

# HOUSE BILL REPORT

## HB 1106

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

**Title:** An act relating to eliminating use of detention for violation of a truancy-related court order while providing more opportunities for truant youth to access services and treatment.

**Brief Description:** Eliminating use of detention for violation of a truancy-related court order while providing more opportunities for truant youth to access services and treatment.

**Sponsors:** Representatives Orwall, Kilduff, Wylie, Santos, Leavitt and Walen.

**Brief History:**

**Committee Activity:**

Civil Rights & Judiciary: 1/29/19, 2/8/19 [DPS].

**Brief Summary of Substitute Bill**

- Removes the statutory authority of the court to order detention for noncompliance with a truancy-related court order, effective July 1, 2020, and:
  - provides, until that date, that detention may be no longer than two days; and
  - provides, after that date, that a court may order the Department of Children, Youth, and Families to complete a family assessment and recommend that an At-Risk Youth petition be filed.
- Encourages juvenile courts to use distributions received for truancy petitions to engage in collaborative efforts with schools and community truancy boards (CTBs) aimed at improving attendance through case management and intervention, and the provision of supports and services.
- Provides that, subject to appropriations to the Office of the Superintendent of Public Instruction for grant funds to CTBs, 25 percent of the funds may be allocated for training of CTB members and 75 percent for the provision of services and treatment to children and their families.

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**HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY**

*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Klippert, Shea and Ybarra.

**Staff:** Cece Clynch (786-7195).

### **Background:**

#### Attendance Requirements and Truancy.

##### *School Truancy Processes.*

Children 8 years of age and under 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 who is 8 years of age and under 18 years of age has unexcused absences, schools and school districts must take certain steps to eliminate or reduce the child's absences:

1. After one unexcused absence in one month, the school must inform parents in writing or by phone of potential consequences of continued absences.
2. After three unexcused absences in one month, the school must schedule a conference with the parents and take steps to reduce absences. Such steps must be data-informed, include the use of the Washington Assessment of the Risks and Needs of Students (WARNS) for middle and high school students and, where appropriate, provide an available approved best practice or research-based intervention, or both, consistent with the WARNS.
3. After 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 (CTB), or file a truancy petition with the court.
4. 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 the age of 17. 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 the third step set forth above does not apply. Specific, additional steps are required with respect to students with individualized education plans (IEP) or 504 plans.

##### *Court Truancy Processes.*

By the beginning of the 2017-18 school year, juvenile courts were required to establish, through a memorandum of understanding (MOU) with each school district within their respective counties, a coordinated and collaborative approach to address truancy through the

establishment of a CTB or, with respect to school districts with fewer than 300 students, either a CTB or other coordinated means of intervention.

If a CTB or other coordinated means of intervention is in place, the court must initially stay a truancy petition and so refer the child and the child's parent. The CTB must provide to the court a description of the intervention and prevention efforts to be employed to substantially reduce the child's unexcused absences, along with a timeline for completion. If the CTB fails to reach an agreement or there is noncompliance, the CTB must return the case to the court, the stay must be lifted, and the court must schedule a hearing to consider the petition. If no CTB or coordinated means of intervention is in place pursuant to an MOU between the court and the district, upon filing of the petition the court must schedule a hearing.

At a hearing on a petition, a court may order a child to:

- attend school and set forth minimum attendance requirements;
- change schools; or
- submit to a substance abuse assessment or mental health evaluation if the court finds on the record that an assessment evaluation is appropriate to the circumstances.

If a child fails to comply with a court order, the court may impose community restitution, nonresidential programs with intensive wraparound services, a requirement that a child meet with a mentor, or other services and interventions that the court deems appropriate. If the child continues to fail to comply, and the court makes a finding that other measures to secure compliance have been tried but not been successful, and no less restrictive alternative is available, then the court may order detention as a remedial sanction. Detention may be for no longer than seven days. (Detention is not applicable to a 6 year old or 7 year old.)

In the event that a child is ordered detained for contempt of court for failure to adhere to a court order, preference is expressed that the child serve detention in a secure Crisis Residential Center near the child's home rather than in a juvenile detention facility.

