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SECOND SUBSTITUTE SENATE BILL 5210

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State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Stevens, Hargrove, Long, Zarelli, Patterson and Franklin)

Read first time 03/08/1999.

1 AN ACT Relating to placement of children with a relative prior to  
2 and at a shelter care hearing; amending RCW 13.34.060; and adding a new  
3 section to chapter 13.34 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 13.34 RCW  
6 to read as follows:

7 The legislature has found that any intervention into the life of a  
8 child is also an intervention in the life of the parent, guardian, or  
9 legal custodian, and that the bond between child and parent is a  
10 critical element of child development. The legislature now also finds  
11 that children who cannot be with their parents, guardians, or legal  
12 custodians are best cared for, whenever possible and appropriate by  
13 family members with whom they have a relationship. This is  
14 particularly important when a child cannot be in the care of a parent,  
15 guardian, or legal custodian as a result of a court intervention.

16 **Sec. 2.** RCW 13.34.060 and 1998 c 328 s 2 are each amended to read  
17 as follows:

1 (1) A child taken into custody pursuant to RCW 13.34.050 or  
2 26.44.050 shall be immediately placed in shelter care. A child taken  
3 by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070  
4 shall be placed in shelter care only when permitted under RCW  
5 13.34.055. "Shelter care" means temporary physical care in a facility  
6 licensed pursuant to RCW 74.15.030 or in a home not required to be  
7 licensed pursuant to that section.

8 (a) Unless there is reasonable cause to believe that the safety or  
9 welfare of the child would be jeopardized or that the efforts to  
10 reunite the parent and child will be hindered, priority placement for  
11 a child in shelter care shall be with any person described in RCW  
12 74.15.020(2)(a). The person must be willing and available to care for  
13 the child and be able to meet any special needs of the child. If a  
14 child is not initially placed with a relative pursuant to this section,  
15 the supervising agency shall make an effort within available resources  
16 to place the child with a relative on the next business day. The  
17 supervising agency shall document its effort to place the child with a  
18 relative pursuant to this section. Nothing within this subsection  
19 (1)(a) establishes an entitlement to services or a right to a  
20 particular placement.

21 (b) Whenever a child is taken into such custody pursuant to this  
22 section, the supervising agency may authorize evaluations of the  
23 child's physical or emotional condition, routine medical and dental  
24 examination and care, and all necessary emergency care. In no case may  
25 a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050,  
26 or 26.44.050 be detained in a secure detention facility. No child may  
27 be held longer than seventy-two hours, excluding Saturdays, Sundays and  
28 holidays, after such child is taken into custody unless a court order  
29 has been entered for continued shelter care. The child and his or her  
30 parent, guardian, or custodian shall be informed that they have a right  
31 to a shelter care hearing. The court shall hold a shelter care hearing  
32 within seventy-two hours after the child is taken into custody,  
33 excluding Saturdays, Sundays, and holidays. If a parent, guardian, or  
34 legal custodian desires to waive the shelter care hearing, the court  
35 shall determine, on the record and with the parties present, that such  
36 waiver is knowing and voluntary.

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

1 custody pursuant to RCW 26.44.050 or 26.44.056, child protective  
2 services shall make reasonable efforts to inform the parents, guardian,  
3 or legal custodian of the fact that the child has been taken into  
4 custody, the reasons why the child was taken into custody, and their  
5 legal rights under this title as soon as possible and in no event  
6 longer than twenty-four hours after the child has been taken into  
7 custody or twenty-four hours after child protective services has been  
8 notified that the child has been taken into custody. The notice of  
9 custody and rights may be given by any means reasonably certain of  
10 notifying the parents including, but not limited to, written,  
11 telephone, or in person oral notification. If the initial notification  
12 is provided by a means other than writing, child protective services  
13 shall make reasonable efforts to also provide written notification.

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

16 "NOTICE

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

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

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

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

36 4. If your hearing occurs before a court commissioner, you have the  
37 right to have the decision of the court commissioner reviewed by a  
38 superior court judge. To obtain that review, you must, within ten days

1 after the entry of the decision of the court commissioner, file with  
2 the court a motion for revision of the decision, as provided in RCW  
3 2.24.050.

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

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

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

15 If after making reasonable efforts to provide notification, child  
16 protective services is unable to determine the whereabouts of the  
17 parents, guardian, or legal custodian, the notice shall be delivered or  
18 sent to the last known address of the parent, guardian, or legal  
19 custodian.

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

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

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

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

38 (5) At the commencement of the shelter care hearing the court shall  
39 advise the parties of their basic rights as provided in RCW 13.34.090

1 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not  
2 been retained by the parent or guardian and if the parent or guardian  
3 is indigent, unless the court finds that the right to counsel has been  
4 expressly and voluntarily waived in court.

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

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

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

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

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

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

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

36 If the court does not release the child to his or her parent,  
37 guardian, or legal custodian, and the child was initially placed with  
38 a relative pursuant to subsection (1) of this section, the court shall  
39 order continued placement with a relative, unless there is reasonable

1 cause to believe the safety or welfare of the child would be  
2 jeopardized. If the child was not initially placed with a relative,  
3 and the court does not release the child to his or her parent,  
4 guardian, or legal custodian, the supervising agency shall make  
5 reasonable efforts to locate a relative pursuant to subsection (1) of  
6 this section. If a relative is not available, the court shall order  
7 continued shelter care or order placement with another suitable person,  
8 and the court shall set forth its reasons for the order. The court  
9 shall enter a finding as to whether subsections (2) and (3) of this  
10 section have been complied with. If actual notice was not given to the  
11 parent, guardian, or legal custodian and the whereabouts of such person  
12 is known or can be ascertained, the court shall order the supervising  
13 agency or the department of social and health services to make  
14 reasonable efforts to advise the parent, guardian, or legal custodian  
15 of the status of the case, including the date and time of any  
16 subsequent hearings, and their rights under RCW 13.34.090.

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

21 The court shall consider whether nonconformance with any conditions  
22 resulted from circumstances beyond the control of the parent and give  
23 weight to that fact before ordering return of the child to shelter  
24 care.

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

31 (11) Any parent, guardian, or legal custodian who for good cause is  
32 unable to attend the initial shelter care hearing may request that a  
33 subsequent shelter care hearing be scheduled. The request shall be  
34 made to the clerk of the court where the petition is filed prior to the  
35 initial shelter care hearing. The hearing shall be held within  
36 seventy-two hours of the request, excluding Saturdays, Sundays, and

1 holidays. The clerk shall notify all other parties of the hearing by  
2 any reasonable means.

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