

FINAL BILL REPORT

E2SSB 5290

C 312 L 19
Synopsis as Enacted

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.).

Senate Committee on Human Services, Reentry & Rehabilitation
Senate Committee on Ways & Means
House Committee on Human Services & Early Learning

Background: The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP A) provides federal funding to local jurisdictions to support juvenile justice activities if they comply with certain core requirements. One requirement is the deinstitutionalization of status offenders. A status offender is a juvenile who is incarcerated for actions that would not be considered offenses if done by an adult. Common status offenses nationally include skipping school, running away, breaking curfew, defying parental instructions, and possession or use of alcohol or tobacco.

A 1984 amendment to the JJDP A provided an exception to the deinstitutionalization of status offenders requirement, which is known as the valid court order (VCO) exception. The VCO exception allows judges to place youth adjudicated for status offenses in secure detention when the youth has disobeyed an order of the court, such as to attend school. Washington law permits courts to order secure detention for juveniles pursuant to the VCO exception in certain instances.

When members of a family are experiencing conflict, the parent of a child may file an at-risk-youth (ARY) petition under certain circumstances. An ARY is a juvenile who is absent from home for at least 72 hours without parental consent; who is beyond the control of the parent such that the juvenile's behavior endangers the health, safety, and welfare of the juvenile or another person; or who has a substance use disorder for which there are no pending criminal charges. If a court grants an ARY petition, the court may order the juvenile to reside at home with the parent or to reside in an agreed out-of-home placement. The court may set further conditions of supervision including, but not limited to, regular school attendance, counseling, participation in substance use disorder or mental health treatment, or employment. The court may also place requirements on parents. If a juvenile fails to abide

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by the requirements of an ARY order, the court may find the juvenile in contempt and place the juvenile in remedial detention for up to 7 days, impose a fine up to \$100, or both.

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 another 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 use 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; or
- is a sexually exploited child.

The purpose of filing a CHINS petition is to obtain a court order mandating temporary placement, for up to 6 months, of the child in a residence other than the home of their 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.

Washington's dependency laws allow the court to issue a placement order placing a child in out-of-home care following a shelter care or fact-finding hearing alleging the juvenile is a dependent child. A dependent child is a child who has been abandoned, abused, or neglected by a person legally responsible for their care, or a child who has no parent or guardian capable of adequately caring for them in circumstances which cause danger of substantial damage to a child's development. A court may issue an order directing law enforcement to take a child into custody based on probable cause to believe that the child has violated a placement order.

Washington's truancy laws require schools to take a range of actions to reduce a student's unexcused absences from school. Among these obligations is filing a truancy petition in juvenile court when a student has amassed seven unexcused absences within a month or ten unexcused absences within a school year. Truancy petitions must be stayed upon filing and referred to a community truancy board (CTB) in school districts with over 250 students. If CTB intervention fails to ameliorate the student's unexcused absences, the case must be returned to juvenile court for a hearing. If the court finds the student has unexcused absences, that actions taken by the school district have not been successful in reducing the absences, and court intervention is necessary, the court may issue an order requiring the child to attend school and to fulfill other requirements, such as undergoing an assessment for mental health or substance use disorder treatment needs. If the child fails to comply with this

court order, the court may commit the child to remedial detention for up to 7 days or impose alternatives to detention, such as community restitution.

Summary: After July 1, 2020, no youth may be placed in detention as a contempt sanction or based on a warrant pursuant to laws related to CHINS or dependency.

After July 1, 2021, no youth may be placed in detention as a contempt sanction or based on a warrant pursuant to laws related to truancy.

After July 1, 2023, no youth may be placed in detention as a contempt sanction or based on a warrant pursuant to laws related to ARY.

Prior to committing any youth to juvenile detention, the court must:

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

Any youth committed to juvenile detention under this act must be detained in such a manner that no direct communication or physical contact may be made between the youth and any youth who is detained pursuant to a violation of criminal law, unless the requirement would result in the youth being placed in solitary confinement.

After July 1, 2023, ARY may be committed to a secure residential program with intensive wraparound services, as a remedial sanction for contempt, or for failure to appear at a court hearing.

The court may impose graduated contempt sanctions such as community restitution, or mentoring, with detention as the last resort if a less restrictive alternative has been attempted and another violation has occurred or after a formal finding that no less restrictive alternative is available. A maximum stay in detention is 72 hours, excluding Saturdays, Sundays, and holidays. The 72 hour period commences on the next nonholiday weekday following the court order and runs to the end of the last nonholiday weekday within the 72 hour period. The court may not impose more than two remedial sanctions during a 30 day period.

The court must issue a summons to the child prior to issuing an arrest warrant for violation of an order. Arrest warrants may not be served on school grounds during school hours.

Law enforcement must return youth who are in contempt of a dependency order to DCYF custody instead of to detention. Courts shall withdraw such orders for law enforcement to pick up youth who are in contempt if DCYF is notified of a child's whereabouts and authorizes such location.

The Administrative Offices of the Courts must ensure the annual statewide report delivered to the Legislature does the following:

- considers the written findings and provides an analysis of the rationale and evidence used and the less restrictive options considered;
- monitors the utilization of alternatives to detention;
- tracks trends in the use of ARY petitions;
- tracks trends in the use of secure residential programs with intensive wraparound services; and
- tracks the race and gender of youth with at-risk petitions.

Votes on Final Passage:

Senate	35	14	
House	52	44	(House amended)
Senate			(Senate refused to concur)
House			(House insisted)
Senate			(Senate refused to concur)
House	55	42	(House receded/amended)
Senate	25	24	(Senate concurred)

Effective: July 1, 2019
July 1, 2020 (Sections 4, 8, and 12)
July 1, 2021 (Sections 5 and 14)
July 1, 2023 (Sections 6 and 9)