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**HOUSE BILL 2957**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representative Shea

AN ACT Relating to the custody and placement of juveniles; amending RCW 13.40.040, 13.40.050, and 13.40.140; adding new sections to chapter 13.40 RCW; and repealing RCW 13.40.280 and 13.40.285.

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

**Sec.**  RCW 13.40.040 and 2002 c 171 s 2 are each amended to read as follows:

(1) A juvenile may be taken into custody:

(a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or

(b) Without a court order, for questioning upon a matter that could result in a petition alleging that the juvenile is either a delinquent juvenile or a juvenile in need of intervention; or

(c) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection ((~~(2)~~)) (3) of this section; or

((~~(c)~~)) (d) Pursuant to a court order that the juvenile be held as a material witness; or

((~~(d)~~)) (e) Where the secretary or the secretary's designee has suspended the parole of a juvenile offender.

(2) Pursuant to subsection (1)(b) of this section, the following requirements must be met:

(a) The juvenile must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or custodian of the juvenile that the juvenile has been taken into custody, the reasons for taking the juvenile into custody, and where the juvenile is being held. If the parents, guardian, or custodian cannot be found through diligent efforts, a close relative or friend chosen by the juvenile must be notified.

(3) A juvenile may not be held in detention unless there is probable cause to believe that:

(a) The juvenile has committed an offense or has violated the terms of a disposition order; and

(i) The juvenile will likely fail to appear for further proceedings; or

(ii) Detention is required to protect the juvenile from himself or herself; or

(iii) The juvenile is a threat to community safety; or

(iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or

(v) The juvenile has committed a crime while another case was pending; or

(b) The juvenile is a fugitive from justice; or

(c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

((~~(3)~~)) (4) Notwithstanding subsection ((~~(2)~~)) (3) of this section, and within available funds, a juvenile who has been found guilty of one of the following offenses shall be detained pending disposition: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); or rape of a child in the first degree (RCW 9A.44.073).

((~~(4)~~)) (5) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

((~~(5)~~)) (6) Except as provided in RCW 9.41.280, a juvenile detained under this section may be released upon posting a probation bond set by the court. The juvenile's parent or guardian may sign for the probation bond. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance. The court shall advise the juvenile of any conditions specified in the order and may at any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. In addition to requiring the juvenile to appear at the next court date, the court may condition the probation bond on the juvenile's compliance with conditions of release. The juvenile's parent or guardian may notify the court that the juvenile has failed to conform to the conditions of release or the provisions in the probation bond. If the parent notifies the court of the juvenile's failure to comply with the probation bond, the court shall notify the surety. As provided in the terms of the bond, the surety shall provide notice to the court of the offender's noncompliance. A juvenile may be released only to a responsible adult or the department of social and health services. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping.

**Sec.**  RCW 13.40.050 and 1997 c 338 s 15 are each amended to read as follows:

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

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

(b) A detention hearing, a hearing to determine whether there is probable cause to believe the juvenile is a delinquent juvenile or a juvenile in need of intervention, a community supervision modification or termination of diversion petition, or a parole modification petition shall be held within ((~~seventy-two~~)) twenty-four hours, Saturdays, Sundays, and holidays excluded, from the time of filing the information or petition, to determine whether continued detention is necessary under RCW 13.40.040. A hearing is not required if the juvenile is released prior to the time of the required hearing.

(2) When a juvenile is taken into custody for a violation of placement under an electronic monitoring program, a hearing to determine whether a violation occurred must be held within twenty-four hours, excluding Saturdays, Sundays, and holidays.

((~~(2)~~)) (3) The probable cause hearing required under subsection (1)(b) of this section may be held in person or by videoconference by the juvenile court, a judge, a court commissioner, or a family law commissioner having jurisdiction in the case. If the probable cause hearing is held by a judge, a court commissioner, or a family law commissioner, a record of the hearing must be made by a court reporter or by a tape recording of the hearing or by an audio/video tape if the hearing is held by videoconference.

(4) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge, court commissioner, or family law commissioner presiding in the case and the hour and date the order or findings were issued.

(5) Notice of the detention hearing or probable cause hearing, stating the time, place, and purpose of the hearing, stating the right to counsel, and requiring attendance shall be given to the parent, guardian, or custodian if such person can be found and shall also be given to the juvenile if over twelve years of age.

