

CHAPTER 288

[Engrossed Senate Bill No. 4738]

JUVENILE OFFENDERS

AN ACT Relating to juveniles; amending RCW 13.32A.050, 13.32A.070, 13.40.200, 13.40.300, 13.40.025, 13.40.027, and 13.50.010; adding a new section to chapter 13.40 RCW; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 19, chapter 155, Laws of 1979 as last amended by section 7, chapter 257, Laws of 1985 and RCW 13.32A.050 are each amended to read as follows:

A law enforcement officer shall take a child into custody:

(1) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or

(2) If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's ((physical)) safety; or

(3) If an agency legally charged with the supervision of a child has notified a law enforcement agency that the child has run away from placement; or

(4) If a law enforcement agency has been notified by the juvenile court that the court finds probable cause exists to believe that the child has violated a court placement order issued pursuant to chapter 13.32A RCW.

Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination.

An officer who takes a child into custody under this section and places the child in a designated crisis residential center shall inform the department of such placement within twenty-four hours.

(5) Nothing in this section affects the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law.

Sec. 2. Section 21, chapter 155, Laws of 1979 as amended by section 5, chapter 298, Laws of 1981 and RCW 13.32A.070 are each amended to read as follows:

(1) An officer taking a child into custody under RCW 13.32A.050 may, at his or her discretion, transport the child to the home of a responsible adult who is other than the child's parent where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in the custody of such adult until such time as the department can bring about the child's return home or an alternative residential placement can be agreed to or determined pursuant to this chapter. An officer placing a child with a responsible adult other than his or

her parent shall immediately notify the department's local community service office of this fact and of the reason for taking the child into custody.

(2) A law enforcement officer acting (~~(reasonably and)~~) in good faith pursuant to this chapter in failing to take a child into custody, in taking a child into custody, or in releasing a child to a person other than a parent of such child is immune from civil or criminal liability for such action.

(3) A person other than a parent of such child who receives a child pursuant to this chapter and who acts reasonably and in good faith in doing so is immune from civil or criminal liability for the act of receiving such child. Such immunity does not release such person from liability under any other law including the laws regulating licensed child care and prohibiting child abuse.

NEW SECTION. Sec. 3. There shall be created a joint select legislative committee to review the implementation and administration of:

(1) Chapter 13.04 RCW, the basic juvenile court act;

(2) Chapter 13.32A RCW, procedures for families in conflict generally, and specifically review the alternative residential placement process and the advisability of granting the juvenile court jurisdiction to make in-house placements. The committee shall consider the establishment of a residential school to address the needs of children who, pursuant to law, may be ordered into an alternative residential placement. A residential school may be funded and operated, in whole or in part by private contributions;

(3) Chapter 13.34 RCW, the juvenile court act relating to dependency of a child and the termination of a parent and child relationship; and

(4) Chapter 74.13 RCW, child welfare services.

The joint select legislative committee shall be composed of bipartisan members of the house and senate judiciary committee to be selected at the discretion of the committee chairpersons.

The committee established under this section shall meet and conduct hearings as often as is necessary to carry out its responsibilities under this chapter.

In reviewing the implementation and administration of chapters 13.04, 13.32A, 13.34, and 74.13 RCW the joint select legislative committee may inquire into instances where it is alleged that a law enforcement officer, school employee, department employee, judge, or juvenile court employee has either misrepresented a provision of the cited chapters or has failed to follow any such provision.

The joint select legislative committee shall be granted access to all relevant information necessary to monitor behavior of agencies and/or employees: PROVIDED, That any confidential information shall be kept confidential by members of the committee and shall not be further disseminated unless specifically authorized by state or federal law.

The joint select legislative committee shall report its findings and make recommendations regarding implementation of the chapters cited in this

section in a report submitted to the legislature before the 1988 regular session of the legislature.

The joint select legislative committee, unless recreated by the legislature, shall cease to exist after submitting the report required under this section.

