
ENGROSSED SUBSTITUTE SENATE BILL 6238

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Stevens and Swecker)

Read first time 02/05/98.

1 AN ACT Relating to dependent children; and amending RCW 13.34.050,
2 13.34.060, 13.34.090, and 13.34.120.

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

4 **Sec. 1.** RCW 13.34.050 and 1979 c 155 s 38 are each amended to read
5 as follows:

6 (1) The court may enter an order directing a law enforcement
7 officer, probation counselor, or child protective services official to
8 take a child into custody if: (a) A petition is filed with the
9 juvenile court alleging that the child is dependent and that the
10 child's health, safety, and welfare will be seriously endangered if not
11 taken into custody; (b) an affidavit or declaration is filed in support
12 of the petition setting forth specific factual information evidencing
13 reasonable grounds that the child's health, safety, and welfare will be
14 seriously endangered if not taken into custody and at least one of the
15 grounds set forth demonstrates a risk of imminent harm to the child.
16 "Imminent harm" for purposes of this section shall include
17 circumstances of sexual abuse, or sexual exploitation as defined in RCW
18 26.44.020; and (c) the court finds reasonable grounds to believe the

1 child is dependent and that the child's health, safety, and welfare
2 will be seriously endangered if not taken into custody.

3 (2) Any petition that does not have the necessary affidavit or
4 declaration demonstrating a risk of imminent harm requires notice and
5 an opportunity to be heard by the parents.

6 (3) The petition and supporting documentation must be served on the
7 parent and the entity with whom the child is in custody at the time the
8 child is removed. Failure to effect service does not invalidate the
9 petition if service was attempted and the parent could not be found.

10 **Sec. 2.** RCW 13.34.060 and 1990 c 246 s 1 are each amended to read
11 as follows:

12 (1) A child taken into custody pursuant to RCW 13.34.050 or
13 26.44.050 shall be immediately placed in shelter care. A child taken
14 by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070
15 shall be placed in shelter care only when permitted under RCW
16 13.34.055. "Shelter care" means temporary physical care in a facility
17 licensed pursuant to RCW 74.15.030 or in a home not required to be
18 licensed pursuant to that section. Whenever a child is taken into such
19 custody pursuant to this section, the supervising agency may authorize
20 evaluations of the child's physical or emotional condition, routine
21 medical and dental examination and care, and all necessary emergency
22 care. In no case may a child who is taken into custody pursuant to RCW
23 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention
24 facility. No child may be held longer than seventy-two hours,
25 excluding Saturdays, Sundays and holidays, after such child is taken
26 into custody unless a court order has been entered for continued
27 shelter care. The child and his or her parent, guardian, or custodian
28 shall be informed that they have a right to a shelter care hearing.
29 The court shall hold a shelter care hearing within seventy-two hours
30 after the child is taken into custody, excluding Saturdays, Sundays,
31 and holidays. If a parent, guardian, or legal custodian desires to
32 waive the shelter care hearing, the court shall determine, on the
33 record and with the parties present, that such waiver is knowing and
34 voluntary.

35 (2) Whenever a child is taken into custody by child protective
36 services pursuant to a court order issued under RCW 13.34.050 or when
37 child protective services is notified that a child has been taken into
38 custody pursuant to RCW 26.44.050 or 26.44.056, child protective

1 services shall make reasonable efforts to inform the parents, guardian,
2 or legal custodian of the fact that the child has been taken into
3 custody, the reasons why the child was taken into custody, and their
4 legal rights under this title as soon as possible and in no event
5 longer than twenty-four hours after the child has been taken into
6 custody or twenty-four hours after child protective services has been
7 notified that the child has been taken into custody. The notice of
8 custody and rights may be given by any means reasonably certain of
9 notifying the parents including, but not limited to, written,
10 telephone, or in person oral notification. If the initial notification
11 is provided by a means other than writing, child protective services
12 shall make reasonable efforts to also provide written notification.

13 The written notice of custody and rights shall be in substantially
14 the following form:

15 "NOTICE

16 Your child has been placed in temporary custody under the
17 supervision of Child Protective Services (or other person or agency).
18 You have important legal rights and you must take steps to protect your
19 interests.

20 1. A court hearing will be held before a judge within 72 hours of
21 the time your child is taken into custody. You should call the court
22 at (insert appropriate phone number here) for specific
23 information about the date, time, and location of the court hearing.

24 2. You have the right to have a lawyer represent you at the
25 hearing. You have the right to records the department intends to rely
26 upon. A lawyer can look at the files in your case, talk to child
27 protective services and other agencies, tell you about the law, help
28 you understand your rights, and help you at hearings. If you cannot
29 afford a lawyer, the court will appoint one to represent you. To get
30 a court-appointed lawyer you must contact: (explain local
31 procedure) .

32 3. At the hearing, you have the right to speak on your own behalf,
33 to introduce evidence, to examine witnesses, and to receive a decision
34 based solely on the evidence presented to the judge.

35 You should be present at this hearing. If you do not come, the
36 judge will not hear what you have to say.

1 You may call the Child Protective Services' caseworker for more
2 information about your child. The caseworker's name and telephone
3 number are: (insert name and telephone number) ."

