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SENATE BILL 5189

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State of Washington                      54th Legislature                      1995 Regular Session

By Senators Roach, Smith, Rasmussen, Deccio and Haugen

Read first time 01/13/95. Referred to Committee on Law & Justice.

1            AN ACT Relating to capability of children to commit crimes; and  
2 amending RCW 9A.04.050, 13.34.070, 13.40.050, and 13.40.100.

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

4            **Sec. 1.** RCW 9A.04.050 and 1975 1st ex.s. c 260 s 9A.04.050 are  
5 each amended to read as follows:

6            Children under the age of ~~((eight))~~ six years are incapable of  
7 committing crime. Children of ~~((eight))~~ six and under ~~((twelve))~~ ten  
8 years of age are presumed to be incapable of committing crime, but this  
9 presumption may be removed by proof that they have sufficient capacity  
10 to understand the act or neglect, and to know that it was wrong.  
11 Whenever in legal proceedings it becomes necessary to determine the age  
12 of a child, ~~((he))~~ the child may be produced for inspection, to enable  
13 the court or jury to determine the age thereby; and the court may also  
14 direct ~~((his))~~ the child's examination by one or more physicians, whose  
15 opinion shall be competent evidence upon the question of ~~((his))~~ the  
16 child's age.

17            **Sec. 2.** RCW 13.34.070 and 1993 c 358 s 1 are each amended to read  
18 as follows:

1 (1) Upon the filing of the petition, the clerk of the court shall  
2 issue a summons, one directed to the child, if the child is (~~twelve~~)  
3 ten or more years of age, and another to the parents, guardian, or  
4 custodian, and such other persons as appear to the court to be proper  
5 or necessary parties to the proceedings, requiring them to appear  
6 personally before the court at the time fixed to hear the petition. If  
7 the child is developmentally disabled and not living at home, the  
8 notice shall be given to the child's custodian as well as to the  
9 child's parent. The developmentally disabled child shall not be  
10 required to appear unless requested by the court. Where the custodian  
11 is summoned, the parent or guardian or both shall also be served with  
12 a summons. The fact-finding hearing on the petition shall be held no  
13 later than seventy-five days after the filing of the petition, unless  
14 exceptional reasons for a continuance are found. The party requesting  
15 the continuance shall have the burden of proving by a preponderance of  
16 the evidence that exceptional circumstances do exist. To ensure that  
17 the hearing on the petition occurs within the seventy-five day time  
18 limit, the court shall schedule and hear the matter on an expedited  
19 basis.

20 (2) A copy of the petition shall be attached to each summons.

21 (3) The summons shall advise the parties of the right to counsel.  
22 The summons shall also inform the child's parent, guardian, or legal  
23 custodian of his or (~~her~~) her right to appointed counsel, if  
24 indigent, and of the procedure to use to secure appointed counsel.

25 (4) The summons shall advise the parents that they may be held  
26 responsible for the support of the child if the child is placed in out-  
27 of-home care.

28 (5) The judge may endorse upon the summons an order directing any  
29 parent, guardian, or custodian having the custody or control of the  
30 child to bring the child to the hearing.

31 (6) If it appears from affidavit or sworn statement presented to  
32 the judge that there is probable cause for the issuance of a warrant of  
33 arrest or that the child needs to be taken into custody pursuant to RCW  
34 13.34.050, the judge may endorse upon the summons an order that an  
35 officer serving the summons shall at once take the child into custody  
36 and take him or her to the place of shelter designated by the court.

37 (7) If the person summoned as provided in this section is subject  
38 to an order of the court pursuant to subsection (5) or (6) of this  
39 section, and if the person fails to abide by the order, he or she may

1 be proceeded against as for contempt of court. The order endorsed upon  
2 the summons shall conspicuously display the following legend:

3 NOTICE:

4 VIOLATION OF THIS ORDER  
5 IS SUBJECT TO PROCEEDING  
6 FOR CONTEMPT OF COURT  
7 PURSUANT TO RCW 13.34.070.

8 (8) If a party to be served with a summons can be found within the  
9 state, the summons shall be served upon the party personally as soon as  
10 possible following the filing of the petition, but in no case later  
11 than fifteen court days before the fact-finding hearing, or such time  
12 as set by the court. If the party is within the state and cannot be  
13 personally served, but the party's address is known or can with  
14 reasonable diligence be ascertained, the summons may be served upon the  
15 party by mailing a copy thereof by certified mail as soon as possible  
16 following the filing of the petition, but in no case later than fifteen  
17 court days before the hearing, or such time as set by the court. If a  
18 party other than the child is without the state but can be found or the  
19 address is known, or can with reasonable diligence be ascertained,  
20 service of the summons may be made either by delivering a copy thereof  
21 to the party personally or by mailing a copy thereof to the party by  
22 certified mail at least ten court days before the fact-finding hearing,  
23 or such time as set by the court.