((~~(3)~~)) (6) At the commencement of the detention hearing or probable cause hearing, the court shall advise the parties of their constitutional rights and rights under this chapter and shall appoint counsel or a guardian ad litem as specified in this chapter.

((~~(4)~~)) (7) The court shall, based upon the allegations in the information, determine whether the case is properly before it or whether the case should be treated as a diversion case under RCW 13.40.080. If the case is not properly before the court the juvenile shall be ordered released.

((~~(5)~~)) (8) Notwithstanding a determination that the case is properly before the court and that probable cause exists, a juvenile shall at the detention hearing be ordered released on the juvenile's personal recognizance pending further hearing unless the court finds detention is necessary under RCW 13.40.040.

((~~(6)~~)) (9) If detention is not necessary under RCW 13.40.040, the court shall impose the most appropriate of the following conditions or, if necessary, any combination of the following conditions:

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

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

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

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

(e) Require that the juvenile return to detention during specified hours; or

(f) Require the juvenile to post a probation bond set by the court under terms and conditions as provided in RCW 13.40.040((~~(4)~~)) (6).

((~~(7)~~)) (10) A juvenile may be released only to a responsible adult or the department.

((~~(8)~~)) (11) If the parent, guardian, or custodian of the juvenile in detention is available, the court shall consult with them prior to a determination to further detain or release the juvenile or treat the case as a diversion case under RCW 13.40.080. A parent, guardian, or custodian of the juvenile may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:

(a) Cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) Is excused by the court for good cause.

((~~(9)~~)) (12) A person notified under this section who fails without reasonable cause to appear and abide by the order of the court may be proceeded against as for contempt of court. ((~~In determining whether a parent, guardian, or custodian had reasonable cause not to appear, the court may consider all factors relevant to the person's ability to appear as summoned.~~))

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

(1) A juvenile shall be advised of his or her rights when appearing before the court.

(2) A juvenile and his or her parent, guardian, or custodian shall be advised by the court or its representative that the juvenile has a right to be represented by counsel at all critical stages of the proceedings. Unless waived, counsel shall be provided to a juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family, in any proceeding where the juvenile may be subject to transfer for criminal prosecution, or in any proceeding where the juvenile may be in danger of confinement. The ability to pay part of the cost of counsel does not preclude assignment. In no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay therefor. The juvenile shall be fully advised of his or her right to an attorney and of the relevant services an attorney can provide. A juvenile may waive his or her rights under the following situations:

(a) When the juvenile is sixteen years of age or older, the juvenile may make an effective waiver;

(b) When the juvenile is under sixteen years of age and the juvenile and his or her parent or guardian agree, they may make an effective waiver; or

(c) When the juvenile is under sixteen years of age and the juvenile and his or her parent or guardian do not agree, the juvenile may make an effective waiver only with advice of counsel.

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

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

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

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

(7) In all adjudicatory proceedings before the court, all parties shall have the right to adequate notice, discovery as provided in criminal cases, opportunity to be heard, confrontation of witnesses except in such cases as this chapter expressly permits the use of hearsay testimony, findings based solely upon the evidence adduced at the hearing, and an unbiased fact finder.

(8) A juvenile shall be accorded the same privilege against self-incrimination as an adult. An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding may not be received in evidence at an adjudicatory hearing over objection. Evidence illegally seized or obtained may not be received in evidence over objection at an adjudicatory hearing to prove the allegations against the juvenile if the evidence would be inadmissible in an adult criminal proceeding. An extrajudicial admission or confession made by the juvenile out of court is insufficient to support a finding that the juvenile committed the acts alleged in the information unless evidence of a corpus delicti is first independently established in the same manner as required in an adult criminal proceeding.