The biennial budget generally includes an appropriation to the Administrator for the Courts (AOC) for distribution to county juvenile court administrators to fund the costs of processing a variety of petitions, including truancy petitions.

The AOC issues an annual report regarding juvenile detention, including detention for violation of a truancy-related court order. The Washington State 2017 Juvenile Detention Annual Report (issued in 2018) reports that there were 575 truancy-related detention admissions statewide in 2017, representing a 29.9 percent reduction from 2016 to 2017.

#### *Community Truancy Boards.*

A CTB must be composed of members of the local community in which a child attends school, and must include members who receive training regarding:

- the identification of barriers to school attendance;
- the use of the WARNS or other assessment tools to identify the specific needs of individual children, culturally responsive interactions, trauma-informed approaches to discipline, and evidence-based treatments that have been found effective in supporting at-risk youth and their families; and

- the specific services and treatment available in the particular school, court, community, and elsewhere.

Duties of a CTB include, but are not limited to, identifying barriers to attendance and recommending methods for improving attendance, such as connecting students and families with services, culturally appropriate promising practices, and evidence-based services.

In 2016 a competitive grant process was established within the Office of the Superintendent of Public Instruction to provide supplemental funding for training for CTB members and the provision of services and treatment to children and their families.

By January 1, 2021, the Washington State Institute for Public Policy must submit a report to the Legislature evaluating the effectiveness of the 2016 legislation which required an initial stay of truancy petitions for diversion to CTBs.

#### 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.
- The child is beyond parental control, such that his or her behavior endangers the health, safety, or welfare of the child or any other person.
- The child 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.

The court may impose remedial sanctions, including confinement for up to seven days, for contempt of the ARY court proceeding.

#### 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. By contrast, a punitive sanction is imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

In addition to statutorily authorized contempt powers to enforce orders, the courts have recognized that a court has inherent contempt power, both remedial and punitive, that is lodged permanently with the court.

#### Juvenile Justice and Delinquency Prevention Act.

The Juvenile Justice and Delinquency Prevention Act (JJDP) 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 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.

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### **Summary of Substitute Bill:**

#### Truancy.

The statutory authority of the court to order detention for noncompliance with a truancy-related court order is removed, effective July 1, 2020. Until July 1, 2020, detention for violation of such an order may be no longer than two days (down from seven days).

The Legislature particularly applauds the collaborative efforts underway in some communities across the state between juvenile courts on the one hand, and school district, educational service districts, and community truancy boards (CTBs), on the other hand. These efforts have been aimed at improving attendance through case management and intervention, and the provision of supports and services such as classes and activities; screenings to identify barriers to attendance and specific needs of individual children; trauma-informed approaches to discipline; evidence-based treatments that have been found to be effective in supporting at-risk youth (ARY) and their families, such as functional family therapy and dialectical behavior therapy; and culturally appropriate promising practices. The Legislature encourages other juvenile courts to follow this lead and to use distributions received pursuant to the Omnibus Operating Appropriations Act for truancy petitions to engage in similar collaborative efforts aimed at improving attendance.

To the extent monies are appropriated to the Office of the Superintendent of Public Instruction for grant funds to CTBs, 25 percent of the funds may be allocated for training of CTB members and 75 percent for the provision of services and treatment to children and their families.

#### At-Risk Youth.

Beginning July 1, 2020, in the event that a child is found in contempt of a truancy-related court order, the court may order the Department of Children, Youth, and Families (DCYF) complete a family assessment. If the assessment indicates that services and assistance available to ARY may facilitate compliance, the court may recommend that an ARY petition be filed by: the child's parent or guardian, with assistance from the DCYF; or, the DCYF if the parent or guardian does not file. The ARY statutory provisions are amended to permit the DCYF to file petitions and take other actions.

#### Contempt of Court.

Language is added to provisions in the school code and the statutory chapter relating to contempt expressly recognizing that nothing in the sections being amended to remove current statutory authority to impose detention as a remedial sanction for violation of a truancy-

related court order shall be construed to limit the court's inherent contempt power or curtail its exercise.