4 Upon receipt of the written notice, the parent, guardian, or legal
5 custodian shall acknowledge such notice by signing a receipt prepared
6 by child protective services. If the parent, guardian, or legal
7 custodian does not sign the receipt, the reason for lack of a signature
8 shall be written on the receipt. The receipt shall be made a part of
9 the court's file in the dependency action.

10 If after making reasonable efforts to provide notification, child
11 protective services is unable to determine the whereabouts of the
12 parents, guardian, or legal custodian, the notice shall be delivered or
13 sent to the last known address of the parent, guardian, or legal
14 custodian.

15 (3) If child protective services is not required to give notice
16 under subsection (2) of this section, the juvenile court counselor
17 assigned to the matter shall make all reasonable efforts to advise the
18 parents, guardian, or legal custodian of the time and place of any
19 shelter care hearing, request that they be present, and inform them of
20 their basic rights as provided in RCW 13.34.090.

21 (4) Reasonable efforts to advise and to give notice, as required in
22 subsections (2) and (3) of this section, shall include, at a minimum,
23 investigation of the whereabouts of the parent, guardian, or legal
24 custodian. If such reasonable efforts are not successful, or the
25 parent, guardian, or legal custodian does not appear at the shelter
26 care hearing, the juvenile court counselor or caseworker shall testify
27 at the hearing or state in a declaration:

28 (a) The efforts made to investigate the whereabouts of, and to
29 advise, the parent, guardian, or legal custodian; and

30 (b) Whether actual advice of rights was made, to whom it was made,
31 and how it was made, including the substance of any oral communication
32 or copies of written materials used.

33 (5) At the commencement of the shelter care hearing the court shall
34 advise the parties of their basic rights as provided in RCW 13.34.090
35 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not
36 been retained by the parent or guardian and if the parent or guardian
37 is indigent, unless the court finds that the right to counsel has been
38 expressly and voluntarily waived in court.

1 (6) The court shall hear evidence regarding notice given to, and
2 efforts to notify, the parent, guardian, or legal custodian and shall
3 examine the need for shelter care. The court shall make an express
4 finding as to whether the notice required under subsections (2) and (3)
5 of this section was given to the parent, guardian, or legal custodian.
6 All parties have the right to present testimony to the court regarding
7 the need or lack of need for shelter care. Hearsay evidence before the
8 court regarding the need or lack of need for shelter care must be
9 supported by sworn testimony, affidavit, or declaration of the person
10 offering such evidence.

11 (7) The juvenile court probation counselor shall submit a
12 recommendation to the court as to the further need for shelter care,
13 except that such recommendation shall be submitted by the department of
14 social and health services in cases where the petition alleging
15 dependency has been filed by the department of social and health
16 services, unless otherwise ordered by the court.

17 (8) The court shall release a child alleged to be dependent to the
18 care, custody, and control of the child's parent, guardian, or legal
19 custodian unless the court finds there is reasonable cause to believe
20 that:

21 (a) After consideration of the specific services that have been
22 provided, reasonable efforts have been made to prevent or eliminate the
23 need for removal of the child from the child's home and to make it
24 possible for the child to return home; and

25 (b)(i) The child has no parent, guardian, or legal custodian to
26 provide supervision and care for such child; or

27 (ii) The release of such child would present a serious threat of
28 substantial harm to such child; or

29 (iii) The parent, guardian, or custodian to whom the child could be
30 released is alleged to have violated RCW 9A.40.060 or 9A.40.070.

31 If the court does not release the child to his or her parent,
32 guardian, or legal custodian, the court shall order continued shelter
33 care or order placement with another suitable person, and the court
34 shall set forth its reasons for the order. The court shall enter a
35 finding as to whether subsections (2) and (3) of this section have been
36 complied with. If actual notice was not given to the parent, guardian,
37 or legal custodian and the whereabouts of such person is known or can
38 be ascertained, the court shall order the supervising agency or the
39 department of social and health services to make reasonable efforts to

1 advise the parent, guardian, or legal custodian of the status of the
2 case, including the date and time of any subsequent hearings, and their
3 rights under RCW 13.34.090.

4 (9) An order releasing the child on any conditions specified in
5 this section may at any time be amended, with notice and hearing
6 thereon, so as to return the child to shelter care for failure of the
7 parties to conform to the conditions originally imposed.

8 The court shall consider whether nonconformance with any conditions
9 resulted from circumstances beyond the control of the parent and give
10 weight to that fact before ordering return of the child to shelter
11 care.

12 (10) A shelter care order issued pursuant to this section may be
13 amended at any time with notice and hearing thereon. The shelter care
14 decision of placement shall be modified only upon a showing of change
15 in circumstances. No child may be detained for longer than thirty days
16 without an order, signed by the judge, authorizing continued shelter
17 care.

18 (11) Any parent, guardian, or legal custodian who for good cause is
19 unable to attend the initial shelter care hearing may request that a
20 subsequent shelter care hearing be scheduled. The request shall be
21 made to the clerk of the court where the petition is filed prior to the
22 initial shelter care hearing. The hearing shall be held within
23 seventy-two hours of the request, excluding Saturdays, Sundays, and
24 holidays. The clerk shall notify all other parties of the hearing by
25 any reasonable means.

