
SUBSTITUTE HOUSE BILL 1644

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Juvenile Justice & Family Law (originally sponsored by Representative B. Sullivan)

READ FIRST TIME 02/25/05.

1 AN ACT Relating to interrogation and waiver; amending RCW
2 13.40.140; and adding new sections to chapter 13.40 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.40 RCW
5 to read as follows:

6 Parents have a fundamental interest in knowing if their child has
7 been taken into police custody for questioning and where their child is
8 being held. Because a parent or guardian is most often in a position
9 to provide a juvenile with guidance in matters of great importance to
10 a juvenile, it is the intent of the legislature to assist parents in
11 their ability to aid and guide their children when making important
12 legal decisions, including the decision to waive legal rights during
13 custodial interrogations. It is also the intent of the legislature to
14 provide children in police custody the opportunity to seek and receive
15 consultation with his or her parents.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.40 RCW
17 to read as follows:

18 (1) When a law enforcement officer takes a juvenile into custody,

1 the officer must make reasonable attempts to notify a parent, guardian,
2 or custodian that the juvenile is in custody and where the juvenile is
3 being held.

4 (2) When a parent, guardian, or custodian requests to consult with
5 a juvenile in custody and makes himself or herself immediately
6 available, he or she shall be permitted to consult with the juvenile
7 immediately upon his or her request, unless: (a) The juvenile objects
8 to the consultation while in the presence of the parent, guardian, or
9 custodian; or (b) the parent, guardian, or custodian is a codefendant
10 or victim of the juvenile.

11 **Sec. 3.** RCW 13.40.140 and 1981 c 299 s 11 are each amended to read
12 as follows:

13 (1) Prior to questioning a juvenile in custody, a juvenile must be
14 advised of his or her rights in substantially the following language:

15 (a) That the juvenile has a right to remain silent;

16 (b) That any statement the juvenile makes can be and may be used
17 against the juvenile;

18 (c) That the juvenile has a right to consult with an attorney; and

19 (d) That the juvenile has a right to consult with his or her
20 parent, guardian, or custodian prior to questioning.

21 (2) A juvenile shall be advised of his or her rights when appearing
22 before the court.

23 ((+2)) (3) A juvenile and his or her parent, guardian, or
24 custodian shall be advised by the court or its representative that the
25 juvenile has a right to be represented by counsel at all critical
26 stages of the proceedings. ((Unless waived,)) Counsel shall be
27 provided to a juvenile who is financially unable to obtain counsel
28 without causing substantial hardship to himself or herself or the
29 juvenile's family, in any proceeding where the juvenile may be subject
30 to transfer for criminal prosecution, or in any proceeding where the
31 juvenile may be in danger of confinement. The ability to pay part of
32 the cost of counsel does not preclude assignment. In no case may a
33 juvenile be deprived of counsel because of a parent, guardian, or
34 custodian refusing to pay therefor. The juvenile shall be fully
35 advised of his or her right to an attorney and of the relevant services
36 an attorney can provide.

1 ~~((3))~~ (4) In any court proceeding pursuant to this chapter in
2 which a child has a right to the assistance of counsel under
3 constitutional, statutory, or common law, or by court rule, the child
4 may not waive this right except as provided in this subsection.

5 (a) A parent, guardian, or custodian of a child may not waive the
6 child's right to the assistance of counsel.

7 (b) In any court proceeding pursuant to this chapter in which a
8 child has a right to the assistance of counsel under constitutional,
9 statutory, or common law, or by court rule, and the child indicates a
10 desire to waive that right, the court may not accept the waiver unless:

11 (i) The child is in the presence of counsel and has consulted with
12 counsel; and

13 (ii) The court determines that the waiver is knowing and voluntary.

14 (c) The court shall find that the waiver was knowing and voluntary
15 only if, after appropriate questioning in open court and on the record,
16 it finds that the child fully comprehends:

17 (i) The nature of the allegations and the proceedings, and the
18 range of allowable dispositions;

19 (ii) That counsel would be of valuable assistance in determining
20 and presenting any defenses to the allegations in the petition or
21 charge, or other mitigating circumstances;

22 (iii) That the right to the assistance of counsel includes the
23 right to the prompt assignment of an attorney, without charge to the
24 child or the child's parents if they are financially unable to obtain
25 private counsel;

26 (iv) That even if the child intends not to contest the petition or
27 charge, counsel may be of substantial assistance in developing and
28 presenting material that could favorably affect the disposition;

29 (v) That among the child's rights at any hearing are the right to
30 call witnesses on the child's behalf, the right to confront and cross-
31 examine witnesses, the right to obtain witnesses by compulsory process,
32 and the right to require proof of the elements of the charge or status
33 offense.

34 (d) In making its judgment, the court should consider evidence of
35 the child's school performance and any testing which the school may
36 have conducted.

37 (e)(i) Unless the court dismisses the case, if a child appears
38 without counsel for any hearing, including a waiver hearing, and the

1 child has not previously waived the right to the assistance of counsel
2 in accordance with this subsection, the court shall continue and the
3 clerk shall reschedule the hearing, and the clerk shall issue a notice
4 of the date, time, and location of the hearing at least ten days prior
5 to the date of the hearing.

6 (ii) The continuance of a hearing may not be a basis for detaining
7 the child.

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

11 ~~((4))~~ (6) Upon application of a party, the clerk of the court
12 shall issue, and the court on its own motion may issue, subpoenas
13 requiring attendance and testimony of witnesses and production of
14 records, documents, or other tangible objects at any hearing, or such
15 subpoenas may be issued by an attorney of record.

16 ~~((5))~~ (7) All proceedings shall be transcribed verbatim by means
17 which will provide an accurate record.

18 ~~((6))~~ (8) The general public and press shall be permitted to
19 attend any hearing unless the court, for good cause, orders a
20 particular hearing to be closed. The presumption shall be that all
21 such hearings will be open.

22 ~~((7))~~ (9) In all adjudicatory proceedings before the court, all
23 parties shall have the right to adequate notice, discovery as provided
24 in criminal cases, opportunity to be heard, confrontation of witnesses
25 except in such cases as this chapter expressly permits the use of
26 hearsay testimony, findings based solely upon the evidence adduced at
27 the hearing, and an unbiased fact-finder.

28 ~~((8))~~ (10) A juvenile shall be accorded the same privilege
29 against self-incrimination as an adult. An extrajudicial statement
30 which would be constitutionally inadmissible in a criminal proceeding
31 may not be received in evidence at an adjudicatory hearing over
32 objection. Evidence illegally seized or obtained may not be received
33 in evidence over objection at an adjudicatory hearing to prove the
34 allegations against the juvenile if the evidence would be inadmissible
35 in an adult criminal proceeding. An extrajudicial admission or
36 confession made by the juvenile out of court is insufficient to support
37 a finding that the juvenile committed the acts alleged in the

1 information unless evidence of a corpus delicti is first independently
2 established in the same manner as required in an adult criminal
3 proceeding.

4 ((+9+)) (11) Waiver of any right which a juvenile has under this
5 chapter must be an express waiver intelligently made by the juvenile
6 after the juvenile has been fully informed of the right being waived.

7 ((+10+)) (12) Whenever this chapter refers to waiver or objection
8 by a juvenile, the word juvenile shall be construed to refer to a
9 juvenile who is at least twelve years of age. If a juvenile is under
10 twelve years of age, the juvenile's parent, guardian, or custodian
11 shall give any waiver or offer any objection contemplated by this
12 chapter.

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