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

((~~(10) Waiver of any right which a juvenile has under this chapter must be an express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived.~~

~~(11) Whenever this chapter refers to waiver or objection by a juvenile, the word juvenile shall be construed to refer to a juvenile who is at least twelve years of age. If a juvenile is under twelve years of age, the juvenile's parent, guardian, or custodian shall give any waiver or offer any objection contemplated by this chapter.~~))

NEW SECTION. **Sec.**  If, at a probable cause hearing held pursuant to RCW 13.40.050, it is determined that there is probable cause to believe that the juvenile is a delinquent juvenile or a juvenile in need of intervention, the court shall determine whether the juvenile should be retained in custody. If the court determines that continued custody of the juvenile is necessary and if the juvenile meets the criteria in sections 6 through 8 of this act, the juvenile may be placed in a detention facility, a resource and assessment center, or shelter care, but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

NEW SECTION. **Sec.**  A juvenile may be placed in a detention facility only if the juvenile:

(1) Has allegedly committed an act that if committed by an adult would constitute a criminal offense;

(2) Is alleged to be a delinquent juvenile and:

(a) Has escaped from a correctional facility or detention facility;

(b) Has violated a valid court order or a parole agreement;

(c) The juvenile's detention is required to protect persons or property;

(d) The juvenile has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(e) There are not adequate assurances that the juvenile will appear for court when required; or

(f) The juvenile meets additional criteria for detention established by the juvenile court in the judicial district that has current jurisdiction over the juvenile; or

(3) Has been adjudicated delinquent and is awaiting final disposition of the juvenile's case.

NEW SECTION. **Sec.**  A juvenile may be placed in shelter care only if:

(1) The juvenile and the juvenile's family need shelter care to address their problematic situation and it is not possible for the juvenile to remain at home;

(2) The juvenile needs to be protected from physical or emotional harm;

(3) The juvenile needs to be deterred or prevented from immediate repetition of troubling behavior;

(4) Shelter care is necessary to assess the juvenile and the juvenile's environment;

(5) Shelter care is necessary to provide adequate time for case planning and disposition; or

(6) Shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

NEW SECTION. **Sec.**  A juvenile may be placed in a resource and assessment center only if:

(1) The juvenile meets the requirements for placement in shelter care;

(2) The juvenile has not committed an act that would be a felony offense if committed by an adult;

(3) The juvenile needs an alternative, staff-secured site for evaluation and assessment of the juvenile's need for services;

(4) The juvenile needs to be held accountable for the juvenile's actions with structured programming; and

(5) The juvenile meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the juvenile placement committees.

NEW SECTION. **Sec.**  After a probable cause hearing provided for in RCW 13.40.050, a juvenile alleged to be a juvenile in need of intervention may be placed only in shelter care, as provided in section 10 of this act.

NEW SECTION. **Sec.**  After a probable cause hearing provided for in RCW 13.40.050, a juvenile alleged to be a delinquent juvenile may be placed only:

(1) In shelter care, in the facilities described in section 10 of this act;

(2) Under home arrest as provided in section 10 of this act;

(3) In detention, as provided in section 11 of this act; or

(4) In a community juvenile court program.

NEW SECTION. **Sec.**  Placement in shelter care means placement in one of the following:

(1) In an institution; or

(2) Under home arrest, with or without a monitoring device, either in the juvenile's own home or in an institution.

NEW SECTION. **Sec.**  Placement in detention means placement in one of the following facilities:

(1) A short-term detention center;

(2) A juvenile detention facility, including a regional detention facility; or

(3) A detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the department.

NEW SECTION. **Sec.**  (1) A juvenile may not be detained or otherwise placed in a jail or other adult detention facility, except as provided in this section.

(2) A juvenile who has allegedly committed an offense that if committed by an adult would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

(a) Six hours, but in no case overnight, for the purpose of identification, processing, or transfer of the juvenile to an appropriate detention facility or shelter care facility; or

(b) Twenty-four hours, excluding weekends and legal holidays, if the juvenile is awaiting a probable cause hearing pursuant to RCW 13.40.050.

(3) The exception provided for in subsection (2)(b) of this section applies only if:

(a) The court having jurisdiction over the juvenile is outside a metropolitan statistical area;

(b) Alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) The juvenile is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2) of this section, the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 13.40.280 (Transfer of juvenile to department of corrections facility—Grounds—Hearing—Term—Retransfer to a facility for juveniles) and 1989 c 410 s 2, 1989 c 407 s 8, & 1983 c 191 s 22; and

(2)RCW 13.40.285 (Juvenile offender sentenced to terms in juvenile and adult facilities—Transfer to department of corrections—Term of confinement) and 1983 c 191 s 23.

NEW SECTION. **Sec.**  Sections 4 through 12 of this act are each added to chapter 13.40 RCW.

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