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ENGROSSED SUBSTITUTE HOUSE BILL 1140

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State of Washington

67th Legislature

2021 Regular Session

**By** House Civil Rights & Judiciary (originally sponsored by Representatives J. Johnson, Frame, Entenman, Sells, Taylor, Santos, Stonier, Ormsby, Lekanoff, Davis, Hackney, Macri, Callan, Chopp, Pollet, Ryu, Goodman, Berg, Ramos, Bergquist, Gregerson, Wicks, Peterson, Thai, Dolan, Bateman, Simmons, Fitzgibbon, and Valdez)

READ FIRST TIME 02/09/21.

1 AN ACT Relating to juvenile access to attorneys when contacted by  
2 law enforcement; amending RCW 13.40.140, 2.70.020, and 13.40.020;  
3 adding a new section to chapter 13.40 RCW; adding a new section to  
4 chapter 2.70 RCW; creating a new section; and providing an effective  
5 date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.40  
8 RCW to read as follows:

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

14 (a) Questions a juvenile after providing a *Miranda* warning;

15 (b) Detains a juvenile based on reasonable suspicion of  
16 involvement in criminal activity; or

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

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

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

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

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

11 (c) The statement was made spontaneously.

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

14 (a) The law enforcement officer believes the juvenile is a victim  
15 of trafficking as defined in RCW 9A.40.100; however, any information  
16 obtained from the juvenile by law enforcement pursuant to this  
17 subsection cannot be used in any prosecution of that juvenile; or

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

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

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

26 (5) After the juvenile has consulted with legal counsel, the  
27 juvenile may advise, direct a parent or guardian to advise, or direct  
28 legal counsel to advise the law enforcement officer that the juvenile  
29 chooses to assert a constitutional right. Any assertion of  
30 constitutional rights by the juvenile through legal counsel must be  
31 treated by a law enforcement officer as though it came from the  
32 juvenile. The waiver of any constitutional rights of the juvenile may  
33 only be made according to the requirements of RCW 13.40.140.

34 (6) For purposes of this section, the following definitions  
35 apply:

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

38 (b) "Law enforcement officer" means any general authority,  
39 limited authority, or specially commissioned Washington peace officer  
40 or federal peace officer as those terms are defined in RCW 10.93.020,

1 including school resource officers as defined in RCW 28A.320.124 and  
2 other public officers who are responsible for enforcement of fire,  
3 building, zoning, and life and safety codes.

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

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

8 (2) A juvenile and (~~his or her~~) the juvenile's parent,  
9 guardian, or custodian shall be advised by the court or its  
10 representative that the juvenile has a right to be represented by  
11 counsel at all critical stages of the proceedings. Unless waived,  
12 counsel shall be provided to a juvenile who is financially unable to  
13 obtain counsel without causing substantial hardship to himself or  
14 herself or the juvenile's family, in any proceeding where the  
15 juvenile may be subject to transfer for criminal prosecution, or in  
16 any proceeding where the juvenile may be in danger of confinement.  
17 The ability to pay part of the cost of counsel does not preclude  
18 assignment. In no case may a juvenile be deprived of counsel because  
19 of a parent, guardian, or custodian refusing to pay therefor. The  
20 juvenile shall be fully advised of (~~his or her~~) the juvenile's  
21 right to an attorney and of the relevant services an attorney can  
22 provide.

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

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

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

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

37 (7) In all adjudicatory proceedings before the court, all parties  
38 shall have the right to adequate notice, discovery as provided in  
39 criminal cases, opportunity to be heard, confrontation of witnesses

1 except in such cases as this chapter expressly permits the use of  
2 hearsay testimony, findings based solely upon the evidence adduced at  
3 the hearing, and an unbiased fact finder.

4 (8) A juvenile shall be accorded the same privilege against self-  
5 incrimination as an adult and the protections provided in section 1  
6 of this act. An extrajudicial statement which would be  
7 constitutionally inadmissible in a criminal proceeding may not be  
8 received in evidence at an adjudicatory hearing over objection.  
9 Evidence illegally seized or obtained, including evidence obtained in  
10 violation of section 1 of this act, may not be received in evidence  
11 over objection at an adjudicatory hearing to prove the allegations  
12 against the juvenile if the evidence would be inadmissible in an  
13 adult criminal proceeding. An extrajudicial admission or confession  
14 made by the juvenile out of court is insufficient to support a  
15 finding that the juvenile committed the acts alleged in the  
16 information unless evidence of a corpus delicti is first  
17 independently established in the same manner as required in an adult  
18 criminal proceeding.

