
HOUSE BILL 3138

State of Washington 55th Legislature 1998 Regular Session

By Representatives Koster, Sump and Sherstad

Read first time . Referred to Committee on .

1 AN ACT Relating to medical treatment of children in custody;
2 amending RCW 13.34.060; and adding new sections to chapter 13.34 RCW.

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

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the
5 "Wenatchee children's protection amendment."

6 NEW SECTION. **Sec. 2.** (1) A child protective services or child
7 welfare professional shall not authorize the administration of
8 antipsychotic or psychotropic medication, or drugs that specifically
9 treat behavior problems or mental illness other than previously
10 prescribed medications, except as provided in this section.

11 (2) The parent of the child in the custody of the department must
12 be informed of the department's intent to seek authorization for the
13 administration of antipsychotic or psychotropic medication, or drugs
14 that specifically treat behavior problems or mental illness. The
15 parent shall be given an opportunity to sign a declaration in support
16 or opposition to the request.

17 (3) A child who is in the custody of the department under chapter
18 13.34 or 26.44 RCW shall not receive antipsychotic or psychotropic

1 medication, or drugs that specifically treat behavior problems or
2 mental illness, until all of the following have occurred:

3 (a) The department has provided the treating physician a copy of
4 the child's complete medical records accompanied by a signed statement
5 by the appropriate department employee verifying that all medical
6 records in the department's possession have been provided and
7 identifying the steps taken to ensure the records are complete. The
8 department or the parents may provide the physician with the child's
9 medical records. The department shall first make a reasonable effort
10 to contact the parent to obtain a copy of the child's complete medical
11 records and to ensure that the medical records and medical history are
12 complete. The department has a continuing obligation to obtain any
13 missing records and to provide the records to the treating physician;

14 (b) The treating physician believes that it is medically necessary
15 to treat a child with antipsychotic or psychotropic medication, or
16 prescription drugs to treat behavior disorders or mental illness;

17 (c) The department has filed a petition with the court requesting
18 authorization for administration of such drugs. The petition shall
19 include a copy of the declaration, if any, signed by the parent under
20 subsection (2) of this section; and

21 (d) The court has issued an order pursuant to the following
22 standards and procedures:

23 (i) The administration of antipsychotic or psychotropic medication,
24 or prescription drugs to treat behavior disorders or mental illness,
25 shall not be ordered unless the petitioning party proves by clear,
26 cogent, and convincing evidence that there exists a compelling state
27 interest that justifies the use of antipsychotic or psychotropic
28 medications, or prescription drugs to treat behavior disorders or
29 mental illness, that the proposed treatment is necessary and effective,
30 and that medically acceptable alternative forms of treatment are not
31 available, have not been successful, or are not likely to be effective.

32 (ii) The court shall make specific findings of fact concerning:
33 (A) The existence of one or more compelling state interests; (B) the
34 necessity and effectiveness of the treatment; and (C) the desires of
35 the parent of the child, or the desires of the child, if the child is
36 age thirteen or older, regarding the proposed treatment. If a child
37 age thirteen or older is unable to make a rational and informed
38 decision about consenting to or refusing the proposed treatment, the

1 court shall make a substituted judgment for the child as if he or she
2 were competent to make such a determination.

3 (iii) A child age thirteen or older shall be present at any hearing
4 on a request to administer antipsychotic medication, or prescription
5 drugs to treat behavior disorders or mental illness, filed pursuant to
6 this subsection. The child has the right: (A) To be represented by an
7 attorney; (B) to present evidence; (C) to cross-examine witnesses; (D)
8 to have the rules of evidence enforced; (E) to remain silent; (F) to
9 view and copy all petitions and reports in the court file; and (G) to
10 be given reasonable notice and an opportunity to prepare for the
11 hearing. The court may appoint one or more psychiatrists,
12 psychologists within their scope of practice, or physicians to examine
13 and testify on behalf of a parent and child.

14 (iv) An order for the administration of antipsychotic medications
15 or prescription drugs to treat behavior disorders or mental illness
16 entered following a hearing conducted pursuant to this section shall be
17 effective for a period of ninety days. The order may be extended for
18 periods of ninety days upon agreement of all parties, or by the court
19 after a hearing on the issue.

20 (4) In an emergency, the decision and authority to prescribe and
21 administer to a dependent child antipsychotic medicines, or
22 prescription drugs necessary to treat behavior disorders or mental
23 illness, rests with the treating physician based on his or her
24 professional opinion that the child's condition constitutes an
25 emergency requiring the treatment be instituted before a judicial
26 hearing as authorized pursuant to this section can be held.

27 NEW SECTION. **Sec. 3.** The department shall not place a child who
28 is in the custody of the department under chapter 13.34 or 26.44 RCW in
29 any facility not located within the borders of the state if that
30 facility is out of compliance with medicaid rules, regulations, and
31 guidelines or its state's licensing or health and safety regulations,
32 or the facility owes the federal government, state government, or any
33 other entity financial penalties related to noncompliance with federal
34 medicaid rules, or state licensing or health and safety regulations.

35 NEW SECTION. **Sec. 4.** The department shall not place a child who
36 is in the custody of the department under chapter 13.34 or 26.44 RCW in
37 any facility, including but not limited to a mental health or medical

1 facility, not located within the borders of the state unless there are
2 medical orders signed by a physician in the child case record and the
3 department has reasonable cause to believe and confirms in writing in
4 the child's case record that in-state facilities or services were
5 considered and that there is no facility or service available in the
6 state that would meet the child's treatment needs. The child case
7 record shall contain all available information to ensure that placement
8 is consistent with the goals of the child's permanency plan and
9 appropriate services have been offered in closest proximity to the
10 child's family resources. This documentation shall be included in the
11 child's case record.

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

14 (1) A child taken into custody pursuant to RCW 13.34.050 or
15 26.44.050 shall be immediately placed in shelter care. A child taken
16 by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070
17 shall be placed in shelter care only when permitted under RCW
18 13.34.055. "Shelter care" means temporary physical care in a facility
19 licensed pursuant to RCW 74.15.030 or in a home not required to be
20 licensed pursuant to that section. Whenever a child is taken into such
21 custody pursuant to this section, the supervising agency may authorize
22 evaluations of the child's physical or emotional condition, routine
23 medical and dental examination and care, and all necessary emergency
24 care, as limited by section 2 of this act. In no case may a child who
25 is taken into custody pursuant to RCW 13.34.055, 13.34.050, or
26 26.44.050 be detained in a secure detention facility. No child may be
27 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

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

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

17 "NOTICE

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

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

26 2. You have the right to have a lawyer represent you at the
27 hearing. 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 You should be present at this hearing. If you do not come, the
37 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 (10) A shelter care order issued pursuant to this section may be
9 amended at any time with notice and hearing thereon. The shelter care
10 decision of placement shall be modified only upon a showing of change
11 in circumstances. No child may be detained for longer than thirty days
12 without an order, signed by the judge, authorizing continued shelter
13 care.

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

22 NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act are each
23 added to chapter 13.34 RCW.

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