

SHB 1239 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED AND ENGROSSED 4/9/09

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.04.030 and 2005 c 290 s 1 and 2005 c 238 s 1 are
4 each reenacted and amended to read as follows:

5 (1) Except as provided in this section, the juvenile courts in this
6 state shall have exclusive original jurisdiction over all proceedings:

7 (a) Under the interstate compact on placement of children as
8 provided in chapter 26.34 RCW;

9 (b) Relating to children alleged or found to be dependent as
10 provided in chapter 26.44 RCW and in RCW 13.34.030 through
11 (~~(13.34.170)~~) 13.34.161;

12 (c) Relating to the termination of a parent and child relationship
13 as provided in RCW 13.34.180 through 13.34.210;

14 (d) To approve or disapprove out-of-home placement as provided in
15 RCW 13.32A.170;

16 (e) Relating to juveniles alleged or found to have committed
17 offenses, traffic or civil infractions, or violations as provided in
18 RCW 13.40.020 through 13.40.230, unless:

19 (i) The juvenile court transfers jurisdiction of a particular
20 juvenile to adult criminal court pursuant to RCW 13.40.110;

21 (ii) The statute of limitations applicable to adult prosecution for
22 the offense, traffic or civil infraction, or violation has expired;

23 (iii) The alleged offense or infraction is a traffic, fish,
24 boating, or game offense, or traffic or civil infraction committed by
25 a juvenile sixteen years of age or older and would, if committed by an
26 adult, be tried or heard in a court of limited jurisdiction, in which
27 instance the appropriate court of limited jurisdiction shall have
28 jurisdiction over the alleged offense or infraction, and no guardian ad
29 litem is required in any such proceeding due to the juvenile's age(~~(+~~
30 ~~PROVIDED, - That~~)). If such an alleged offense or infraction and an

1 alleged offense or infraction subject to juvenile court jurisdiction
2 arise out of the same event or incident, the juvenile court may have
3 jurisdiction of both matters(~~(: PROVIDED FURTHER, That)~~). The
4 jurisdiction under this subsection does not constitute "transfer" or a
5 "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this
6 subsection(~~(: PROVIDED FURTHER, That)~~). Courts of limited
7 jurisdiction which confine juveniles for an alleged offense or
8 infraction may place juveniles in juvenile detention facilities under
9 an agreement with the officials responsible for the administration of
10 the juvenile detention facility in RCW 13.04.035 and 13.20.060;

11 (iv) The alleged offense is a traffic or civil infraction, a
12 violation of compulsory school attendance provisions under chapter
13 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
14 assumed concurrent jurisdiction over those offenses as provided in RCW
15 13.04.0301; or

16 (v) The juvenile is sixteen or seventeen years old on the date the
17 alleged offense is committed and the alleged offense is:

18 (A) A serious violent offense as defined in RCW 9.94A.030;

19 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile
20 has a criminal history consisting of: (I) One or more prior serious
21 violent offenses; (II) two or more prior violent offenses; or (III)
22 three or more of any combination of the following offenses: Any class
23 A felony, any class B felony, vehicular assault, or manslaughter in the
24 second degree, all of which must have been committed after the
25 juvenile's thirteenth birthday and prosecuted separately;

26 (C) Robbery in the first degree, rape of a child in the first
27 degree, or drive-by shooting, committed on or after July 1, 1997;

28 (D) Burglary in the first degree committed on or after July 1,
29 1997, and the juvenile has a criminal history consisting of one or more
30 prior felony or misdemeanor offenses; or

31 (E) Any violent offense as defined in RCW 9.94A.030 committed on or
32 after July 1, 1997, and the juvenile is alleged to have been armed with
33 a firearm.

34 (I) In such a case the adult criminal court shall have exclusive
35 original jurisdiction, except as provided in (e)(v)(E)(II) of this
36 subsection.

37 (II) The juvenile court shall have exclusive jurisdiction over the
38 disposition of any remaining charges in any case in which the juvenile

1 is found not guilty in the adult criminal court of the charge or
2 charges for which he or she was transferred, or is convicted in the
3 adult criminal court of a lesser included offense that is not also an
4 offense listed in (e)(v) of this subsection. The juvenile court shall
5 enter an order extending juvenile court jurisdiction if the juvenile
6 has turned eighteen years of age during the adult criminal court
7 proceedings pursuant to RCW 13.40.300. However, once the case is
8 returned to juvenile court, the court may hold a decline hearing
9 pursuant to RCW 13.40.110 to determine whether to retain the case in
10 juvenile court for the purpose of disposition or return the case to
11 adult criminal court for sentencing.