24 (9) Service of summons may be made under the direction of the court  
25 by any person eighteen years of age or older who is not a party to the  
26 proceedings or by any law enforcement officer, probation counselor, or  
27 department of social and health services social worker.

28 (10) In any proceeding brought under this chapter where the court  
29 knows or has reason to know that the child involved is a member of an  
30 Indian tribe, notice of the pendency of the proceeding shall also be  
31 sent by registered mail, return receipt requested, to the child's  
32 tribe. If the identity or location of the tribe cannot be determined,  
33 such notice shall be transmitted to the secretary of the interior of  
34 the United States.

35 **Sec. 3.** RCW 13.40.050 and 1992 c 205 s 106 are each amended to  
36 read as follows:

37 (1) When a juvenile taken into custody is held in detention:

1 (a) An information, a community supervision modification or  
2 termination of diversion petition, or a parole modification petition  
3 shall be filed within seventy-two hours, Saturdays, Sundays, and  
4 holidays excluded, or the juvenile shall be released; and

5 (b) A detention hearing, a community supervision modification or  
6 termination of diversion petition, or a parole modification petition  
7 shall be held within seventy-two hours, Saturdays, Sundays, and  
8 holidays excluded, from the time of filing the information or petition,  
9 to determine whether continued detention is necessary under RCW  
10 13.40.040.

11 (2) Notice of the detention hearing, stating the time, place, and  
12 purpose of the hearing, and stating the right to counsel, shall be  
13 given to the parent, guardian, or custodian if such person can be found  
14 and shall also be given to the juvenile if over (~~twelve~~) ten years of  
15 age.

16 (3) At the commencement of the detention hearing, the court shall  
17 advise the parties of their rights under this chapter and shall appoint  
18 counsel as specified in this chapter.

19 (4) The court shall, based upon the allegations in the information,  
20 determine whether the case is properly before it or whether the case  
21 should be treated as a diversion case under RCW 13.40.080. If the case  
22 is not properly before the court the juvenile shall be ordered  
23 released.

24 (5) Notwithstanding a determination that the case is properly  
25 before the court and that probable cause exists, a juvenile shall at  
26 the detention hearing be ordered released on the juvenile's personal  
27 recognizance pending further hearing unless the court finds detention  
28 is necessary under RCW 13.40.040 as now or hereafter amended.

29 (6) If detention is not necessary under RCW 13.40.040, as now or  
30 hereafter amended, the court shall impose the most appropriate of the  
31 following conditions or, if necessary, any combination of the following  
32 conditions:

33 (a) Place the juvenile in the custody of a designated person  
34 agreeing to supervise such juvenile;

35 (b) Place restrictions on the travel of the juvenile during the  
36 period of release;

37 (c) Require the juvenile to report regularly to and remain under  
38 the supervision of the juvenile court;

1 (d) Impose any condition other than detention deemed reasonably  
2 necessary to assure appearance as required; or

3 (e) Require that the juvenile return to detention during specified  
4 hours.

5 (7) If the parent, guardian, or custodian of the juvenile in  
6 detention is available, the court shall consult with them prior to a  
7 determination to further detain or release the juvenile or treat the  
8 case as a diversion case under RCW 13.40.080.

9 **Sec. 4.** RCW 13.40.100 and 1979 c 155 s 62 are each amended to read  
10 as follows:

11 (1) Upon the filing of an information the alleged offender shall be  
12 notified by summons, warrant, or other method approved by the court of  
13 the next required court appearance.

14 (2) If notice is by summons, the clerk of the court shall issue a  
15 summons directed to the juvenile, if the juvenile is (~~twelve~~) ten or  
16 more years of age, and another to the parents, guardian, or custodian,  
17 and such other persons as appear to the court to be proper or necessary  
18 parties to the proceedings, requiring them to appear personally before  
19 the court at the time fixed to hear the petition. Where the custodian  
20 is summoned, the parent or guardian or both shall also be served with  
21 a summons.

22 (3) A copy of the information shall be attached to each summons.

23 (4) The summons shall advise the parties of the right to counsel.

24 (5) The judge may endorse upon the summons an order directing the  
25 parents, guardian, or custodian having the custody or control of the  
26 juvenile to bring the juvenile to the hearing.

27 (6) If it appears from affidavit or sworn statement presented to  
28 the judge that there is probable cause for the issuance of a warrant of  
29 arrest or that the juvenile needs to be taken into custody pursuant to  
30 RCW 13.34.050, as now or hereafter amended, the judge may endorse upon  
31 the summons an order that an officer serving the summons shall at once  
32 take the juvenile into custody and take the juvenile to the place of  
33 detention or shelter designated by the court.

34 (7) Service of summons may be made under the direction of the court  
35 by any law enforcement officer or probation counselor.

1           (8) If the person summoned as herein provided fails without  
2 reasonable cause to appear and abide the order of the court, the person  
3 may be proceeded against as for contempt of court.

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