19 (9) Statements, admissions, or confessions made by a juvenile in  
20 the course of a mental health or chemical dependency screening or  
21 assessment, whether or not the screening or assessment was ordered by  
22 the court, shall not be admissible into evidence against the juvenile  
23 on the issue of guilt in any juvenile offense matter or adult  
24 criminal proceeding, unless the juvenile has placed (~~his or her~~)  
25 the juvenile's mental health at issue. The statement is admissible  
26 for any other purpose or proceeding allowed by law. This prohibition  
27 does not apply to statements, admissions, or confessions made to law  
28 enforcement, and may not be used to argue for derivative suppression  
29 of other evidence lawfully obtained as a result of an otherwise  
30 inadmissible statement, admission, or confession.

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

36 (11) Whenever this chapter refers to waiver or objection by a  
37 juvenile, the word juvenile shall be construed to refer to a juvenile  
38 who is at least (~~twelve~~) 12 years of age. If a juvenile is under  
39 (~~twelve~~) 12 years of age, the juvenile's parent, guardian, or

1 custodian shall give any waiver or offer any objection contemplated  
2 by this chapter.

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

5 The director shall:

6 (1) Administer all state-funded services in the following program  
7 areas:

8 (a) Trial court criminal indigent defense, as provided in chapter  
9 10.101 RCW;

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

11 (c) Representation of indigent parents qualified for appointed  
12 counsel in dependency and termination cases, as provided in RCW  
13 13.34.090 and 13.34.092;

14 (d) Extraordinary criminal justice cost petitions, as provided in  
15 RCW 43.330.190;

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

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

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

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

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

29 (4) Provide oversight and technical assistance to ensure the  
30 effective and efficient delivery of services in the office's program  
31 areas;

32 (5) Recommend criteria and standards for determining and  
33 verifying indigency. In recommending criteria for determining  
34 indigency, the director shall compile and review the indigency  
35 standards used by other state agencies and shall periodically submit  
36 the compilation and report to the legislature on the appropriateness  
37 and consistency of such standards;

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

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

7 The office of public defense shall not provide direct  
8 representation of clients.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 2.70 RCW  
10 to read as follows:

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

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

18 For the purposes of this chapter:

19 (1) "Assessment" means an individualized examination of a child  
20 to determine the child's psychosocial needs and problems, including  
21 the type and extent of any mental health, substance abuse, or co-  
22 occurring mental health and substance abuse disorders, and  
23 recommendations for treatment. "Assessment" includes, but is not  
24 limited to, drug and alcohol evaluations, psychological and  
25 psychiatric evaluations, records review, clinical interview, and  
26 administration of a formal test or instrument;

27 (2) "Community-based rehabilitation" means one or more of the  
28 following: Employment; attendance of information classes; literacy  
29 classes; counseling, outpatient substance abuse treatment programs,  
30 outpatient mental health programs, anger management classes,  
31 education or outpatient treatment programs to prevent animal cruelty,  
32 or other services including, when appropriate, restorative justice  
33 programs; or attendance at school or other educational programs  
34 appropriate for the juvenile as determined by the school district.  
35 Placement in community-based rehabilitation programs is subject to  
36 available funds;

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

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

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

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

9 (5) "Community supervision" means an order of disposition by the  
10 court of an adjudicated youth not committed to the department or an  
11 order granting a deferred disposition. A community supervision order  
12 for a single offense may be for a period of up to two years for a sex  
13 offense as defined by RCW 9.94A.030 and up to one year for other  
14 offenses. As a mandatory condition of any term of community  
15 supervision, the court shall order the juvenile to refrain from  
16 committing new offenses. As a mandatory condition of community  
17 supervision, the court shall order the juvenile to comply with the  
18 mandatory school attendance provisions of chapter 28A.225 RCW and to  
19 inform the school of the existence of this requirement. Community  
20 supervision is an individualized program comprised of one or more of  
21 the following:

22 (a) Community-based sanctions;

23 (b) Community-based rehabilitation;

24 (c) Monitoring and reporting requirements;

25 (d) Posting of a probation bond;

26 (e) Residential treatment, where substance abuse, mental health,  
27 and/or co-occurring disorders have been identified in an assessment  
28 by a qualified mental health professional, psychologist,  
29 psychiatrist, co-occurring disorder specialist, or substance use  
30 disorder professional and a funded bed is available. If a child  
31 agrees to voluntary placement in a state-funded long-term evaluation  
32 and treatment facility, the case must follow the existing placement  
33 procedure including consideration of less restrictive treatment  
34 options and medical necessity.

