

# SENATE BILL REPORT

## E2SSB 5290

As Amended by House, April 9, 2019

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

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 1/23/19, 1/29/19 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/13/19, 2/28/19 [DP2S, DNP, w/oRec].

**Floor Activity:**

Passed Senate: 3/12/19, 35-14.

Passed House: 4/09/19, 52-44.

### Brief Summary of Engrossed Second Substitute Bill

- Announces that it is the policy of the state to reduce juvenile detention as a remedy for contempt of a valid court order (VCO).
- Allows the courts to impose remedial sanctions and confinement up to 72 hours if it meets certain criteria.
- Limits confinement to no more than two 72 hour periods in a 30 day time frame.
- Requires that a contempt sanction cannot be served in a juvenile detention facility when the case is filed in a county with an operational and secure crisis residential center with an unused bed.
- Requires the courts to ensure that the annual statewide report delivered to the Legislature in 2021 provides sufficient information to measure the impacts of these changes on reducing the use of VCO exception.

*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.*

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## SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Majority Report:** That Substitute Senate Bill No. 5290 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Cleveland and Wilson, C..

**Minority Report:** Do not pass.

Signed by Senators Walsh, Ranking Member; O'Ban.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Zeiger.

**Staff:** Keri Waterland (786-7490)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5290 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo and Pedersen.

**Minority Report:** Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

**Minority Report:** That it be referred without recommendation.

Signed by Senator Bailey.

**Staff:** Maria Hovde (786-7474)

**Background:** The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP) provides federal funding to local jurisdictions to support juvenile justice activities, provided that they comply with certain core requirements. One such requirement is the deinstitutionalization of status offenders. A status offender is a juvenile who is incarcerated for actions that would not be considered offenses if done by an adult. Common status offenses nationally include skipping school, running away, breaking curfew, defying parental instructions, and possession or use of alcohol or tobacco.

A 1984 amendment to the JJDP provides for an exception to the deinstitutionalization of status offenders requirement, which is known as the valid court order (VCO) exception. The VCO exception allows judges to place youth adjudicated for status offenses in secure detention when the youth has disobeyed an order of the court, such as to attend school. Washington law permits courts to order secure detention for juveniles pursuant to the VCO exception in certain instances.

When members of a family are experiencing conflict, the parent of a child may file an at-risk-youth (ARY) petition under certain circumstances. An ARY is a juvenile who is absent from home for at least 72 hours without parental consent; who is beyond the control of the parent such that the juvenile's behavior endangers the health, safety, and welfare of the juvenile or another person; or who has a substance use disorder for which there are no pending criminal charges. If a court grants an ARY petition, the court may order the juvenile to reside at home with the parent or to reside in an agreed out-of-home placement. The court may set further conditions of supervision including, but not limited to, regular school attendance, counseling, participation in substance use disorder or mental health treatment, or employment. The court may also place requirements on parents. If a juvenile fails to abide by the requirements of an ARY order, the court may find the juvenile in contempt and place the juvenile in remedial detention for up to seven days, impose up to a \$100 fine, or both.

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; 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 their 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.

Washington's dependency laws allow the court to issue a placement order placing a child in out-of-home care following a shelter care or fact-finding hearing alleging that the juvenile is a dependent child. A dependent child is a child who has been abandoned, abused or neglected by a person legally responsible for their care, or who has no parent or guardian capable of adequately caring for them in circumstances which cause danger of substantial damage to a child's development. A court may issue an order directing law enforcement to take a child into custody based on probable cause to believe that the child has violated a placement order.

Washington's truancy laws require schools to take a range of actions to reduce a student's unexcused absences from school. Among these obligations is filing of a truancy petition in

juvenile court when a student has amassed seven unexcused absences within a month or ten unexcused absences within a school year. Truancy petitions must be stayed upon filing and referred to a community truancy board (CTB) in school districts with over 250 students. If CTB intervention fails to ameliorate the student's unexcused absences, the case must be returned to juvenile court for a hearing. If the court finds the student has unexcused absences, that actions taken by the school district have not been successful in reducing the absences, and court intervention is necessary, the court may issue an order requiring the child to attend school and to fulfill other requirements, such as undergoing an assessment for mental health or substance use disorder treatment needs. If the child fails to comply with this court order, the court may commit the child to remedial detention for up to seven days or impose alternatives to detention, such as community restitution.

**Summary of Engrossed Second Substitute Bill:** After July 1, 2019, no youth may be placed in detention as a contempt sanction or based on a warrant pursuant to laws related to CHINS, truancy, or dependency.

