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SENATE BILL 6238

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State of Washington

55th Legislature

1998 Regular Session

By Senators Stevens and Swecker

Read first time 01/14/98. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to dependent children; amending RCW 13.34.050,  
2 13.34.060, 13.34.090, and 13.34.120; reenacting and amending RCW  
3 26.44.020; and adding a new section to chapter 13.34 RCW.

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

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

7 The court may enter an order directing a law enforcement officer,  
8 probation counselor, or child protective services official to take a  
9 child into custody if a petition is filed with the juvenile court  
10 alleging that the child is dependent and the court finds reasonable  
11 grounds to believe the child is dependent and that the child's health,  
12 safety, and welfare will be seriously endangered if not taken into  
13 custody. A petition must be supported by a signed affidavit from a  
14 physician licensed under chapter 18.71 or 18.57 RCW or a law  
15 enforcement officer that the child's health, safety, and welfare will  
16 be seriously endangered if the child is not taken into custody. If the  
17 petition is not supported by a signed affidavit from a physician  
18 licensed under chapter 18.71 or 18.57 RCW or a law enforcement officer,  
19 an alleged dependent child shall not be removed from the custody and

1 care of his or her parents until his or her parents have been notified  
2 and until a shelter care hearing has been held pursuant to chapter  
3 13.34 RCW.

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

6 (1) A child taken into custody pursuant to RCW 13.34.050 or  
7 26.44.050 shall be immediately placed in shelter care. A child taken  
8 by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070  
9 shall be placed in shelter care only when permitted under RCW  
10 13.34.055. "Shelter care" means temporary physical care in a facility  
11 licensed pursuant to RCW 74.15.030 or in a home not required to be  
12 licensed pursuant to that section. Whenever a child is taken into such  
13 custody pursuant to this section, the supervising agency may authorize  
14 evaluations of the child's physical or emotional condition, routine  
15 medical and dental examination and care, and all necessary emergency  
16 care. In no case may a child who is taken into custody pursuant to RCW  
17 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention  
18 facility. No child may be held longer than seventy-two hours,  
19 excluding Saturdays, Sundays and holidays, after such child is taken  
20 into custody unless a court order has been entered for continued  
21 shelter care. The child and his or her parent, guardian, or custodian  
22 shall be informed that they have a right to a shelter care hearing.  
23 The court shall hold a shelter care hearing within seventy-two hours  
24 after the child is taken into custody, excluding Saturdays, Sundays,  
25 and holidays. If a parent, guardian, or legal custodian desires to  
26 waive the shelter care hearing, the court shall determine, on the  
27 record and with the parties present, that such waiver is knowing and  
28 voluntary.

29 (2) Whenever a child is taken into custody by child protective  
30 services pursuant to a court order issued under RCW 13.34.050 or when  
31 child protective services is notified that a child has been taken into  
32 custody pursuant to RCW 26.44.050 or 26.44.056, child protective  
33 services shall make reasonable efforts to inform the parents, guardian,  
34 or legal custodian of the fact that the child has been taken into  
35 custody, the reasons why the child was taken into custody, and their  
36 legal rights under this title as soon as possible and in no event  
37 longer than twenty-four hours after the child has been taken into  
38 custody or twenty-four hours after child protective services has been

1 notified that the child has been taken into custody. The notice of  
2 custody and rights may be given by any means reasonably certain of  
3 notifying the parents including, but not limited to, written,  
4 telephone, or in person oral notification. If the initial notification  
5 is provided by a means other than writing, child protective services  
6 shall make reasonable efforts to also provide written notification.

7 The written notice of custody and rights shall be in substantially  
8 the following form:

9

"NOTICE

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

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

18 2. You have the right to have a lawyer represent you at the  
19 hearing. A lawyer can look at the files in your case, talk to child  
20 protective services and other agencies, tell you about the law, help  
21 you understand your rights, and help you at hearings. If you cannot  
22 afford a lawyer, the court will appoint one to represent you. To get  
23 a court-appointed lawyer you must contact:       (explain local  
24 procedure)      .