NEW SECTION. Sec. 4. The legislature finds that there is evidence of failure to implement and enforce juvenile justice laws. This failure may be due to a number of factors, including, but not necessarily limited to, resource limitations within the various units of government charged with responsibility for such implementation and enforcement.

Therefore, commencing with the effective date of this act, and continuing through such time as further legislative direction is enacted into law, any person legally responsible for implementation or enforcement of any provision of chapter 13.04, 13.32A, 13.34, or 74.13 RCW who is unable to implement or enforce any such provision shall file a report on the situation as soon as possible with the oversight committee created under section 3 of this act or, if the oversight committee has ceased to exist, to the judiciary committees of the house of representatives and the senate. Any such report shall include a documented description of the situation and the reason or reasons for failure to implement or enforce the provision in question.

Nothing contained in this section is intended to limit criminal or civil liability or to protect any employee against possible disciplinary action for failure to perform his or her duties.

Sec. 5. Section 74, chapter 291, Laws of 1977 ex. sess. as last amended by section 15, chapter 191, Laws of 1983 and RCW 13.40.200 are each amended to read as follows:

(1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a wilful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform community service hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community service.

(3) (a) If the court finds that a respondent has wilfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days' confinement. Penalties for multiple

violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

(b) If the violation of the terms of the order under (a) of this subsection is failure to pay fines, penalty assessments, complete community service, or make restitution, the term of confinement imposed under (a) of this subsection shall be assessed at a rate of one day of confinement for each twenty-five dollars or eight hours owed.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community service. The number of hours of community service in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section.

Sec. 6. Section 1, chapter 170, Laws of 1975 1st ex. sess. as last amended by section 17, chapter 191, Laws of 1983 and RCW 13.40.300 are each amended to read as follows:

(1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) ~~((The juvenile court has committed the juvenile offender to the department of social and health services for a sentence consisting of the standard range of disposition for the offense and the sentence includes a period beyond the juvenile offender's eighteenth birthday; or~~

~~(b) The juvenile court has committed the juvenile offender to the department of social and health services for a sentence outside the standard range of disposition for the offense and the sentence includes a period beyond the juvenile's eighteenth birthday and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile offender for that period; or~~

(c)) Proceedings are pending seeking the adjudication of a juvenile offense (~~or seeking a disposition order or the enforcement of such an order~~) and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition; or

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday.

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older.

NEW SECTION. Sec. 7. It is the policy of this state that all county juvenile detention facilities provide a humane, safe, and rehabilitative environment and that unadjudicated youth remain in the community whenever possible, consistent with public safety and the provisions of chapter 13.40 RCW.

Sec. 8. Section 3, chapter 299, Laws of 1981 as amended by section 11, chapter 287, Laws of 1984 and RCW 13.40.025 are each amended to read as follows:

(1) There is established a juvenile disposition standards commission to propose disposition standards to the legislature in accordance with RCW 13.40.030 and perform the other responsibilities set forth in this chapter.

(2) The commission shall be composed of the secretary or the secretary's designee and the following ~~((eight))~~ nine members appointed by the governor, subject to confirmation by the senate: (a) A superior court judge; (b) a prosecuting attorney or deputy prosecuting attorney; (c) a law enforcement officer; (d) an administrator of juvenile court services; (e) a public defender actively practicing in juvenile court; ~~((and))~~ (f) a county legislative official or county executive; and (g) three other persons who have demonstrated significant interest in the adjudication and disposition of juvenile offenders. In making the appointments, the governor shall seek the

recommendations of the association of superior court judges in respect to the member who is a superior court judge; of Washington prosecutors in respect to the prosecuting attorney or deputy prosecuting attorney member; of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer; of juvenile court administrators in respect to the member who is a juvenile court administrator; and of the state bar association in respect to the public defender member; and of the Washington association of counties in respect to the member who is either a county legislative official or county executive.

(3) The secretary or the secretary's designee shall serve as chairman of the commission.

