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SENATE BILL 5450

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State of Washington

56th Legislature

1999 Regular Session

By Senators Swecker, Hargrove, Stevens, Zarelli, Long, Hochstatter and Costa

Read first time 01/22/1999. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to placing children in shelter care; amending RCW  
2 13.34.060 and 2.24.050; reenacting and amending RCW 13.34.090; and  
3 adding a new 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 of  
10 paramount importance. The legislature now also finds that children who  
11 cannot be with their parents, guardians, or legal custodians are best  
12 cared for, whenever possible and appropriate, by family members with  
13 whom they have a relationship. This is particularly important when a  
14 child cannot be in the care of a parent, guardian, or legal custodian  
15 as a result of a court intervention.

16 Furthermore, the legislature has determined that it is important  
17 that families have knowledge of their rights and responsibilities with  
18 regard to the child protection laws. Parents, guardians, and legal  
19 custodians must also be able to exercise their rights. The legislature

1 has found that parents and children are often unaware of their due  
2 process rights when they disagree with the findings and decision made  
3 by a court commissioner at a hearing on the placement of their children  
4 out of their home. The legislature finds that current law allows for  
5 review by a superior court judge of a court commissioner's order to  
6 maintain a child in placement and away from a parent, guardian, or  
7 legal custodian. Parents should have the right to an expedited review  
8 of the commissioner's ruling if they request a review.

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

11       (1) A child taken into custody pursuant to RCW 13.34.050 or  
12 26.44.050 shall be immediately placed in shelter care. A child taken  
13 by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070  
14 shall be placed in shelter care only when permitted under RCW  
15 13.34.055. "Shelter care" means temporary physical care in a facility  
16 licensed pursuant to RCW 74.15.030 or in a home not required to be  
17 licensed pursuant to that section. Whenever a child is taken into  
18 custody pursuant to this section, the supervising agency shall: (a)  
19 First seek to place the child with any person related to the child as  
20 described in RCW 74.15.020(2)(a), who is willing and available to care  
21 for the child, with whom the child has a relationship, and with whom  
22 the child is comfortable; (b) document its efforts to accomplish the  
23 requirements of (a) of this subsection; and (c) if unable to accomplish  
24 the requirements of (a) of this subsection, place the child in a  
25 shelter care facility. Whenever a child is taken into such custody  
26 pursuant to this section, the supervising agency may authorize  
27 evaluations of the child's physical or emotional condition, routine  
28 medical and dental examination and care, and all necessary emergency  
29 care. In no case may a child who is taken into custody pursuant to RCW  
30 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention  
31 facility. No child may be held longer than seventy-two hours,  
32 excluding Saturdays, Sundays, and holidays, after such child is taken  
33 into custody unless a court order has been entered for continued  
34 shelter care. The child and his or her parent, guardian, or custodian,  
35 and the parent's guardian if the parent has been declared incompetent,  
36 shall be informed that they have a right to a shelter care hearing.  
37 The court shall hold a shelter care hearing within seventy-two hours  
38 after the child is taken into custody, excluding Saturdays, Sundays,

1 and holidays. If a parent or the parent's guardian if the parent has  
2 been declared incompetent, guardian, or legal custodian desires to  
3 waive the shelter care hearing, the court shall determine, on the  
4 record and with the parties present, that such waiver is knowing and  
5 voluntary.

6 (2) Whenever a child is taken into custody by child protective  
7 services pursuant to a court order issued under RCW 13.34.050 or when  
8 child protective services is notified that a child has been taken into  
9 custody pursuant to RCW 26.44.050 or 26.44.056, child protective  
10 services shall make reasonable efforts to inform the parents, guardian,  
11 or legal custodian, and the parent's guardian if the parent has been  
12 declared incompetent, of the fact that the child has been taken into  
13 custody, the reasons why the child was taken into custody, and their  
14 legal rights under this title as soon as possible and in no event  
15 longer than twenty-four hours after the child has been taken into  
16 custody or twenty-four hours after child protective services has been  
17 notified that the child has been taken into custody. The notice of  
18 custody and rights may be given by any means reasonably certain of  
19 notifying the parents including, but not limited to, written,  
20 telephone, or in person oral notification. If the initial notification  
21 is provided by a means other than writing, child protective services  
22 shall make reasonable efforts to also provide written notification.