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

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

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

33 Upon receipt of the written notice, the parent, guardian, or legal  
34 custodian shall acknowledge such notice by signing a receipt prepared  
35 by child protective services. If the parent, guardian, or legal  
36 custodian does not sign the receipt, the reason for lack of a signature  
37 shall be written on the receipt. The receipt shall be made a part of  
38 the court's file in the dependency action.

1 If after making reasonable efforts to provide notification, child  
2 protective services is unable to determine the whereabouts of the  
3 parents, guardian, or legal custodian, the notice shall be delivered or  
4 sent to the last known address of the parent, guardian, or legal  
5 custodian.

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

12 (4) Reasonable efforts to advise and to give notice, as required in  
13 subsections (2) and (3) of this section, shall include, at a minimum,  
14 investigation of the whereabouts of the parent, guardian, or legal  
15 custodian. If such reasonable efforts are not successful, or the  
16 parent, guardian, or legal custodian does not appear at the shelter  
17 care hearing, the juvenile court counselor or caseworker shall testify  
18 at the hearing or state in a declaration:

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

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

24 (5) At the commencement of the shelter care hearing the court shall  
25 advise the parties of their basic rights as provided in RCW 13.34.090  
26 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not  
27 been retained by the parent or guardian and if the parent or guardian  
28 is indigent, unless the court finds that the right to counsel has been  
29 expressly and voluntarily waived in court.

30 (6) The court shall hear evidence regarding notice given to, and  
31 efforts to notify, the parent, guardian, or legal custodian and shall  
32 examine the need for shelter care. The court shall make an express  
33 finding as to whether the notice required under subsections (2) and (3)  
34 of this section was given to the parent, guardian, or legal custodian.  
35 All parties have the right to present testimony to the court regarding  
36 the need or lack of need for shelter care. Hearsay evidence before the  
37 court regarding the need or lack of need for shelter care must be  
38 supported by sworn testimony, affidavit, or declaration of the person  
39 offering such evidence.

1 (7) The juvenile court probation counselor shall submit a  
2 recommendation to the court as to the further need for shelter care,  
3 except that such recommendation shall be submitted by the department of  
4 social and health services in cases where the petition alleging  
5 dependency has been filed by the department of social and health  
6 services, unless otherwise ordered by the court.

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

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

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

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

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

21 If the court does not release the child to his or her parent,  
22 guardian, or legal custodian, the court shall order continued shelter  
23 care or order placement with another suitable person, and the court  
24 shall set forth its reasons for the order. The court shall enter a  
25 finding as to whether subsections (2) and (3) of this section have been  
26 complied with. If actual notice was not given to the parent, guardian,  
27 or legal custodian and the whereabouts of such person is known or can  
28 be ascertained, the court shall order the supervising agency or the  
29 department of social and health services to make reasonable efforts to  
30 advise the parent, guardian, or legal custodian of the status of the  
31 case, including the date and time of any subsequent hearings, and their  
32 rights under RCW 13.34.090.

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

37 (10) A shelter care order issued pursuant to this section may be  
38 amended at any time with notice and hearing thereon. ~~((The shelter  
39 care decision of placement shall be modified only upon a showing of~~

1 ~~change in circumstances.))~~ No child may be detained for longer than  
2 thirty days without an order, signed by the judge, authorizing  
3 continued shelter care.

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

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

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

19 (2) At all stages of a proceeding in which a child is alleged to be  
20 dependent pursuant to RCW 13.34.030(~~((+2))~~)(4), the child's parent,  
21 guardian, or legal custodian has the right to be represented by  
22 counsel, and if indigent, to have counsel appointed for him or her by  
23 the court. Unless waived in court, counsel shall be provided to the  
24 child's parent, guardian, or legal custodian, if such person (a) has  
25 appeared in the proceeding or requested the court to appoint counsel  
26 and (b) is financially unable to obtain counsel because of indigency as  
27 defined in chapter 10.101 RCW.