(4) The secretary shall serve on the commission during the secretary's tenure as secretary of the department. The term of the remaining members of the commission shall be three years. The initial terms shall be determined by lot conducted at the commission's first meeting as follows: (a) Four members shall serve a two-year term; and (b) four members shall serve a three-year term. In the event of a vacancy, the appointing authority shall designate a new member to complete the remainder of the unexpired term.

(5) Commission members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members shall be compensated in accordance with RCW 43.03.240.

(6) ~~((The commission's first meeting shall be held prior to January 1, 1982. Thereafter,))~~ The commission shall meet at least once every ((six)) three months.

Sec. 9. Section 4, chapter 299, Laws of 1981 and RCW 13.40.027 are each amended to read as follows:

(1) It is the responsibility of the commission to: (a) (i) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally and (ii) specifically review the guidelines relating to the confinement of minor and first offenders as well as the use of diversion. The committee shall propose modifications to the legislature regarding subsection (1)(a)(ii) of this section by January 1, 1987; (b) solicit the comments and suggestions of the juvenile justice community concerning disposition standards; and (c) develop and propose to the legislature modifications of the disposition standards in accordance with RCW 13.40.030.

(2) It is the responsibility of the department to: (a) Provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders; (b) at the request of the commission, provide technical and administrative assistance to the commission in the performance of its responsibilities; and (c) provide the commission with recommendations for modification of the disposition standards.

NEW SECTION. Sec. 10. A new section is added to chapter 13.40 RCW to read as follows:

The commission, in cooperation and consultation with the judiciary committees of the senate and house of representatives, shall propose to the legislature state-wide standards by November 1, 1987, on the following subjects:

(1) The detention intake procedures used and decisions made to release or detain youth in juvenile detention facilities;

(2) The use of punishment, security, and control mechanisms such as isolation, restraints, program restrictions, and the procedures required for their use;

(3) Availability and quality of health care;

(4) Inventory and storage of residents' belongings;

(5) Access to defense counsel;

(6) Residents' rights to communicate with persons outside the facility; and

(7) Information gathering and reporting necessary for educated decision-making by the commission and for the proper monitoring of facilities for compliance with commission standards.

The standards proposed under this section shall become effective upon approval by the legislature.

Sec. 11. Section 8, chapter 155, Laws of 1979 and RCW 13.50.010 are each amended to read as follows:

(1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the department of social and health services and its contracting agencies, and persons or public or private agencies having children committed to their custody;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Social file" means the juvenile court file containing the records and reports of the probation counselor;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information;

(b) An agency shall take reasonable steps to insure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment, or to individuals or agencies engaged in legitimate research for educational, scientific, or public purposes. The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050(11). Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the juvenile disposition standards commission under RCW 13.40.025 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

NEW SECTION. Sec. 12. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 11, 1986.

Passed the House March 11, 1986.

Approved by the Governor April 4, 1986.

Filed in Office of Secretary of State April 4, 1986.

CHAPTER 289

[Substitute Senate Bill No. 4797]

UNDERGROUND STORAGE TANKS

AN ACT Relating to underground storage tanks; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that underground storage tanks may be leaking petroleum products and other hazardous substances in quantities sufficient to pose a threat to public health and the environment. The legislature further finds that congress has adopted Subtitle I under the hazardous and solid waste amendments of 1984 (Public Law 98-616), which addresses the issue of leaking underground storage tanks and prescribes a new federal program to control this source of pollution.

(2) The department of ecology shall, no later than December 31, 1986, after consulting with representatives of the business community, submit a report to the appropriate standing committees of the legislature which describes and assesses the nature of the underground storage tank problem in the state. This report shall include, but is not limited to the following information:

- (a) The number of underground storage tanks in the state;
- (b) The location of underground storage tanks in the state;
- (c) The age, size, and materials used to construct tanks identified;
- (d) The substances stored in the tanks; and
- (e) Leak detection methods currently used.

The report shall be accompanied by an overview of underground storage tank programs implemented or proposed for implementation in other selected states and the federal government, and shall include the costs and methods of funding those programs, and their cost-effectiveness. The report