23 The written notice of custody and rights shall be in substantially  
24 the following form:

25 "NOTICE

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

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

34 2. You have the right to have a lawyer represent you at the  
35 hearing. You have the right to records the department intends to rely  
36 upon. A lawyer can look at the files in your case, talk to child  
37 protective services and other agencies, tell you about the law, help  
38 you understand your rights, and help you at hearings. If you cannot

1 afford a lawyer, the court will appoint one to represent you. To get  
2 a court-appointed lawyer you must contact: \_\_\_\_\_ (explain local  
3 procedure)\_\_\_\_\_.

4 If your hearing occurs before a court commissioner, you have the  
5 right to have the decision of the court commissioner reviewed by an  
6 elected superior court judge. To obtain that review, you must, within  
7 ten days after the entry of the decision of the court commissioner,  
8 file with the court a motion for revision of the decision, as provided  
9 in RCW 2.24.050. If you file a written request for an expedited  
10 hearing in addition to your motion for revision, the court must hold  
11 the review hearing within three court days after you file both of those  
12 documents.

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

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

18 You may call the Child Protective Services' caseworker for more  
19 information about your child. The caseworker's name and telephone  
20 number are: \_\_\_\_\_ (insert name and telephone number)\_\_\_\_\_."

21 Upon receipt of the written notice, the parent, guardian, or legal  
22 custodian, and the parent's guardian if the parent has been declared  
23 incompetent, shall acknowledge such notice by signing a receipt  
24 prepared by child protective services. If the parent, guardian, or  
25 legal custodian does not sign the receipt, the reason for lack of a  
26 signature shall be written on the receipt. The receipt shall be made  
27 a part of the court's file in the dependency action.

28 If after making reasonable efforts to provide notification, child  
29 protective services is unable to determine the whereabouts of the  
30 parents, guardian, or legal custodian, and the parent's guardian if the  
31 parent has been declared incompetent, the notice shall be delivered or  
32 sent to the last known address of the parent, guardian, or legal  
33 custodian, and the parent's guardian if the parent has been declared  
34 incompetent.

35 (3) If child protective services is not required to give notice  
36 under subsection (2) of this section, the juvenile court counselor  
37 assigned to the matter shall make all reasonable efforts to advise the  
38 parents, guardian, or legal custodian, and the parent's guardian if the  
39 parent has been declared incompetent, of the time and place of any

1 shelter care hearing, request that they be present, and inform them of  
2 their basic rights as provided in RCW 13.34.090.

3 (4) Reasonable efforts to advise and to give notice, as required in  
4 subsections (2) and (3) of this section, shall include, at a minimum,  
5 investigation of the whereabouts of the parent, guardian, or legal  
6 custodian, and the parent's guardian if the parent has been declared  
7 incompetent. If such reasonable efforts are not successful, or the  
8 parent or the parent's guardian if the parent has been declared  
9 incompetent, guardian, or legal custodian does not appear at the  
10 shelter care hearing, the juvenile court counselor or caseworker shall  
11 testify at the hearing or state in a declaration:

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

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

17 (5) At the commencement of the shelter care hearing the court shall  
18 advise the parties of their basic rights as provided in RCW 13.34.090  
19 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not  
20 been retained by the parent or guardian and if the parent or guardian  
21 is indigent, unless the court finds that the right to counsel has been  
22 expressly and voluntarily waived in court.

23 (6) The court shall hear evidence regarding notice given to, and  
24 efforts to notify, the parent, guardian, or legal custodian, and the  
25 parent's guardian if the parent has been declared incompetent, and  
26 efforts to place the child with a relative, and shall examine the need  
27 for shelter care. The court shall make an express finding as to  
28 whether the notice required under subsections (2) and (3) of this  
29 section was given to the parent, guardian, or legal custodian, and the  
30 parent's guardian if the parent has been declared incompetent, and  
31 whether the child was placed in compliance with subsection (1) of this  
32 section. All parties have the right to present testimony to the court  
33 regarding the need or lack of need for shelter care. Hearsay evidence  
34 before the court regarding the need or lack of need for shelter care  
35 must be supported by sworn testimony, affidavit, or declaration of the  
36 person offering such evidence.

37 (7) The juvenile court probation counselor shall submit a  
38 recommendation to the court as to the further need for shelter care,  
39 except that such recommendation shall be submitted by the department of

1 social and health services in cases where the petition alleging  
2 dependency has been filed by the department of social and health  
3 services, unless otherwise ordered by the court.

