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**SENATE BILL 5463**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senator Lovick

AN ACT Relating to juvenile access to an attorney; and amending RCW 13.40.740.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 13.40.740 and 2021 c 328 s 1 are each amended to read as follows:

(1) Except as provided in subsection ((~~(4)~~)) (5) of this section, law enforcement shall provide a juvenile who is suspected of committing a criminal offense with access to an attorney for consultation, which may be provided in person, by telephone, or by video conference, before the juvenile waives any constitutional rights if a law enforcement officer:

(a) Questions a juvenile during a custodial interrogation;

(b) Detains a juvenile based on probable cause of involvement in criminal activity; or

(c) Requests that the juvenile provide consent to an evidentiary search of the juvenile or the juvenile's property, dwellings, or vehicles under the juvenile's control.

(2) The consultation required by subsection (1) of this section may not be waived.

(3) Statements made by a juvenile after the juvenile is contacted by a law enforcement officer in a manner described under subsection (1) of this section are not admissible in the state's case in chief in a juvenile offender or adult criminal court proceeding in which said juvenile is a defendant, unless:

(a) The juvenile has been provided with access to an attorney for consultation; and the juvenile provides an express waiver knowingly, intelligently, and voluntarily made by the juvenile after the juvenile has been fully informed of the rights being waived as required under RCW 13.40.140;

(b) The statement is for impeachment purposes; or

(c) The statement was made spontaneously.

(4) Physical evidence obtained in violation of this section shall not be admissible in the state's case in chief only when such evidence would be subject to exclusion pursuant to *United States v. Patane*, 542 U.S. 630 (2004) and subsequent case law.

(5) A law enforcement officer may question a juvenile without following the requirement in subsection (1) of this section if:

(a) The law enforcement officer provides an age-appropriate statement of applicable rights to the juvenile, including miranda rights and ferrier rights where appropriate, and the juvenile provides an express waiver knowingly, intelligently, and voluntarily, and the statement of rights, waiver, and subsequent interview or search is audio and video recorded by the law enforcement officer;

(b) The law enforcement officer believes the juvenile is a victim of trafficking as defined in RCW 9A.40.100; however, any information obtained from the juvenile by law enforcement pursuant to this subsection cannot be used in any prosecution of that juvenile; ((~~or~~

~~(b)~~)) (c) The juvenile indicates that their statement would be exculpatory in nature;

(d) The law enforcement officer seeks only to identify or locate others involved in an alleged crime or recover evidence or property; or

(e)(i) The law enforcement officer believes that the information sought is necessary to protect an individual's life from an imminent threat;

(ii) A delay to allow legal consultation would impede the protection of an individual's life from an imminent threat; and

(iii) Questioning by the law enforcement officer is limited to matters reasonably expected to obtain information necessary to protect an individual's life from an imminent threat.

((~~(5)~~)) (6) After the juvenile has consulted with legal counsel, the juvenile may advise, direct a parent or guardian to advise, or direct legal counsel to advise the law enforcement officer ((~~that~~)) whether the juvenile chooses to assert or waive a constitutional right. Any assertion of constitutional rights by the juvenile through legal counsel must be treated by a law enforcement officer as though it came from the juvenile, however, legal counsel may not assert constitutional rights on behalf of the juvenile without the juvenile's consent. ((~~The~~)) A juvenile who has asserted their constitutional rights directly or through a parent, guardian, or legal counsel may subsequently waive their constitutional rights at any time, if the waiver of any constitutional rights of the juvenile ((~~may only be~~)) is made according to the applicable requirements of RCW 13.40.140.

((~~(6)~~)) (7) For purposes of this section, the following definitions apply:

(a) "Juvenile" means any individual who is under the chronological age of ((~~18~~)) 16 years; and

(b) "Law enforcement officer" means any general authority, limited authority, or specially commissioned Washington peace officer ((~~or federal peace officer~~)) as those terms are defined in RCW 10.93.020, including school resource officers as defined in RCW 28A.320.124 ((~~and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes~~)).

**--- END ---**