After July 1, 2021, no youth may be placed in detention as a contempt sanction or based on a warrant pursuant to laws related to ARY, unless the court:

- considers, on the record, the mitigating and aggravating factors used to determine the appropriateness of detention for enforcement of its order;
- affirms 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;
- affords the same due process considerations that it affords all youth in criminal contempt proceedings; and
- seeks input from all relevant parties, including the youth.

Any ARY committed to juvenile detention under chapters relating to ARY 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 pursuant to a violation of criminal law, unless the requirement would result in the youth being placed in solitary confinement.

The court may impose, for ARY, graduated contempt sanctions such as community restitution, or mentoring, with detention as the last resort if a less restrictive alternative has been attempted and another violation has occurred or after a formal finding that no less restrictive alternative is available. ARY petition cases shall have a maximum stay in detention of 72 hours, excluding Saturdays, Sundays, and holidays, with the 72-hour period commencing upon the next nonholiday weekday following the court order and shall run to the end of the last nonholiday weekday within the 72-hour period. The court may not impose more than two remedial sanctions during a 30-day period. The court may not order detention for ARY if placement is available at a crisis residential center or other secure juvenile facility in the county in which the action is pending. A contempt sanction for ARY cannot be served in a juvenile detention facility when the case is filed in a county with an operational and secure crisis residential center with an unused bed.

DCYF must provide family reconciliation services (FRS), or its successor program, if requested by the family, before or once a petition is filed. DCYF must complete a family

assessment under FRS. A CHINS petition may be filed before completion of a family assessment under FRS.

Beginning December 31, 2019, DCYF must report annually to the Legislature on the use of FRS and any reductions or outcomes along with recommendations for improvement.

The court must issue a summons to the child prior to issuing an arrest warrant for violation of an order. Arrest warrants are prohibited from being served on school grounds during school hours.

Law enforcement may return youth who are in contempt of a dependency order to DCYF or shall take a child to a designated crisis residential center's secure facility. If the secure facility is not available, not located within a reasonable distance, or full, the officer shall take the child to a semi-secure crisis residential center. An officer taking a child into custody may place the child in a juvenile detention facility or a secure facility, except that the child shall be taken to detention whenever the officer has been notified that a juvenile court has entered a detention order.

The Administrative Offices of the Courts must ensure that the annual statewide report delivered to the Legislature in 2021 provides sufficient information to measure the impacts of the changes of this act on reducing the use of juvenile detention as a remedy for contempt of a valid court order for ARY.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates, and contains an emergency clause that takes effect immediately. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill (Human Services, Reentry & Rehabilitation):** *The committee recommended a different version of the bill than what was heard.* PRO: The mission is to end incarceration of youth who commit status offenses is in this bill. The court orders were meant to be used rarely, and while I have pride in what the state has done so far, prevention is better than curative or reactive work. We embrace the use of science and respect research, and continuing to incarcerate youth for status offenses is contrary to science. This bill allows for the phasing out of the VCO and is informed by science, and the practice is already legal in many other states. OJJDP was just updated, and this bills gets us in compliance with federal law. Youth have experienced so much trauma, and incarceration compounds this and does not work. Trauma informed work and supports are needed. Programs such as FRS, respite care, and counseling already exist and can be expanded, because criminalizing noncriminal behavior is detrimental to the youth we treat. I was in foster care, which was a lifesaver for me but to my siblings it was the loss of our parents. My sister acted out and was labeled as an ARY. She spent time going into and out of juvenile detention, but this did not improve her behavior, and made it worse. The FRS services provided were too short. We should help those at risk, not punish them. After my

dad passed away it was difficult; we became homeless and my brother was not attending school and we did not have any resources. When he was kicked out of school, court and juvenile detention were the answer. But we know alternatives are needed, help is what is needed, not punishment or threats of jail when someone is already in crisis. This needs to be treated with a public health approach to figure out why the system has failed these youth. We need to be less restrictive and traumatizing, and create trauma sensitive environments. Trauma changes the brain and makes people do things out of survival. This is an epidemic of intergenerational trauma and is a public health problem. We must move from a vicious cycle to a virtuous cycle; trauma is exacerbated in this cycle, and persons of color have the highest rates of incarceration. The majority of girls in the system have mental health, behavioral health, suicide, self-harm, adverse childhood experiences, and trauma. These cases are more complex, and many girls enter the system as non-violent individuals. Trauma and acting out is likely to continue until the root cause is addressed. Arresting is not evidence-based practice, best practice, or even effective. We are in violation of federal law for dependency, and this bill fixes that. Thank you for the creation of DCYF and the system change. Truancy prevention begins with regular attendance at school and is an indicator of success, and a safe place is needed with alternatives. We need funding to end this practice. If we eliminate incarceration for status offenses, then we need to ensure there are appropriate resources. We have no objection to the due process and graduated sanctions portions.

