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HOUSE BILL 1724

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By Representatives Roberts, Kagi, Pettigrew, Goodman, Green, Reykdal, Cody, Jinkins, Appleton, Freeman, Moeller, Ryu, Pollet, Moscoso, and Bergquist

Read first time 02/06/13. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to statements made by juveniles during assessments  
2 or screenings for mental health or chemical dependency treatment; and  
3 amending RCW 13.40.020 and 13.40.140.

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

5 **Sec. 1.** RCW 13.40.020 and 2012 c 201 s 1 are each amended to read  
6 as follows:

7 For the purposes of this chapter:

8 (1) "Assessment" means an individualized examination of a child to  
9 determine the child's psychosocial needs and problems, including the  
10 type and extent of any mental health, substance abuse, or co-occurring  
11 mental health and substance abuse disorders, and recommendations for  
12 treatment. "Assessment" includes, but is not limited to, drug and  
13 alcohol, psychological and psychiatric evaluations, records review,  
14 clinical interview, and administration of a formal test or instrument;

15 (2) "Community-based rehabilitation" means one or more of the  
16 following: Employment; attendance of information classes; literacy  
17 classes; counseling, outpatient substance abuse treatment programs,  
18 outpatient mental health programs, anger management classes, education  
19 or outpatient treatment programs to prevent animal cruelty, or other

1 services; or attendance at school or other educational programs  
2 appropriate for the juvenile as determined by the school district.  
3 Placement in community-based rehabilitation programs is subject to  
4 available funds;

5 ~~((+2))~~ (3) "Community-based sanctions" may include one or more of  
6 the following:

- 7 (a) A fine, not to exceed five hundred dollars;
- 8 (b) Community restitution not to exceed one hundred fifty hours of  
9 community restitution;

10 ~~((+3))~~ (4) "Community restitution" means compulsory service,  
11 without compensation, performed for the benefit of the community by the  
12 offender as punishment for committing an offense. Community  
13 restitution may be performed through public or private organizations or  
14 through work crews;

15 ~~((+4))~~ (5) "Community supervision" means an order of disposition  
16 by the court of an adjudicated youth not committed to the department or  
17 an order granting a deferred disposition. A community supervision  
18 order for a single offense may be for a period of up to two years for  
19 a sex offense as defined by RCW 9.94A.030 and up to one year for other  
20 offenses. As a mandatory condition of any term of community  
21 supervision, the court shall order the juvenile to refrain from  
22 committing new offenses. As a mandatory condition of community  
23 supervision, the court shall order the juvenile to comply with the  
24 mandatory school attendance provisions of chapter 28A.225 RCW and to  
25 inform the school of the existence of this requirement. Community  
26 supervision is an individualized program comprised of one or more of  
27 the following:

- 28 (a) Community-based sanctions;
- 29 (b) Community-based rehabilitation;
- 30 (c) Monitoring and reporting requirements;
- 31 (d) Posting of a probation bond;

32 ~~((+5))~~ (6) "Confinement" means physical custody by the department  
33 of social and health services in a facility operated by or pursuant to  
34 a contract with the state, or physical custody in a detention facility  
35 operated by or pursuant to a contract with any county. The county may  
36 operate or contract with vendors to operate county detention  
37 facilities. The department may operate or contract to operate  
38 detention facilities for juveniles committed to the department.

1 Pretrial confinement or confinement of less than thirty-one days  
2 imposed as part of a disposition or modification order may be served  
3 consecutively or intermittently, in the discretion of the court;

4 ~~((+6+))~~ (7) "Court," when used without further qualification, means  
5 the juvenile court judge(s) or commissioner(s);

6 ~~((+7+))~~ (8) "Criminal history" includes all criminal complaints  
7 against the respondent for which, prior to the commission of a current  
8 offense:

9 (a) The allegations were found correct by a court. If a respondent  
10 is convicted of two or more charges arising out of the same course of  
11 conduct, only the highest charge from among these shall count as an  
12 offense for the purposes of this chapter; or

13 (b) The criminal complaint was diverted by a prosecutor pursuant to  
14 the provisions of this chapter on agreement of the respondent and after  
15 an advisement to the respondent that the criminal complaint would be  
16 considered as part of the respondent's criminal history. A  
17 successfully completed deferred adjudication that was entered before  
18 July 1, 1998, or a deferred disposition shall not be considered part of  
19 the respondent's criminal history;