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

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

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

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

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

18 If the court does not release the child to his or her parent,  
19 guardian, or legal custodian, the court shall order continued shelter  
20 care or order placement with another suitable person, and the court  
21 shall set forth its reasons for the order. The court shall enter a  
22 finding as to whether subsections (1), (2), and (3) of this section  
23 have been complied with. If actual notice was not given to the parent,  
24 guardian, or legal custodian, and the parent's guardian if the parent  
25 has been declared incompetent, and the whereabouts of such person is  
26 known or can be ascertained, the court shall order the supervising  
27 agency or the department of social and health services to make  
28 reasonable efforts to advise the parent, guardian, or legal custodian,  
29 and the parent's guardian if the parent has been declared incompetent,  
30 of the status of the case, including the date and time of any  
31 subsequent hearings, and their rights under RCW 13.34.090.

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

36 The court shall consider whether nonconformance with any conditions  
37 resulted from circumstances beyond the control of the parent and give  
38 weight to that fact before ordering return of the child to shelter  
39 care.

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

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

16 **Sec. 3.** RCW 2.24.050 and 1988 c 202 s 1 are each amended to read  
17 as follows:

18 (1) All of the acts and proceedings of court commissioners  
19 hereunder shall be subject to revision by the superior court. Any  
20 party in interest may have such revision upon demand made by written  
21 motion, filed with the clerk of the superior court, within ten days  
22 after the entry of any order or judgment of the court commissioner.  
23 Such revision shall be upon the records of the case, and the findings  
24 of fact and conclusions of law entered by the court commissioner, and  
25 unless a demand for revision is made within ten days from the entry of  
26 the order or judgment of the court commissioner, the orders and  
27 judgments shall be and become the orders and judgments of the superior  
28 court, and appellate review thereof may be sought in the same fashion  
29 as review of like orders and judgments entered by the judge.

30 (2)(a)(i) A parent, or the parent's guardian if the parent has been  
31 declared incompetent, may file with the clerk of the superior court a  
32 request for an expedited hearing on a motion for revision of any order,  
33 judgment, findings of fact, or conclusions of law made by a  
34 commissioner at a shelter care hearing held under RCW 13.34.060.

35 (ii) A person related to the child as described in RCW  
36 74.15.020(2)(a) who was willing and available to care for the child and  
37 with whom the child was not placed may file with the clerk of the  
38 superior court a request for an expedited hearing on a motion for

1 revision of any order, judgment, findings of fact, or conclusions of  
2 law made by a commissioner at a shelter care hearing held under RCW  
3 13.34.060, but limited to the issue of whether placement with another  
4 person presents a serious threat of substantial harm to the child.

5 (b) The superior court shall hold the hearing on motion for  
6 revision within three days after the filing of both the motion for  
7 revision and the request for an expedited hearing.

8 (c) If more than one party files a motion for revision, all such  
9 motions shall be joined in one hearing.

10 **Sec. 4.** RCW 13.34.090 and 1998 c 328 s 3 and 1998 c 141 s 1 are  
11 each reenacted and amended to read as follows:

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

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

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

29 (4) Copies of department of social and health services or  
30 supervising agency records to which parents have legal access pursuant  
31 to chapter 13.50 RCW shall be given to the child's parent, guardian,  
32 legal custodian, or his or her legal counsel, prior to any shelter care  
33 hearing and within fifteen days after the department or supervising  
34 agency receives a written request for such records from the parent,  
35 guardian, legal custodian, or his or her legal counsel. These records  
36 shall be provided to the child's parents, guardian, legal custodian, or  
37 legal counsel a reasonable period of time prior to the shelter care  
38 hearing in order to allow an opportunity to review the records prior to



1 the hearing. These records shall be legible and shall be provided at  
2 no expense to the parents, guardian, legal custodian, or his or her  
3 counsel. When the records are served on legal counsel, legal counsel  
4 shall have the opportunity to review the records with the parents and  
5 shall review the records with the parents prior to the shelter care  
6 hearing.

7 If a court commissioner presides at the shelter care hearing, the  
8 child's parent, guardian, legal custodian, and the parent's guardian if  
9 the parent has been declared incompetent, or any party in interest may  
10 file with the clerk of the superior court a motion for revision of the  
11 decision, as provided in RCW 2.24.050, and may file a request for an  
12 expedited hearing on the motion for revision, whereupon the court must  
13 hold a hearing within three days as further provided in RCW 2.24.050.

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