel.

The Director of the Office of Public Defense is required to provide access to attorneys for juveniles consistent with the requirements of this Act.

Appropriation: None.

Fiscal Note: Requested on January 15, 2021.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.