

HOUSE BILL REPORT

HB 1434

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

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

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

Sponsors: Representatives Frame, Eslick, Kilduff, Callan, Davis, Dolan, Fitzgibbon, Peterson, Ryu, Shewmake, Steele, Stonier, Sutherland, Kloba, Walen, Robinson, Stanford, Jinkins, Leavitt and Ormsby.

Brief History:

Committee Activity:

Human Services & Early Learning: 2/1/19, 2/6/19 [DPS].

Brief Summary of Substitute Bill

- Eliminates the use of detention as a contempt sanction for truancy proceedings, dependency court proceedings, and child in need of services proceedings.
- Reduces the length of detention time allowed as a contempt sanction in at-risk youth proceedings from seven days to 72 hours on July 1, 2019, and eliminates this use of detention on July 1, 2021.
- Eliminates the authority for a juvenile court to order the pick up of a child based on a violation of a dependency court placement order.

HOUSE COMMITTEE ON HUMAN SERVICES & EARLY LEARNING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Senn, Chair; Callan, Vice Chair; Frame, Vice Chair; Eslick, Assistant Ranking Minority Member; Goodman, Kilduff, Lovick and Ortiz-Self.

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.

Minority Report: Do not pass. Signed by 5 members: Representatives Dent, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Corry, Griffey and Klippert.

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.
- 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.

Child in Need of Services.

A child in need of services (CHINS) court process allows a child, parent, guardian, or 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.
- The child 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.
- The child 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.

- The child is sexually exploited.

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 8 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 8 to 18 years of age has unexcused absences, schools and school districts must take certain 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 school 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.
- 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 after seven unexcused absences in a 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.

Dependency Court Proceedings.

Anyone, including the DCYF, may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. These petitions must be verified and contain a statement of facts that constitute a dependency and the names and residence of the parents if known.

When a child is taken into custody, the court is to hold a shelter care hearing within 72 hours. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the dependency case is being resolved.

If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, provision of services by the DCYF, compliance of the parents, and whether progress has been made by the parents.

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 court action.

Data Gathering

Juvenile courts are required to transmit youth-level secure detention data to the Administrative Office of the Courts (AOC) at least monthly. Juvenile courts must include:

- the name and birthdate of the youth;
- the court case number;
- the reason for admission to detention;
- the date of admission and exit; and
- the time spent in detention.

Summary of Substitute Bill:

Detention as a Contempt Sanction.

The use of detention as a contempt sanction for truancy proceedings, dependency court proceedings, and CHINS proceedings is eliminated effective July 1, 2019.

Law Enforcement Taking Children into Custody.

The authority for a juvenile court to order the pick up of a child based on a child violating a dependency court placement order is eliminated. Law enforcement who take a child into

custody after running away must return the child to a supervising agency or take the child to a designated crisis residential center, and not to a semi-secure crisis center or detention.

At-Risk Youth Proceedings.

The length of detention time allowed as a contempt sanction in at-risk youth proceedings is reduced from seven days to 72 hours, excluding weekends and holidays, effective July 1, 2019. If a child fails to comply with an at-risk youth 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 and interventions.

If one of the above alternatives has been attempted and another violation of the order occurs or if the court issues a formal finding that none of the less restrictive alternatives is available, the court may impose up to three days of confinement.

When the court finds probable cause to believe, based on a motion for contempt and a supporting declaration, that a child has violated a placement order, the court must direct the court clerk to command the presence of the child using a summons or other process instead of a warrant, unless the court finds probable cause to believe the youth would not appear or that an arrest is necessary to prevent serious bodily harm to the juvenile or another, in which case the court may issue a warrant. A warrant must be supported by an affidavit or sworn testimony, which must be recorded electronically or by stenographer. These warrants may not be served on a child inside of his or her school during school hours in a location where other students are present. If a child fails to appear after being summoned, the court may issue an order directing law enforcement to take the child to detention.

The use of detention as a contempt sanction for at-risk youth proceedings and warrant authority for at-risk youth proceedings are eliminated effective July 1, 2021.