26 **Sec. 3.** RCW 13.34.090 and 1990 c 246 s 4 are each amended to read
27 as follows:

28 (1) Any party has a right to be represented by an attorney in all
29 proceedings under this chapter, to introduce evidence, to be heard in
30 his or her own behalf, to examine witnesses, to receive a decision
31 based solely on the evidence adduced at the hearing, and to an unbiased
32 fact-finder.

33 (2) At all stages of a proceeding in which a child is alleged to be
34 dependent (~~((pursuant to))~~) as defined in RCW 13.34.030~~((+2))~~ (4), the
35 child's parent, guardian, or legal custodian has the right to be
36 represented by counsel, and if indigent, to have counsel appointed for
37 him or her by the court. Unless waived in court, counsel shall be
38 provided to the child's parent, guardian, or legal custodian, if such

1 person (a) has appeared in the proceeding or requested the court to
2 appoint counsel and (b) is financially unable to obtain counsel because
3 of indigency as defined in chapter 10.101 RCW.

4 (3) If a party to an action under this chapter is represented by
5 counsel, no order shall be provided to that party for his or her
6 signature without prior notice and provision of the order to counsel.

7 (4) Copies of department of social and health services or
8 supervising agency records to which parents have legal access pursuant
9 to chapter 13.50 RCW shall be given to the child's parent, guardian,
10 legal custodian, or his or her legal counsel, prior to any shelter care
11 hearing and within ((twenty)) ten days after the department or
12 supervising agency receives a written request for such records from the
13 parent, guardian, legal custodian, or his or her legal counsel. These
14 records shall be provided to the child's parents, guardian, legal
15 custodian, or legal counsel a reasonable period of time prior to the
16 shelter care hearing in order to allow an opportunity to review the
17 records prior to the hearing. These records shall be legible and shall
18 be provided at no expense to the parents, guardian, legal custodian, or
19 his or her counsel. When the records are served on legal counsel,
20 legal counsel shall have the opportunity to review the records with the
21 parents and shall review the records with the parents prior to the
22 shelter care hearing.

23 **Sec. 4.** RCW 13.34.120 and 1996 c 249 s 14 are each amended to read
24 as follows:

25 (1) To aid the court in its decision on disposition, a social
26 study, consisting of a written evaluation of matters relevant to the
27 disposition of the case, shall be made by the person or agency filing
28 the petition. A parent may submit a counselor's or health care
29 provider's evaluation of the parent, which shall either be included in
30 the social study or considered in conjunction with the social study.
31 The study shall include all social records and may also include facts
32 relating to the child's cultural heritage, and shall be made available
33 to the court. The court shall consider the social file, social study,
34 guardian ad litem report, the court-appointed special advocate's
35 report, if any, and any reports filed by a party at the disposition
36 hearing in addition to evidence produced at the fact-finding hearing.
37 At least ten working days before the disposition hearing, the
38 department shall mail to the parent and his or her attorney a copy of

1 the agency's social study and proposed service plan, which shall be in
2 writing or in a form understandable to the parents or custodians. In
3 addition, the department shall provide an opportunity for parents to
4 review and comment on the plan at the community service office. If the
5 parents disagree with the agency's plan or any part thereof, the
6 parents shall submit to the court at least twenty-four hours before the
7 hearing, in writing, or signed oral statement, an alternative plan to
8 correct the problems which led to the finding of dependency. This
9 section shall not interfere with the right of the parents or custodians
10 to submit oral arguments regarding the disposition plan at the hearing.

11 (2) In addition to the requirements set forth in subsection (1) of
12 this section, a predisposition study to the court in cases of
13 dependency alleged pursuant to RCW 13.34.030(4) (b) or (c) shall
14 contain the following information:

15 (a) A statement of the specific harm or harms to the child that
16 intervention is designed to alleviate;

17 (b) A description of the specific programs, for both the parents
18 and child, that are needed in order to prevent serious harm to the
19 child; the reasons why such programs are likely to be useful; the
20 availability of any proposed services; and the agency's overall plan
21 for ensuring that the services will be delivered. The description
22 shall identify services chosen and approved by the parent;

23 (c) If removal is recommended, a full description of the reasons
24 why the child cannot be protected adequately in the home, including a
25 description of any previous efforts to work with the parents and the
26 child in the home; the in-home treatment programs which have been
27 considered and rejected; the preventive services that have been offered
28 or provided and have failed to prevent the need for out-of-home
29 placement, unless the health, safety, and welfare of the child cannot
30 be protected adequately in the home; and the parents' attitude toward
31 placement of the child;

32 (d) A statement of the likely harms the child will suffer as a
33 result of removal. This section should include an exploration of the
34 nature of the parent-child attachment and the meaning of separation and
35 loss to both the parents and the child;

36 (e) A description of the steps that will be taken to minimize harm
37 to the child that may result if separation occurs; and

1 (f) Behavior that will be expected before determination that
2 supervision of the family or placement is no longer necessary.

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