20 ~~((+8+))~~ (9) "Department" means the department of social and health  
21 services;

22 ~~((+9+))~~ (10) "Detention facility" means a county facility, paid for  
23 by the county, for the physical confinement of a juvenile alleged to  
24 have committed an offense or an adjudicated offender subject to a  
25 disposition or modification order. "Detention facility" includes  
26 county group homes, inpatient substance abuse programs, juvenile basic  
27 training camps, and electronic monitoring;

28 ~~((+10+))~~ (11) "Diversion unit" means any probation counselor who  
29 enters into a diversion agreement with an alleged youthful offender, or  
30 any other person, community accountability board, youth court under the  
31 supervision of the juvenile court, or other entity except a law  
32 enforcement official or entity, with whom the juvenile court  
33 administrator has contracted to arrange and supervise such agreements  
34 pursuant to RCW 13.40.080, or any person, community accountability  
35 board, or other entity specially funded by the legislature to arrange  
36 and supervise diversion agreements in accordance with the requirements  
37 of this chapter. For purposes of this subsection, "community  
38 accountability board" means a board comprised of members of the local

1 community in which the juvenile offender resides. The superior court  
2 shall appoint the members. The boards shall consist of at least three  
3 and not more than seven members. If possible, the board should include  
4 a variety of representatives from the community, such as a law  
5 enforcement officer, teacher or school administrator, high school  
6 student, parent, and business owner, and should represent the cultural  
7 diversity of the local community;

8 ~~((+11+))~~ (12) "Foster care" means temporary physical care in a  
9 foster family home or group care facility as defined in RCW 74.15.020  
10 and licensed by the department, or other legally authorized care;

11 ~~((+12+))~~ (13) "Institution" means a juvenile facility established  
12 pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

13 ~~((+13+))~~ (14) "Intensive supervision program" means a parole  
14 program that requires intensive supervision and monitoring, offers an  
15 array of individualized treatment and transitional services, and  
16 emphasizes community involvement and support in order to reduce the  
17 likelihood a juvenile offender will commit further offenses;

18 ~~((+14+))~~ (15) "Juvenile," "youth," and "child" mean any individual  
19 who is under the chronological age of eighteen years and who has not  
20 been previously transferred to adult court pursuant to RCW 13.40.110,  
21 unless the individual was convicted of a lesser charge or acquitted of  
22 the charge for which he or she was previously transferred pursuant to  
23 RCW 13.40.110 or who is not otherwise under adult court jurisdiction;

24 ~~((+15+))~~ (16) "Juvenile offender" means any juvenile who has been  
25 found by the juvenile court to have committed an offense, including a  
26 person eighteen years of age or older over whom jurisdiction has been  
27 extended under RCW 13.40.300;

28 ~~((+16+))~~ (17) "Labor" means the period of time before a birth  
29 during which contractions are of sufficient frequency, intensity, and  
30 duration to bring about effacement and progressive dilation of the  
31 cervix;

32 ~~((+17+))~~ (18) "Local sanctions" means one or more of the following:  
33 (a) 0-30 days of confinement; (b) 0-12 months of community supervision;  
34 (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

35 ~~((+18+))~~ (19) "Manifest injustice" means a disposition that would  
36 either impose an excessive penalty on the juvenile or would impose a  
37 serious, and clear danger to society in light of the purposes of this  
38 chapter;

1        ~~((19))~~ (20) "Monitoring and reporting requirements" means one or  
2 more of the following: Curfews; requirements to remain at home,  
3 school, work, or court-ordered treatment programs during specified  
4 hours; restrictions from leaving or entering specified geographical  
5 areas; requirements to report to the probation officer as directed and  
6 to remain under the probation officer's supervision; and other  
7 conditions or limitations as the court may require which may not  
8 include confinement;

9        ~~((20))~~ (21) "Offense" means an act designated a violation or a  
10 crime if committed by an adult under the law of this state, under any  
11 ordinance of any city or county of this state, under any federal law,  
12 or under the law of another state if the act occurred in that state;

13        ~~((21))~~ (22) "Physical restraint" means the use of any bodily  
14 force or physical intervention to control a juvenile offender or limit  
15 a juvenile offender's freedom of movement in a way that does not  
16 involve a mechanical restraint. Physical restraint does not include  
17 momentary periods of minimal physical restriction by direct person-to-  
18 person contact, without the aid of mechanical restraint, accomplished  
19 with limited force and designed to:

20        (a) Prevent a juvenile offender from completing an act that would  
21 result in potential bodily harm to self or others or damage property;

22        (b) Remove a disruptive juvenile offender who is unwilling to leave  
23 the area voluntarily; or

24        (c) Guide a juvenile offender from one location to another;

25        ~~((22))~~ (23) "Postpartum recovery" means (a) the entire period a  
26 woman or youth is in the hospital, birthing center, or clinic after  
27 giving birth and (b) an additional time period, if any, a treating  
28 physician determines is necessary for healing after the youth leaves  
29 the hospital, birthing center, or clinic;

30        ~~((23))~~ (24) "Probation bond" means a bond, posted with sufficient  
31 security by a surety justified and approved by the court, to secure the  
32 offender's appearance at required court proceedings and compliance with  
33 court-ordered community supervision or conditions of release ordered  
34 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of  
35 cash or posting of other collateral in lieu of a bond if approved by  
36 the court;

37        ~~((24))~~ (25) "Respondent" means a juvenile who is alleged or  
38 proven to have committed an offense;

1           ~~((+25+))~~ (26) "Restitution" means financial reimbursement by the  
2 offender to the victim, and shall be limited to easily ascertainable  
3 damages for injury to or loss of property, actual expenses incurred for  
4 medical treatment for physical injury to persons, lost wages resulting  
5 from physical injury, and costs of the victim's counseling reasonably  
6 related to the offense. Restitution shall not include reimbursement  
7 for damages for mental anguish, pain and suffering, or other intangible  
8 losses. Nothing in this chapter shall limit or replace civil remedies  
9 or defenses available to the victim or offender;

10           ~~((+26+))~~ (27) "Restorative justice" means practices, policies, and  
11 programs informed by and sensitive to the needs of crime victims that  
12 are designed to encourage offenders to accept responsibility for  
13 repairing the harm caused by their offense by providing safe and  
14 supportive opportunities for voluntary participation and communication  
15 between the victim, the offender, their families, and relevant  
16 community members;

17           ~~((+27+))~~ (28) "Restraints" means anything used to control the  
18 movement of a person's body or limbs and includes:

19           (a) Physical restraint; or

20           (b) Mechanical device including but not limited to: Metal  
21 handcuffs, plastic ties, ankle restraints, leather cuffs, other  
22 hospital-type restraints, tasers, or batons;

23           ~~((+28+))~~ (29) "Screening" means a process that is designed to  
24 identify a child who is at risk of having mental health, substance  
25 abuse, or co-occurring mental health and substance abuse disorders that  
26 warrant immediate attention, intervention, or more comprehensive  
27 assessment. A screening may be undertaken with or without the  
28 administration of a formal instrument;

29           (30) "Secretary" means the secretary of the department of social  
30 and health services. "Assistant secretary" means the assistant  
31 secretary for juvenile rehabilitation for the department;

32           ~~((+29+))~~ (31) "Services" means services which provide alternatives  
33 to incarceration for those juveniles who have pleaded or been  
34 adjudicated guilty of an offense or have signed a diversion agreement  
35 pursuant to this chapter;

36           ~~((+30+))~~ (32) "Sex offense" means an offense defined as a sex  
37 offense in RCW 9.94A.030;

1       (~~(+31+)~~) (33) "Sexual motivation" means that one of the purposes  
2 for which the respondent committed the offense was for the purpose of  
3 his or her sexual gratification;

4       (~~(+32+)~~) (34) "Surety" means an entity licensed under state  
5 insurance laws or by the state department of licensing, to write  
6 corporate, property, or probation bonds within the state, and justified  
7 and approved by the superior court of the county having jurisdiction of  
8 the case;

9       (~~(+33+)~~) (35) "Transportation" means the conveying, by any means,  
10 of an incarcerated pregnant youth from the institution or detention  
11 facility to another location from the moment she leaves the institution  
12 or detention facility to the time of arrival at the other location, and  
13 includes the escorting of the pregnant incarcerated youth from the  
14 institution or detention facility to a transport vehicle and from the  
15 vehicle to the other location;

16       (~~(+34+)~~) (36) "Violation" means an act or omission, which if  
17 committed by an adult, must be proven beyond a reasonable doubt, and is  
18 punishable by sanctions which do not include incarceration;

19       (~~(+35+)~~) (37) "Violent offense" means a violent offense as defined  
20 in RCW 9.94A.030;

21       (~~(+36+)~~) (38) "Youth court" means a diversion unit under the  
22 supervision of the juvenile court.