The AOC detention report must monitor trends in the use of at-risk youth petitions as well as the race and gender of these youth until July 1, 2022.

Child in Need of Services Proceedings.

Parents may file a child in need of services court petition before waiting two working days following a request for a family assessment to be completed by the DCYF.

Substitute Bill Compared to Original Bill:

The substitute bill eliminates the requirement that the DCYF provide family reconciliation services if requested by a family and the DCYF reporting requirement regarding family reconciliation services. The substitute bill replaces the limitation on detention imposed for violations of at-risk youth proceedings to three days with a limitation that the detention not exceed 72 hours, excluding weekends and holidays. The substitute bill specifies that whenever a court finds probable cause to believe a child is missing from care, the court may issue an order directing law enforcement to return the child to the DCYF.

The substitute also allows courts to impose parent-teen mediation services and interventions offered by dispute resolution centers following a finding that a youth failed to comply with an at-risk youth or truancy court proceeding.

Appropriation: None.

Fiscal Note: Requested on January 24, 2019.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2019, except sections 4 and 6, relating to elimination of detention as a contempt sanction for at-risk youth court proceedings, which take effect July 1, 2021.

Staff Summary of Public Testimony:

(In support) This bill ends detention for noncriminal offenses, which 25 other states have already done. Being detained for running away from an unsafe placement is a humiliating and wrong practice. Kids who run away should not be put in detention, as that detention often has a negative impact on youth. Family reconciliation services can support families, and this program should be expanded. Jail is the worst option for noncriminal behavior of youth. There is a disproportionate impact of noncriminal youth detention on lesbian, gay, bisexual, transgender, and questioning persons, and racial minorities. Jail takes away a person's soul. Detaining the most vulnerable kids in detention is harmful. The majority of youth who are detained in this manner can be placed in HOPE centers. Kids are exposed to additional trauma when jailed for noncriminal offenses. This detention makes kids much less trustful of adults and the programs that are available to them. This bill provides the correct legal solution to this problem. This bill would not have saved Rebecca Hedman, the person for whom the "Becca" laws are named after.

(Opposed) The valid court order is a necessary component of the Becca laws. The Becca laws were passed as a response to the death of Rebecca Hedman to try and prevent that tragedy from happening again. Often detention is the only service available for courts to keep kids safe. Attendance and participation in community truancy boards is excellent right now, and this is partly because of the court's authority to detain youth. After beginning to use community truancy boards, the use of truancy detention has declined. It makes sense to keep the current process in place until the Washington State Institute for Public Policy study is completed in 2021. The increased due process requirements and reporting components of this bill are positive. However, courts need to be able to enforce a court order. Taking away the contempt sanction leaves courts with no ability to enforce a court order. There is an inherent ability for courts to exercise contempt in addition to statutory contempt authority. By removing the statutory authority for court contempt, the Legislature may be inviting a constitutional conflict. Juvenile courts would prefer to have services and housing to place juveniles in instead of detention.

Persons Testifying: (In support) Representative Frame, prime sponsor; Annie Blackledge, Kim Hines, Yasmin Tyler, and Farid Rasuli, The Mockingbird Society; Celia Jackson, King County Executive Office; Wendy Heipt, Justice for Girls Coalition; Colleen Shea-Brown,

Legal Counsel for Youth and Children; Haydee Vargas, King County Public Defense Office; Jim Theofolis, A Way Home Washington; and Gordon McHenry, Jr., Washington Partnership Council on Juvenile Justice.

(Opposed) Tom McBride and Jack Murphy, Washington Association of Juvenile Court Administrators; and Sean O'Donnell, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: Frank Ordway, Department of Children, Youth, and Families; Krissy Johnson, Office of the Superintendent of Public Instruction; Jody Suhrbier, Resolution Washington; Patrick Dowd, Office of the Family and Children's Ombuds; and Roz Thompson, Association of Washington School Principals; and Liz Trautman, The Mockingbird Society.