

HOUSE BILL REPORT

SSB 5596

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to phasing out use of the valid court order exception to place youth in detention for noncriminal behavior.

Brief Description: Phasing out use of the valid court order exception to place youth in detention for noncriminal behavior.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Darneille, Hunt, Hasegawa, Kuderer and Saldaña).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/16/18, 2/20/18 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Eliminates the ability for courts to issue orders directing law enforcement to place youth in detention or directly place youth in detention pursuant to a truancy contempt of court finding beginning July 1, 2019.
- Eliminates the ability for courts to issue orders directing law enforcement to place youth in detention or directly place youth in detention pursuant to an at-risk youth, child in need of services, or dependency contempt of court finding beginning July 1, 2021.
- Requires that until July 1, 2021, any youth committed to juvenile detention as a contempt of court sanction or for failing to appear at a court hearing, must be detained in such a manner so that no direct communication or physical contact may be made between the youth and any youth who is detained in juvenile detention based on a criminal law violation.
- Requires the Department of Children, Youth, and Families to conduct a study, jointly with the Office of Homeless Youth Prevention and Protection Programs, on the public system response to families and youth in crisis who are seeking services to address family conflict in the absence of child abuse and neglect and submit recommendations related to this study to the Governor and the Legislature by December 30, 2018.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 7 members: Representatives Kagi, Chair; Senn, Vice Chair; Frame, Goodman, Kilduff, Lovick and Ortiz-Self.

Minority Report: Do not pass. Signed by 6 members: Representatives Dent, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Eslick, Griffey, Klippert and Muri.

Staff: Luke Wickham (786-7146).

Background:

Juvenile Justice and Delinquency Prevention Act.

The Juvenile Justice and Delinquency Prevention Act (JJDP A) is a federal law that provides funding to states that follow certain protections in the care and treatment of youth in the juvenile justice system. The JJDP A requires that juveniles who have committed an offense that would not be criminal by an adult, known as a status offense, not be placed in secure detention facilities or secure correctional facilities. However, an exception to this requirement is made for juveniles who have violated a court order.

At-Risk Youth.

An at-risk youth (ARY) court process allows a parent or guardian to petition to the court if their child meets at least one of the following three requirements. The child:

- is absent from home for at least 72 consecutive hours without parental consent;
- is beyond parental control such that his or her behavior endangers the health, safety, or welfare of the child or any other person; or
- has a substance abuse problem for which there are no pending criminal charges relating to the substance abuse.

The purpose of filing an ARY petition is to obtain assistance and support from the juvenile court in maintaining the care, custody, and control of the child and to assist in the resolution of family conflict, after alternatives to court intervention have been attempted. The ARY proceeding is a voluntary process, and a parent or guardian may request dismissal at any time.

Child in Need of Services.

A child in need of services (CHINS) court process allows a child, parent, guardian, or the Department of Social and Health Services, and after July 1, 2018, 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 other person;
- 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;

- 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 utilize 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 six months, of the child in a residence other than the home of his or her 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.

The court may impose remedial sanctions including a fine up to \$100 and confinement for up to seven days, or both for contempt of the ARY or the CHINS court proceeding.

Compulsory School Attendance.

Children eight to 18 years of age must attend public school unless they fall within certain exceptions, such as attending private school or receiving home-based instruction. If a parent enrolls a 6-year-old or 7-year-old child in school, the child is required to attend school, and the parent is responsible for ensuring the child attends.

When a child eight to 18 years of age has unexcused absences, schools and school districts must take the following steps to eliminate or reduce the child's absences:

- after one unexcused absence in one month, the school must inform parents in writing or by phone of potential consequences of continued absences;
- after three unexcused absences in one month, the school must schedule a conference with the parents and take steps to reduce absences;
- before a student accumulates five unexcused absences in one month, the district must enter into an attendance agreement with the student and parent, refer the student to a community truancy board, or file a truancy petition with the court; and
- after seven unexcused absences in one month or 10 unexcused absences in one year, the district must file a truancy petition with the court if the student is under 17 years of age. A petition may be filed with respect to a student who is 17 years of age.

Similar requirements are in place with respect to 6-year-old and 7-year-old children who are enrolled in school, except that after seven unexcused absences in one month or 10 unexcused absences in a year, the school district must file a truancy petition against the parent of the child.

If a child fails to comply with a truancy court order, the court may impose:

- community restitution;
- nonresidential programs with intensive wraparound services;
- a requirement that the child meet with a mentor; or
- other services that that court deems appropriate.

If the child continues to fail to comply with the truancy court order and the court makes a finding that other measures to secure compliance have been tried but have been unsuccessful and no less restrictive alternative is available, the court may order the child to be subject to detention for no longer than seven days. Courts must give preference to imposing detention for contempt of a truancy court order in a secure crisis residential center close to the child's home rather than a juvenile detention center.