12 If the juvenile challenges the state's determination of the
13 juvenile's criminal history under (e)(v) of this subsection, the state
14 may establish the offender's criminal history by a preponderance of the
15 evidence. If the criminal history consists of adjudications entered
16 upon a plea of guilty, the state shall not bear a burden of
17 establishing the knowing and voluntariness of the plea;

18 (f) Under the interstate compact on juveniles as provided in
19 chapter 13.24 RCW;

20 (g) Relating to termination of a diversion agreement under RCW
21 13.40.080, including a proceeding in which the divertee has attained
22 eighteen years of age;

23 (h) Relating to court validation of a voluntary consent to an out-
24 of-home placement under chapter 13.34 RCW, by the parent or Indian
25 custodian of an Indian child, except if the parent or Indian custodian
26 and child are residents of or domiciled within the boundaries of a
27 federally recognized Indian reservation over which the tribe exercises
28 exclusive jurisdiction;

29 (i) Relating to petitions to compel disclosure of information filed
30 by the department of social and health services pursuant to RCW
31 74.13.042; and

32 (j) Relating to judicial determinations and permanency planning
33 hearings involving developmentally disabled children who have been
34 placed in out-of-home care pursuant to a voluntary placement agreement
35 between the child's parent, guardian, or legal custodian and the
36 department of social and health services.

37 (2) The family court shall have concurrent original jurisdiction

1 with the juvenile court over all proceedings under this section if the
2 superior court judges of a county authorize concurrent jurisdiction as
3 provided in RCW 26.12.010.

4 (3) The juvenile court shall have concurrent original jurisdiction
5 with the family court over child custody proceedings under chapter
6 26.10 RCW and parenting plans or residential schedules under chapters
7 26.09 and 26.26 RCW as provided for in RCW 13.34.155.

8 (4) A juvenile subject to adult superior court jurisdiction under
9 subsection (1)(e)(i) through (v) of this section, who is detained
10 pending trial, may be detained in a detention facility as defined in
11 RCW 13.40.020 pending sentencing or a dismissal.

12 **Sec. 2.** RCW 13.34.062 and 2007 c 413 s 4 and 2007 c 409 s 5 are
13 each reenacted and amended to read as follows:

14 (1)(a) Whenever a child is taken into custody by child protective
15 services pursuant to a court order issued under RCW 13.34.050 or when
16 child protective services is notified that a child has been taken into
17 custody pursuant to RCW 26.44.050 or 26.44.056, child protective
18 services shall make reasonable efforts to inform the parent, guardian,
19 or legal custodian of the fact that the child has been taken into
20 custody, the reasons why the child was taken into custody, and their
21 legal rights under this title, including the right to a shelter care
22 hearing, as soon as possible. Notice must be provided in an
23 understandable manner and take into consideration the parent's,
24 guardian's, or legal custodian's primary language, level of education,
25 and cultural issues.

26 (b) In no event shall the notice required by this section be
27 provided to the parent, guardian, or legal custodian more than twenty-
28 four hours after the child has been taken into custody or twenty-four
29 hours after child protective services has been notified that the child
30 has been taken into custody.

31 (2)(a) The notice of custody and rights may be given by any means
32 reasonably certain of notifying the parents including, but not limited
33 to, written, telephone, or in person oral notification. If the initial
34 notification is provided by a means other than writing, child
35 protective services shall make reasonable efforts to also provide
36 written notification.

1 (b) The written notice of custody and rights required by this
2 section shall be in substantially the following form:

3 "NOTICE

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

8 1. A court hearing will be held before a judge within 72 hours of
9 the time your child is taken into custody excluding Saturdays, Sundays,
10 and holidays. You should call the court at ____(insert appropriate
11 phone number here)____ for specific information about the date, time,
12 and location of the court hearing.

13 2. You have the right to have a lawyer represent you at the
14 hearing. Your right to representation continues after the shelter care
15 hearing. You have the right to records the department intends to rely
16 upon. A lawyer can look at the files in your case, talk to child
17 protective services and other agencies, tell you about the law, help
18 you understand your rights, and help you at hearings. If you cannot
19 afford a lawyer, the court will appoint one to represent you. To get
20 a court-appointed lawyer you must contact: ____(explain local
21 procedure)____.

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

25 4. If your hearing occurs before a court commissioner, you have the
26 right to have the decision of the court commissioner reviewed by a
27 superior court judge. To obtain that review, you must, within ten days
28 after the entry of the decision of the court commissioner, file with
29 the court a motion for revision of the decision, as provided in RCW
30 2.24.050.

31 You should be present at any shelter care hearing. If you do not
32 come, the judge will not hear what you have to say.

33 You may call the Child Protective Services' caseworker for more
34 information about your child. The caseworker's name and telephone
35 number are: ____(insert name and telephone number)____.

