
HOUSE BILL 2957

State of Washington

64th Legislature

2016 Regular Session

By Representative Shea

Read first time 02/01/16. Referred to Committee on Early Learning & Human Services.

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

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

5 **Sec. 1.** RCW 13.40.040 and 2002 c 171 s 2 are each amended to
6 read as follows:

7 (1) A juvenile may be taken into custody:

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

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

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

19 ~~((+e+))~~ (d) Pursuant to a court order that the juvenile be held
20 as a material witness; or

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (d) The juvenile is a material witness.

30 ~~((3))~~ (4) Notwithstanding subsection ~~((2))~~ (3) of this
31 section, and within available funds, a juvenile who has been found
32 guilty of one of the following offenses shall be detained pending
33 disposition: Rape in the first or second degree (RCW 9A.44.040 and
34 9A.44.050); or rape of a child in the first degree (RCW 9A.44.073).

35 ~~((4))~~ (5) Upon a finding that members of the community have
36 threatened the health of a juvenile taken into custody, at the
37 juvenile's request the court may order continued detention pending
38 further order of the court.

39 ~~((5))~~ (6) Except as provided in RCW 9.41.280, a juvenile
40 detained under this section may be released upon posting a probation

1 bond set by the court. The juvenile's parent or guardian may sign for
2 the probation bond. A court authorizing such a release shall issue an
3 order containing a statement of conditions imposed upon the juvenile
4 and shall set the date of his or her next court appearance. The court
5 shall advise the juvenile of any conditions specified in the order
6 and may at any time amend such an order in order to impose additional
7 or different conditions of release upon the juvenile or to return the
8 juvenile to custody for failing to conform to the conditions imposed.
9 In addition to requiring the juvenile to appear at the next court
10 date, the court may condition the probation bond on the juvenile's
11 compliance with conditions of release. The juvenile's parent or
12 guardian may notify the court that the juvenile has failed to conform
13 to the conditions of release or the provisions in the probation bond.
14 If the parent notifies the court of the juvenile's failure to comply
15 with the probation bond, the court shall notify the surety. As
16 provided in the terms of the bond, the surety shall provide notice to
17 the court of the offender's noncompliance. A juvenile may be released
18 only to a responsible adult or the department of social and health
19 services. Failure to appear on the date scheduled by the court
20 pursuant to this section shall constitute the crime of bail jumping.

21 **Sec. 2.** RCW 13.40.050 and 1997 c 338 s 15 are each amended to
22 read as follows:

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

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

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

38 (2) When a juvenile is taken into custody for a violation of
39 placement under an electronic monitoring program, a hearing to

1 determine whether a violation occurred must be held within twenty-
2 four hours, excluding Saturdays, Sundays, and holidays.

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

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

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

22 ~~((+3))~~ (6) At the commencement of the detention hearing or
23 probable cause hearing, the court shall advise the parties of their
24 constitutional rights and rights under this chapter and shall appoint
25 counsel or a guardian ad litem as specified in this chapter.

26 ~~((+4))~~ (7) The court shall, based upon the allegations in the
27 information, determine whether the case is properly before it or
28 whether the case should be treated as a diversion case under RCW
29 13.40.080. If the case is not properly before the court the juvenile
30 shall be ordered released.

31 ~~((+5))~~ (8) Notwithstanding a determination that the case is
32 properly before the court and that probable cause exists, a juvenile
33 shall at the detention hearing be ordered released on the juvenile's
34 personal recognizance pending further hearing unless the court finds
35 detention is necessary under RCW 13.40.040.

36 ~~((+6))~~ (9) If detention is not necessary under RCW 13.40.040,
37 the court shall impose the most appropriate of the following
38 conditions or, if necessary, any combination of the following
39 conditions:

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

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

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

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

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

11 (f) Require the juvenile to post a probation bond set by the
12 court under terms and conditions as provided in RCW 13.40.040(~~(+4)~~)
13 (6).

14 (~~(+7)~~) (10) A juvenile may be released only to a responsible
15 adult or the department.