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

31 (4) Copies of department of social and health services or  
32 supervising agency records to which parents have legal access pursuant  
33 to chapter 13.50 RCW shall be given to the child's parent, guardian,  
34 legal custodian, or his or her legal counsel, within (~~((twenty days))~~)  
35 twenty-four hours, excluding Saturdays, Sundays, and legal holidays  
36 after the department or supervising agency receives a written request  
37 for such records from the parent, guardian, legal custodian, or his or  
38 her legal counsel. These records shall be provided to the child's

1 parents, guardian, legal custodian, or legal counsel at least twenty-  
2 four hours, excluding Saturdays, Sundays, and legal holidays prior to  
3 the shelter care hearing in order to allow an opportunity to review the  
4 records prior to the hearing. These records shall be legible and shall  
5 be provided at no expense to the parents, guardian, legal custodian, or  
6 his or her counsel.

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

9 (1) To aid the court in its decision on disposition, a social  
10 study, consisting of a written evaluation of matters relevant to the  
11 disposition of the case, shall be made by the person or agency filing  
12 the petition. The social study shall include all evaluations of the  
13 parent by counselors or health care providers chosen and approved by  
14 the parent. The study shall include all social records and may also  
15 include facts relating to the child's cultural heritage, and shall be  
16 made available to the court. The court shall consider the social file,  
17 social study, guardian ad litem report, the court-appointed special  
18 advocate's report, if any, and any reports filed by a party at the  
19 disposition hearing in addition to evidence produced at the fact-  
20 finding hearing. At least ten working days before the disposition  
21 hearing, the department shall mail to the parent and his or her  
22 attorney a copy of the agency's social study and proposed service plan,  
23 which shall be in writing or in a form understandable to the parents or  
24 custodians. In addition, the department shall provide an opportunity  
25 for parents to review and comment on the plan at the community service  
26 office. If the parents disagree with the agency's plan or any part  
27 thereof, the parents shall submit to the court at least twenty-four  
28 hours before the hearing, in writing, or signed oral statement, an  
29 alternative plan to correct the problems which led to the finding of  
30 dependency. This section shall not interfere with the right of the  
31 parents or custodians to submit oral arguments regarding the  
32 disposition plan at the hearing.

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

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

1 (b) A description of the specific programs, for both the parents  
2 and child, that are needed in order to prevent serious harm to the  
3 child; the reasons why such programs are likely to be useful; the  
4 availability of any proposed services; and the agency's overall plan  
5 for ensuring that the services will be delivered. Services provided  
6 under this section shall include, but not be limited to, services  
7 chosen and approved by the parent;

8 (c) If removal is recommended, a full description of the reasons  
9 why the child cannot be protected adequately in the home, including a  
10 description of any previous efforts to work with the parents and the  
11 child in the home; the in-home treatment programs which have been  
12 considered and rejected; the preventive services that have been offered  
13 or provided and have failed to prevent the need for out-of-home  
14 placement, unless the health, safety, and welfare of the child cannot  
15 be protected adequately in the home; and the parents' attitude toward  
16 placement of the child;

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

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

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

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 13.34 RCW  
26 to read as follows:

27 The department shall make final recommendations to the court as to  
28 when it is appropriate for a child to be returned home or retained in  
29 custody and when a change in visitation with parents or legal guardians  
30 is appropriate. This recommendation may be informed by information  
31 from experts who have treated the child or provided services to the  
32 parents, or both.

33 **Sec. 6.** RCW 26.44.020 and 1997 c 386 s 45, 1997 c 386 s 24, 1997  
34 c 282 s 4, and 1997 c 132 s 2 are each reenacted and amended to read as  
35 follows:

36 For the purpose of and as used in this chapter:

1 (1) "Court" means the superior court of the state of Washington,  
2 juvenile department.

3 (2) "Law enforcement agency" means the police department, the  
4 prosecuting attorney, the state patrol, the director of public safety,  
5 or the office of the sheriff.

6 (3) "Practitioner of the healing arts" or "practitioner" means a  
7 person licensed by this state to practice podiatric medicine and  
8 surgery, optometry, chiropractic, nursing, dentistry, osteopathic  
9 medicine and surgery, or medicine and surgery or to provide other  
10 health services. The term "practitioner" shall include a duly  
11 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a  
12 person who is being furnished Christian Science treatment by a duly  
13 accredited Christian Science practitioner shall not be considered, for  
14 that reason alone, a neglected person for the purposes of this chapter.

15 (4) "Institution" means a private or public hospital or any other  
16 facility providing medical diagnosis, treatment or care.

