
Human Services & Early Learning Committee

E2SSB 5290

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Darneille, Wellman, Kuderer, Randall, Palumbo, Das, Hasegawa, McCoy, Nguyen, Saldaña and Wilson, C.).

Brief Summary of Engrossed Second Substitute Bill

- Reduces the maximum period of detention allowed as a court contempt sanction for truancy, dependency, at-risk youth (ARY), and child in need of services (CHINS) court proceedings from seven days to 72 hours, excluding weekends and holidays beginning on the next weekday after the order.
- Requires a court to issue certain formal written findings before imposing remedial sanctions including a fine up to \$150 and confinement up to 72 hours in ARY and truancy proceedings.
- Requires the Department of Children, Youth, and Families to provide families who are in conflict or who are experiencing problems with an ARY or a child who may be in need of services with family reconciliation services in a timely manner upon request by the family or once an ARY or CHINS petition is filed.

Hearing Date: 3/20/19

Staff: Luke Wickham (786-7146).

Background:

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

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justice system. The JJDPA 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.

Family Reconciliation Services.

Family Reconciliation Services (FRS) are voluntary services provided by the Department of Children, Youth, and Families for runaway adolescents, and youth in conflict with their families. The program targets adolescents between ages 12 through 17. The FRS are temporary and attempt to resolve family crises and prevent unnecessary out-of-home placement. These services include:

- short-term family counseling;
- crisis residential services;
- referrals for substance abuse treatment and counseling;
- referrals for mental health services;
- short-term placement; and
- family assessments that connect to juvenile court services.

Crisis Residential Centers.

A Crisis Residential Center (CRC) is a secure or semi-secure facility that provides emergency, temporary residence, assessment, referrals, and permanency planning services for youth ages 12 through 17.

The CRCs provide emergency, temporary residence, assessment, referrals, and permanency planning services for youth ages 12 through 17. Youth may be admitted to a CRC when law enforcement brings a youth who is:

- absent from parental custody without consent;
- in circumstances which constitute a danger to the youth's safety;
- in violation of a local curfew ordinance;
- a runaway from placement;
- in violation of a court placement order; or
- being unlawfully harbored.

Youth may also receive services from a CRC following a truancy, CHINS, or ARY court order.

A youth's parent may remove the youth from the CRC at any time unless the CRC staff has reasonable cause to believe that the youth is experiencing abuse or neglect at home. Youth who

are not court ordered in a truancy action may only reside in a CRC up to 72 hours, excluding Saturdays, Sundays, and holidays. Afterward, the youth may continue to stay at the CRC only with parental consent, a CHINS petition has been filed, or a court order for placement is entered.

The CRCs may be secure or semi-secure. A secure CRC has locking doors, windows, or secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff. A semi-secure CRC is operated in a manner to reasonably assure that youth placed there will not run away.

Secure CRCs may exist within a juvenile detention facility if the program is operated in a manner that prevents in-person contact between the residents and the persons held in juvenile detention.

Secure CRCs may exist outside of juvenile detention facilities if the facility has locking doors, locking windows, or a secured perimeter, designed and operated to prevent youth from leaving without permission of staff. The maximum length of stay in a nondetention secure CRC is 15 days and five days in a detention secure CRC.

There are two secure CRCs in Washington, located at the Chelan County Juvenile Detention Center and the Clallam County Juvenile Detention Center. Each of these secure CRCs have four beds available for a total of eight beds available in the state. There are four other semi-secure CRCs in Washington, with a total of 52 beds.

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 Bill:

Detention as a Contempt Sanction.

The maximum period of detention allowed as a court contempt sanction for truancy, dependency, ARY, and CHINS court proceedings is reduced from seven days to 72 hours, excluding weekends and holidays. The 72-hour period begins on the next nonholiday weekday following the court order and runs to the end of the last nonholiday weekday within the 72-hour period. These sanctions may not be imposed more than twice during a 30-day period. The court may not order detention as a court contempt sanction in these proceedings if placement is available in a CRC or other secure juvenile facility in the county where the action is pending.

At-Risk Youth Proceedings.

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

- community restitution;
- nonresidential programs with intensive wraparound services;
- a requirement that the child meet with a mentor for a specified number of times; or

- other services and interventions that the court deems appropriate.

The court may only impose remedial sanctions including a fine up to \$150 and confinement up to 72 hours upon issuing formal written findings that it:

- considered, on the record, mitigating and aggravating factors used to determine the appropriateness of detention for enforcement of its order;
- affirmed that it considered all less restrictive options, that detention is the only appropriate alternative, including its rationale and the clear, cogent, and convincing evidence used to enforce the order;
- afforded the same due process considerations that it affords all youth in a criminal contempt proceeding; and
- sought input from all relevant parties.

When the court finds probable cause to believe, based on a motion for contempt and a supporting declaration, that a child has violated an ARY 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.

A CHINS or ARY contempt sanction cannot be served in a juvenile detention facility when the case is filed in a county with an operational and secure CRC with an unused bed.

Family Reconciliation Services.

If requested by the family, the DCYF must provide families who are in conflict or who are experiencing problems with an ARY or a child who may be in need of services with family reconciliation services, or its successor program before or once an ARY or CHINS petition is filed. The DCYF should provide these services in a timely manner once requested by the family.

The DCYF must report to the Legislature annually, beginning December 31, 2019, on the use of family reconciliation services, any significant reductions or outcomes within the program, and any recommendations for improvement.

Child in Need of Services Proceedings.

Parents may file a CHINS court petition before waiting two working days following a request for a family assessment to be completed by the DCYF.

Violation of a Placement Order.

A court may issue an order directing law enforcement to take a dependent child who is missing from care into custody and return the child to DCYF custody. The authority for law enforcement to place children subject to dependency, truancy, CHINS, and ARY proceedings in detention following a violation of a placement order or upon a court order directing law enforcement to pick up the child is removed, while authority to take these children into custody remains. For

ARY proceedings only, courts may direct the presence of a youth to appear through a summons or a warrant as described above.

Truancy Proceedings.

The court may impose remedial sanctions, including a fine of up to \$100 and confinement for up to 72 hours, or both, for contempt of court in truancy proceedings upon issuing formal written findings that it:

- considered, on the record, the mitigating and aggravating factors used to determine the appropriateness of detention for enforcement of its order;
- affirmed that it considered all less restrictive options, that detention is the only appropriate alternative, including its rationale and the clear, cogent, and convincing evidence used to enforce the order;
- afforded the same due process considerations that it affords all youth in a criminal contempt proceeding; and
- sought input from all relevant parties, including the youth.

The court may impose no more than two such 72-hour periods in a 30-day period.

Administrative Office of the Courts Data Gathering.

The statewide report produced by the AOC regarding detention imposed as a violation of a court order in truancy, ARY, and CHINS proceedings shall measure the impacts of the written findings required under the bill for ARY contempt proceedings on reducing the use of juvenile detention as a remedy for contempt of a valid court order.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.