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

37 (A) The referral is necessary to rehabilitate the child;

38 (B) The referral is necessary to protect the public or the child;

39 (C) The referral is in the child's best interest;

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

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

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

10 (6) "Confinement" means physical custody by the department of  
11 children, youth, and families in a facility operated by or pursuant  
12 to a contract with the state, or physical custody in a detention  
13 facility operated by or pursuant to a contract with any county. The  
14 county may operate or contract with vendors to operate county  
15 detention facilities. The department may operate or contract to  
16 operate detention facilities for juveniles committed to the  
17 department. Pretrial confinement or confinement of less than  
18 ~~((thirty-one))~~ 31 days imposed as part of a disposition or  
19 modification order may be served consecutively or intermittently, in  
20 the discretion of the court;

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

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

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

30 (b) The criminal complaint was diverted by a prosecutor pursuant  
31 to the provisions of this chapter on agreement of the respondent and  
32 after an advisement to the respondent that the criminal complaint  
33 would be considered as part of the respondent's criminal history. A  
34 successfully completed deferred adjudication that was entered before  
35 July 1, 1998, or a deferred disposition shall not be considered part  
36 of the respondent's criminal history;

37 (9) "Department" means the department of children, youth, and  
38 families;

39 (10) "Detention facility" means a county facility, paid for by  
40 the county, for the physical confinement of a juvenile alleged to

1 have committed an offense or an adjudicated offender subject to a  
2 disposition or modification order. "Detention facility" includes  
3 county group homes, inpatient substance abuse programs, juvenile  
4 basic training camps, and electronic monitoring;

5 (11) "Diversion unit" means any probation counselor who enters  
6 into a diversion agreement with an alleged youthful offender, or any  
7 other person, community accountability board, youth court under the  
8 supervision of the juvenile court, or other entity with whom the  
9 juvenile court administrator has contracted to arrange and supervise  
10 such agreements pursuant to RCW 13.40.080, or any person, community  
11 accountability board, or other entity specially funded by the  
12 legislature to arrange and supervise diversion agreements in  
13 accordance with the requirements of this chapter. For purposes of  
14 this subsection, "community accountability board" means a board  
15 comprised of members of the local community in which the juvenile  
16 offender resides. The superior court shall appoint the members. The  
17 boards shall consist of at least three and not more than seven  
18 members. If possible, the board should include a variety of  
19 representatives from the community, such as a law enforcement  
20 officer, teacher or school administrator, high school student,  
21 parent, and business owner, and should represent the cultural  
22 diversity of the local community;

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

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

28 (14) "Intensive supervision program" means a parole program that  
29 requires intensive supervision and monitoring, offers an array of  
30 individualized treatment and transitional services, and emphasizes  
31 community involvement and support in order to reduce the likelihood a  
32 juvenile offender will commit further offenses;

33 (15) "Juvenile," "youth," and "child" mean any individual who is  
34 under the chronological age of (~~eighteen~~) 18 years and who has not  
35 been previously transferred to adult court pursuant to RCW 13.40.110,  
36 unless the individual was convicted of a lesser charge or acquitted  
37 of the charge for which he or she was previously transferred pursuant  
38 to RCW 13.40.110 or who is not otherwise under adult court  
39 jurisdiction;

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

5 (17) "Labor" means the period of time before a birth during which  
6 contractions are of sufficient frequency, intensity, and duration to  
7 bring about effacement and progressive dilation of the cervix;

8 (18) "Local sanctions" means one or more of the following: (a)  
9 0-30 days of confinement; (b) 0-12 months of community supervision;  
10 (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

11 (19) "Manifest injustice" means a disposition that would either  
12 impose an excessive penalty on the juvenile or would impose a  
13 serious, and clear danger to society in light of the purposes of this  
14 chapter;

15 (20) "Miranda warning" means a verbal warning provided by a law  
16 enforcement officer advising the individual that the individual has  
17 the right to remain silent, the right to consult with legal counsel  
18 and have legal counsel present during questioning, and the right to  
19 have legal counsel appointed if the individual cannot afford legal  
20 counsel;

21 (21) "Monitoring and reporting requirements" means one or more of  
22 the following: Curfews; requirements to remain at home, school, work,  
23 or court-ordered treatment programs during specified hours;  
24 restrictions from leaving or entering specified geographical areas;  
25 requirements to report to the probation officer as directed and to  
26 remain under the probation officer's supervision; and other  
27 conditions or limitations as the court may require which may not  
28 include confinement;