17 (5) "Department" means the state department of social and health  
18 services.

19 (6) "Child" or "children" means any person under the age of  
20 eighteen years of age.

21 (7) "Professional school personnel" shall include, but not be  
22 limited to, teachers, counselors, administrators, child care facility  
23 personnel, and school nurses.

24 (8) "Social service counselor" shall mean anyone engaged in a  
25 professional capacity during the regular course of employment in  
26 encouraging or promoting the health, welfare, support or education of  
27 children, or providing social services to adults or families, including  
28 mental health, drug and alcohol treatment, and domestic violence  
29 programs, whether in an individual capacity, or as an employee or agent  
30 of any public or private organization or institution.

31 (9) "Psychologist" shall mean any person licensed to practice  
32 psychology under chapter 18.83 RCW, whether acting in an individual  
33 capacity or as an employee or agent of any public or private  
34 organization or institution.

35 (10) "Pharmacist" shall mean any registered pharmacist under the  
36 provisions of chapter 18.64 RCW, whether acting in an individual  
37 capacity or as an employee or agent of any public or private  
38 organization or institution.

1 (11) "Clergy" shall mean any regularly licensed or ordained  
2 minister, priest or rabbi of any church or religious denomination,  
3 whether acting in an individual capacity or as an employee or agent of  
4 any public or private organization or institution.

5 (12) "Abuse or neglect" shall mean the injury, sexual abuse, sexual  
6 exploitation, negligent treatment, or maltreatment of a child, adult  
7 dependent, or developmentally disabled person by any person under  
8 circumstances which indicate that the child's or adult's health,  
9 welfare, and safety is harmed, excluding conduct permitted under RCW  
10 9A.16.100. An abused child is a child who has been subjected to child  
11 abuse or neglect as defined herein.

12 (13) "Child protective services section" shall mean the child  
13 protective services section of the department.

14 (14) "Adult dependent persons" shall be defined as those persons  
15 over the age of eighteen years who have been found to be legally  
16 incompetent or disabled pursuant to chapter 11.88 RCW.

17 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or  
18 encouraging a child to engage in prostitution by any person; or (b)  
19 allowing, permitting, encouraging, or engaging in the obscene or  
20 pornographic photographing, filming, or depicting of a child by any  
21 person.

22 (16) "Negligent treatment or maltreatment" means an act or omission  
23 which evidences a serious disregard of consequences of such magnitude  
24 as to constitute a clear and present danger to the child's health,  
25 welfare, and safety and for which criminal charges have been charged  
26 against the parents. (~~(The fact that siblings share a bedroom is not,~~  
27 ~~in and of itself, "negligent treatment or maltreatment.")~~)

28 (17) "Developmentally disabled person" means a person who has a  
29 disability defined in RCW 71A.10.020.

30 (18) "Child protective services" means those services provided by  
31 the department designed to protect children from child abuse and  
32 neglect and safeguard such children from future abuse and neglect, and  
33 conduct investigations of child abuse and neglect reports.  
34 Investigations may be conducted regardless of the location of the  
35 alleged abuse or neglect. Child protective services includes referral  
36 to services to ameliorate conditions which endanger the welfare of  
37 children, the coordination of necessary programs and services relevant  
38 to the prevention, intervention, and treatment of child abuse and  
39 neglect, and services to children to ensure that each child has a

1 permanent home. In determining whether protective services should be  
2 provided, the department shall not decline to provide such services  
3 solely because of the child's unwillingness or developmental inability  
4 to describe the nature and severity of the abuse or neglect.

5 (19) "Malice" or "maliciously" means an evil intent, wish, or  
6 design to vex, annoy, or injure another person. Such malice may be  
7 inferred from an act done in wilful disregard of the rights of another,  
8 or an act wrongfully done without just cause or excuse, or an act or  
9 omission of duty betraying a wilful disregard of social duty.

10 (20) "Sexually aggressive youth" means a child who is defined in  
11 RCW 74.13.075(1)(b) as being a "sexually aggressive youth."

12 (21) "Unfounded" means available evidence indicates that, more  
13 likely than not, child abuse or neglect did not occur.

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