
SENATE BILL 5463

State of Washington

68th Legislature

2023 Regular Session

By Senator Lovick

Read first time 01/19/23. Referred to Committee on Human Services.

1 AN ACT Relating to juvenile access to an attorney; and amending
2 RCW 13.40.740.

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

4 **Sec. 1.** RCW 13.40.740 and 2021 c 328 s 1 are each amended to
5 read as follows:

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

12 (a) Questions a juvenile during a custodial interrogation;

13 (b) Detains a juvenile based on probable cause of involvement in
14 criminal activity; or

15 (c) Requests that the juvenile provide consent to an evidentiary
16 search of the juvenile or the juvenile's property, dwellings, or
17 vehicles under the juvenile's control.

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

20 (3) Statements made by a juvenile after the juvenile is contacted
21 by a law enforcement officer in a manner described under subsection

1 (1) of this section are not admissible in the state's case in chief
2 in a juvenile offender or adult criminal court proceeding in which
3 said juvenile is a defendant, unless:

4 (a) The juvenile has been provided with access to an attorney for
5 consultation; and the juvenile provides an express waiver knowingly,
6 intelligently, and voluntarily made by the juvenile after the
7 juvenile has been fully informed of the rights being waived as
8 required under RCW 13.40.140;

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

10 (c) The statement was made spontaneously.

11 (4) Physical evidence obtained in violation of this section shall
12 not be admissible in the state's case in chief only when such
13 evidence would be subject to exclusion pursuant to *United States v.*
14 *Patane*, 542 U.S. 630 (2004) and subsequent case law.

15 (5) A law enforcement officer may question a juvenile without
16 following the requirement in subsection (1) of this section if:

17 (a) The law enforcement officer provides an age-appropriate
18 statement of applicable rights to the juvenile, including miranda
19 rights and ferrier rights where appropriate, and the juvenile
20 provides an express waiver knowingly, intelligently, and voluntarily,
21 and the statement of rights, waiver, and subsequent interview or
22 search is audio and video recorded by the law enforcement officer;

23 (b) The law enforcement officer believes the juvenile is a victim
24 of trafficking as defined in RCW 9A.40.100; however, any information
25 obtained from the juvenile by law enforcement pursuant to this
26 subsection cannot be used in any prosecution of that juvenile; (~~(c)~~

27 ~~(b))~~ (c) The juvenile indicates that their statement would be
28 exculpatory in nature;

29 (d) The law enforcement officer seeks only to identify or locate
30 others involved in an alleged crime or recover evidence or property;
31 or

32 (e)(i) The law enforcement officer believes that the information
33 sought is necessary to protect an individual's life from an imminent
34 threat;

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

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

1 ~~((5))~~ (6) After the juvenile has consulted with legal counsel,
2 the juvenile may advise, direct a parent or guardian to advise, or
3 direct legal counsel to advise the law enforcement officer ~~((that))~~
4 whether the juvenile chooses to assert or waive a constitutional
5 right. Any assertion of constitutional rights by the juvenile through
6 legal counsel must be treated by a law enforcement officer as though
7 it came from the juvenile, however, legal counsel may not assert
8 constitutional rights on behalf of the juvenile without the
9 juvenile's consent. ~~((The))~~ A juvenile who has asserted their
10 constitutional rights directly or through a parent, guardian, or
11 legal counsel may subsequently waive their constitutional rights at
12 any time, if the waiver of any constitutional rights of the juvenile
13 ~~((may only be))~~ is made according to the applicable requirements of
14 RCW 13.40.140.

15 ~~((6))~~ (7) For purposes of this section, the following
16 definitions apply:

17 (a) "Juvenile" means any individual who is under the
18 chronological age of ~~((18))~~ 16 years; and

19 (b) "Law enforcement officer" means any general authority,
20 limited authority, or specially commissioned Washington peace officer
21 ~~((or federal peace officer))~~ as those terms are defined in RCW
22 10.93.020, including school resource officers as defined in RCW
23 28A.320.124 ~~((and other public officers who are responsible for~~
24 ~~enforcement of fire, building, zoning, and life and safety codes))~~.

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