Contempt of Court.

A contempt of court finding may be made if an individual intentionally disobeys a lawful court order, among other things.

Following a contempt of court finding, a court may impose remedial sanctions if the court finds that a person failed or refused to perform an act that is within the person's power to perform. A remedial sanction is imposed for the purpose of coercing performance when the contempt involves refusing to perform an act that is in the person's power to perform.

A court may impose up to seven days of detention as a remedial sanction following a contempt of court finding in an ARY, CHINS, truancy, or dependency action.

Summary of Amended Bill:

After July 1, 2019, the court may no longer issue an order directing law enforcement to pick up a child and take the child to detention or order a youth to juvenile detention as a contempt of court sanction for truancy proceedings.

After July 1, 2021, the court may no longer issue an order directing law enforcement to pick up a child and take the child to detention or order a youth to juvenile detention as a contempt of court sanction for CHINS, ARY, or dependency proceedings.

Until July 1, 2021, any youth committed to juvenile detention as a contempt of court sanction or for failing to appear at a court hearing, must be detained in such a manner so that no direct communication or physical contact may be made between the youth and any youth who is detained in juvenile detention based on a criminal law violation.

Amended Bill Compared to Substitute Bill:

The amended bill specifies that the elimination of detention as a remedial sanction for truancy contempt of court proceedings is effective July 1, 2019.

The amended bill delays the elimination of detention as a remedial sanction for ARY, CHINS, and dependency proceedings until July 1, 2021.

The DCYF is required to conduct a study, jointly with the Office of Homeless Youth Prevention and Protection Programs (Office) within the Department of Commerce, on the public system response to families and youth in crisis who are seeking services to address family conflict in the absence of child abuse and neglect. The DCYF and the Office must

submit recommendations related to this study to the Governor and the Legislature by December 30, 2018.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 3 and 7, relating to elimination of detention for truancy offenses, which take effect July 1, 2019, and sections 4, 5, 8, and 10, relating to elimination of detention for other status offenses, which take effect July 1, 2021.

Staff Summary of Public Testimony:

(In support) Washington is an outlier in the use of detention for status offenses. More than half of the youth who are detained for status offenses are detained subject to a truancy proceeding.

The use of detention in a truancy proceeding is especially problematic because it results in children missing additional school. There is an upcoming report that discusses the change in other state policies to remove the use of detention for status offenses. The vast majority of states use less than 200 days of detention for status offenses. Four years ago, Washington accounted for 30 percent of the detention of status offenses across the country. This bill would not take effect until community truancy boards are fully implemented.

This would set many counties on the pathway toward reduced use of detention for status offenses. Clark County only used detention once in the past year for status offenses.

Ending detention for status offenses is important because the use of detention does more harm than good. There is wide variation in the use of detention in status offenses. Youth who are detained for status offenses are not willfully violating court orders. There is movement on the federal level to phase out the use of the valid court order exception. The use of detention is not a trauma-informed approach to status offenses.

The practice of detention for status offenses can lead to youth being accustomed to being locked up and has other negative consequences. Youth who are arrested and detained for status offenses feel like criminals. These youth need support and care and should not be treated like criminals.

Youth are detained for running away, staying out past curfew, and missing school. Often youth are just trying to find a safe place to be. When youth are arrested under these circumstances, it is often confusing to be treated like a criminal. Staying in detention never gets to the root of these problems. The use of detention leads to depression and loss of self-esteem.

(Opposed) The practices in the use of detention have changed dramatically. Judges do not like using detention for status offenses. However, this is the only sanction that the court has to get the attention of a youth. Without this bill, the child can tell a judge to "buzz off" without any recourse. Judicial orders should not be entered that can be ignored. There are two counties, Cowlitz and Chelan, that have secure crisis residential centers. If we had access to secure crisis residential beds, judges would support removal of detention.

There are different resources available throughout the state. Grays Harbor had nothing in the way of services. Catholic Community Services is now providing some services in Grays Harbor, and the use of detention has dramatically declined. It is very risky to pass this bill now and figure out the services later.

(Other) Changes should be made to the bill. It is not appropriate to fine families in poverty. Children should be the priority and should come before the funding. Families do not benefit from an overwhelming number of appointments.

Persons Testifying: (In support) Senator Darneille, prime sponsor; Liz Trautman, Zack Zibrosky, and Austin Jaquez, The Mockingbird Society.

(Opposed) Andrew Somers, Washington Association of Juvenile Court Administrators; and Stephen Warning, Superior Court Judges Association.

(Other) Stacy Bacon.

Persons Signed In To Testify But Not Testifying: None.