36 5. You have a right to a case conference to develop a written
37 service agreement following the shelter care hearing. The service
38 agreement may not conflict with the court's order of shelter care. You

1 may request that a multidisciplinary team, family group conference, or
2 prognostic staffing be convened for your child's case. You may
3 participate in these processes with your counsel present.

4 6. If your child is placed in the custody of the department of
5 social and health services or other supervising agency, immediately
6 following the shelter care hearing, the court will enter an order
7 granting the department or other supervising agency the right to
8 inspect and copy all health, medical, mental health, and education
9 records of the child, directing health care providers to release such
10 information without your further consent, and granting the department
11 or supervising agency or its designee the authority and responsibility,
12 where applicable, to:

13 (1) Notify the child's school that the child is in out-of-home
14 placement;

15 (2) Enroll the child in school;

16 (3) Request the school transfer records;

17 (4) Request and authorize evaluation of special needs;

18 (5) Attend parent or teacher conferences;

19 (6) Excuse absences;

20 (7) Grant permission for extracurricular activities;

21 (8) Authorize medications which need to be administered during
22 school hours and sign for medical needs that arise during school hours;
23 and

24 (9) Complete or update school emergency records.

25 7. A dependency petition begins a judicial process which, if the
26 court finds your child dependent, could result in substantial
27 restrictions including the entry or modification of a parenting plan or
28 residential schedule, nonparental custody order or decree, guardianship
29 order, or the permanent loss of your parental rights."

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

36 If after making reasonable efforts to provide notification, child
37 protective services is unable to determine the whereabouts of the

1 parents, guardian, or legal custodian, the notice shall be delivered or
2 sent to the last known address of the parent, guardian, or legal
3 custodian.

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

10 (4) Reasonable efforts to advise and to give notice, as required in
11 this section, shall include, at a minimum, investigation of the
12 whereabouts of the parent, guardian, or legal custodian. If such
13 reasonable efforts are not successful, or the parent, guardian, or
14 legal custodian does not appear at the shelter care hearing, the
15 petitioner shall testify at the hearing or state in a declaration:

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

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

21 **Sec. 3.** RCW 13.34.155 and 2000 c 135 s 1 are each amended to read
22 as follows:

23 (1) The court hearing the dependency petition may hear and
24 determine issues related to chapter 26.10 RCW in a dependency
25 proceeding as necessary to facilitate a permanency plan for the child
26 or children as part of the dependency disposition order or a dependency
27 review order or as otherwise necessary to implement a permanency plan
28 of care for a child. The parents, guardians, or legal custodian of the
29 child must agree, subject to court approval, to establish a permanent
30 custody order. This agreed order may have the concurrence of the other
31 parties to the dependency including the supervising agency, the
32 guardian ad litem of the child, and the child if age twelve or older,
33 and must also be in the best interests of the child. If the petitioner
34 for a custody order under chapter 26.10 RCW is not a party to the
35 dependency proceeding, he or she must agree on the record or by the
36 filing of a declaration to the entry of a custody order. Once an order

1 is entered under chapter 26.10 RCW, and the dependency petition
2 dismissed, the department shall not continue to supervise the
3 placement.

4 (2)(a) The court hearing the dependency petition may establish or
5 modify a parenting plan under chapter 26.09 or 26.26 RCW as part of a
6 disposition order or at a review hearing when doing so will implement
7 a permanent plan of care for the child and result in dismissal of the
8 dependency.

9 (b) Unless the whereabouts of one of the parents is unknown to
10 either the department or the court, the parents must agree, subject to
11 court approval, to establish the parenting plan or modify an existing
12 parenting plan.

13 (c) Whenever the court is asked to establish or modify a parenting
14 plan under this section, the court shall first determine whether the
15 child's interests are represented consistent with the requirements of
16 RCW 13.34.100. The dependency court must make a written finding that
17 the parenting plan established or modified by the dependency court
18 under this section is in the child's best interests.

19 (d) The dependency court may interview the child in chambers to
20 ascertain the child's wishes as to the child's residential schedule in
21 a proceeding for the entry or modification of a parenting plan under
22 this section. The court may permit counsel to be present at the
23 interview. The court shall cause a record of the interview to be made
24 and to become part of the court record of the dependency case and the
25 case under chapter 26.09 or 26.26 RCW.

26 (e) In the absence of agreement by a parent, guardian, or legal
27 custodian of the child to allow the juvenile court to hear and
28 determine issues related to the establishment or modification of a
29 parenting plan under chapter 26.09 or 26.26 RCW, a party may move the
30 court to transfer such issues to the family law department of the
31 superior court for further resolution. The court may only grant the
32 motion upon entry of a written finding that it is in the best interests
33 of the child.

34 (f) In any parenting plan agreed to by the parents and entered or
35 modified in juvenile court under this section, all issues pertaining to
36 child support and the division of marital property shall be referred to
37 or retained by the family law department of the superior court.