29 (~~((21))~~) (22) "Offense" means an act designated a violation or a  
30 crime if committed by an adult under the law of this state, under any  
31 ordinance of any city or county of this state, under any federal law,  
32 or under the law of another state if the act occurred in that state;

33 (~~((22))~~) (23) "Physical restraint" means the use of any bodily  
34 force or physical intervention to control a juvenile offender or  
35 limit a juvenile offender's freedom of movement in a way that does  
36 not involve a mechanical restraint. Physical restraint does not  
37 include momentary periods of minimal physical restriction by direct  
38 person-to-person contact, without the aid of mechanical restraint,  
39 accomplished with limited force and designed to:

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

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

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

6 ~~((23))~~ (24) "Postpartum recovery" means (a) the entire period a  
7 woman or youth is in the hospital, birthing center, or clinic after  
8 giving birth and (b) an additional time period, if any, a treating  
9 physician determines is necessary for healing after the youth leaves  
10 the hospital, birthing center, or clinic;

11 ~~((24))~~ (25) "Probation bond" means a bond, posted with  
12 sufficient security by a surety justified and approved by the court,  
13 to secure the offender's appearance at required court proceedings and  
14 compliance with court-ordered community supervision or conditions of  
15 release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means  
16 a deposit of cash or posting of other collateral in lieu of a bond if  
17 approved by the court;

18 ~~((25))~~ (26) "Respondent" means a juvenile who is alleged or  
19 proven to have committed an offense;

20 ~~((26))~~ (27) "Restitution" means financial reimbursement by the  
21 offender to the victim, and shall be limited to easily ascertainable  
22 damages for injury to or loss of property, actual expenses incurred  
23 for medical treatment for physical injury to persons, lost wages  
24 resulting from physical injury, and costs of the victim's counseling  
25 reasonably related to the offense. Restitution shall not include  
26 reimbursement for damages for mental anguish, pain and suffering, or  
27 other intangible losses. Nothing in this chapter shall limit or  
28 replace civil remedies or defenses available to the victim or  
29 offender;

30 ~~((27))~~ (28) "Restorative justice" means practices, policies,  
31 and programs informed by and sensitive to the needs of crime victims  
32 that are designed to encourage offenders to accept responsibility for  
33 repairing the harm caused by their offense by providing safe and  
34 supportive opportunities for voluntary participation and  
35 communication between the victim, the offender, their families, and  
36 relevant community members;

37 ~~((28))~~ (29) "Restraints" means anything used to control the  
38 movement of a person's body or limbs and includes:

39 (a) Physical restraint; or

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

4 ~~((29))~~ (30) "Screening" means a process that is designed to  
5 identify a child who is at risk of having mental health, substance  
6 abuse, or co-occurring mental health and substance abuse disorders  
7 that warrant immediate attention, intervention, or more comprehensive  
8 assessment. A screening may be undertaken with or without the  
9 administration of a formal instrument;

10 ~~((30))~~ (31) "Secretary" means the secretary of the department;

11 ~~((31))~~ (32) "Services" means services which provide  
12 alternatives to incarceration for those juveniles who have pleaded or  
13 been adjudicated guilty of an offense or have signed a diversion  
14 agreement pursuant to this chapter;

15 ~~((32))~~ (33) "Sex offense" means an offense defined as a sex  
16 offense in RCW 9.94A.030;

17 ~~((33))~~ (34) "Sexual motivation" means that one of the purposes  
18 for which the respondent committed the offense was for the purpose of  
19 ~~((his or her))~~ the respondent's sexual gratification;

20 ~~((34))~~ (35) "Surety" means an entity licensed under state  
21 insurance laws or by the state department of licensing, to write  
22 corporate, property, or probation bonds within the state, and  
23 justified and approved by the superior court of the county having  
24 jurisdiction of the case;

25 ~~((35))~~ (36) "Transportation" means the conveying, by any means,  
26 of an incarcerated pregnant youth from the institution or detention  
27 facility to another location from the moment she leaves the  
28 institution or detention facility to the time of arrival at the other  
29 location, and includes the escorting of the pregnant incarcerated  
30 youth from the institution or detention facility to a transport  
31 vehicle and from the vehicle to the other location;

32 ~~((36))~~ (37) "Violation" means an act or omission, which if  
33 committed by an adult, must be proven beyond a reasonable doubt, and  
34 is punishable by sanctions which do not include incarceration;

35 ~~((37))~~ (38) "Violent offense" means a violent offense as  
36 defined in RCW 9.94A.030;

37 ~~((38))~~ (39) "Youth court" means a diversion unit under the  
38 supervision of the juvenile court.

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

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

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