**Substitute Bill Compared to Original Bill:**

The entirety of the underlying bill is retained, and the following provisions are added:

- Effective immediately and until July 1, 2020, when detention for truancy-related court orders is eliminated, detention for truancy may not exceed two days (down from 7 days).
- The school code is amended to provide that, if a child continues to fail to comply with a truancy-related court order, the court may order that the Department of Children, Youth, and Families (DCYF) complete a family assessment and, if that assessment indicates that at-risk youth (ARY) services/assistance may facilitate compliance with mandatory attendance laws, recommend that an ARY petition be filed by the parent/guardian or the DCYF. At-risk youth provisions are amended to permit the DCYF to file an ARY petition and take other actions. These new ARY and DCYF provisions are effective on July 1, 2020, simultaneous with the effective date of the provisions eliminating the use of detention for violation of a truancy-related court order.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 2, 4, and 7 through 11, relating to removing the statutory authority of the courts to detain for noncompliance with a truancy-related court order and the new Department of Children, Youth, and Families and at-risk youth provisions, which take effect July 1, 2020.

**Staff Summary of Public Testimony:**

(In support) It has been over 20 years since the Becca law passed. One of the components of that law was putting resources in the community. Community truancy boards (CTBs) are working. Incredible partnerships have been formed. Each looks a little different from the other. For instance, in Federal Way they have a healing circle. The reasons why a child is not attending school regularly vary widely. For instance, in one case a student just stopped going to school due to feeling overwhelmed. What was needed for this student was a reworked class schedule. Another student was homeless. The CTBs should be continued, and additional resources should be put into the communities. Currently, courts are constrained as to how money can be used. Rather than limiting this money to processing cases, courts should be allowed to use these monies to provide more services. There is also a need for additional grant support. The petition process is an important tool, as is the stay for purposes of the CTB involvement and the provision of services. Some families respond to the court, while they do not necessarily respond to the school. Detention can have detrimental impacts, although it sometimes does provide access. Perhaps additional involvement by the Department of Children, Youth, and Families or at-risk youth (ARY)

petitions should be considered. Regular attendance is important, beginning in kindergarten. Attendance is part of the school accountability framework. The bill does not change the petition process or CTBs, and the partnerships with the courts is appreciated. Incarceration for status offenses must be ended. Washington is a leading user of this loophole. From the data available from the Office of the Superintendent of Public Instruction, detention does not seem to have a deterrent effect. Petitions are disproportionately filed against Native Americans and other persons of color. The timeline for removing detention should be moved up. Schools are overwhelmed, and school services alone are not enough. Many of the barriers faced by these children are very complex. The bill appropriately acknowledges the need for collaboration between schools and courts and the need to work together.

(Opposed) The superior court judges are opposed to the bill in its current form. Use of a valid court order exception in order to sometimes order detention is important. The CTBs are working well, however, detention is sometimes necessary if a child does not comply. It is important to get the appropriate resources to the children, and there are many tools that are used by the courts, including community service and requiring the child to write a paper. There is a need for leverage to be successful. A court order is an order, not an invitation. It can be a matter of life or death sometimes that a child is put in a safe place. There are not secure crisis residential centers everywhere. There is an ongoing effort to figure out the best way to move forward.

(Other) The use of detention in truancy matters is being measured by the courts. The most recent report, regarding 2017, is available on the website of the Administrative Office of the Courts and includes a county-by-county listing. There was a 29 to 30 percent reduction in admissions for detention from 2016 to 2017. Comparing the data available for the first six months of 2018 with 2017, it shows a similar reduction of 28 percent.

**Persons Testifying:** (In support) Representative Orwall, prime sponsor; Krissy Johnson, Office of the Superintendent of Public Instruction; Liz Trautman, The Mockingbird Society; and Charmaine Krause, Puyallup School District.

(Opposed) Kitty Ann Van Doorninck and Tom Parker, Superior Court Judges Association.

(Other) Carl McCurley, Center for Court Research.

**Persons Signed In To Testify But Not Testifying:** None.