23       **Sec. 2.** RCW 13.40.140 and 1981 c 299 s 11 are each amended to read  
24 as follows:

25       (1) A juvenile shall be advised of his or her rights when appearing  
26 before the court.

27       (2) A juvenile and his or her parent, guardian, or custodian shall  
28 be advised by the court or its representative that the juvenile has a  
29 right to be represented by counsel at all critical stages of the  
30 proceedings. Unless waived, counsel shall be provided to a juvenile  
31 who is financially unable to obtain counsel without causing substantial  
32 hardship to himself or herself or the juvenile's family, in any  
33 proceeding where the juvenile may be subject to transfer for criminal  
34 prosecution, or in any proceeding where the juvenile may be in danger  
35 of confinement. The ability to pay part of the cost of counsel does  
36 not preclude assignment. In no case may a juvenile be deprived of

1 counsel because of a parent, guardian, or custodian refusing to pay  
2 therefor. The juvenile shall be fully advised of his or her right to  
3 an attorney and of the relevant services an attorney can provide.

4 (3) The right to counsel includes the right to the appointment of  
5 experts necessary, and the experts shall be required pursuant to the  
6 procedures and requirements established by the supreme court.

7 (4) Upon application of a party, the clerk of the court shall  
8 issue, and the court on its own motion may issue, subpoenas requiring  
9 attendance and testimony of witnesses and production of records,  
10 documents, or other tangible objects at any hearing, or such subpoenas  
11 may be issued by an attorney of record.

12 (5) All proceedings shall be transcribed verbatim by means which  
13 will provide an accurate record.

14 (6) The general public and press shall be permitted to attend any  
15 hearing unless the court, for good cause, orders a particular hearing  
16 to be closed. The presumption shall be that all such hearings will be  
17 open.

18 (7) In all adjudicatory proceedings before the court, all parties  
19 shall have the right to adequate notice, discovery as provided in  
20 criminal cases, opportunity to be heard, confrontation of witnesses  
21 except in such cases as this chapter expressly permits the use of  
22 hearsay testimony, findings based solely upon the evidence adduced at  
23 the hearing, and an unbiased fact finder.

24 (8) A juvenile shall be accorded the same privilege against self-  
25 incrimination as an adult. An extrajudicial statement which would be  
26 constitutionally inadmissible in a criminal proceeding may not be  
27 received in evidence at an adjudicatory hearing over objection.  
28 Evidence illegally seized or obtained may not be received in evidence  
29 over objection at an adjudicatory hearing to prove the allegations  
30 against the juvenile if the evidence would be inadmissible in an adult  
31 criminal proceeding. An extrajudicial admission or confession made by  
32 the juvenile out of court is insufficient to support a finding that the  
33 juvenile committed the acts alleged in the information unless evidence  
34 of a corpus delicti is first independently established in the same  
35 manner as required in an adult criminal proceeding.

36 (9) Statements, admissions, or confessions made by a juvenile in  
37 the course of a mental health or chemical dependency screening or  
38 assessment, whether or not the screening or assessment was ordered by



1 the court, shall not be admissible into evidence against the juvenile  
2 on the issue of guilt in any juvenile offense matter or adult criminal  
3 proceeding, unless the juvenile has placed his or her mental health at  
4 issue. The statement is admissible for any other purpose or proceeding  
5 allowed by law. This prohibition does not apply to statements,  
6 admissions, or confessions made to law enforcement, and may not be used  
7 to argue for derivative suppression of other evidence lawfully obtained  
8 as a result of an otherwise inadmissible statement, admission, or  
9 confession.

10 (10) Waiver of any right which a juvenile has under this chapter  
11 must be an express waiver intelligently made by the juvenile after the  
12 juvenile has been fully informed of the right being waived.

13 ((+10+)) (11) Whenever this chapter refers to waiver or objection  
14 by a juvenile, the word juvenile shall be construed to refer to a  
15 juvenile who is at least twelve years of age. If a juvenile is under  
16 twelve years of age, the juvenile's parent, guardian, or custodian  
17 shall give any waiver or offer any objection contemplated by this  
18 chapter.

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