16 (~~(+8)~~) (11) If the parent, guardian, or custodian of the
17 juvenile in detention is available, the court shall consult with them
18 prior to a determination to further detain or release the juvenile or
19 treat the case as a diversion case under RCW 13.40.080. A parent,
20 guardian, or custodian of the juvenile may be held in contempt of
21 court for failing to be present at or to participate in the probable
22 cause hearing unless the parent, guardian, or custodian:

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

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

26 (~~(+9)~~) (12) A person notified under this section who fails
27 without reasonable cause to appear and abide by the order of the
28 court may be proceeded against as for contempt of court. (~~In~~
29 ~~determining whether a parent, guardian, or custodian had reasonable~~
30 ~~cause not to appear, the court may consider all factors relevant to~~
31 ~~the person's ability to appear as summoned.))~~

32 **Sec. 3.** RCW 13.40.140 and 2014 c 110 s 2 are each amended to
33 read as follows:

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

36 (2) A juvenile and his or her parent, guardian, or custodian
37 shall be advised by the court or its representative that the juvenile
38 has a right to be represented by counsel at all critical stages of
39 the proceedings. Unless waived, counsel shall be provided to a

1 juvenile who is financially unable to obtain counsel without causing
2 substantial hardship to himself or herself or the juvenile's family,
3 in any proceeding where the juvenile may be subject to transfer for
4 criminal prosecution, or in any proceeding where the juvenile may be
5 in danger of confinement. The ability to pay part of the cost of
6 counsel does not preclude assignment. In no case may a juvenile be
7 deprived of counsel because of a parent, guardian, or custodian
8 refusing to pay therefor. The juvenile shall be fully advised of his
9 or her right to an attorney and of the relevant services an attorney
10 can provide. A juvenile may waive his or her rights under the
11 following situations:

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

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

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

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

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

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 4.** If, at a probable cause hearing held
36 pursuant to RCW 13.40.050, it is determined that there is probable
37 cause to believe that the juvenile is a delinquent juvenile or a
38 juvenile in need of intervention, the court shall determine whether
39 the juvenile should be retained in custody. If the court determines

1 that continued custody of the juvenile is necessary and if the
2 juvenile meets the criteria in sections 6 through 8 of this act, the
3 juvenile may be placed in a detention facility, a resource and
4 assessment center, or shelter care, but may not be placed in a jail
5 or other facility used for the confinement of adults accused or
6 convicted of criminal offenses.

7 NEW SECTION. **Sec. 5.** A juvenile may be placed in a detention
8 facility only if the juvenile:

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

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

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

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

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

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

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

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

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

27 NEW SECTION. **Sec. 6.** A juvenile may be placed in shelter care
28 only if:

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

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

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

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

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

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

6 NEW SECTION. **Sec. 7.** A juvenile may be placed in a resource and
7 assessment center only if:

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

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

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

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

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

20 NEW SECTION. **Sec. 8.** After a probable cause hearing provided
21 for in RCW 13.40.050, a juvenile alleged to be a juvenile in need of
22 intervention may be placed only in shelter care, as provided in
23 section 10 of this act.

24 NEW SECTION. **Sec. 9.** After a probable cause hearing provided
25 for in RCW 13.40.050, a juvenile alleged to be a delinquent juvenile
26 may be placed only:

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

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

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

31 (4) In a community juvenile court program.

32 NEW SECTION. **Sec. 10.** Placement in shelter care means placement
33 in one of the following:

34 (1) In an institution; or

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

1 NEW SECTION. **Sec. 11.** Placement in detention means placement in
2 one of the following facilities:

3 (1) A short-term detention center;

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

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

10 NEW SECTION. **Sec. 12.** (1) A juvenile may not be detained or
11 otherwise placed in a jail or other adult detention facility, except
12 as provided in this section.

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

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

20 (b) Twenty-four hours, excluding weekends and legal holidays, if
21 the juvenile is awaiting a probable cause hearing pursuant to RCW
22 13.40.050.

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

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

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

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

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

37 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
38 each repealed:

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

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

8 NEW SECTION. **Sec. 14.** Sections 4 through 12 of this act are
9 each added to chapter 13.40 RCW.

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