CON: There are some youth who will not voluntarily submit to services. Previous legislation was meant to engage youth and get help; if they refuse help, there is no secure alternative. Juvenile detention is not ideal, but it is all that this state has, and is where these kids get services. Crisis Residential Centers and other secure facilities need to be expanded, but until then, we are opposed. When youth are an immediate threat to themselves, these secure alternatives are needed. Improvements have been made in the detention rates of status offenses. We oppose the lack of ability to enforce court orders in the bill. We make orders and if they know I can't enforce a VCO, then the purpose and authority of the court is in question.

OTHER: Principles and schools rely on partnerships to provide programs to youth who need services, and sometimes detention may be necessary. We are concerned this bill may eliminate something that may save a life. Schools want to partner to figure this out together.

**Persons Testifying (Human Services, Reentry & Rehabilitation):** PRO: Senator Jeannie Darnelle, Prime Sponsor; Annie Blackledge, The Mockingbird Society; Kim Hines, The Mockingbird Society; Yasmin Tyler, The Mockingbird Society; Marcus Stubblefield, King County; Jody McVittie, ED, Sound Discipline; Wendy Heipt, Justice for Girls Coalition of Washington State; Brian Carroll, Washington Associate for children and families; Krissy Johnson, Office of Superintendent of Public Instruction; Frank Ordway, Department of Children Youth and Families; Patrick Dowd, Office of the Family & Children's Ombuds.

CON: Sean O'Donnell, Superior Court Judges' Association; Lisa Tremblay, Juvenile Court Administrators; Tom McBride, Juvenile Court Administrators.

OTHER: Roz Thompson, Association of Washington School Principals.

**Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: Washington State is an outlier in the use of valid court order exceptions. Seven counties in the state incarcerate more than 100 youth per year for status offenses, which exceeds what most states use for the valid court order exception. This bill would reduce by 849 the number of youth incarcerated for these offenses. Jailing youth for non-criminal offenses is not an evidence-based practice. Truant youth who are court involved have outcomes worse than those who are not, according to a Washington State Institute for Public Policy study. There will be overall savings from decreased detention and increases in prevention services. A focus on trauma-informed responses will end harmful practices. In King County, the costs to detain these youth are four times that of youth detained for criminal violations because of the need for sight and sound separation. There are HOPE centers that can be used as alternative placements for these youth. Families need support and courts are using the tools they have, but we need to provide more tools before getting to this point.

CON: The valid court order is an important tool of the courts. This bill undermines the ability to help these youth. These cases can include sexually exploited individuals and youth with chemical dependency issues. Detention is only used when necessary and the trend is working as there is an overall decline in detention for these youth. Having a secure facility may be the only option in some areas. Detention facilities do offer services to youth while detained and provide referrals to other services as needed. If there is not statutory direction for how to use this exception it will likely result in different uses throughout the state.

**Persons Testifying (Ways & Means):** PRO: Annie Blackledge, The Mockingbird Society; Celia Jackson, Deputy Director Government Relations, Office of King County Executive; Alicia Ferris, Chief Clinical Officer, Community Youth Services.

CON: Tom Parker, Superior Court Judges Association; Brooke Powell, Washington Association of Juvenile Court Administrators.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Eliminates the use of detention as a court contempt sanction for child in need of services, truancy, and dependency court proceedings on July 1, 2019.
- Maintains the same maximum detention period that can be imposed as a court contempt sanction for at-risk youth court proceedings at 72-hours excluding weekends and beginning on the next nonholiday weekday. Current law allows a maximum detention period of seven days.
- Eliminates the use of detention as a court contempt sanction for at-risk youth court proceedings on July 1, 2022.
- Allows courts to commit a juvenile to a secure crisis residential center or any program approved by the Department of Children, Youth, and Families (DCYF) offering secure

confinement and intensive wraparound services as an at-risk youth remedial court sanction beginning July 1, 2022.

- Eliminates the requirement that the DCYF provide family reconciliation services in a timely manner if requested by the family.
- Specifies that nothing in the act that removes statutory authority to impose detention as a remedial sanction for status offenses shall be construed to limit the court's inherent contempt power, or curtail its exercise.