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SENATE BILL 5266

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State of Washington

60th Legislature

2007 Regular Session

By Senators McAuliffe, Hargrove, Stevens, Regala, Fairley, Franklin and Shin

Read first time 01/15/2007. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to juveniles in the custody of law enforcement  
2 officers; amending RCW 13.40.140; and adding new sections to chapter  
3 13.40 RCW.

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

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

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

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

1 (1) When a law enforcement officer takes a juvenile into custody,  
2 the officer must make reasonable attempts to notify a parent, guardian,  
3 or custodian that the juvenile is in custody and where the juvenile is  
4 being held.

5 (2) When a parent, guardian, or custodian requests to consult with  
6 a juvenile age fifteen or younger who is in custody, and makes himself  
7 or herself immediately available in person or by telephone, he or she  
8 must be permitted to consult with the juvenile immediately upon his or  
9 her request, unless: (a) The juvenile objects to the consultation; or  
10 (b) the parent, guardian, or custodian is a codefendant or victim of  
11 the juvenile.

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

14 (1) Prior to questioning a juvenile in custody, law enforcement  
15 must advise a juvenile of his or her rights in substantially the  
16 following language:

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

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

20 (c) That the juvenile has a right to consult with an attorney and  
21 the right to have an attorney present during questioning;

22 (d) That if the juvenile or his or her family cannot afford to hire  
23 an attorney, an attorney will be provided; and

24 (e) That the juvenile has a right to consult with his or her  
25 parent, guardian, or custodian.

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

28 ((+2)) (3) A juvenile and his or her parent, guardian, or  
29 custodian shall be advised by the court or its representative that the  
30 juvenile has a right to be represented by counsel at all critical  
31 stages of the proceedings. Unless waived, counsel shall be provided to  
32 a juvenile who is financially unable to obtain counsel without causing  
33 substantial hardship to himself or herself or the juvenile's family, in  
34 any proceeding where the juvenile may be subject to transfer for  
35 criminal prosecution, or in any proceeding where the juvenile may be in  
36 danger of confinement. The ability to pay part of the cost of counsel  
37 does 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))~~ (4) The right to counsel includes the right to the  
5 appointment of experts necessary, and the experts shall be required  
6 pursuant to the procedures and requirements established by the supreme  
7 court.

8 ~~((+4))~~ (5) Upon application of a party, the clerk of the court  
9 shall issue, and the court on its own motion may issue, subpoenas  
10 requiring attendance and testimony of witnesses and production of  
11 records, documents, or other tangible objects at any hearing, or such  
12 subpoenas may be issued by an attorney of record.

13 ~~((+5))~~ (6) All proceedings shall be transcribed verbatim by means  
14 which will provide an accurate record.

15 ~~((+6))~~ (7) The general public and press shall be permitted to  
16 attend any hearing unless the court, for good cause, orders a  
17 particular hearing to be closed. The presumption shall be that all  
18 such hearings will be open.

19 ~~((+7))~~ (8) In all adjudicatory proceedings before the court, all  
20 parties shall have the right to adequate notice, discovery as provided  
21 in criminal cases, opportunity to be heard, confrontation of witnesses  
22 except in such cases as this chapter expressly permits the use of  
23 hearsay testimony, findings based solely upon the evidence adduced at  
24 the hearing, and an unbiased fact-finder.

25 ~~((+8))~~ (9) A juvenile shall be accorded the same privilege against  
26 self-incrimination as an adult. An extrajudicial statement which would  
27 be constitutionally inadmissible in a criminal proceeding may not be  
28 received in evidence at an adjudicatory hearing over objection.  
29 Evidence illegally seized or obtained may not be received in evidence  
30 over objection at an adjudicatory hearing to prove the allegations  
31 against the juvenile if the evidence would be inadmissible in an adult  
32 criminal proceeding. An extrajudicial admission or confession made by  
33 the juvenile out of court is insufficient to support a finding that the  
34 juvenile committed the acts alleged in the information unless evidence  
35 of a corpus delicti is first independently established in the same  
36 manner as required in an adult criminal proceeding.

37 ~~((+9))~~ (10) Waiver of any right which a juvenile has under this

1 chapter must be an express waiver intelligently made by the juvenile  
2 after the juvenile has been fully informed of the right being waived.

3 ~~((10))~~ (11) Whenever this chapter refers to waiver or objection  
4 by a juvenile, the word juvenile shall be construed to refer to a  
5 juvenile who is at least twelve years of age. If a juvenile is under  
6 twelve years of age, the juvenile's parent, guardian, or custodian  
7 shall give any waiver or offer any objection contemplated by this  
8 chapter.

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